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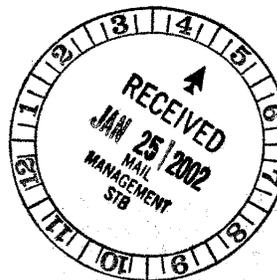
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January 25, 2002



Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Finance Docket Nos. 33980 and 34040
1925 K Street, N.W.
Washington, D.C. 20423-0001

**RE: STB Finance Docket No. 33980, Riverview Trenton Railroad Company –
Acquisition and Operation Exemption – Crown Enterprises, Inc.**

**STB Finance Docket No. 34040, Riverview Trenton Railroad Company –
Acquisition and Operation in Wayne County,
Michigan**

204601

204602

Dear Mr. Williams:

Enclosed for filing in the above-referenced proceedings are an original and ten (10) copies of the Notice by County of Wayne and Grand Trunk Western Railroad Incorporated of Withdrawal of Motions to Consolidate and Supplemental Comments, in the above referenced proceedings.

Also enclosed is a diskette containing the text of this filing in WordPerfect 6/7/8/9 format.

Very truly yours,

Paul A. Cunningham

ENTERED
Office of the Secretary

JAN 28 2002

Part of
Public Record

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

204601
STB Finance Docket No. 33980

RIVERVIEW TRENTON RAILROAD COMPANY
- ACQUISITION AND OPERATION EXEMPTION -
CROWN ENTERPRISES, INC.

STB Finance Docket No. 34040



204602
RIVERVIEW TRENTON RAILROAD COMPANY -
ACQUISITION AND OPERATION IN WAYNE COUNTY, MICHIGAN

**NOTICE BY COUNTY OF WAYNE AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED
OF WITHDRAWAL OF MOTIONS TO CONSOLIDATE
AND SUPPLEMENTAL COMMENTS**

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January 25, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33980

RIVERVIEW TRENTON RAILROAD COMPANY
– ACQUISITION AND OPERATION EXEMPTION –
CROWN ENTERPRISES, INC.

STB Finance Docket No. 34040

RIVERVIEW TRENTON RAILROAD COMPANY –
ACQUISITION AND OPERATION IN WAYNE COUNTY, MICHIGAN

**NOTICE BY COUNTY OF WAYNE AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED
OF WITHDRAWAL OF MOTIONS TO CONSOLIDATE
AND SUPPLEMENTAL COMMENTS**

The County of Wayne, Michigan (the “County”), and Grand Trunk Western Railroad Incorporated (“GTW”) (together, “Movants”) hereby notify the Board and parties to these proceedings that they are withdrawing the motions they filed on May 21, 2001, in which they requested that the Board consolidate the proceedings on revocation of the notice of exemption (the “Notice”) in STB Finance Docket No. 33980 with those on the petition for exemption (the “Petition”) in STB Finance Docket No. 34040.¹ The Board has taken no action on those motions, and it is now evident that the statutory deadline of February 15, 2002, for completion of

¹ Reply of Grand Trunk Western Railroad Incorporated to Petition for Exemption and Motion of Grand Trunk Western Railroad Incorporated to Consolidate, Finance Docket Nos. 33980 and 34040 (filed May 21, 2001) (“GTW Reply”); Motion of Wayne County to Consolidate and Reply of Wayne County to Verified Petition for Exemption and Request for Issuance of a Procedural Schedule, Finance Docket Nos. 33980 and 34040 (filed May 21, 2001) (“County Reply”).

the Board's proceeding on revocation of the Notice is now too close to accommodate a proceeding on the Petition.

Accordingly, Movants respectfully submit that the proper course for the Board at this point is to keep the two matters separate, to revoke the exemption in Finance Docket No. 33980 as requested by the County, GTW and several other parties, and either to dismiss the Petition summarily or to act expeditiously on the requests of RTRR, the County, and GTW to set a procedural schedule on the Petition in Finance Docket No. 34040. Since the filing of Movants' earlier submissions on revocation of the Notice and institution of a procedural schedule on the Petition, several new developments have come to light that underscore the need for the Board to take the requested actions.² Movants' summary below of the grounds for those actions therefore includes supplemental comments on the issues of revocation and institution of a procedural schedule.³

As explained below, a decision by the Board in a case parallel to this one holds definitively that the Board's class exemption procedures may not be used, as RTRR has used them here, to attempt to convert non-rail property into "rail line" subject to the Board's jurisdiction, nor may its jurisdiction be invoked merely as a device to shield property from condemnation proceedings under state law. Massive opposition to RTRR's project has arisen in the affected community, from citizens and public officials who believe that the Board's procedures are being misused precisely as such a device to thwart the plans of the elected representatives of the communities. This belief is supported by a pattern of misrepresentations

² These new developments include a decision by the Board that is precisely on point on certain material issues, the emergence of additional facts bearing on the motives for and timing of RTRR's creation, and a groundswell of opposition to RTRR's proposal from elected officials and affected communities.

³ To the extent that the Board's leave is required for the submission of those supplemental comments, Movants respectfully request that leave.

and material omissions by RTRR and its affiliates regarding the proposed project and about the circumstances leading to RTRR's invocation of the Board's jurisdiction, which by themselves also form a sufficient basis for revocation of RTRR's Notice of Exemption.

BACKGROUND

In February 2000, Manuel J. Moroun, an individual who controls CenTra, Inc. ("CenTra") and through it Crown Enterprises, Inc. ("Crown") and Riverview Trenton Railroad Company ("RTRR"), acquired a 76-acre parcel in Wayne County, Michigan, from Detroit Steel Center, Ltd. ("DSC") and Monguagon Land Company ("MLC").⁴ That parcel, bounded by West Jefferson Avenue, King Road, and the Trenton Channel of the Detroit River, is located in the cities of Riverview and Trenton and forms the northern end of a former McLouth Steel Company plant. The property includes trackage formerly used for deliveries to the McLouth plant and for intra-plant switching, including the track identified by RTRR as the subject of the Notice and the Petition in these proceedings. That track did not constitute "railroad line" subject to 49 U.S.C. § 10901, and Moroun therefore neither sought nor obtained authority under that section (or an exemption from it) for his acquisition of the track. Since the track was not jurisdictional rail line, Moroun's status as a non-carrier was not affected by his acquisition of that track.

⁴ Although RTRR has stated that the property was acquired by Crown in February 2000 (*e.g.*, Reply of Riverview Trenton Railroad Company to Petition to Revoke, STB Finance Docket No. 33980, at 5 (Mar. 8, 2001)), documents filed in these proceedings indicate that the property was actually transferred from DSC to Manuel J. Moroun on March 22, 2000, pursuant to the terms of the February 16, 2000, Purchase Agreement between Crown on the one hand and DSC and MLC on the other. Railway Easement Agreement, Recitals, para. 1 (June 2, 2000) ("Railway Easement Agreement") (Exhibit 2 to Affidavit of Arnold M. Mistura, attached to RTRR's February 8, 2001 Post-Hearing Memorandum Submitted to U. S. District Court, attached in turn to Reply of Riverview Trenton Railroad Company to Petition to Revoke, STB Finance Docket No. 33980); Environmental Obligations Implementation Agreement, Recitals, paras. 1-3 (June 1, 2000) (attachment to Affidavit of Patricia D. Hartig (Feb. 8, 2001) (Exhibit H to Petition [of County of Wayne] to Revoke, STB Finance Docket No. 33980 (Feb. 16, 2001) ("County Petition to Revoke")))).

At some time between Moroun's acquisition of the property and June 2, 2002, Moroun deeded the property to Crown.⁵ Like Moroun, Crown neither sought nor obtained authority under 49 U.S.C. § 10901 (or an exemption from that section) for its acquisition of the property, nor did it become a rail common carrier or the track become rail line subject to section 10901 as a result of the acquisition.

Both before and after the acquisitions of the property by Moroun and Crown, the County and the cities of Riverview and Trenton engaged in discussions with the owners of the property, and persons affiliated with them, regarding the localities' wishes for redevelopment, including possible public use, of the property. The localities were unsuccessful in persuading Moroun or Crown to convey the property voluntarily. On October 30, 2000, the mayor of Trenton contacted Alan Ackerman, "a prominent condemnation attorney in Detroit," to discuss statutory condemnation requirements regarding the property, but Mr. Ackerman represented to the mayor that he represented Crown and thus could not assist the city in this matter.⁶

Two days after the conversation between Mr. Ackerman and the mayor of Trenton, Crown signed and notarized articles of incorporation for RTRR, a new subsidiary of Crown, but did not immediately file them with the Michigan state authorities, or otherwise give public notice of its intention to operate a railroad on the property.⁷ To the contrary, Crown continued to make public representations inconsistent with any such intent. On November 2, 2000, for example, at a meeting of the Riverview City Planning Commission, Crown's representative informed the

⁵ Railway Easement Agreement, Recitals, paras. 1-2.

⁶ Deposition of Patricia DiBattista Hartig at 40-41 (Exhibit 6 to Verified Statement of B. Michael Blashfield (attachment to Reply of Riverview Trenton Railroad Company to Petition to Revoke, STB Finance Docket No. 33980)).

⁷ Affidavit of B. Michael Blashfield ¶ 6 (Exhibit J to County Petition to Revoke).

