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35164

ENTERED
Office of Proceedings

SEP 23 2003

Part of
Public Record

September 22, 2003



Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

VIA FED EX

**RE: STB Docket No. AB-55 (Sub-No. 568X)
CSX Transportation, Inc. -- Abandonment
Exemption in Franklin County, Pennsylvania**

Dear Mr. Williams:

Please be advised that this office represents New Franklin Properties, LLC.

Enclosed herewith please find an original and 11 copies of New Franklin Properties, LLC's, Petition to Intervene in the above-referenced matter.

Please file the original and 10 copies, and stamp and return one of the copies to us in the enclosed self-addressed, stamped envelope.

If you need anything further from us to complete the filing of the Petition, then please do not hesitate to contact me. Thank you for your courtesy and assistance in this matter.

BECKLEY & MADDEN

Vernon A. Williams, Secretary
September 22, 2003
Page 2

Very truly yours,

BECKLEY & MADDEN

By:


Charles O. Beckley, II

cc: Natalie S. Rosenberg, Esquire (via Fed Ex)
Lynn Y. MacBride, Esquire (via Fed Ex)
Thomas J. Finucane, Esquire (via Fed Ex)
David C. Finch, Assistant Borough Manager (via Fed Ex)
Mr. Frederick Armstrong Fox

208965

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



DOCKET NO. AB-55 (SUB-NO. 568X)

CSX TRANSPORTATION, INC.
ABANDONMENT EXEMPTION
IN FRANKLIN COUNTY, PENNSYLVANIA

**ENTERED
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PETITION TO INTERVENE OF NEW FRANKLIN PROPERTIES, LLC

DATED: September 22, 2003

Thomas A. Beckley, Esquire
Charles O. Beckley, II, Esquire

BECKLEY & MADDEN
212 North Third Street
P. O. Box 11998
Harrisburg, PA 17108-1998
(717) 233-7691

Attorneys for Petitioner
New Franklin Properties, LLC

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



DOCKET NO. AB-55 (SUB-NO. 568X)

CSX TRANSPORTATION, INC.
ABANDONMENT EXEMPTION
IN FRANKLIN COUNTY, PENNSYLVANIA

**ENTERED
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PETITION TO INTERVENE OF NEW FRANKLIN PROPERTIES, LLC

AND NOW comes New Franklin Properties, LLC, which, by and through its attorneys, Thomas A. Beckley, Esquire, Charles O. Beckley, II, Esquire, and Beckley & Madden, of Counsel, files this Petition to Intervene, and in support thereof avers as follows:

I. BACKGROUND

1. CSXT commenced this proceeding on November 16, 1998, by filing a petition for exemption. CSXT sought to exempt from the prior approval requirements of 49 U.S.C. §10903 its plan to abandon a portion of its railroad known as the Baltimore Service Lane, Lurgan Subdivision, extending from Fourth Street to Commerce Street in the Borough of Chambersburg, Franklin County, Pennsylvania. For purposes of this motion, the section of rail line which CSXT intends to abandon may be divided into three separate parts: (1) the Fourth Street to Main Street

Section; (2) the Main Street to South Street Section; and (3) the South Street to Commerce Street Section.

2. In its petition for exemption, CSXT indicated that Chambersburg Engineering Company ("Chambersburg Engineering") was the only rail shipper located along the entire length of railroad which CSXT wants to abandon. CSXT stated that, despite the abandonment, Chambersburg Engineering would not lose rail service, because CSXT planned to reclassify the Fourth Street to Main Street Section as industrial sidetrack.

3. On March 9, 1999, the Board served a Decision which, *inter alia*: (a) granted CSXT's petition for exemption; and (b) established March 19, 1999, as the deadline for filing offers of financial assistance.

4. On March 12, 1999, the Frederick A. Fox, Kaye A. Fox and Frederick Armstrong Fox ("the Foxes," herein) timely filed an offer of financial assistance ("OFA"), pursuant to which they sought to purchase the Main Street to South Street Section of CSXT's railroad.¹ On March 23, 1999, the Board served a decision which found the Foxes to be financially responsible, and postponed the effective date of the exemption authorizing abandonment of the Main Street to South Street Section of the line, in order to allow the OFA process to proceed.

5. In December, 2001, or January, 2002, Chambersburg Engineering went out of business.

6. On July 30, 2002, Chambersburg Engineering conveyed all of its real property -- which is the property served by the Fourth Street to Main Street Section of CSXT's line and consists of approximately 25 acres and 250,000 square feet of building space -- to New Franklin

¹ When the Foxes made their offer of financial assistance, the Foxes' Counsel also represented Frederick Armstrong Fox's wife, Karla M. Fox. In March, 2002, Ms. Fox commenced an action for divorce against Frederick Armstrong Fox in the Court of Common Pleas of Franklin County, Pennsylvania. Consequently, the Foxes' Counsel no longer represents Ms. Fox, and Ms. Fox has not participated separately in this proceeding. Ms. Fox is represented in the divorce proceeding by Lynn Y. MacBride, Esquire. A copy of this petition is being served on Ms. MacBride.

Properties, LLC (New Franklin Properties). (A copy of the deed by which Chambersburg Engineering Company conveyed its real property to New Franklin Properties is incorporated herein by reference and attached hereto as Exhibit A.)

7. New Franklin Properties is a Pennsylvania limited liability company which is wholly owned by Frederick Armstrong Fox.

8. Due to this change in circumstances, i.e. Chambersburg Engineering's demise and New Franklin Properties' acquisition of its real property, the Foxes filed with the Board on August 15, 2003, a Petition to Amend their Offer of Financial Assistance, or, Alternatively, to Reopen the Decision Served by the Board on March 9, 1999, Pursuant to 49 C.F.R. §1152.25(e), to Permit the Filing of a New Offer of Financial Assistance, *Nunc Pro Tunc* ("petition to amend OFA," herein).

9. The Foxes want to amend their OFA to include the Fourth Street to Main Street Section of CSXT's line, which serves the property formerly owned by Chambersburg Engineering, and now owned by New Franklin Properties and controlled by Frederick Armstrong Fox. The Foxes plan to develop this property, along with their Black Avenue properties (which are served by the Main Street to South Street Section of CSXT's line, for which the Foxes have already filed an OFA), into an integrated industrial park, whose anchor tenants will be the Foxes' own manufacturing and service businesses. Both the Foxes and New Franklin Properties view the continued availability of rail service as essential to the success of this project.

