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ORIGINAL

January 5, 2007



BY HAND

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

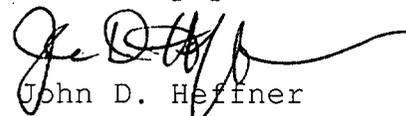
**RE: STB Docket No. AB-290 (Sub-No. 286), Norfolk Southern
Railway Company - Adverse Abandonment in St. Joseph
County, IN**

Dear Mr. Williams:

On behalf of The Chicago, Lake Shore And South Bend Railway Company, I am submitting an original and ten copies of its Protest in the above-captioned adverse abandonment proceeding as well as a copy of the text of its pleading in MS Word on a computer disk.

Please date stamp and return one copy of this letter.

Sincerely yours,


John D. Heffner
Counsel

cc: All parties
Mr. Robert Harris
Mr. Gary Landrio

ENTERED
Office of Proceedings

JAN 5 2007

Part of
Public Record

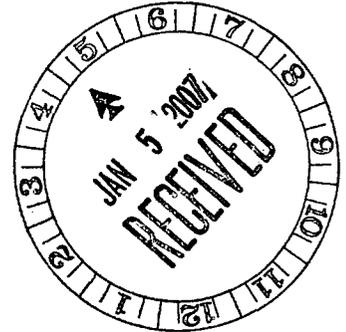
Enclosure

ORIGINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-290 (Sub-No. 286)

NORFOLK SOUTHERN RAILWAY COMPANY
-ADVERSE ABANDONMENT-
ST. JOSEPH COUNTY, IN



**PROTEST OF
THE CHICAGO, LAKE SHORE & SOUTH BEND RAILWAY COMPANY**

Respectfully submitted,

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Counsel for The Chicago, Lake Shore
& South Bend Railway Company

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Dated: January 5, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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NORFOLK SOUTHERN RAILWAY COMPANY
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**PROTEST OF
THE CHICAGO, LAKE SHORE & SOUTH BEND RAILWAY COMPANY**

INTRODUCTION

On November 21, 2006, the City of South Bend, IN, the Brothers of the Holy Cross ("the Brothers"), and the Sisters of the Holy Cross ("the Sisters", collectively "the Applicants") jointly filed their application seeking the adverse abandonment of a line of railroad owned and operated by Norfolk Southern Railway Company ("NS") in St. Joseph County, IN.¹ By decision served December 11, 2006, the Board acknowledged receipt of the adverse abandonment application and established a procedural schedule with protests due January 5, 2007. The Chicago, Lake Shore & South Bend Railway Company ("CLSSB")² opposes the subject

¹ The line extends 3.7 miles between MP UV 0.0 and MP UV 2.8 and between MP ZO 9.6 and MP ZO 10.5.

² In some of the supporting documents CLSSB may be identified as either the South Bend Railway or the CLS&SB.

application and urges the Board to deny it because it fails to meet the public convenience and necessity standard. Moreover, CLSSB renews its previous request submitted on December 1, 2006, seeking rejection of the adverse abandonment application for failure to satisfy the Board's abandonment regulations.

STATEMENT OF FACTS

As the Board will recall, CLSSB is an entrepreneur-owned short line railroad company that seeks to acquire and operate most of the track that is the subject of this *forced* abandonment proceeding. After reaching what it considers a legally enforceable purchase agreement with NS, CLSSB filed its first notice of exemption³ on June 14, 2006, to purchase and operate the subject 3.2 route miles of railroad between MP UV0.0 and MP UV2.8 and between MP Z09.48 and MP Z09.9⁴ in the City of South Bend, IN. CLSSB withdrew that notice on September 5, 2006, after local officials pressured NS to abrogate that agreement and withdraw its support for the sale. Verified Statement of Robert Harris (Harris VS) at 3. CLSSB submitted a second notice of exemption for the identical piece of track on

³ Assigned STB Finance Docket No. 34893.

⁴ Including any ownership interest in the spur leading to the University of Notre Dame.

November 20, 2006,⁵ after NS indicated that it would reconsider the sale if CLSSB could manage to placate the Applicants' numerous concerns. On November 22, 2006, the Applicants filed a "Petition to Revoke and Stay Exemption" to which CLSSB replied on December 5, 2006. On December 20, 2006, the Board published a notice of the acquisition exemption (which was effective 7 days after filing or November 27, 2006) indicating by footnote that it would address Applicants' Petition in a separate decision. Regarding mileage, the *only* difference between the acquisition notices and the adverse abandonment application is that the acquisition proposal only covers the 3.2 miles of track to MP Z09.9 whereas the adverse abandonment application covers the additional track to MP Z0 10.5, a difference of approximately 0.5 miles.