Commission that it would make “no use of rail” on the property.⁸ Crown further informed the City of Riverview, in a letter dated November 13, 2000, that its plans were “for all containers and trailers to be delivered and leave the site by way of surface street truck routes.”⁹

On November 17, 2000, counsel for the County wrote to attorney Ackerman, as counsel for Crown, stating that the County was interested in acquisition of the property by eminent domain and requesting certain information needed to begin the condemnation process.¹⁰ On November 22, 2000, Ackerman responded by stating that any correspondence regarding possible eminent domain should be addressed directly to Crown.¹¹

On November 27, 2000, RTRR’s articles of incorporation were filed with the Michigan Department of Consumer and Industry Services, and Crown transferred its interest in the property to RTRR by quitclaim deed.¹²

The following day, November 28, 2000, the County sent a second letter to Crown, repeating the information request contained in its November 17 letter.¹³

On December 11, 2000, RTRR filed the Notice of Exemption in STB Finance Docket No. 33980, seeking regulatory authority to operate, as a “line of railroad,” approximately 1.5

⁸ See Minutes, City Planning Commission, Nov. 2, 2000, at 1 (Exhibit A hereto); Letter from Tim Durand (Mayor, City of Riverview) to Members of Surface Transportation Board at 1 (Feb. 15, 2001) (submitted in STB Finance Docket No. 33980).

⁹ Letter from Dick Bartscht (to Gerald L. Couch (Community Development Director, City of Riverview) at 1 (Nov. 13, 2000) (Exhibit B hereto), *quoted in* Letter from Tim Durand to Members of Surface Transportation Board at 1 (Feb. 15, 2001).

¹⁰ Letter from Mark J. Zausmer (counsel for County) to Crown Enterprises c/o Alan Ackerman (Nov. 17, 2000) (County Petition to Revoke, Exhibit B).

¹¹ County Petition to Revoke at 5.

¹² County Petition to Revoke, Exhibit D; Reply of Riverview Trenton Railroad Company to Petition to Revoke, STB Finance Docket No. 33980, at 5.

¹³ See Letter from Mark J. Zausmer to Dick Bartscht (Nov. 28, 2000) (County Petition to Revoke, Exhibit C).

miles of railroad track on the property it had acquired on November 27.¹⁴ (Despite misleading language in the Notice, including its caption¹⁵ and the statement that RTRR “*will acquire*” trackage and right of way from an affiliate controlling company, Crown Enterprises, Inc.,¹⁶ it does not appear that RTRR was also seeking regulatory authority to acquire the property at issue. At the time it filed its notice, RTRR was already the owner of that property, which in any event did not, at the time of its acquisition by RTRR, constitute a “railroad line” subject to the Board’s jurisdiction under 49 U.S.C. § 10901.)

That very same day (almost two weeks after having received the County’s second letter requesting information about the property) Crown responded to the County’s November 28 letter by claiming the identification of the property was deficient and requesting a “more specific” legal description of the property.¹⁷ This request was made, despite the fact that attorney Ackerman had cited no deficiency in the property description in the November 17 letter, and

¹⁴ Crown’s actions to shield the RTRR property from condemnation are parallel to actions it was taking contemporaneously regarding a parcel of land it owned in the City of Detroit. On October 17, 2000, Crown filed articles of incorporation creating another subsidiary, Jefferson Terminal Railroad Company (“Jefferson Terminal”). Crown characterized the new entity as a rail carrier and transferred to it the Detroit property, which was the subject of a pending condemnation action. *Jefferson Term. R.R. – Acquisition & Operation Exemption – Crown Enterprises, Inc.*, STB Finance Docket No. 33950, slip op. at 1 (STB served Mar. 19, 2001) (“*Jefferson Terminal*”). Two days later, Jefferson Terminal filed a notice of exemption for operation of what it characterized as a “rail line” on the property. *Id.*

In the condemnation action in state court, Jefferson Terminal claimed that its operating authority had become effective seven days after the filing of the notice of exemption, and that all condemnation activity was thereafter preempted by federal law. The Board, however, revoked Jefferson Terminal’s exemption on March 19, 2001, in a decision holding that Jefferson Terminal had improperly invoked the Board’s class exemption procedures. *Id.* at 4-5. (The Board also noted that Finance Docket No. 33980 raised “[s]imilar issues” to those in *Jefferson Terminal*. *Id.* at 5 n.12.)

¹⁵ “Riverview Trenton Railroad Company Notice of Exemption – *Acquisition and Commencement of Rail Common Carrier Operations*” (emphasis added).

¹⁶ Notice at 4. As will appear below, this was far from the only misleading or inaccurate statement contained in RTRR’s Notice.

¹⁷ County Petition to Revoke, Exhibit E (Letter from Richard Bartscht to Mark J. Zausmer (Dec. 11, 2000)).

despite the fact that Crown owned no other property that could reasonably have been confused with the property described.

The County provided a specific legal description of the property to Crown on December 29, 2000, as requested in Crown's December 11 letter,¹⁸ but Crown never provided the information requested by the County. Instead, Crown's subsidiary, RTRR, filed a civil action in U.S. District Court, arguing, based on the Notice it had filed with the Board, that federal law preempted any condemnation-related activities regarding the property.¹⁹

The County and the cities of Riverview and Trenton subsequently filed petitions with the Board to revoke the class exemption with respect to RTRR's proposed transaction.²⁰ These parties advanced several grounds for revocation, including (1) that RTRR and its proposed operations did not fall within the jurisdiction of the Board under section 10901, (2) that the Notice was void *ab initio* because it contained false or misleading information, and (3) that revocation was necessary in order to ensure consistency of the transaction with the rail transportation policy of 49 U.S.C. § 10101 ("RTP"). GTW filed a reply to the County's petition to revoke, supporting that petition and arguing, as a further ground for revocation, that the class exemption was an inappropriate means of converting non-jurisdictional trackage (as the track in question appeared to be) into railroad line subject to 49 U.S.C. § 10901.²¹ On April 2, 2001,

¹⁸ *Id.*, Exhibit F (Letter from Mark J. Zausmer to Richard Bartscht (Dec. 29, 2000)).

¹⁹ *Riverview Trenton R.R. v. County of Wayne*, No. 01-70078 (E.D. Mich. filed Jan 5, 2001).

²⁰ Although the petition filed by the City of Trenton was styled a "Motion to Reconsider and Revoke" rather than a "petition," for the sake of convenience we refer to this document as well as those filed by the City of Riverview and the County, as "petitions to revoke."

²¹ See *Jefferson Terminal*, slip op. at 4 ("The [class exemption] procedures were not intended to apply to cases in which a noncarrier seeks to convert what could be non-rail property into a rail line."). GTW's reply did not cite the Board's decision in *Jefferson Terminal*, which had not yet been issued.

RTRR replied to the petitions for revocation and to GTW's pleading, all of which remain pending.

On May 1, 2001, while the petitions to revoke the class exemption in Finance Docket No. 33980 were pending, RTRR simultaneously filed a Supplemental Reply to the petitions to revoke in Finance Docket No. 33980 and its Petition in STB Finance Docket No. 34040, in which it sought an individual exemption from 49 U.S.C. § 10901 for "the proposed acquisition and operation" of the property that was the subject of RTRR's Notice.²² In both documents, RTRR stated that it was filing the Petition in response to possible concerns about RTRR's invocation of the class exemption procedure (Petition at 1; Supplemental Reply at 2). RTRR requested that, if the Board had any such concerns, it institute a proceeding on the petitions to revoke the class exemption and that it consolidate that proceeding (in Finance Docket No. 33980) with consideration of the Petition (in Finance Docket No. 34040), so that all issues might be resolved simultaneously (Petition at 2; Supplemental Reply at 3). RTRR further proposed a procedural schedule for Board consideration of the Petition (Petition at 17-18).

In separate replies to the Petition, in which they addressed only procedural aspects of that Petition, Movants sought consolidation of the proceeding on the Petition with that on revocation of the Notice, and proposed alternative procedural schedules to the one proposed by RTRR.

Both the County and GTW emphasized that the schedule set by the Board should afford adequate opportunity for discovery regarding the Board's jurisdiction over RTRR and its proposal as well

²² This language, like the similar language in the Notice, misleadingly suggests that RTRR was seeking regulatory authority to acquire the property, or that the property involved an operating railroad or rail line within the Board's jurisdiction. In fact, of course, closer examination of the Petition reveals that ownership of the property had already been transferred to RTRR by its parent, Crown (Petition at 3).

as on the merits of that proposal.²³ RTRR replied to the motions to consolidate, which remain pending.

In a decision served May 15, 2001, in Finance Docket No. 33980, the Board announced that, as required by 49 U.S.C. § 10502(d), it was instituting a proceeding on the petitions to revoke the class exemption in that case, and that the proceeding would be completed by February 15, 2002. The decision did not mention the motions to consolidate, and no subsequent decision by the Board has addressed those motions or the proposals by RTRR or Movants for a procedural schedule. Moreover, the Board has not yet issued a decision initiating a proceeding on the Petition in accordance with 49 U.S.C. § 10502(b).