10. CSXT has taken no position concerning the Foxes' petition to amend their OFA. CSXT has previously indicated to the Board, however, that CSXT will sell the Fourth Street to Main Street Section to the Foxes under the OFA process. *See January 28, 1999, Reply of CSXT to Protest to Petition for Exemption Filed by the Foxes*, p. 3 ("If the Foxes choose to purchase

this trackage [the rail line between Fourth Street and Main Street and between Main Street and South Street] under the Board's OFA process, CSXT will sell them the rail line.").

11. On September 9, 2003, the Foxes' Counsel, Charles O. Beckley, II, Esquire, spoke by telephone with Thomas J. Finucane, Esquire, who serves as the Solicitor for the Borough of Chambersburg ("the Borough," herein). Mr. Finucane indicated that the Borough intended to oppose the Foxes' petition to amend their OFA, despite the Borough's failure to file a timely reply to the petition. *See* 49 C.F.R. §1104.13(a).

12. Mr. Finucane further indicated that the Borough intends to attempt to purchase the Fourth Street to Main Street Section of CSXT's rail line -- the section of line that forms the subject of the Foxes' petition -- directly from CSXT, outside of the OFA process. Mr. Finucane stated that the Borough would then be willing to negotiate with the Foxes to sell the Fourth Street to Main Street Section to them, in exchange for: (a) the Foxes' conveyance of the Main Street to South Street Section to the Borough; (b) the Foxes agreement to underwrite the cost of the removal of the rails from the Main Street to South Street Section; (c) the Foxes' payment to the Borough of an undetermined sum of money; and (d) the Foxes' agreement to grant to the Borough a right-of-way over certain of the Foxes' properties.

13. The Foxes previously rejected a similar proposal from the Borough. The Foxes filed their petition to amend their OFA in order to preserve rail service to their Black Avenue properties and the newly-acquired former Chambersburg Engineering property, which, as noted previously, the Foxes plan to develop into an integrated industrial park. Purchasing the Fourth Street to Main Street and the Main Street to South Street Sections of CSXT's rail line through the OFA process is the only means by which the Foxes can ensure continued rail service to their properties and to the land owned by New Franklin Properties.

14. The Borough's attempt to purchase the Fourth Street to Main Street Section directly from CSXT now, almost a month after the Foxes' filing of their petition to amend their OFA, and more than four-and-a-half years after the Board issued its decision granting CSXT's petition for exemption, represents nothing more than an obvious and cynical attempt by the Borough to render the Foxes' petition moot.

15. In truth, the Borough does not want and has no railroad use for the Fourth Street to Main Street Section. The Borough wants to acquire that Section simply to employ it as leverage to extract certain concessions from the Foxes.

16. Accordingly, on September 11, 2003, the Foxes filed with the Board a Motion for an order Staying CSXT's Right to Exercise its Abandonment Authority for the Fourth Street to Main Street Section of its line, pending the Board's disposition of the Foxes petition to amend their OFA.

17. On September 12, 2003, the Borough of Chambersburg filed both an untimely reply to the Foxes' petition to amend their OFA, and a reply opposing the Foxes' motion for stay. (The Borough's two replies are virtually identical, and will hereinafter be referred to collectively as "the Borough's reply.")

18. On September 17, 2003, the Board entered an Order granting the Foxes' request for a stay.

II. RESPONSE TO THE BOROUGH'S POSITION

A. THE BOROUGH DOES NOT DISPUTE THAT CIRCUMSTANCES HAVE CHANGED AND THAT IT NO LONGER HAS ANY RAILROAD USE FOR THE FOURTH STREET TO MAIN STREET SECTION

19. Before addressing the core contention of the Borough's reply, it is important to note at the outset what the Borough has not said. First, the Borough has not contested the Foxes' contentions that: (a) the purpose of maintaining the Fourth Street to Main Street Section as industrial sidetrack was always to preserve rail service to Chambersburg Engineering Company; and (b) that circumstances have now changed, because Chambersburg Engineering Company has gone out of business and sold its real property to New Franklin Properties, the limited liability company wholly owned by Frederick Armstrong Fox.

Second, the Borough has not contested the Foxes' assertion that, with Chambersburg Engineering's demise, the Borough no longer has any legitimate railroad use for the Fourth Street to Main Street section of CSXT's line. Indeed, the Borough has not identified any use at all that it intends to make of the Fourth Street to Main Street Section, nor has the Borough indicated that it has either the resources or the inclination to maintain the Fourth Street to Main Street Section, which includes two bridges, in a condition suitable for rail use.

Third, the Borough does not contend that the Board cannot grant the relief that the Foxes have requested, nor has the Borough advanced any argument rooted in fact to explain why, given the change in ownership of the former Chambersburg Engineering property, the Board should now deny the Foxes the opportunity to purchase the Fourth Street to Main Street Section through the OFA process. New Franklin Properties, the limited liability company owned by Frederick Armstrong Fox, now owns the property served by the Fourth Street to Main Street Section.

Moreover, the Fourth Street to Main Street Section connects to the Main Street to South Street Section, which serves the Foxes' Black Avenue properties. The Borough does not contest these facts, nor has the Borough identified a single reason why it does not simply make sense for the individuals who own and/or control the properties served by the line -- the individuals who have a direct stake in ensuring the preservation of rail service to those properties, and the means to do so -- to own the line.

Fourth, the Borough does not credibly suggest that permitting the Foxes to purchase the Fourth Street to Main Street Section will in any way harm the Borough. The Borough says only that granting the Foxes' petition will prejudice the Borough "because the Borough has accepted an offer from CSXT for the Borough to acquire the Right of Way." (*Reply of Borough to Petition to Amend OFA*, ¶1). But the Borough itself trumped up this alleged "prejudice," by attempting to purchase the Fourth Street to Main Street section *after* the Foxes had already filed their petition to amend their OFA. And the Borough has failed to aver any facts that explain or identify the precise nature of any alleged prejudice.