The track sought to be acquired by CLSSB forms a small portion of a line that formerly extended between South Bend, IN, and Niles, MI. Originally owned by the Michigan Central Railroad and its successors, the New York Central Railroad, the Penn Central Transportation Company, and Consolidated Rail Corporation ("Conrail"), the portion of the line north of MP Z0 9.48 was abandoned by Conrail in

⁵ Assigned STB Finance Docket No. 34960.

the 1980's. Conrail continued to use the track sought to be acquired by CLSSB to serve a coal burning power plant at the University of Notre Dame ("UND") until the mid to late 1990's when the University for an undetermined reason decided to truck the coal over city streets from a rail-served transload facility. This arrangement continues today. In June 1999, NS acquired the subject line as part of its acquisition and operation of its share of Conrail's properties and common carrier services. CSX Corp. et al. - Control-Conrail, Inc. et al., 3 S.T.B. 196 (1998).

The line remained out of service and was of no apparent interest to any one in the community including City officials, the Brothers and the Sisters until CLSSB began its efforts to acquire the line starting in 2005.

PRELIMINARY MATTERS

As noted above, on December 4, 2006, the CLSSB petitioned the Board under 49 CFR 1104.10 and 49 CFR 1117.1 asking the Board to reject the subject adverse abandonment application for failure to comply with the following requirements:

1. Failure to serve the Notice of Intent on the Board by certified mail. 49 CFR 1152.20(a)(1).
2. Failure to provide evidence, by certification, contemporaneous service list, or other means of

the service of the Notice of Intent on the parties specified in 49 CFR 1152.20(a)(2)(ii) (except as to significant users and rail labor organizations which requirements were waived).

3. Failure to satisfy the time limit requirements of 49 CFR 1152.20(b)(1) and (3).

The Board's decision served December 11, 2006, providing notice of the adverse abandonment application, indicates that it will address CLSSB's rejection request in a subsequent decision but, as yet, it has not ruled on this request. Accordingly, CLSSB reasserts its request that the Board reject the subject application as being noncompliant with the Board's rules.

In their Petition to Reject and Stay [CLSSB's] Exemption, Applicants asserted,

"[i]t is respectfully submitted that [CLSSB] lacked and continues to lack standing in the adverse abandonment proceeding."⁶

The Board's public convenience and necessity mandate in an adverse abandonment proceeding is to balance the relative burdens that continuing or ceasing rail service would have on all of the potentially affected interests,

⁶ At footnote 2 on page 3 of their Petition to Revoke and Stay.

including the railroad, the owners of the property (if different from the carrier), the shippers, the national rail network, and the broader public. New York Cross Harbor R.R. v. Surface Transp. BD, 374 F.3d 1177, 1183 (2006) ("More importantly, the STB itself-not New York City-is to determine the public convenience and necessity"). Insofar as NS, as evidenced by its willingness to consider selling the subject track to CLSSB, desires to exit this market and CLSSB wants to acquire the line to continue that railroad franchise, CLSSB's role here is tantamount to that of the railroad.

For the Board to accept Applicants' suggestion that CLSSB has no standing to protest this adverse abandonment application would amount to abrogating its role as the arbiter of the public convenience and necessity in violation of law and letting the Applicants themselves determine the outcome of this case. As the authorized and exempted operator of the line that is the subject of this adverse abandonment application, CLSSB clearly has standing. How can the STB do its job if protestants were forbidden from submitting comments on the proposed adverse abandonment?

ARGUMENT

This line is unique because it presents the first time that a party has sought the adverse abandonment of an out-of-service line where the carrier is not the current owner but a party authorized to acquire and restore it to active rail service. Furthermore, this proceeding presents significant policy implications going far beyond the facts of this proceeding as existing railroad owners, short line entrepreneurs, and public agencies seek to restore to service out-of-service rail lines contrary to the wishes of adjoining landowners and NIMBY (Not in Your Backyard) groups. In deciding whether to grant the subject adverse abandonment without serious consideration of policy and environmental considerations going far beyond the current proceeding, the Board should consider the fact that rail is the *only* form of transportation that can combat America's insatiable thirst for oil and its effect on global warming. Granting adverse abandonment applications such as this presents a serious threat to the long term viability of the national rail infrastructure by chipping away pieces that are difficult, if not impossible, to restore at a later date.