DISCUSSION

Because a decision on the petitions to revoke the class exemption in Finance Docket No. 33980 must be issued by February 15, 2002, or 21 days from now, consolidation of the proceedings in Finance Docket No. 33980 with those on the Petition in Finance Docket No. 34040 is no longer appropriate.

No notice of the filing of the Petition has been published in the Federal Register, and none of the competing procedural schedules proposed by RTRR, the County, and GTW could be completed in the time remaining in Finance Docket No. 33980.²⁴

Under these circumstances, the appropriate course of action is for the Board to (1) keep the two proceedings separate, (2) revoke the class exemption in Finance Docket No. 33980 by

²³ GTW Reply at 2-3; County Reply at 4-5.

²⁴ The schedule proposed by RTRR would require at least 50 days after publication of a notice in the Federal Register (*see* Petition at 17-18 (calling for filing of comments by interested parties 30 days after Federal Register notice of filing of the Petition, and for filing of RTRR's reply 20 days thereafter)). The procedural schedules proposed by Movants, which provided for discovery and longer comment periods, would require additional time (*see* GTW Reply at 3; County Reply at 3-5).

February 15, 2002 (particularly in light of the new developments and facts discussed herein), and (3) either dismiss the Petition in Finance Docket No. 34040, based on the apparent lack of jurisdiction or need to apply the statute to protect the public interest, or set a schedule for a proceeding on the Petition.

I. NOTICE OF EXEMPTION (STB FINANCE DOCKET NO. 33980)

It would be hard to conceive of a more compelling case for revocation of a notice of exemption than the one presented in this proceeding. The Board's precedents establish clearly that its class exemption procedures are not available for proposals, such as RTRR's, that would convert non-rail property into a "railroad line" subject to 49 U.S.C. § 10901, and that they may not be used, as they appear to have been here, as a device to invoke federal preemption in order to shield such non-rail property from local land use regulation and condemnation authority. Moreover, the Board should revoke the Notice as void *ab initio*, in light of the misstatements and misrepresentations in that Notice, which form part of a pattern of misrepresentations to the Board and to other public agencies. In addition, it is now evident either that RTRR and its proposal are outside the Board's jurisdiction under 49 U.S.C. § 10901, or that its jurisdiction is so doubtful as to require more searching scrutiny. Finally, for these same reasons, and also in light of the already extensive and growing opposition that has arisen to that proposal from public officials and entities in the communities affected by that proposal, it has become apparent that regulation of RTRR and its proposed transaction is needed to ensure the consistency of that transaction with the RTP. Thus, the Board may wish, not only to revoke the Notice in Finance Docket No. 33980, but also to dismiss summarily the Petition in Finance Docket No. 34040.

A. The Class Exemption Cannot Be Used to Convert Non-Jurisdictional Track into “Railroad Line,” or to Shield Non-Rail Property from State Eminent Domain Proceedings.

As the Board observed in *Jefferson Terminal*, “[t]he [class exemption] procedures were not intended to apply to cases in which a noncarrier seeks to convert what could be non-rail property into a rail line.” *Jefferson Terminal*, slip op. at 4. It is undisputed that RTRR, before the filing of its Notice, was a non-carrier. In addition, given that the property had historically been operated as private industry track rather than jurisdictional rail line, that it was acquired without authorization from the Board by various RTRR affiliates and by RTRR itself, and that one of those affiliates (Crown) was specifically identified by RTRR as a non-carrier (*see* Notice at 2-3), there can be no serious question but that the track RTRR acquired was not rail line subject to Board jurisdiction. On the issue of conversion of non-jurisdictional track to jurisdictional rail line, therefore, this case is on all fours with *Jefferson Terminal*. Accordingly, the Board should revoke the class exemption and require RTRR to submit its proposal for examination under “a more searching process” than the bare-bones class exemption procedures. *See id.* at 5.

Jefferson Terminal also provides a second ground for revocation of the class exemption in this case. That decision, involving a similar effort by Crown to defeat condemnation proceedings, held that the Board’s exemption procedures may not be misused “to insulate the [subject] property from the condemnation process by invoking our jurisdiction to bolster [the owner’s] claim that the property is a rail line beyond the reach of state or local condemnation authority.” *Id.* In this case, Crown created a new “railroad” subsidiary and transferred property to that entity shortly after learning that the City of Riverview and the County were interested in pursuing acquisition by condemnation, and at about the same time as it was creating *Jefferson*

Terminal to insulate other Crown property from condemnation.²⁵ As in *Jefferson Terminal*, the timing of the acquisition of the subject property by a new Crown subsidiary and the filing of its Notice bears strong evidence that the Notice was filed as “a device to acquire or retain property for non-rail purposes using federal preemption as a shield.” *Id.*²⁶

Deposition testimony by B. Michael Blashfield, Crown’s and RTRR’s Director of Governmental Affairs, in RTRR’s district court litigation²⁷ confirms that RTRR’s creation and the filing of the Notice were responses to the possibility of eminent domain proceedings. As Mr. Blashfield stated, when questioned regarding the circumstances of RTRR’s formation, “I know that at some point things were – there was an encouragement to get things going because of the county had expressed an interest in some property but I am not certain” (Tr. 50). Further, he admitted that the filing of the Notice was expedited “because we had just gotten burned on our efforts to initiate a railroad” (Tr. 53) – an apparent reference to Crown’s formation of *Jefferson Terminal* several months after the initiation of eminent domain proceedings.

²⁵ As noted above, the Board noted further that “[s]imilar issues” to those in the *Jefferson Terminal* case had been raised in Finance Docket No. 33980. *Jefferson Terminal*, slip op. at 5 n.12.

²⁶ In its reply to GTW’s reply to the County petition to revoke, RTRR attempted to distinguish *Jefferson Terminal* by claiming that the localities had been informed about planned rail activities long before the formation of RTRR and the filing of the Notice, and that RTRR was unaware of any eminent domain plans when it filed its notice. Reply of Riverview Trenton Railroad Company to Petitions to Revoke Filed by Cities of Trenton and Riverview and to Submission of Grand Trunk Western Incorporated, STB Finance Docket No. 33980, at 4 (Apr. 2, 2001) (“RTRR Supplemental Reply”).

These claims ignore the facts that (1) Crown’s discussions about possible rail use indicated no intention to operate as a rail common carrier, but rather were consistent with the intention to operate the property like other “intermodal facilities throughout the United States” that are owned and operated by affiliates of Crown but are not rail common carriers (see Affidavit of B. Michael Blashfield ¶ 2 (Exhibit J to County Petition to Revoke)) and (2) that the knowledge of Crown’s counsel regarding possible condemnation proceedings is property imputed to Crown and to RTRR, Crown’s wholly owned subsidiary.

²⁷ Deposition of B. Michael Blashfield (Mar. 6, 2001) (“Tr.”) (relevant pages attached as Exhibit C hereto). When the County filed its petition to revoke and GTW filed its reply thereto, the Blashfield deposition was covered by a protective order of the district court, which prevented Movants from presenting it to the Board at that time.

As demonstrated by facts recounted above, Crown and RTRR went to great lengths to delay the initiation of eminent domain proceedings until after RTRR could acquire the property and file its Notice, obfuscated the fact that they acted with knowledge of the threat of eminent domain, and denied the fact that they acted in response to that threat.

It is now apparent that Crown's counsel was on notice that the property was a possible subject of condemnation proceedings on October 30, 2000, before RTRR's articles of incorporation were executed, much less filed. When the County wrote to Crown, through its counsel, requesting information needed to initiate those proceedings, Crown's counsel insisted that the County address its inquiry directly to Crown. When the County did so, Crown waited until it was ready to file its Notice of Exemption with the Board and again rejected the County's request for information, claiming this time that a technical legal description of the subject property was needed. RTRR thus ensured that by the time the County responded, Crown and RTRR could raise its preemption claim to keep condemnation proceedings from going any further.

By delaying any possible initiation of eminent domain proceedings until after the filing of the Notice, Crown apparently sought to create a fact on which this case could be distinguished from *Jefferson Terminal*, where condemnation proceedings had begun several months before the transfer of property to the new subsidiary and the filing of the notice of exemption (see RTRR Supplemental Reply at 4). *Jefferson Terminal*, however, does not turn on the precise sequence of events, but on the issue of whether the facts indicate that a party's motivation in claiming Board jurisdiction is not for proper purposes, but to use that jurisdiction as a shield against local regulation. In that case, for example, what the Board found significant was that the property "was about to be condemned," slip op. at 5, not that it arguably had already been condemned by

the initiation of proceedings. The question of the Board's jurisdiction should not turn on the gamesmanship of a race to file, such as that apparently engaged in by Crown and RTRR. The facts in this proceeding are more than sufficient to demonstrate that dismissal of RTRR's Notice on this ground is appropriate.