Finally, the Borough has not contested the Foxes' contention that the real reason that the Borough made an eleventh hour attempt to purchase the Fourth Street to Main Street Section, after the Foxes had already filed their petition to amend their OFA, was to render the Foxes' petition moot, and to acquire the Fourth Street to Main Street Section for use as a bargaining chip to extract concessions from the Foxes.

**B. THE COOPERATION AGREEMENT DID NOT REQUIRE
CSXT TO CONVEY THE FOURTH STREET TO MAIN
STREET SECTION TO THE BOROUGH**

20. The Borough's core contention is that the Board should deny the Foxes' petition because on March 18, 1999, the Borough, CSXT, the Consolidated Rail Corporation, Norfolk Southern Railway Corporation and the Pennsylvania Department of Transportation entered into a Reimbursement and Cooperation Agreement ("the Cooperation Agreement," herein) which provided, in relevant part, as follows:

WHEREAS, CSXT will, as part of its twenty (20) percent local match for its portion of the Project, contribute the railroad operating land *to be vacated by the removal of the line segment and associated crossings by quitclaim deed* to the municipality in which each segment is located....

* * *

3. Real estate requirements. The Railroads agree to cooperate for purposes of the Project as follows:

* * *

B. CSXT shall convey to the Borough by quitclaim deed all CSXT ownership interests in rights of way in the Borough as defined in Exhibit A. The conveyance to the Borough shall be in lieu of eminent domain proceedings. ***Prior to the conveyance, CSXT shall complete all Project work on its lines in the Borough in accordance with the Project work plan*** approved by the Department in consultation with the Borough. CSXT agrees to obtain an independent appraiser who shall make an appraisal of the parcels to be vacated in order to determine the value ***of the property*** to be transferred. The appraiser must be approved by the Department prior to the start of the appraisal. ***Upon acceptance of the rights of way and conveyance of title,*** the Borough shall assume all future maintenance responsibility and liability ***for the property*** so conveyed. The Borough shall record the deeds conveying rights-of-way and any other necessary property to the Borough and shall be responsible for all recording fees and transfer taxes, if any, from such transactions.

C. CSXT understands that the Department's reimbursement to CSXT under the description in Exhibit B for the *line sales* from Commerce to Lurgan and *from Main Street to Fourth Street* is contingent upon CSXT's successful negotiation to transfer the lines within five years of the date of this Agreement *either to the Borough or to another public entity charged with maintaining the affected segments.*

* * *

[EXHIBIT A]

Abandonment through Chambersburg – This shows the estimated cost (\$252,791.00) to eliminate the 9 road crossings through Chambersburg. *These crossings include Main through Commerce. The tracks are removed* and the road surfaces are restored to match adjacent road conditions. CSXT will cease to be the property owner and the Borough *is expected* to become the property owner. *The estimated value of CSXT land contributed to the Chambersburg Borough* is \$276,000.00 and is to be validated by an independent appraiser [sic]. Total abandonment section subtotal is \$528,791.

* * *

4th Street to Main – This shows the estimated cost (\$104,000.00) *to sell the line from 4th Street to Main.* This also includes the siding that serves Chambersburg Engineering. CSXT will continue to serve Chambersburg Engineering as long as maintenance responsibility of the track and bridge is assumed by another party. *The Borough is willing to assume ownership providing there are funds available to maintain the track and bridge.* CSXT and the Borough have five (5) years to effect this transaction.

* * *

[EXHIBIT B]

9. <i>Sale: From 4th Street to Main</i>	<u>104,000.00</u>
(includes Chambersburg Eng. MP MP 20.5 to 20.8)	

(March 18, 1999, *Cooperation Agreement*, p.p. 2-3; Exh. A, p. 4; Exh. B, p. 3)(emphasis supplied). (A copy of the Cooperation Agreement is attached to the Borough's Reply as Exhibit B.)

Contrary to the Borough's assertion in its reply, the Cooperation Agreement did not obligate CSXT to convey the Fourth Street to Main Street Section to the Borough. Rather, as the language of the Agreement makes clear, CSXT agreed to convey to the Borough by quitclaim deed the rights of way "to be vacated by the removal of the line segment and associated crossings..." (*Cooperation Agreement*, p. 2). This is why the Agreement requires that "[p]rior to the conveyance, CSXT shall complete all Project work on its lines in accordance with the Project work plan approved by the Department in consultation with the Borough." (*Id.*, ¶3.B., p. 3). The Agreement provides that "CSXT shall convey to the Borough by quitclaim deed all CSXT ownership interests in rights of way in the Borough as defined in Exhibit A." (*Id.*). Exhibit A defines the rights of way to be conveyed to include the crossings from "Main through Commerce," where "[t]he tracks are removed and the road surfaces are restored to match adjacent road conditions." (*Id.*, Exh. A, p. 4). This area constitutes the "CSXT land contributed to the Chambersburg Borough," and the Agreement indicates only that "the Borough *is expected* to become the property owner." (*Id.*)(emphasis added).

Unlike the section of CSXT's line that extends from Main Street to Commerce Street -- where the Cooperation Agreement contemplated that the track and crossings would be removed and the underlying rights of way contributed by CSXT by quitclaim deed to the Borough -- the Agreement provides that the Fourth Street to Main Street Section will be *sold* by CSXT to the Borough or some other public entity. Specifically, the Agreement states that "CSXT understands that the Department's reimbursement to CSXT ... for the *line sales* from Commerce to Lurgan

and *from Main Street to Fourth Street is contingent upon CSXT's successful negotiation to transfer the lines...either to the Borough or to another public entity charged with maintaining the affected segments.*" (Cooperation Agreement, ¶3.C., p. 3)(emphasis added).

Similarly, Exhibit A to the Agreement refers to "the estimated cost "(104,000.00) *to sell the line from 4th Street to Main,*" and provides that "the Borough is willing to assume ownership" of the Fourth Street to Main Street Section only if "there are funds available to maintain the track and bridge, and indicates that "CSXT and the Borough have five (5) years to effect this transaction." (*Id.*, Exh. A, p. 4). Exhibit B to the Agreement likewise makes reference to the "Sale: From 4th Street to Main." (*Id.*, Exh. B, p. 3).

