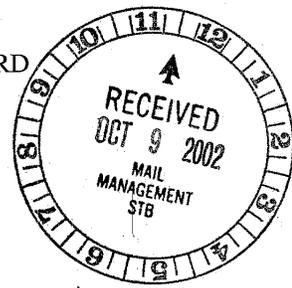


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ENTERED BEFORE THE SURFACE TRANSPORTATION BOARD
Office of Proceedings
OCT 9 2002
Part of Public Record



Docket No. AB 167 (Sub-No. 1094)A

CHELSEA PROPERTY OWNERS -- ABANDONMENT -- PORTION OF THE
CONSOLIDATED RAIL CORPORATION'S WEST 30TH STREET SECONDARY TRACK IN
NEW YORK, NEW YORK

**REPLY OF THE CITY OF NEW YORK TO OPPOSITION OF CHELSEA PROPERTY
OWNERS TO MOTION OF THE CITY OF NEW YORK TO ENLARGE TIME FOR
RESPONDING TO MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT**

The City of New York ("the City") submits this reply to correct certain misstatements of fact set forth in the Opposition of Chelsea Property Owners to Motion of the City of New York to Enlarge the Time for Responding to Motion for Approval of Settlement Agreement and Petition to Reopen, filed on October 1, 2002 (the "CPO Opposition").

1. Contrary to statements made in the CPO Opposition (i) the 90 days requested by the City is an extremely aggressive schedule for the City, given the number of interested parties and the complexity of issues presented by recent developments, to ascertain whether or not to support any proposal related to the High Line, and thus a reasonable period of time for the Board to grant the City to respond to CPO's Motion for Approval of Settlement Agreement, (ii) the resolution of the pending matters before the Board before approximately December 17, 2002 would prevent the City's comprehensive consideration, in consultation with interested public officials and private parties, of whether or not the City should support an application for a Certificate of

Interim Trail Use (“CITU”) pursuant to 16 U.S.C. §1247(d) and 49 C.F.R. §1152.29, (iii) prior to the current mayoral administration, the City had never undertaken any meaningful consideration of rail banking the High Line for public trail use, and (iv) the City understands the legal issues and requirements associated with the request for a CITU.

2. As stated in the CPO Opposition, The Friends of the High Line, Inc. (“FOHL”) is preparing a study considering the feasibility of rail banking the High Line for public trail use under the Rails-to-Trails Act. This study, as well as the study being done by CPO, has been coordinated by the Department of City Planning at the request of the current administration. Reportedly, CPO will also submit the results of its study for the City’s consideration (although representatives of CPO have also participated in the study being prepared by FOHL). The issues surrounding the question of potential re-use are numerous and complex, both relating to the future of the west side rail yards north of 30th Street through which the High Line runs, and otherwise (open view preservation, assumption of liabilities, access by disabled persons, security, traffic, compatibility with overall plan for the area, etc.). Many of these issues will be addressed by the FOHL and, one supposes, the CPO studies. However, the FOHL study is primarily directed towards the economic feasibility of the High Line’s conversion to a public trail use. If, upon consideration of the studies being prepared, the City believes that FOHL’s proposal for public trail use is meritorious and economically feasible, a further analysis of any and all issues associated with implementation will be needed. Complex legal, financial, engineering and community planning issues associated with implementation will have to be considered. This will necessarily involve discussions with officials at the highest levels of State government, the two public benefit corporations which own the west side rail yards through which a portion of the High Line runs (the Convention Center Development Corporation

("CCDC") and the Metropolitan Transportation Authority ("MTA"), New York Central Lines LLC/Conrail/CSX, and proposed developers involved with the west side rail yards. Local legislative and community leaders will be consulted. CPO and its constituency will certainly be a part of this process. Given the circumstances, the City submits that the 90 day period requested is an extremely aggressive time frame for the City to consider implementation and decide whether to support a rail banking application for public trail use.

3. Since CPO has taken approximately 10 years to present to the Board an arrangement which the railroad parties agree satisfies the surety condition of the Interstate Commerce Commission's 1992 ruling (the "ICC Surety Condition"), it is hardly unreasonable for the City to seek a 90 day period to consider in detail the proposal for public trail use which has, thus far, been presented to the current administration only in concept.

4. The City does not misunderstand the consequences under the Rails-to-Trails Act of severing the High Line below 30th Street from the interstate rail network. In discussions among FOHL, the City's Department of City Planning and CPO over the scope of FOHL's study, the City informed FOHL that its study must address the issue of how the High Line south of 30th Street could qualify for a CITU if the portion of the High Line over the west side rail yards were demolished and the easements extinguished. Clearly, and contrary to CPO's argument to this Board, the City is aware of the question of the Board's continuing jurisdiction in the event of a severance of the High Line south of 30th Street from a connection to the national rail network.

5. CPO alleges that the portion of the High Line over the west side rail yards will have to be severed from the portion to the south in order for existing plans for the west side rail yards to proceed. Whether or not the High Line must be abandoned and dismantled and the easements

extinguished in order to undertake proposed development at the west side rail yards is not a matter on which the City has reached any conclusion. There are a number of proposals for the development of the west side rail yards, not just those described by CPO. At this time the development proposals concerning the west side rail yards are in the beginning stages and remain conceptual in nature. Moreover, the City does not concede that, if the will of all the parties with interests in the west side rail yards (which does not include CPO) was to maintain a link between the High Line south of 30th Street and the interstate rail network, this could not be accomplished in a manner consistent with the development needs of the interested parties. This is an issue that FOHL has been directed to examine, and which will be addressed, as appropriate, with the interested parties within a global framework.