Beyond the basic facts establishing that RTRR indeed acted to create a jurisdictional carrier out of concern for local land use regulation, RTRR's subsequent actions to conceal those facts speak volumes about their import. Early in the proceedings on Finance Docket No. 33980, RTRR acknowledged to the Board that the Notice was filed, and the property transferred from Crown to RTRR, 10 days after the County's November 17, 2000, letter notifying Crown (through its counsel) of the potential institution of an eminent domain action regarding the property.²⁸

Five days after that acknowledgement, however, RTRR filed a letter attempting to obscure the existence of the November 17, 2000, letter, by describing its earlier citation of such a letter as a "typographical error."²⁹ In its "correction" letter, without ever mentioning the fact that there was indeed a November 17 letter to attorney Ackerman, RTRR claimed that "[t]he correct date" of the correspondence with the County regarding possible condemnation proceedings "was actually November 28, 2000."³⁰ The "correction" letter, after attempting to undo RTRR's acknowledgment of the November 17 letter, then represented that the correspondence had

²⁸ Letter from Daniel C. Sullivan (counsel for RTRR) to Vernon A. Williams (Secretary, Surface Transportation Board) at 2 (dated Jan. 4, 2001; entered on record Jan. 8, 2001) ("On November 17, 2000, Crown received a letter from Wayne County through its counsel, informing Crown of a potential eminent domain proceeding related to property 'located at Bridge Road a/k/a Riverview and Jefferson Avenue.'")

²⁹ Letter from Daniel C. Sullivan to Secretary Williams at 1 (Jan. 9, 2001).

³⁰ *Id.* at 1 & attachment (emphasis in original).

occurred “after the transfer of the ownership and control of the property from Crown Enterprises, Inc. to Riverview Trenton Railroad Company had occurred.”³¹

Similarly, even before the “correction” letter, RTRR had misstated the date of its incorporation as November 1, 2000 (the date its articles of incorporation were executed, but 26 days before they were filed),³² thus falsely suggesting that RTRR had been established before even the November 17, 2000, letter informing Crown of the County’s condemnation plans.³³

By concealing the actual sequence of events leading to its formation and Notice and of its parent’s efforts to delay the initiation of condemnation proceedings, RTRR implicitly admitted that the true chronology would indicate (as it surely does), contrary to Crown’s and RTRR’s self-serving claims to the Board, that Crown was motivated to invoke the Board’s jurisdiction as a means of avoiding eminent domain. Even more so than Jefferson Terminal’s failure in its own notice of exemption to mention possible condemnation proceedings, that concealment, along with the filing of the Notice and consequent invocation of the Board’s jurisdiction for an improper purpose, appear to have been an abuse of the Board’s procedures. The Board should respond by revoking the class exemption.

B. RTRR’s Repeated Misstatements and Misrepresentations Require Revocation of the Notice as Void *Ab Initio*.

RTRR’s misstatements to the Board regarding the sequence of events described in its letters of January 4 and 9, 2001, form part of a pattern of concealment of the truth and positive misrepresentations about its project. Among these misrepresentations are several in RTRR’s

³¹ *Id.* at 1.

³² See Mich. Comp. Laws § 450.1131 (articles of incorporation are effective when endorsed upon their filing), 450.1221 (corporate existence begins on effective date of articles of incorporation).

³³ Letter from Daniel C. Sullivan to Secretary Williams at 2 (dated Jan. 4, 2001; entered on record Jan. 8, 2001).

Notice which, as Movants pointed out in their petitions to revoke, render the Notice void *ab initio* under 49 C.F.R. § 1150.32.

Not only did the Notice fail to mention the fact that the property was the subject of potential eminent domain proceedings, but it omitted the even more material fact that RTRR was proposing a start-up operation on property that was not currently a jurisdictional rail line. Also, in the caption and in textual language, the Notice misleadingly suggested that RTRR was seeking authority to acquire the property at some point in the future, when in fact it had already done so, without any need for regulatory authority (a fact that would have made it much clearer that RTRR was not acquiring a jurisdictional rail line).³⁴

Moreover, the Notice incorrectly claimed (at 7) that no environmental review of the proposal was required, because the transaction fell within 49 C.F.R. § 1105.6(b)(1), which deals with proposals for approval of “[c]onstruction of connecting track within existing rail rights-of-way, or on land owned by the connecting railroad.” RTRR was, of course, seeking no such approval.

These misstatements, as well as other misstatements by RTRR and its affiliates cited in the petitions to revoke and in GTW’s reply to the County’s petition, are sufficient to render the Notice void *ab initio*, and support its revocation.

C. The Notice Should Be Revoked Because Neither RTRR nor its Proposed Transaction Fall Within the Board’s Jurisdiction Under 49 U.S.C. § 10901.

RTRR filed its Notice in order to obtain an exemption for its proposal from the prior approval requirements of 49 U.S.C. § 10901. Despite the misleading statements contained in the Notice, it now appears that the subject property has not constituted jurisdictional “railroad line” for purposes of section 10901 and that RTRR will not be a common carrier railroad. RTRR’s

³⁴ See above, p. 6 & n.15.

self-serving claim that it intends to “offer [rail] service to any member of the public in a position to use those services,” and thus to operate as a rail common carrier,³⁵ should not be credited.

That claim, like the similar claim by RTRR’s affiliate Jefferson Terminal, appears to be merely a device to shield Crown property from state condemnation proceedings, and it contradicts representations by RTRR’s parent (at the very time it was preparing to incorporate RTRR and transfer the property to its new subsidiary) that there would be “no use of rail” on the property and that all containers would enter and leave the property by truck.³⁶

Under these circumstances, any claims by RTRR of future intent or need to operate as a rail common carrier should be discounted. And even if considered, given the structure of its facility and basic proposed operation, any such claimed need or possible resulting public benefits would necessarily be insubstantial. RTRR’s operations on the property will be comparable to those of other “intermodal facilities throughout the United States”³⁷ that are owned and operated by RTRR affiliates, none of which – other than Jefferson Terminal Railroad Company (as to which the Board rejected a similar claim) – has been claimed by RTRR or its parent to be a rail common carrier.³⁸ Neither Crown nor RTRR has shown any plausible reason – other than the need to shield the property from eminent domain – why it would serve the public interest for the

³⁵ Reply of Riverview Trenton Railroad Company to Petition to Revoke, STB Finance Docket No. 33980, at 18.

³⁶ See Exhibits A and B hereto.

³⁷ Affidavit of B. Michael Blashfield ¶ 2 (Exhibit J to County Petition to Revoke).

³⁸ When RTRR filed its notice of exemption, its corporate parent filed a petition for exemption seeking authority for control of RTRR in common with Jefferson Terminal Railroad Company and no other rail carrier. *CenTra, Inc., – Continuance in Control Exemption – Riverview Trenton R.R.*, STB Finance Docket No. 33979 (STB served Jan. 8, 2001).

intermodal facility in this case to be uniquely regulated as a rail common carrier within the exclusive jurisdiction of the Board under 49 U.S.C. § 10501.³⁹

On the present record, there appears to be no substantial reason, other than the avoidance of state condemnation proceedings, to characterize either RTRR as a Board-regulated rail common carrier or the subject property as a Board-regulated railroad line upon commencement of RTRR's proposed operations. The Board need not be concerned that the public policy concerns that led Congress to place rail common carriers and their rail lines under that jurisdiction would be implicated if it declined to extend that jurisdiction to RTRR. The Board should therefore revoke the class exemption for lack of jurisdiction.⁴⁰

D. Public Opposition to RTRR's Proposal Underscores the Need for More Searching Examination of the Merits of that Proposal than Is Provided by the Board's Class Exemption Procedures.

Since public awareness of the RTRR project has grown, there has been a groundswell of opposition to that project from the communities that would be affected by it and from their representatives. As the Board is already aware from pleadings and correspondence filed in these proceedings, the County and the cities of Riverview and Trenton oppose RTRR's project, as does State Representative Bruce Patterson (the Majority Floor Leader of the Michigan House of Representatives).⁴¹ U.S. Senator Carl Levin and John Dingell have submitted letters to the Board raising serious concerns about the project, and requesting the Board to give it careful

³⁹ Should the Board wish to afford RTRR an opportunity to attempt to make such a showing before the Board, Movants welcome the opportunity to rebut them.

⁴⁰ Even if the Board merely harbors doubts as to its jurisdiction over RTRR or its property, it should still revoke the exemption so that question can be examined more carefully in an application or individual exemption proceeding.

⁴¹ Representative Patterson sponsored House Resolution No. 298, adopted unanimously by the Michigan House of Representatives on January 22, 2000, which expressed that body's opposition to RTRR's proposal and called on the Board to revoke the exemption and find either that it lacks jurisdiction over the proposal or that the proposal is inconsistent with the public interest. (*see* Exhibit D).

attention. More recently, State Senator Christopher D. Dingell has not only opposed the proposal, he has called for legislative hearings on the project to be held after the State Senate returns to session on January 29, 2002. The Michigan House of Representatives has already expressed its opposition to the project, in a unanimous bipartisan resolution strongly opposed to the project (*see* Exhibit D). In addition, the governing bodies of the Downriver Community Conference (which by itself represents 18 communities with a population of approximately 450,000), the City of Wyandotte, and the Township of Grosse Ile have all unanimously passed resolutions and have taken other action in opposition to RTRR's proposal.⁴²

These public officials and local governments have expressed their well-founded concerns that the RTRR project would provide few or no public benefits, but would diminish the quality of life for residents of the surrounding communities. They are concerned about the apparent abuse of the Board's procedures to create an entity that is not a bona fide rail carrier, but, on the strength of its claims to be one, would be insulated from condemnation under state law. They raise serious issues concerning the environmental impacts of the project and the inconsistency of that proposal with local land use objectives, which include the conversion of some or all of the property in question from industrial to non-industrial or mixed use. Finally, they are concerned that public benefits from the proposal will be far smaller than RTRR claims, and that the proposal will be inconsistent with the RTP and the public interest. The Board should examine these concerns more thoroughly than is possible under the summary class exemption procedures. As the Board's predecessor has indicated, its exemption procedures are inappropriate for proposals that arouse "substantial public opposition" raising serious questions whether the agency can conclude that regulation is not needed to carry out the rail transportation policy.