In summary, then, the Cooperation Agreement entered into between the Borough, CSXT and others contemplated that CSXT would convey to the Borough the rights of way for the Main Street to South Street and the South Street to Commerce Street Sections (i. e. Main to Commerce) of CSXT's rail line. This was the area in which CSXT planned to remove the tracks and the crossings and for which the Borough filed a trail use request. The Agreement further envisioned that CSXT would negotiate to sell the Fourth Street to Main Street Section to the Borough or some other public entity, sometime within the five years following the Agreement's execution, provided that funds became available to the Borough or some other public entity to maintain the track and bridge.

The Cooperation Agreement clearly did not *require* CSXT to sell the Fourth Street to Main Street Section to the Borough. Moreover, the Agreement did not obligate the Borough to purchase or accept the Fourth Street to Main Street Section from CSXT. (These facts were made manifest when, as referenced at pages 5-6 of the Foxes' petition to amend their OFA, during the period from February, 2001, to July, 2001, CSXT planned to remove the track from the Fourth

Street to Main Street Section because no one wanted it, which in turn caused the Foxes to withdraw and then ultimately reinstate their OFA for the Main Street Section to South Street Section.) The Cooperation Agreement contemplated simply that the Borough and CSXT could negotiate concerning the sale of the Fourth Street to Main Street Section to the Borough or some other public entity.

Finally, despite the Borough's transparent, last-minute attempt to render the Foxes' petition to amend their OFA moot, the Borough still has not entered into an agreement with CSXT to purchase the Fourth Street to Main Street Section. The proposed Purchase and Sale Agreement attached to the Borough's reply as Exhibit A is undated and unsigned by CSXT, and constitutes, at most, an offer by the Borough. Moreover, the proposed Agreement contains numerous grounds for unilateral termination by either party, which include either party's inability, "for any reason, to enter into the agreement for assignment and assumption contemplated under [the] Agreement," and claims or litigation that is "threatened or pending in connection with the transactions contemplated by this Agreement." (*Proposed Purchase and Sale Agreement*, ¶11, p. 6). (Apparently, the Borough could rely on the pendency of the Foxes' petition before the Board as a basis to terminate the proposed Agreement.)

In short, the attachments to the Borough's reply cannot sustain the Borough's contention that the Board should deny the Foxes' petition to amend their OFA because CSXT has already entered into an agreement to convey the Fourth Street to Main Street Section to the Borough. Despite the efforts engaged in by the Borough after the Foxes filed their petition, no enforceable agreement to convey the Fourth Street to Main Street Section exists.

**C. THE BOROUGH'S OFFER TO PURCHASE THE
FOURTH STREET TO MAIN STREET SECTION PRIVATELY
FROM CSXT CANNOT TRUMP THE OFA PROCESS**

21. Even if the Borough had entered into a private agreement with CSXT to purchase the Fourth Street to Main Street Section, which it did not do, the mere fact of such an agreement could not, in and of itself, override or displace the OFA process.

In their petition, the Foxes have asked the Board either to permit them to file an amended OFA, or, alternatively, to reopen the decision served by the Board on March 9, 1999, to permit the Foxes to file a new OFA, which includes the Fourth Street to Main Street Section, *nunc pro tunc*. If the Board grants the Foxes' petition, and permits them to file a new or amended OFA, then the Foxes will enter into negotiations with CSXT to establish the price and conditions applicable to the sale of the Fourth Street to Main Street Section. If they are unable to reach agreement with CSXT, then the Foxes can request to Board to establish the conditions and amount of compensation for the sale. *See* 49 U.S.C. §10904(e); 49 C.F.R. §1152.27(g).

In either case, however, whether the terms of the sale are established by agreement of the parties, or by the Board and accepted by the Foxes, the Board will dismiss CSXT's petition for exemption insofar as it applies to the Fourth Street to Main Street Section of the line, and the Foxes will proceed to acquire both that section and the Main Street to South Street Section of CSXT's line. *See* 49 U.S.C. § 904; 49 C.F.R. §1152.27(f)(2) and (h)(7).

Fundamentally, then, the Borough's offer to purchase the Fourth Street to Main Street Section privately from CSXT, which the Borough made almost a month after the Foxes' filed their petition to amend their OFA, is irrelevant to the Board's consideration of the Foxes' request for relief. As a matter of law, the Borough's private offer can neither trump nor displace the OFA process. *See* 49 U.S.C. §10904; 49 C.F.R. §1152.27.

***D. SINCE NEW FRANKLIN PROPERTIES NOW OWNS THE
PROPERTY SERVED BY THE FOURTH STREET TO MAIN
STREET SECTION, THE BOARD SHOULD PERMIT NEW
FRANKLIN PROPERTIES TO INTERVENE IN THIS
MATTER***

22. In its reply to the Foxes' petition, the Borough suggests that, since new Franklin Properties now owns the property served by the Fourth Street to Main Street Section, and not the Foxes as individuals, the Foxes have no interest in the property, and, by implication at least, no interest in acquiring the rail line. The Borough makes this assertion despite its acknowledgment that Frederick Armstrong Fox "is the sole owner of New Franklin Properties, LLC...." (*Borough of Chambersburg's Reply to Petition*, p. 4).

The Foxes believe that their interest in acquiring the Fourth Street to Main Street Section of CSXT's line, and in the property served by that line, both by virtue of Frederick Armstrong Fox's ownership of New Franklin Properties, and of the Foxes' ownership of the Black Avenue properties served by the Main Street to South Street Section of the line, is self-evident. Nevertheless, in order to avoid any question relating to the Foxes' standing to seek the relief they have requested, New Franklin Properties, as the owner of the property served by the Fourth Street to Main Street Section, seeks the Board's permission to intervene as a party in this matter. Allowing New Franklin Properties to intervene will neither unduly broaden the issues raised in this proceeding, nor prejudice the rights of the other parties.

III. RELIEF REQUESTED

23. New Franklin Properties respectfully requests the Board to permit New Franklin Properties to intervene as a party in this matter.

24. New Franklin Properties hereby incorporates herein by reference as though set forth in full the Foxes' Petition for Permission to File an Amended Offer of Financial Assistance, or Alternatively, to Reopen the Decision Served by the Board on March 9, 1999, Pursuant to 49 C.F.R. § 1152.25(e), to Permit the Filing of a New Offer of Financial Assistance, *Nunc Pro Tunc*.