I. THE APPLICABLE LEGAL STANDARD

In 1981, the Board's predecessor agency, the Interstate Commerce Commission, ruled in a seminal case that it has the power to *force* the abandonment ("an adverse abandonment") of a rail line against the wishes of the railroad owner and operator of the line where required by the public convenience and necessity. Modern Handcraft, Inc.-Abandonment, 363 I.C.C. 969 (1981). That line had been out of service for 12 years, had been turned into a parking lot, and there had been no serious effort to reinstate service, and the carrier's only interest in opposing the application appeared to be price and terms for the sale of the right of way. Id. at 971. Subsequent cases have reaffirmed that power, but with significant limitations, that the Board will not grant the adverse abandonment of an actively used rail line⁷ or even an inactive line where there is potential for continued operations and the carrier has taken reasonable steps to attract traffic.⁸ Agency precedent holds that it is the

⁷ Western Stock Show Assn.-Aban. Exemption-In Denver, CO, 1 S.T.B. 113 (1996)

⁸ Chelsea Property Owners-Aban.-The Consol. R. Corp., 8 I.C.C. 773, 778 (1992), aff'd sub. nom., Consolidated Rail Corp. v. ICC, 29 F.3d 706 (D.C. Cir. 1994); Wisconsin Dept. of Transp.-Aband. Exempt, Finance Docket No. 31303, slip op. served Dec. 5, 1988, at 4; City of Colorado Springs and Metex Metropolitan Dist.-Pet. For Declaratory Order, et al., Finance Docket No. 31271, slip op. served March 31, 1989, at 3, 6, and 7; Seminole Gulf Railway, L.P.-Adverse Abandonment-In Lee County, FL, STB Docket No. AB-400 (Sub-No. 4), slip op. served November 18,

adverse abandonment applicant which has the burden of proof, a very high burden of proof.⁹ The Board must deny the subject application as applicants have failed to sustain that burden.

II. PC&N ANALYSIS of APPLICANTS' PROPOSAL

In support of their proposal, Applicants cite numerous redundant, overlapping goals that the adverse abandonment would facilitate. In the interest of brevity, CLSSB categorizes them as follows:

1. No "demonstrable need" for rail service, as reflected through lack of NS service and track maintenance, no desire to restore service, and nonexistent marketing. Appl. at 2, 9.
2. The line is a "public nuisance," as demonstrated by NS' lack of maintenance, scattered ties and track materials, vegetation and garbage. Appl. at 3, 7.
3. "Public project justifications" including the need to use the right of way to build a sewer (Appl. at 4, 6, and 8); the need to use the right of way for a recreational trail (Appl. at 4, 8); and the need to repave and reroute roads at a

2004 (Seminal Gulf), at 5; Yakima Interurban Lines Association-Adverse Abandonment-In Yakima County, WA, STB Docket No. AB-600, slip op. served November 19, 2004 at 5 (Yakima).

⁹ See, Seminal Gulf at 5, Yakima at 5.

lower cost than would be possible if the railroad remains (Appl. at 8).

4. Abandonment will avoid the substantial costs associated with the restoration of working crossing signals. Appl. at 13-4.
5. There is substantial community opposition to service restoration. Appl. at 11.
6. Environmental and safety considerations including eliminating train whistles, unsightly conditions on the track and right of way (Appl. at 11), and vehicular and pedestrian interaction with the railroad at grade crossings, and along the track.
7. Abandonment will assist the Brothers and the Sisters by allowing them to acquire, presumably at minimal or no cost, abandoned land needed to expand their facilities. Appl. at 4, 8, and 14.

In response, CLSSB submits as part of its Protest verified statements prepared by its President, Robert Harris, along with its engineering and operations consultant and corporate officer, Gary Landrio (Landrio Verified Statement, Landrio VS), as well as a verified letter to Mr. Harris from fellow corporate officer, John P. Hankey. These documents are labeled Exhibits A, B, and C, respectively. Mr. Harris will rebut each of Applicants'

allegations. Mr. Landrio will comment on Applicants' assertions involving engineering or operating issues or the associated expenses. Mr. Hankey's letter describes the discussions between CLSSB, the principal shipper, Buckeye Industrial Mining ("Buckeye"), and the consignee, UND. Confidential commercial information has been redacted from Mr. Hankey's letter.