⁴² See resolutions attached hereto as Exhibits E, F, and G.

Ozark Mountain R.R. – Construction Exemption, Finance Docket No. 32204, slip op. at 6 (ICC served Dec. 15, 1994). This has clearly become just such a proceeding, and the Board should therefore revoke the exemption.

II. PETITION FOR EXEMPTION (STB FINANCE DOCKET NO. 34040)

Nearly all the grounds that call for revocation of RTRR's Notice also warrant dismissal of the Petition on the Board's own motion, with no further proceedings. (The one exception is the inappropriateness of the class exemption procedures for a transaction to convert non-rail property into jurisdictional rail line.) If the Board believes it does not have a sufficient record to permit it to choose that course, it should give searching scrutiny to the Petition. To that end, the Board should move with expedition on the requests of RTRR, the County, and GTW for establishment of a procedural schedule in Finance Docket No. 34040.⁴³ The need for institution of a proceeding on the Petition and establishment of a schedule is even more evident now than when the parties made their requests.

Since that time, as described in the preceding section, a groundswell of opposition to RTRR's proposal has arisen from those who know RTRR and its owners best – public officials and others in the affected communities. These parties are concerned about the apparent abuse of the Board's procedures to evade condemnation proceedings, and they have found that RTRR's proposal would significantly reduce the quality of life in their communities, would bring few, if any benefits, to the public, and is unnecessary in light of preferable alternatives (such as the

⁴³ Although the Petition was filed on May 1, 2001, the Board has not yet issued an order initiating a proceeding on the Petition or deciding that it will not institute a proceeding. Accordingly, there is not yet a clear statutory deadline for a decision on the Petition. (Because no proceeding on the Petition was instituted in the Board's decision of May 15, 2001, in Finance Docket No. 33980, the February 15, 2002, deadline set in that decision does not apply to a proceeding on the Petition.)

planned Detroit Intermodal Freight Terminal (“DIFT”)⁴⁴). They have expressed concerns that the RTRR proposal is inconsistent with the public interest and the RTP, especially as it bears on the public health and safety and the benefits claimed for the proposal. *See, e.g.*, 49 U.S.C. § 10101(4), (5), (8), (9).⁴⁵ They, as well as the parties already before the Board, should be afforded the opportunity to take discovery and to submit evidence and argument regarding the Board’s jurisdiction over the proposed transaction and the merits of the exemption request. The Board should act promptly on the pending requests by the County and GTW for establishment of a schedule, which would permit them to do so.

⁴⁴ In a letter contained in the Draft Environmental Assessment prepared by the Board’s Section of Environmental Analysis in Finance Docket No. 34040, the Michigan Department of Transportation describes the DIFT, which it states “could serve *all* the intermodal (containers, trailer-on-flatcar, Roadrailleurs, etc.) needs of major shippers in the region.” Letter from Larry B. Karnes (Intermodal Policy Division, Michigan Department of Transportation) to Jaya Zyman-Ponebshek (URS Corp.) at 1 (July 23, 2001) (emphasis added), *reprinted in* Draft Environmental Assessment, STB Finance Docket No. 34040, Appendix F (served Oct. 15, 2001).

⁴⁵ *Cf. Indiana & O. Ry. – Construction & Operation – Butler, Warren, & Hamilton Counties, OH*, 9 I.C.C.2d 783, 789-91 (1993) (denying application for approval of construction found by Board’s predecessor to present harms to public health and safety that could not be adequately mitigated). Many of the potential parties in this proceeding may be expected to present evidence to the Board that RTRR’s proposal would be inconsistent with the public health and safety and thus with the RTP.

CONCLUSION

The County and GTW hereby withdraw their previously filed motions to consolidate these two dockets. The Board should keep the two dockets separate, revoke the class exemption in Finance Docket No. 33980, and, unless it summarily dismisses the Petition in Finance Docket No. 34040, institute a proceeding and issue a procedural schedule in that docket.

Respectfully submitted,



Mark J. Zausmer
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Counsel for Grand Trunk Western
Railroad Incorporated

January 25, 2002

CERTIFICATE OF SERVICE

I certify that I have this 25th day of January, 2002, served copies of the foregoing Notice by County of Wayne and Grand Trunk Western Railroad Incorporated of Withdrawal of Motions to Consolidate and Supplemental Comments on all parties to these proceedings, by causing a copy to be delivered to each of the following:

BY HAND:

J. William Koegel, Jr.
David H. Coburn
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036

Richard S. Edelman
O'DONNELL, SCHWARTZ & ANDERSON, P.C.
1900 L Street, N.W., Suite 707
Washington, DC 20036

The Honorable Carl M. Levin
United States Senate
Washington, DC 20510

The Honorable John D. Dingell
House of Representatives
Washington, DC 20515

BY OVERNIGHT DELIVERY:

Daniel C. Sullivan
SULLIVAN & HINCKS
2 West 22nd Street, Suite 350
Oak Brook, IL 60523

Randall A. Pentiuik
Jayson J. Hall
PENTIUK, COUVREUR & KOBILJAK. P.C.
Suite 230, Superior Place
20300 Superior Street
Taylor, MI 48180

Wallace C. Long
COX, HODGMAN & GIARMARCO, P.C.
Tenth Floor Columbia Center
101 West Big Beaver Road
Troy, MI 48084-5280

Sarah K. Watson
Sarah K. Watson

A

(D)

**CITY PLANNING COMMISSION
REGULAR MEETING
THURSDAY, NOVEMBER 2, 2000**

The regular meeting of the City Planning Commission was called to order at 7:30 p.m. by Acting Chairperson Fredericks.

PRESENT

Vice Chairperson Fredericks (Acting Chairperson), Secretary Ross, Commissioners Duey, Mohammadi, Orosz, Petee and Rankin

ALSO PRESENT

Community Development Director Couch

ABSENT & EXCUSED

Chairperson Astalos, Commissioner Chesney

READING AND APPROVAL OF THE MINUTES

Motion by Rankin, seconded by Ross to receive and place on file as presented the minutes of the regular meeting of 10/19/00.

YES: 7 NO: 0 ABSTAIN: 0

PERSONS IN THE AUDIENCE

<u>NAME</u>	<u>ADDRESS</u>	<u>REASON FOR ATTENDING</u>
Karmmell Knox		Metricom
Paul Smoke		Grosse Ile Toll Plaza
Kam Ng		Grosse Ile Toll Plaza
Richard Bartsch		Crown Enterprises

COMMUNICATIONS

Motion by Ross, seconded by Duey to receive and place on file the SEMCOG Regional Update, Vol. 5, No. 20, dated October 2, 2000.

YES: 7 NO: 0 ABSTAIN: 0

OLD BUSINESS

SP-02-00 Crown Enterprises

Motion by Duey, seconded by Fredericks to receive and place of file SP-02-00, Crown Enterprises site plan and administrative reviews for further study.

YES: 7 NO: 0 ABSTAIN: 0

Discussion took place with Mr. Richard Bartsch, representing Crown Enterprises, Inc. Mr. Bartsch claimed that no shipping or dock-loading activities will take place and that the proposed use of the property is a simple storage lot for containers that are sealed and air-tight. They receive the containers, stack them for pick-up and they are never opened on-site. Some containers come from Europe and Asia and will be trucked to this location, no use of rail. King Road will be used to transport containers due to axle load restrictions on Sibley Road. About 100 trucks per day in 2 to 3 years.

Couch
EXHIBIT NO. 3
3/15/01
J. MAKELKE

OLD BUSINESS, continued

Mr. Bartsch stated that the debris piles are the responsibility of DSC and under a consent agreement with MDEQ. DSC is responsible for giving them a workable surface/setting the grade on the property. Mr. Bartsch stated the property can only be used for industrial purposes due to land contamination. The Riverview site is leaching through the ground to go into the Detroit River; the Trenton sit will drain directly to the Detroit River. There are no structures scheduled to be built on the property for 1 to 2 years. Two (2) pickers (large, mobile cranes) will be on site to move and load containers. The only access is on the W. Jefferson curve, including the property in Trenton because the Trenton piece is landlocked except at terminus of Sibley and W. Jefferson. DSC will be working on the property through the summer of 2001. Current container facility is in Dearborn at Michigan and Wyoming (50 acre parcel). Mr. Bartsch could not tell us what route the containers would take to and from the site. Mr. Bartsch requested a meeting with City officials to discuss issues at hand. Mr. Couch said a meeting would be appropriate after Mr. Bartsch submits a written narrative fully outlining the proposed use of the property.

NEW BUSINESS

SP-03-00 Metricom

Motion by Duey, seconded by Petee to receive and place of file SP-03-00, Metricom site plan and administrative reviews for further study.