25. New Franklin Properties hereby joins in the Foxes' petition, and respectfully requests that the relief requested therein be granted.

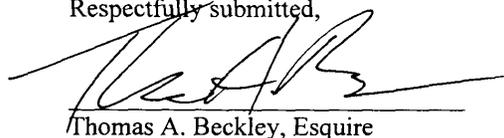
26. Alternatively, New Franklin Properties, as the new owner of the former Chambersburg Engineering Company property, respectfully requests the Board to reopen its decision served in this matter on March 9, 1999, in order to afford New Franklin Properties the opportunity to file its own offer of financial assistance for the Fourth Street to Main Street Section of CSXT's line.

DATED: September 22, 2003

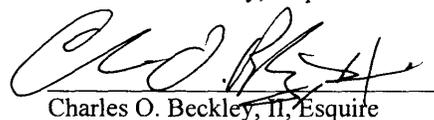
Of Counsel

BECKLEY & MADDEN
212 North Third Street
P. O. Box 11998
Harrisburg, Pennsylvania 17108-1998
(717) 233-7691

Respectfully submitted,



Thomas A. Beckley, Esquire



Charles O. Beckley, II, Esquire

Attorneys for Petitioner New
Franklin Properties, LLC

DEED

This Deed is made the 30th day of July, 2002, between CHAMBERSBURG ENGINEERING COMPANY, a Pennsylvania corporation, with its principal place of business situated at 150 Derbyshire Street, Chambersburg, Franklin County, Pennsylvania (hereinafter referred to as the "Grantor"),

AND

NEW FRANKLIN PROPERTIES, LLC, a Pennsylvania limited liability company which maintains an office at 521 Black Avenue, Chambersburg, Franklin County, Pennsylvania (hereinafter referred to as the "Grantee").

WITNESSETH, that the said Grantor, for and in consideration of the sum of ONE DOLLAR (\$1.00) lawful money of the United States of America, unto the Grantor well and truly paid by the said Grantee at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged and the Grantor being therewith fully satisfied, does by these presents grant, bargain, sell and convey to the Grantee, its successors and assigns:

ALL that real estate located and being situated within the Borough of Chambersburg, Franklin County, Pennsylvania, being more particularly bounded and described as follows:

TRACT NO. 1: BEGINNING at a point in the public road leading from Chambersburg to Waynesboro and called the Waynesboro Road. The said road is intersected by Lincoln Street; thence along the line of said public road South 13 degrees and 47 minutes East 326 feet to a point on the line of the Cumberland Valley Rail Road; thence along the line of said railroad South 21 degrees West 203 feet to a point; the corner of lands now or formerly of Mrs. Ellen H. Culbertson and formerly of Dr. Edmund Culbertson; thence by lands of said Culbertson North 78 degrees and 27 minutes West 722 feet to a point on the east side of twelve foot alley; thence by said alley North 16 degrees and 8 minutes East 474 feet to a point on the south line of said Lincoln Street; thence along the south line of said Lincoln Street South 80 degrees and 19 minutes East 578.5 feet to place of beginning. CONTAINING 8 acres, more or less.

TOGETHER with a right-of-way over the lands now or formerly of Ellen H. Culbertson and a right-of-way over the lands formerly of Weisgarber's heirs.

BEING the same real estate which Joshua W. Sharpe, Trustee *et al.*, by their deed dated December 6, 1897, and recorded in the Office of the Recorder of Deeds for Franklin County, Pennsylvania, in Deed Book

Volume 110, Page 69, conveyed to the Chambersburg Engineering Company.

TRACT NO. 2: BEGINNING at a post in the middle of the road leading from Chambersburg to Greencastle; thence by lands now or formerly of E. Culbertson, South 78-3/4 degrees East 677.08 feet to a post; thence along line of land now or formerly of Cumberland Valley Railroad Company, South 20-7/8 degrees West 662.76 feet to a point in the middle of the right-of-way of the Western Maryland Rail Road Company; thence along the middle of said right-of-way, North 32-1/2 degrees West 824.39 feet to a post in the middle of the said Chamberburg-Greencastle road; thence along the middle of said road, North 16-1/4 degrees East 92.4 feet to the post, the place of beginning. CONTAINING 5 acres and 30 perches.

BEING the same real estate that Ellis E. Foust and Sally G. Foust, his wife, by their deed dated June 27, 1903, and recorded in the Office of the Recorder of Deeds for Franklin County in Deed Book Volume 130, Page 38, conveyed to Chambersburg Engineering Company, and that Irvin C. Elder and Ariana R. K. Elder, his wife, and Walter K. Sharpe and Helen M. Sharpe, his wife, by their deed dated June 29, 1903, and recorded in the Office of the Recorder of Deeds for Franklin County at Deed Book Volume 130, Page 40, conveyed to Chambersburg Engineering Company.

TRACT NO. 3: BEGINNING at a point in the centerline of the Chambersburg-Greencastle Road (now South Main Street) at a corner common to the within described real estate and other lands of the Grantor herein; thence in said centerline, North 16 degrees 8 minutes East 715 feet 4 inches to a point in the centerline of the Chambersburg-Greencastle Road (now South Main Street) where it intersects with the south property line of Lincoln Street (now Derbyshire Street); thence in the south property line of Lincoln Street (now Derbyshire Street), South 80 degrees 19 minutes East 192 feet, more or less, to a point common to the within described real estate and Tract No. 1 above; thence along the aforesaid Tract No. 1, South 16 degrees 8 minutes West 474 feet to a point; thence continuing along Tract No. 1 herein, South 78 degrees 27 minutes East 673 feet to a point; thence by lands now or formerly of the Cumberland Valley Railroad Company, South 21 degrees West 272 feet to a point; thence by other lands of the Grantor herein, North 76 degrees 30 minutes West 874 feet to a point in the centerline of the Chambersburg-Greencastle Road (now South Main Street), the place of beginning. CONTAINING 6.9 acres.

BEING the same real estate which Ellen H. Culbertson, individually and as executrix of Edmund Culbertson, late of the Borough of Chambersburg, by her deed dated October 1, 1903, and recorded in the Office of the

Recorder of Deeds for Franklin County, Pennsylvania, in Deed Book Volume 130, Page 422, conveyed to the Chambersburg Engineering Company.