6. CPO's statements to the contrary notwithstanding, the City has given no prior serious consideration to public trail use for the High Line. While it is true that the concept of reuse and potential reuse possibilities have been examined by prior mayoral administrations, such proposals have focused solely on converting the High Line to other transportation uses. Prior to FOHL's proposal, the City had not been presented with a serious proposal for rail banking the High Line for public trail use, and therefore had never thoroughly reviewed this alternative. Nor has the City had to consider the question of the impact of demolishing part of the High Line (over the west side rail yards) on continuing STB jurisdiction over the portion south of 30th Street for purposes of a CITU. Consequently the proposal of a Rails-to-Trails use is a new issue to the City, and one which the City believes entails issues far more complicated than a reuse scenario solely focused on transport.

7. CPO has not presented any evidence of any material hardship it would suffer as a result of this Board's approval of the City's motion. It is hard to imagine how granting the 90 day request

could cause any material hardship to CPO given that it took ten years for CPO to satisfy the ICC Surety Condition to the railroad parties' satisfaction.

8. In direct contrast, denial of the City's motion would present a hardship to the City. If the Board were to act upon the Motion CPO filed, the City would be required to act quickly and without the benefit of the studies that are now underway. The City would be forced to make a decision on next steps that have far reaching consequences without having an opportunity to review all available information and to consult with all the interested parties whose support and cooperation would be required for such an endeavor.

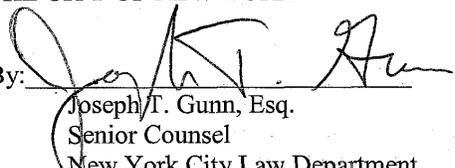
9. Given the implementation analysis that would be required for any of the possible solutions, including a possible request for a CITU, as well as the need to consult with many interested public officials and private parties interested in the High Line and the west side rail yards, and the planning, engineering and legal tasks involved should the City decide to support an application for a CITU, the 90 day period requested by the City is very modest. Less than 90 days would likely prevent the City from comprehensively undertaking the tasks involved and force the City into a hasty decision, possibly foreclosing forever the possibility of public trail use for the High Line.

10. The City's Motion for Enlargement Of Time is timely. According to the Certificate of Service attached to CPO's Motion, the Motion was deposited in the mail on August 14, 2002. Sometime shortly thereafter, the City received the Motion. The papers were served on Gail Rubin of the City Law Department's Affirmative Litigation Division, who had, years earlier, been involved with the High Line matter before the Board. As attorneys and principals for CPO are aware, the High Line matter has been handled for approximately the last three years

principally by Joseph Gunn of the City Law Department's Economic Development Division. Due to vacation schedules, the papers served did not come into Mr. Gunn's possession until approximately September 6, 2002, and, due to the need to engage with Ms. Rubin, as a litigator, and given certain workload priorities which necessitated attention prior to attending to CPO's motion, the City could not make its motion for additional time until September 19, 2002.

Respectfully submitted,

THE CITY OF NEW YORK

By: 

Joseph T. Gunn, Esq.
Senior Counsel
New York City Law Department
100 Church Street
New York, New York 10007
Tel. 212-788-1169
Fax. 212-227-5648
Email. JGunn@law.nyc.gov

Charles A. Spitulnik
McLeod, Watkinson & Miller
One Massachusetts Avenue, N.W.
Suite 800
Washington, D.C. 20001
Tel. 202-842-2345
Fax. 202-408-7763
Email. Cspitulnik@mwmlaw.com

Dated: October 9, 2002

Certificate of Service

I, Joseph Gunn, certify that on the 9th day of October, 2002, I caused a copy of the foregoing REPLY OF THE CITY OF NEW YORK TO OPPOSITION OF CHELSEA PROPERTY OWNERS TO MOTION OF THE CITY OF NEW YORK TO ENLARGE TIME FOR RESPONDING TO MOTION FOR APPROVAL OR SETTLEMENT AGREEMENT AND PETITION TO REOPEN AND PETITION FOR DECLARATORY ORDER to be served by first class mail on the parties listed below.

Counsel

Represents

Elizabeth Bradford
655 West 34th Street
New York, New York 10001-1188

(NYCCDC)

John F. Guinan
New York Department of Transportation
Albany, NY 12232

(NYDOT)

Robert M. Jenkins
Mayer Brown Rowe & Maw
1909 K Street NW
Washington, D.C. 20006-1101

(Conrail)

Dennis G. Lyons
Arnold & Porter
555 Twelfth Street NW, Suite 940
Washington, DC 20004-1206

(CSX and CSXT)

Anthony P. Semancik
347 Madison Avenue
New York, New York 10017-3706

(MTA)

J. Michael Hemmer
Kimberly K. Egan
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

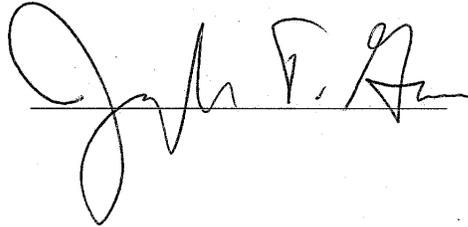
(Friends of the
High Line)



John Broadley, Esq.
Chelsea Property Owners
1054 31st Street, N.W. - Suite 200
Washington, D.C. 20007

(CPO)

Dated October 9, 2002

A handwritten signature in black ink, appearing to read "John F. Broadley", is written over a horizontal line. The signature is stylized and cursive.