YES: 7 NO: 0 ABSTAIN: 0

Mr. Kummell Knox, representing Metricom, made a presentation to the Planning Commission. Metricom was founded in 1985 for high speed, mobile Internet access. The question of what the physical antenna actually looks like remains as the sample presented at the meeting does not match those shown on the drawings. This is a five (5) year renewable lease. Metricom will work in tandem with the 23 shoe box size antennas ~~located on~~ poles in the City of Riverview. Antennas claimed to be 10" x 35" or smaller.

Motion by Petee, seconded by Duey to receive and place on file a communication from Mr. Karmmell Knox, Esq., Whalen and Co., presented at the meeting.

YES: 7 NO: 0 ABSTAIN: 0

Lot Split - Civic Park Drive property - Civic Storage

Motion by Petee, seconded by Duey to receive and place on file the surveys and proposed lot split configuration and legal descriptions.

YES: 7 NO: 0 ABSTAIN: 0

Note that Mr. Couch indicated that the developer request this item to be tabled to the next regular meeting of the Planning Commission.

NEW BUSINESS, continued

SP-01-00 - Grosse Ile Toll Plaza

Motion by Petee, seconded by Duey to receive and place on file the site plan and administrative reviews.

YES: 7 NO: 0 ABSTAIN: 0

Discussion took place with Mr. Smoke and Mr. Ng. They state that the toll bridge accommodates approximately 5,000 vehicles per day and the free bridge 17,000 vehicles per day. The Planning Commission noted that the drawings lack dimensions. The developer was instructed that prints need to be corrected by the architect and done in accordance with the check off list. All questions must be memorialized in writing. Mr. Smoke indicated that he would submit revised drawings for a future meeting.

Motion by Ross, seconded by Mohammadi to table SP-01-00 - Grosse Ile Toll Plaza until revised drawings are received.

YES: 7 NO: 0 ABSTAIN: 0

ADJOURNMENT

Motion by Ross, seconded by Petee that the meeting be adjourned.

YES: 7 NO: 0 ABSTAIN: 0

The meeting was adjourned at 8:30 p.m.

Respectfully Submitted,

Mark Fredericks, Acting Chairperson
Mike Ross, Secretary

Crown Enterprises inc.

12225 Stephens Road • Warren, MI 48089 • (810) 939-7000 • FAX (810) 755-9348

November 13, 2000

Gerald L. Couch
Community Development Director
City of Riverview
14100 Civic Park Drive
Riverview, MI 48192-7689

Re: Site Plan, Crown Enterprises Inc., 1491 W. Jefferson

Dear Mr. Couch

The following narrative provides an overview of the intended use of our property located in Riverview (and Trenton) MI.

Site Description:

Crown Enterprises owns 76 contiguous acres of vacant property comprised of 40.49 acres in Riverview MI, and 35.51 acres in Trenton MI. With the exception of several debris piles, the property exhibits a fairly level surface topography. The property is zoned Heavy Industrial and is bounded on the south by Industrial property (the DSC Steel Facility); on the west by Jefferson Avenue, commercial properties, and a railroad right-of-way; on the north by the Monguagon Creek and adjacent industrial properties, and to the east by the Detroit River.

Site Utilization:

Crown intends to use the Riverview Property and the adjacent Trenton Property as an intermodal staging and transfer facility for shipping containers and trailers. The shipping containers and trailers are used for transport of such items as consumer goods and / or manufacturing parts and supplies. The containers are approximately 40' by 8' by 10' high and weigh approximately 6000 lbs. empty and average 45,000 lbs. loaded. Current plans are for all containers and trailers to be delivered and leave the site by way of surface street truck routes in compliance with local weight and axle load limits. Local truck Traffic is expected to be 20 to 30 trucks per day, Monday through Friday, for the first six months, building to 100 trucks per day, Monday through Friday, by the end of the second year. In and out traffic will utilize the existing gate and driveway at the north end of the site off Jefferson Ave.

Couch 4
EXHIBIT NO.
3/5/01
J. MAKELKE

Our operation consists of receiving containers or trailers from various trucking and logistic companies, logging them in, inspecting the exterior, staging them for an indefinite period of time, and logging them out at pick-up. The containers are placed directly on the ground and can be stacked one on top of the other. Although most containers and trailers will be empty, those that are laden are delivered in a sealed condition and are not opened while on site.

Grading of the lanes used by the container handling equipment is done on an as needed basis as are dust control measures. Security will be provided by a mobile patrol 24 hours a day, seven days a week.

Site Preparation:

Currently there are numerous debris piles scattered about the site. These piles are being removed by DSC as required by the Michigan-DEQ. Any buildings that are on the site are also to be removed by DSC per the DEQ guidelines. Final grading by DSC will result in no more than a 2% grade difference in areas where debris piles existed. The composition of the site is compacted slag, iron findings and other waste by-products from the steel mill that have been dumped over the past 30 years. This composition has traditionally absorbed and held any storm water accumulation with little or no run-off. In its current condition, the surface composition is also suitable for the staging and stacking of containers and for operating the equipment used for placing the containers in their staging areas.

The only exposed area of our site to adjoining properties is along Jefferson Ave. on the west and north sides. We propose to remove some of the older shrubs and bushes and install 12' - 16' spruce trees at 15' intervals the entire length of our property line along Jefferson.

I hope the above narrative provides an adequate supplement to the site plans we have submitted. I look forward to our meeting this Wednesday, but if you have any questions you would like answered before then, please do not hesitate to call.

Sincerely,



Dick Bartscht
Crown Enterprises Inc.

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1 A I am not aware of it, no. I don't -- I mean, I
2 don't even know that I've seen the letter.
3 Q And if I am understanding your testimony, it is that
4 the timing of the formation and filing of the
5 articles of incorporation for RTR was completely
6 independent of any actions by the County's -- the
7 County or the cities of Trenton and Riverview with
8 respect to these properties; is that correct?
9 MR. KOEGEL: Objection to form of the
10 question.
11 You can answer.
12 THE WITNESS: I am trying to -- I am
13 trying to decide exactly what point in time because
14 I know that at some point things were -- there was
15 an encouragement to get things going because of the
16 county had expressed an interest in some property
17 but I am not certain.
18 BY MR. ZAUSMER:
19 Q Who said -- in other words, the things had to move
20 along related to RTR because of the County's
21 interest in the property?
22 A I am sorry. That's not quite what I said.
23 Q Let me tell you what I am driving at and then you
24 can help me with it. Okay?
25 A Okay.

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1 Q What I am trying to understand is, were the
2 decisions that were made including but not limited
3 to timing decisions related to the formation of RTR
4 driven in any way by the County's expressed interest
5 in this property, the seventy-six acres?
6 MR. KOEGEL: Objection to the form of the
7 question.
8 You may answer.
9 THE WITNESS: I don't know that there was
10 a direct relationship.
11 BY MR. ZAUSMER:
12 Q I thought you just got done telling me that there
13 was a decision by somebody or directive by somebody
14 to hurry up because of the County's expressed
15 interest in the property.
16 A No, that's not quite what I said. I am not sure at
17 what point in time. I know that later on in
18 December there was -- there was discussion of that.
19 I don't know.
20 I don't know when those original
21 discussions took place or decisions were made. But
22 I do know that there was -- there was incentive to
23 move this business plan forward. And part of that
24 was driven -- and this is what I am having trouble
25 differentiating, how much was due to the

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1 conflagration that we were undergoing with Jefferson
2 Terminal Railroad and how much was because the
3 County had filed this notice.
4 Q I am really not interested in amount. I am
5 interested in whether there was some motivation in
6 the timing of all of this related to the County's
7 expressed interest in the property. And at least I
8 am hearing you say that some of the actions were
9 driven to a degree by the County's interest.
10 MR. KOEGEL: Object to the form of the
11 question. It's essentially --
12 MR. ZAUSMER: You keep your opinions to
13 yourself.
14 BY MR. ZAUSMER:
15 Q Sir, I don't think I am trying to misstate your
16 answer. But if I am, don't hesitate to tell me
17 that.
18 If I am understanding your testimony, you
19 are saying that at least to some degree the timing
20 of CenTra slash RTR's formation of this corporation
21 was driven by the County's expressed interest in the
22 property?
23 A No. The formation of the decision and the formation
24 of the corporation had nothing to do to my knowledge
25 of anything going on with Wayne County.

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1 Q What was it that you said was to be hurried along?
2 A The things to -- the things to put it into place
3 later on. And that's where I am having trouble as
4 far as what was happening.
5 Q Let me ask you this: Was it -- how about the notice
6 of exemption that was filed with the Surface
7 Transportation Board, you were involved in that?
8 A Yes.
9 Q What was your involvement in that?
10 A I directed my attorney to prepare and file that.
11 Q And was the timing of that at all driven by or
12 affected by the County's expressed interest in this
13 property?
14 A The filing of the exemption I am sure that there was
15 some -- there was because we had just -- my gross
16 characterization of it -- because we had just gotten
17 burned on our efforts to initiate a railroad, I knew
18 that we wanted to file it sooner rather than later
19 if we were going to -- if we were going to be able
20 to do that.
21 Q I mean, there's no mystery here. The intention of
22 RTR in filing this notice of exemption was to divest
23 the County of the ability to condemn this property.
24 A No.
25 Q That wasn't part of the motivation to form RTR?