TRACT NO. 4: BEGINNING at an angle in the northwesterly line of land now or formerly of the Pennsylvania Railroad Company at the distance of 80.67 feet measured North 76 degrees 32 minutes West from a point in the line established as the centerline (bearing North 20 degrees 53 minutes East) of the eastward bound main track of the Cumberland Valley Division of its railroad, said point in the centerline being distant 5,459.2 feet measured southwestwardly along the same from a point therein opposite the middle of Chambersburg Passenger Station; extending thence by other land now or formerly of the Pennsylvania Railroad Company as follows, viz: First, on a line parallel with the said centerline and 80 feet distant northwestwardly therefrom, South 20 degrees 53 minutes West 90.77 feet; and, second, North 69 degrees 7 minutes West 150 feet; and thence by land now or formerly of the Chambersburg Engineering Company as follows, viz: First, on a line parallel with the said centerline and 230 feet distant northwestwardly therefrom, North 20 degrees 53 minutes East 71.24 feet; and, second, South 76 degrees 32 minutes East 151.3 feet to the place of beginning. CONTAINING 12,150.75 square feet, more or less.

TRACT NO. 5: BEGINNING at a point in the northwesterly corner of the parcel of land hereinabove described as Tract No. 4 at the distance of 231.97 feet measured North 76 degrees 32 minutes West from a point in the said line established as the centerline (bearing North 20 degrees 53 minutes East) of the eastward bound main track of the Cumberland Valley Division of the Pennsylvania Railroad Company, said point in the centerline being distant 5,459.2 feet measured southwestwardly along the same from a point therein opposite the middle of the Chambersburg Passenger Station; extending from the said beginning point South 20 degrees 53 minutes West by the said parcel of land hereinabove described as Tract No. 4, 12.02 feet to a point; thence North 76 degrees 32 minutes West by land now or formerly of the said Chambersburg Engineering Company 675.34 feet to the middle of state road; thence along same and by land now or formerly of William Boyer, North 16 degrees 6 minutes East 12.02 feet; and thence by other land now or formerly of the Chambersburg Engineering Company, South 76 degrees 32 minutes East, 676.3 feet to the place of beginning. CONTAINING 8,109.84 square feet, more or less.

TOGETHER WITH any and all the rights and privileges to use same as a driveway as mentioned and set forth by the Indenture from Ellis E. Foust and wife to the Cumberland Valley Railroad Company, its successors and

assigns, dated June 27, 1903, and recorded in Franklin County Deed Book Volume 130, Page 37.

SUBJECT, HOWEVER, to the existing rights and privileges relating to maintaining and using the railroad, branch sidings and connections now crossing the said strip or piece of land and extending from the tracks of the Western Maryland Railway Company to those of the Pennsylvania Railroad Company.

TRACT Nos. 4 and 5 being the same two tracts of real estate which the Pennsylvania Railroad Company, by deed dated March 18, 1929, and recorded in Franklin County, Pennsylvania in Deed Book Volume 236, Page 10, conveyed to the Chambersburg Engineering Company.

TRACT NO. 6: BEGINNING at a point in a Northeasterly line of land of the Western Maryland Railway Company, at the distance of 60 feet measured Northeastwardly and at right angles from a point in the line established as the center line of the main track of railroad of the Western Maryland Railway Company; said beginning point being also at the distance of 80 feet measured Westwardly and at right angles from a point in the line established as the center line of the Eastbound main track of railroad of the Pennsylvania Railroad Company, known as the Cumberland Valley Branch; said last mentioned point being at the distance of 6,200 feet and 8/10 of a foot measured Southwestwardly along said center line of the Eastbound main track of railroad from another point therein, opposite the center and said railroad company's Chambersburg Passenger Station.

EXTENDING from said beginning point the following four courses and distances: (1) North 32 degrees and 26 minutes West, along said Northeasterly line of land of the Western Maryland Railway Company, on a line parallel with and distant 60 feet measured Northeastwardly and at right angles from said center line of the main track of railroad of the Western Maryland Railway Company, 187.04 feet to a point in an Easterly line of land of the Chambersburg Engineering Company; the following two courses and distances being by said land of the Chambersburg Engineering Company; (2) North 20 degrees and 53 minutes East, on a line parallel with and distant 230 feet measured Westwardly and at right angles from said center line of the Eastbound main track of railroad of the Pennsylvania Railroad Company, 528.81 feet to a point; (3) South 69 degrees 7 minutes East, 150 feet to a point; and thence (4) South 20 degrees 53 minutes West, by land of the Pennsylvania Railroad Company, on a line parallel with and distant 80 feet measured Westwardly and at right angles from said center line of the Eastbound main track of railroad of the Pennsylvania Railroad Company, 640.55 to the place of beginning. CONTAINING 2.013 acres, more or less.

TRACT NO. 7: BEGINNING at a point at a corner common to land of the Western Maryland Railway Company and common to a corner of land of the Chambersburg Engineering Company, at the distance of 20 feet measured Northeastwardly and at right angles from a point in the line established as the center line of the main track of railroad of the Western Maryland Railway Company; said beginning point being also at the distance of 230 feet measured Westwardly and at right angles from a point in the line established as the center line of the Eastbound main track of railroad of the Pennsylvania Railroad Company, known as the Cumberland Valley Branch; said last mentioned point being at the distance of 6,138 feet and 9/10 of a foot measured Southwestwardly along said center line of the Eastbound main track of railroad from another point therein, opposite the center of said Railroad Company's Chambersburg Passenger Station;

EXTENDING from said beginning point the following five courses and distances: (1) North 32 degrees 26 minutes West, along a Northeasterly line of land of the Western Maryland Railway Company, on a line parallel with and distant 20 feet measured Northeastwardly and at right angles from said center line of the main track of railroad of the Western Maryland Railway Company, crossing the Easterly line of State Road, 829.85 feet to a point in the center line of said State Road; (2) North 16 degrees 6 minutes East, along said center line of State Road, 16.01 feet to a point; the following two courses and distances being through land of the Chambersburg Engineering Company; (3) South 32 degrees 26 minutes East, on a line parallel with and distant 32 feet measured Northeastwardly and at right angles from said center line of the main track of railroad of the Western Maryland Railway Company, recrossing said Easterly line of State Road, 752.98 feet to a point; (4) South 69 degrees 7 minutes East, 62 feet and 98 one-hundredths of a foot to a point in the Westerly line of the parcel of land containing 2.013 acres, more or less, as hereinbefore described; and thence (5) South 20 degrees 53 minutes West, partly along said Westerly line of the parcel of land as hereinbefore described, and partly along a Westerly line of land of the Western Maryland Railway Company, on a line parallel with and distant 230 feet measured Westwardly and at right angles from said center line of the Eastbound main track of railroad of the Pennsylvania Railroad Company, 61.88 feet to the place of beginning. CONTAINING 263 one-thousandths of an acre, more or less.