D

No. 2
STATE OF MICHIGAN
JOURNAL
OF THE
House of Representatives
91st Legislature
REGULAR SESSION OF 2002

House Chamber, Lansing, Tuesday, January 22, 2002.

2:00 p.m.

The House was called to order by Associate Speaker Pro Tempore Ehardt.

The roll was called by the Clerk of the House of Representatives, who announced that a quorum was present.

House Journal No. 2

Adamini—present	Garza—present	Lockwood—present	Schermesser—excused
Allen—present	George—present	Mans—present	Scranton—present
Anderson—present	Gielegem—present	McConico—present	Shackleton—present
Basham—present	Gilbert—present	Mead—present	Sheltrown—present
Bernero—present	Godchaux—present	Meyer—present	Shulman—present
Birkholz—present	Gosselin—present	Middaugh—present	Spade—present
Bisbee—present	Hager—present	Minore—present	Stallworth—excused
Bishop—present	Hale—present	Mortimer—present	Stamas—present
Bogardus—present	Hansen—present	Murphy—present	Stewart—present
Bovin—present	Hardman—present	Neumann—present	Switalski—present
Bradstreet—present	Hart—present	Newell—present	Tabor—present
Brown, Bob—present	Howell—present	O'Neil—present	Thomas—present
Brown, Cameron—present	Hummel—present	Pappageorge—present	Toy—present
Brown, Rich—present	Jacobs—present	Patterson—present	Vander Roest—present
Callahan—present	Jamnick—present	Pestka—present	Vander Veen—present
Cassis—present	Jansen—present	Phillips—present	Van Woerkom—present
Caul—present	Jelinek—present	Plakas—excused	Vear—present
Clark—present	Johnson, Rick—present	Pumford—present	Voorhees—present
Clarke—present	Johnson, Ruth—present	Quarles—present	Waters—present
Daniels—present	Julian—present	Raczkowski—present	Whitmer—present
Dennis—present	Koetje—present	Reeves—present	Williams—present
DeRossett—present	Kolb—present	Richardville—present	Wojno—present
DeVuyst—present	Kooiman—present	Richner—present	Woodward—present
DeWeese—e/d/s	Kowall—present	Rison—present	Woronchak—present
Drolet—present	Kuipers—present	Rivet—present	Zelenko—present
Ehardt—present	LaSata—present	Rocca—present	
Faunce—present	Lemmons—present	Schauer—present	
Frank—present	Lipsey—present		

e/d/s = entered during session

By unanimous consent the House returned to the order of
Motions and Resolutions

Reps. Vander Veen, Raczkowski, Patterson, Vander Roest, Switalski, Mead, Tabor, Faunce, Meyer, Van Woerkom, DeVuyst, Julian, Bishop, George, Kuipers, Middaugh, Shulman, Stewart, Howell, Drolet, Newell, Richardville, Gosselin, Woronchak, Hager, Gilbert, Koetje, Toy, Scranton, Mans, Jelinek, Pappageorge, Richner, Voorhees, Vear, Birkholz, Jansen, DeRossett, Cassis, Kooiman, Caul and Bisbee offered the following resolution:

House Resolution No. 297.

A resolution designating February 6th as "Ronald Reagan Day" in the state of Michigan.

Whereas, On February 6, 2002, President Ronald Wilson Reagan will reach the age of ninety-one years old. Ronald Reagan, a man of faith, coming from a humble background, worked throughout his life serving freedom and advancing the public good, having been employed as an entertainer, union leader, corporate spokesman, Governor of California, and President of the United States; and

Whereas, Ronald Reagan served with honor and distinction for two terms as the 40th President of the United States of America. In his second term he earned the confidence of 3/5 of the electoral vote and was victorious in 49 of the 50 states in the general election, a record unsurpassed in the history of American presidential elections; and

Whereas, During Ronald Reagan's presidency, he worked in a bipartisan manner to enact his bold agenda of restoring accountability and common sense to government, which led to an unprecedented economic expansion and opportunity for millions of Americans. His commitment to an active social policy agenda for the nation's children helped lower crime and drug use in our neighborhoods; and

Whereas, President Reagan's commitment to our armed forces contributed to the restoration of pride in America. His vision of "peace through strength" led to the end of the Cold War and helped prepare America's Armed Forces to win the Gulf War; now, therefore, be it

Resolved by the House of Representatives, That the members of this legislative body designate February 6th as "Ronald Reagan Day"; and be it further

Resolved, That a copy of this resolution be transmitted to the Ronald Reagan Legacy Project as a token of our sincere gratitude and admiration.

Pending the reference of the resolution to a committee,

Rep. Patterson moved that Rule 77 be suspended and the resolution be considered at this time.

The motion prevailed, 3/5 of the members present voting therefor.

The question being on the adoption of the resolution,

The resolution was adopted.

Reps. Patterson, Mans, O'Neil, Basham, Anderson, Bob Brown and Bovin offered the following resolution:

House Resolution No. 298.

A resolution to express opposition to plans by the Riverview Trenton Railroad Company to develop certain riverfront lands in the cities of Riverview and Trenton for the purposes of a rail, truck, and vessel-served intermodal transportation facility.

Whereas, The Riverview Trenton Railroad Company proposes to construct an intermodal transportation facility along the banks of the Detroit River in the cities of Riverview and Trenton, Michigan. The facility would be designed and operated to permit the handling of truck trailers and containers transferred between trucks, railroad flat cars, and ships or barges. The operation of such a facility would result in increased truck, rail, and ship traffic in the general vicinity; and

Whereas, The proposed Riverview Trenton Railroad Company intermodal facility will require new rail construction to permit the facility to become operational; and

Whereas, The construction and subsequent operation of the facility threaten to have significant adverse impacts on the region and the Detroit River; and

Whereas, Added waterborne traffic that would be generated by the proposed project, which includes access to deep water ports, would require additional bridge openings on the Detroit River, isolating approximately 14,000 people on the island of Grosse Ile and cutting it off from emergency services; and

Whereas, The added rail traffic that would be generated by the proposed project would cause significant blockages of important streets, isolating two hospitals and denying the public basic police and fire protection and emergency medical services; and

Whereas, The additional truck traffic that would be generated by the proposed project represents a significant reduction in the quality of life for thousands of citizens who will face lines of stalled traffic at railroad crossings and additional congestion as they go about their routine activities, such as entering and leaving their subdivisions and driveways; and

Whereas, The local road and rail infrastructure is inadequate to handle the additional truck and rail traffic that would be generated by the proposed project. The local communities would be forced to spend millions of dollars on road improvements and repairs, while realizing few, if any, economic benefits from the proposed project, either from added jobs or taxes; and

Whereas, The proposed project has not been adequately defined to permit a full assessment of its potential impacts; and
Whereas, The proposed project is inconsistent with the work of state and local communities along the Detroit River over many years to improve the appearance of the land along the banks of the river, preserve and restore the river and the land adjacent to it as important natural resources, and create recreational opportunities along the river's banks; and
Whereas, The proposed project would be inconsistent with the American and Canadian Heritage River Initiative and with the first International Wildlife Refuge in North America, located along the Detroit River, which was designated by President Bush on December 21, 2001; and

Whereas, Wayne County, the Downriver Community Conference, which by itself represents 18 communities with a total population of 450,000, the city of Riverview, the city of Trenton, the city of Wyandotte, and Grosse Ile Township have all unanimously passed resolutions and have taken many other actions in opposition to the Riverview Trenton Railroad Company's proposed project. They have done so because of concerns over the environmental impacts of the project and because the project is not consistent with local land use objectives, which include conversion of some or all of the property in question from industrial to nonindustrial or mixed use; and

Whereas, There are proceedings before the United States Surface Transportation Board on the merits of the Riverview Trenton Railroad Company's proposed project, its environmental impacts, and whether federal law should prevent the local communities from exercising their authority over local land use planning and zoning with respect to the proposed project; and

Whereas, It seems clear that the intermodal facility proposed by the Riverview Trenton Railroad Company poses significant threats to the public health, safety, and welfare; that it is contrary to local community interests to improve the conditions of the lands immediately adjacent to the Detroit River; and that it would place within these communities an industrial activity that may conflict with future land use plans; and

Whereas, Any need for an additional intermodal facility in the Detroit area could be better met at other locations, such as the Detroit Intermodal Terminal, in which the state already has a substantial investment; now, therefore, be it Resolved by the House of Representatives, That we oppose the construction and operation of an intermodal facility at the proposed location in the cities of Riverview and Trenton, Michigan, and call upon the United States Surface Transportation Board to (1) revoke the class exemption that, according to the Riverview Trenton Railroad Company, allows it to operate as a railroad within the proposed facility and deny any other operating authority sought by the Riverview Trenton Railroad Company, (2) find that it lacks jurisdiction over the Riverview Trenton Railroad Company and its proposed operations, and (3) if it determines that it has jurisdiction over the project, then find that it is not consistent with the public interest; and be it further

Resolved, That copies of this resolution be transmitted to the communities of the Downriver area and to the United States Department of Transportation Surface Transportation Board.

Pending the reference of the resolution to a committee,

Rep. Patterson moved that Rule 77 be suspended and the resolution be considered at this time.

The motion prevailed, 3/5 of the members present voting therefor.

The question being on the adoption of the resolution,

The resolution was adopted.

Reps. Hager, Raczkowski, Van Woerkom, Hart, Jelinek, LaSata, Bisbee, Meyer, Faunce, Tabor, Daniels, Kowall, Mortimer, Bishop, Woronchak, Shackleton, Allen, Scranton, Hansen, Sheltroun, Rison and Birkholz offered the following resolution:

House Resolution No. 299.

A resolution to urge Canadian authorities to remove all offshore drilling platforms from the waters of the Great Lakes.

Whereas, The people of Michigan are strongly committed to the protection of the Great Lakes. This concern rises from living in the center of the Great Lakes Basin, where the Great Lakes contain one-fifth of the world's fresh water and at least two-thirds of North America's fresh water, appreciation for the harmful impact of certain activities over the years, and sensitivity to the vulnerability of this remarkable fresh water resource; and

Whereas, As science and technology have advanced to paint a clearer picture of how delicate the lakes truly are in the face of certain specific threats, more and more people have voiced opposition to offshore drilling on the Great Lakes. For many, whatever there is to gain in energy produced from offshore drilling on the Great Lakes could not exceed the potential costs that would arise from a serious accident or series of problems; and

Whereas, Over the years, the United States and Canadian governments have taken great efforts to repair and restore the viability of the Great Lakes. Notwithstanding those efforts, there are still several hundred off-shore gas wells on Great Lakes waters which pose a threat to the Great Lakes ecosystem and the progress that has been made in the past three decades; and

Whereas, The people of Michigan feel that there are great risks to operating offshore drilling platforms on the Great Lakes. The potential for serious harm to the source of fresh water for tens of millions of Americans and Canadians is a source of utmost concern; now, therefore, be it

Resolved by the House of Representatives, That we urge Canadian authorities to remove all offshore drilling platforms from the waters of the Great Lakes; and be it further

Resolved, That copies of this resolution be transmitted to the Counsel General of Canada in Detroit, the United States Secretaries of State and Energy, the Michigan congressional delegation, and the International Joint Commission.

The resolution was referred to the Committee on House Oversight and Operations.

E

RESOLUTION
OF THE DCC BOARD OF DIRECTORS
February 1, 2001
SUPPORT THE CITIES OF TRENTON AND RIVERVIEW'S MOTION FOR
CONDEMNING FORMER MCLOUTH STEEL PROPERTY

- WHEREAS, the Downriver Community Conference (DCC), a consortium of sixteen Downriver communities in Wayne County whose total population exceeds 350,000, has joined in an effort to improve local government and enhance the quality of life for area residents through municipal cooperation; and
- WHEREAS, the Downriver Community Conference assists and encourages communities to maintain and enhance the health, safety and welfare of local residents; and
- WHEREAS, the member communities of the DCC have worked cooperatively over many years to develop plans for reclaiming the Detroit River waterfront, an area of historic heavy industrial use and is now a polluted Brownfield; and
- WHEREAS, the Riverview Trenton Railroad is located on the Detroit River within the cities of Trenton and Riverview, members of the DCC, that designate the property on their Master Plans as mixed use; and
- WHEREAS, it is the desire of the community to improve the quality of life in the Downriver region through redevelopment efforts along the Detroit River that will remediate a polluted Brownfield, provide greater public access to the waterfront, and help implement the Southeast Michigan Greenways Initiative; and
- WHEREAS, the proposed use of an intermodal transportation center and the railroad company will increase rail and truck traffic in a region already plagued by large amounts of rail and truck traffic; and
- WHEREAS, the member communities of the DCC support the efforts of Wayne County to condemn the property formerly known as the McLouth Steel Property, and currently known as the Riverview Trenton Railroad Company.

NOW, THEREFORE BE IT RESOLVED, that the sixteen member communities of the Downriver Community Conference hereby request the Surface Transportation Board to revoke the exemption given to the Riverview Trenton Railroad Company, and hereby support the efforts of the County of Wayne, Michigan, to condemn the waterfront property for purpose of parkland and public access, and supports the Cities of Trenton and Riverview's Motion to Reconsider and Revoke.

CERTIFICATION

The undersigned duly qualified Board Secretary of the Downriver Community Conference certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the Board of the Downriver Community Conference held on February 1, 2001, and that said resolution has not been rescinded.

Secretary: Tim Demand

F

OFFICIALS

William R. Coggs
CITY CLERK
Andrew A. Swiecki
CITY TREASURER
Colleen A. Koehn
CITY MANAGER



COUNCIL

Todd M. Browning
James R. DeSano
Johnny A. Kolakowski
Mark A. Paryaski
Patrick J. Sutka
Tom Talluto

LEONARD T. SABUDA
MAYOR

January 15, 2002

Councilman Johnny A. Kolakowski
3131 Biddle Avenue
Wyandotte, Michigan 48192

Dear Councilman Kolakowski:

I, Maria Johnson, Deputy City Clerk for the City of Wyandotte, do hereby certify that the attached is a true and exact copy of a resolution that was adopted by the Mayor and Council of the City of Wyandotte at a regular meeting held on January 14, 2002.

Maria Johnson
MARIA JOHNSON
DEPUTY CITY CLERK

attachment
Surface Transportation Board
Downriver Communities
Elected Officials
Engineer
Legal Department
Mayor Leonard T. Sabuda
Councilmen Browning DeSano Kolakowski Paryaski Sutka Talluto
Clerk

Wyandotte, Michigan
Date: January 14, 2002

RESOLUTION by Councilman Johnny A. Kolakowski

RESOLVED by the City Council that

the proposed use and redevelopment of 76 acres of the former McLouth Steel Company site as an intermodal transportation and distribution center on waterfront land in the cities of Riverview and Trenton, Michigan, would have a distinct negative impact on the quality of life in the Wayne County region known as Downriver; and

whereas, the current property owner has proposed the re-use of this site as a transportation distribution center that would result in increased freighter traffic, train traffic and most notably, as many as 600 additional heavy trucks daily in a region that is already plagued by excessive amounts of rail and truck traffic and

whereas, with the designation of the Detroit River as a Federal Heritage River, the opportunity for redevelopment of this waterfront site will never be greater and is therefore critical to the future development of the Downriver area and

whereas, it is the desire of the City of Wyandotte and other communities in this area to improve the quality of life in the Downriver region through redevelopment efforts along the Detroit River that will provide greater public access to the waterfront and help implement the Southeast Michigan Green Initiative and

whereas, the member communities of the Downriver Community Conference (a consortium of sixteen communities in Wayne County whose population exceeds 200,000, have worked and planned for years to re-claim the waterfront from its historic heavy industrial use, to a mixed use that includes recreation and public access.

Now, therefore, be it resolved, the City of Wyandotte this 7th day of January, 2002, is opposed to the proposed industrial re-use of a large portion of the former McLouth Steel site as an intermodal transportation and distribution center in Riverview and Trenton, Michigan, and be it further resolved that the City of Wyandotte supports the efforts of the communities in the Downriver area who prefer an alternative use for the site that would include public access to the waterfront and be it further resolved that a copy of this Resolution be forwarded to the Surface Transportation Board, all Downriver communities and all federal and state elected officials who represent the people of the Downriver area and the City Engineer and Department of Legal Affairs for continued monitoring.

I move the adoption of the foregoing resolution.

ADOPTED by Councilman

supported by Councilman

YEAS

COUNCIL

NAYS

- ✓ Browning
- ✓ DeSane
- ✓ Kolakowski
- ✓ Paryaski
- ✓ Sutka
- ✓ Taluto
- ✓ Wynn. Sahuja.

G

6

TOWNSHIP OF GROSSE ILE BOARD OF TRUSTEES

CERTIFIED RESOLUTION

At a regular meeting of the Township Board of the Township of Grosse Ile, County of Wayne, State of Michigan, held in said Township, on February 12, 2001 at 7:32 p.m., eastern time.

Present: Supervisor Jones, Clerk O'Connor, Treasurer Kobiljak, Trustees Neal, Raithel, Will and Wojewodzic.

Absent: None

01-029 Moved Kobiljak, second Raithel, *WHEREAS*, the use and development of the former McLouth Steel Co. site will have a dramatic impact on quality of life in Grosse Ile Township; and,
WHEREAS, the increased traffic on the Trenton Channel will result in more frequent closings of the Grosse Ile Toll Bridge to vehicular traffic; and,
WHEREAS, the Grosse Ile Toll Bridge represents one of only two access points to Grosse Ile Township, and the only access point when the Wayne County Bridge is out of service; and,
WHEREAS, the current property owner has proposed the industrial re-use of the site as an intermodal transportation site resulting in increased freighter, truck and train traffic in the area;
NOW, THEREFORE, the Grosse Ile Township Board of Trustees resolves that it is opposed to the proposed industrial re-use of the former McLouth site as an intermodal transportation center, and supports the efforts of Wayne County, the City of Trenton, and the City of Riverview to foster an alternative use for the site.

All aye.

MOTION CARRIED

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Township Board of the Township of Grosse Ile, County of Wayne, Michigan, at a regular meeting held on February 12, 2001, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 207, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.


Sharon A. Bennett
Deputy Clerk, Township of Grosse Ile