TRACT NOS. 6 and 7 being the same two tracts of real estate which the Pennsylvania Railroad Company, by its deed dated September 4, 1942, and recorded in the Office of the Recorder of Deeds for Franklin County, Pennsylvania, in Deed Book Volume 300, Page 91, conveyed and quit claimed, respectively, to the Chambersburg Engineering Company.

TRACT NO. 8: BEGINNING at an iron pin in Wayne Avenue on the southern boundary line of land now or formerly of Jere Senseny, being 7.7 feet from the curb line of Wayne Avenue and 12 feet from the property line thereof; thence across Wayne Avenue and along land now or formerly of Jere Senseny, South 79 degrees 54 minutes East 261 feet to an iron pin on the centerline of a 16-foot alley; thence with centerline of said alley, South 10 degrees 46 minutes West, 185.9 feet to an iron pin; thence South 53 degrees 12 minutes East 14.8 feet to an iron pin on the northern right-of-way line of railroad siding of track connecting the Pennsylvania Railroad Company tracks with tracks of the Western Maryland Railway Company; thence with a line 15 feet from and parallel to the centerline of the track connecting the Pennsylvania Railroad and the Western Maryland Railroad 198.2 feet to an iron pin in Wayne Avenue, said line being the arc of a circle having a radius of 410.3 feet, the chord thereof being 195.9 feet and running South 67 degrees 11 minutes West; thence in said Wayne Avenue, North 9 degrees 31 minutes West, 318.4 feet to an iron pin, the place of beginning. CONTAINING 1 acre and 45.5 perches, more or less, as shown by draft entitled "Draft of Land, Chambersburg, Franklin Co., Pa., surveyed May 20, 1943 for the Chambersburg Engineering Co., Scale 1" 30 ft., John H. Atherton, C.S."

BEING the same real estate which Mabel H. Schaff, widow, by her deed dated June 4, 1943, and recorded in the Office of the Recorder of Deeds for Franklin County, Pennsylvania, in Deed Book Volume 310, Page 504, conveyed to Chambersburg Engineering Company.

TRACT NO. 9: BEGINNING at an iron pin located North 57 degrees 34 minutes East, 20 feet from a point in the center line of the main track of the Western Maryland Railway Company, which point is South 32 degrees 27 minutes East, 824.39 feet from the intersection of said main track and the center of South Main Street; thence North 32 degrees 30 minutes West, 14.89 feet to an iron pin at other lands of the Chambersburg Engineering Company; thence by the same, North 20 degrees 53 minutes East, 49.87 feet to an iron pin; thence South 32 degrees 26 minutes East, 44.7 feet to an iron pin at lands of the Western Maryland Railway Company; thence by said lands South 57 degrees 34 minutes West, 40 feet to an iron pin, the place of beginning. CONTAINING 1,191.8 square feet.

BEING the same real estate which the Western Maryland Railway Company, by its deed dated March 10, 1955, and recorded in the Office of the Recorder of Deeds for Franklin County, Pennsylvania, in Deed Book Volume 464, Page 395, conveyed to the Chambersburg Engineering Company.

THERE IS EXCEPTED AND EXCLUDED from these tracts of real estate the tract of real estate conveyed to The Pennsylvania Railroad Company by deed dated March 2, 1929, and recorded in the Office of the Recorder of Deeds for Franklin County, Pennsylvania, in Deed Book Volume 236, Page 8.

THERE IS ALSO EXCEPTED AND EXCLUDED from these tracts of real estate two tracts of real estate conveyed to the Borough of Chambersburg by deed dated February 11, 1942, and recorded in the Office of the Recorder of Deeds for Franklin County, Pennsylvania, in Deed Book Volume 291, Page 463.

THERE IS ALSO EXCEPTED AND EXCLUDED from these tracts of real estate the tract of real estate conveyed to William D. Amsley and C. Larry Amsley by Deed dated June 14, 1999, and recorded in the Office of the Recorder of Deeds for Franklin County, Pennsylvania, on June 15, 1999, in Record Book Volume 1436, Page 361.

The premises hereby conveyed are known collectively as 150 Derbyshire Street, Chambersburg, Franklin County, Pennsylvania, and have been assigned parcel number 04-1E33.-029.-000000 by the Franklin County, Pennsylvania, tax assessment office.

The premises hereby conveyed are shown on the Property Layout of CECO, drawing number 9956, which is attached hereto as Exhibit A and incorporated herein by reference.

It is the express intent of Grantor to grant, bargain, sell and convey to Grantee by this deed, and Grantor does grant, bargain, sell and convey to Grantee by this deed, all of the real property situated in the Borough of Chambersburg, Franklin County, Pennsylvania, which Grantor owns, has title to, and/or in which Grantor has any interest whatsoever.

UNDER AND SUBJECT to all easements, encumbrances and restrictions as appear of record or are visible upon the land.

TOGETHER with all and singular the buildings and improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of the Grantor, both at law and in equity, of, in and to the same.

TO HAVE AND TO HOLD all and singular the above-described premises, with the message or tenement thereon erected, hereditaments and premises hereby granted, or

mentioned and intended so to be, with the appurtenances, unto the said Grantee, its successors and assigns, to and for the only proper use and behoof of the said Grantee, its successors and assigns, forever.

AND the said Grantor, for itself and its successors and assigns, does covenant promise and agree, to and with the said Grantee, its successors and assigns, that it, the said Grantor, and its successors and assigns, all and singular the hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the said Grantee, its successors and assigns, against it, the said Grantor and its successors and assigns, and against all and every person and persons whomsoever lawfully claiming or to claim the same or any part thereof, by from or under the Grantor, its successors or assigns, shall and will, subject as aforesaid, SPECIALLY WARRANT and forever DEFEND.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Grantor has caused this deed to be signed by its duly authorized representative and its corporate seal to be affixed hereto the day and year first above written.

WITNESS:

CHAMBERSBURG ENGINEERING
COMPANY



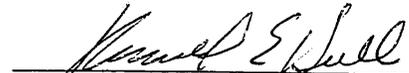
By: 
Samuel C. Clarke, Chairman of the Board of
Directors

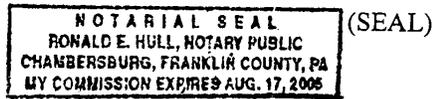
(SEAL)

COMMONWEALTH OF PENNSYLVANIA :
 : SS:
COUNTY OF FRANKLIN :

On this, the 30TH day of July, 2002, before me, the undersigned officer, personally appeared SAMUEL C. CLARKE, who acknowledged himself to be the Chairman of the Board of Directors of CHAMBERSBURG ENGINEERING COMPANY, a corporation, and that he as such Chairman of the Board of Directors, being authorized to do so, executed the foregoing deed for the purpose therein contained by signing the name of the CHAMBERSBURG ENGINEERING COMPANY by himself as Chairman of the Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Notary Public



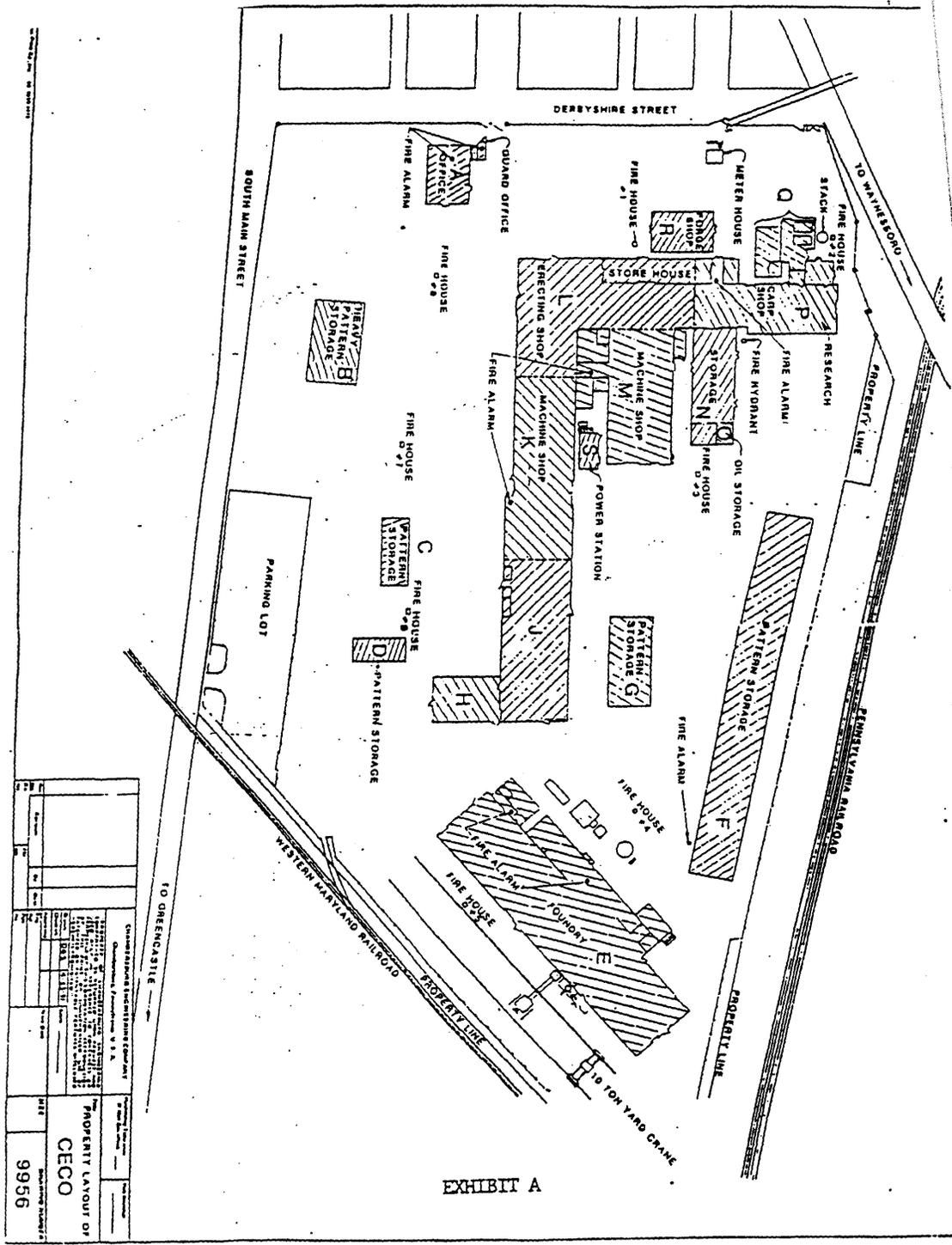


EXHIBIT A

Charles E. H.	
PROPERTY LAYOUT OF CECO	
...	9956

CERTIFICATE OF SERVICE

I Charles O. Beckley, II, Esquire, hereby certify that a copy of the foregoing document was served this day upon the persons and in the manner indicated below:

SERVICE BY FED EX:

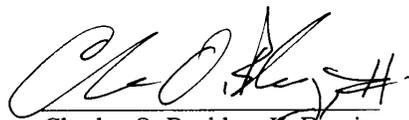
Natalie S. Rosenberg, Esquire
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Law Department
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Jacksonville, FL 32202

Lynn Y. MacBride, Esquire
Barley, Snyder, Senft & Cohen, LLC
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Thomas J. Finucane, Esquire
Finucane Law Office, LLP
273 Lincoln Way East
Chambersburg, PA 17201

David C. Finch, Assistant Borough Manager
Borough of Chambersburg
100 South Second Street
Chambersburg, PA 17201

DATED: September 22, 2003


Charles O. Beckley, II, Esquire