The Public's Need for the Service. Under Board precedent the agency must deny an adverse abandonment application when there is potential for continued operations and the carrier has taken reasonable steps to attract traffic.¹⁰ As Mr. Harris testifies, Applicants want to view the potential for this line through the prism of NS, an owner which during its 7-8 years of ownership has allowed traffic over the line to atrophy. Harris VS at 1. This is not the correct perspective. For if it was, major segments of the short line and regional railroad industry would not be handling thousands of car loads of new business every year.

This case does not present a situation as in Chelsea Property Owners, supra, where there is no current traffic and the railroad presents a speculative plan to attract business to the line. That traffic exists today in the

¹⁰ See cases cited in footnote 8.

form of coal moving on a regular basis to UND's power plant by truck over city streets. CLSSB has worked hard to return that traffic movement to rail by securing the support of the **actual shipper**, Buckeye, the approval of UND (until forced by the City to renege on that approval),¹¹ and the support of NS which had agreed to pay CLSSB a per car switching charge for delivering the coal. Applicants' assertions that there is "no demonstrable need for future rail service" and that "[n]o shipper has indicated any future intent or need to ship via rail over the Lines"¹² are pure fabrications that the Board should investigate as to their truthfulness. While Applicants would have the Board believe that UND does not support restoration of rail service, the facts shown in Mr. Harris' statement are to the contrary. UND was ready to return to receiving coal by rail until the City pressured them not to do so. Harris VS at 3. Buckeye Industrial mining has needed to be cautious with their support once their customer UND was pressured by the City.

Regarding restoration of passenger service, Applicants belittle and misconstrue CLSSB's proposal on the grounds that there is no market for trolley service between the UND

¹¹ Harris VS at 3.

¹² Appls. at 2 and 13.

campus and downtown South Bend. Appl. at 16-7. These remarks are purely inflammatory because the Board has no jurisdiction over excursion passenger service.¹³

The line is a public nuisance. CLSSB concedes Applicants are correct on this point as the line is strewn with salvaged track materials, unkempt vegetation, and trash. However, as Applicants themselves note,¹⁴ this state of affairs is of either NS' or Conrail's doing, rather than any action (or lack of action) by CLSSB. As Mr. Landrio notes in his statement, CLSSB will spend approximately \$200,000 in phase One and an additional \$267,000 in phase Two for a total of \$476,000 to return the track and right of way to a good state of maintenance. Landrio VS at 1. In any event the Board has indicated that lack of maintenance is not necessarily indicative when there is no traffic moving over the line. Yakima, supra at 5.

The City needs the right of way for "public projects." The City asserts that it can save money by building a new sewer line utilizing the abandoned right of way. Appl. at 6,8. But the Board and the ICC before it have held that

¹³ That is not CLSSB's intended market. Rather CLSSB would provide trolley service between the UND campus and the Northern Indiana Commuter Transit District (NICTD) station at the South Bend Regional Airport and would allow NICTD to operate football and other special trains on its line to reach UND. Harris VS. at 3.

¹⁴ Lauren VS at ¶9.

monetary savings afforded state or local government by the abandonment are not a sufficient justification for abandonment in the face of the need for continued rail service. Seminal Gulf, supra at 5-6. Mr. Harris states that CLSSB has been more than willing to work with the City utilizing the right of way for sewer line construction. But the City may choose to locate the sewer under a city street for other reasons. Harris VS at 5.

Similarly, the City suggests that it would use a portion of the right of way for a trail. Appl. at 8. Again, CLSSB has stated its willingness to work with the City on using the right of way to accommodate the City's trail use needs. CLSSB President, Robert Harris, is active in rail trail activities as a founder of the Northern Indiana Trails Alliance, and, as an avid cyclist, he supports that effort. Harris VS at 4.

Again, in the same vein, the City suggests that removal of the railroad would facilitate the repaving and relocation of city streets at far lower cost than would be possible with retention of the railroad. But as noted above, the monetary savings afforded state or local government by the abandonment are not a sufficient justification for abandonment in the face of the need for continued rail service. Seminal Gulf, supra. Mr. Harris

details at length CLSSB's efforts to work with the City to accommodate each of its needs and how the City has steadfastly refused to negotiate in good faith. Harris VS at 5-6.

Abandonment will obviate the substantial expense associated with restoration of crossing signals. Applicant avers that elimination of the railroad would in its words "prevent the wasteful expenditure of public funds to cover the cost of reinstalling crossing gates and signals." Appl. at 13-4. The Board should disregard this comment as CLSSB has not asked for public funds to repair and/or install warning devices. It has acquired and stockpiled this equipment and will reinstall the necessary warning devices at its own expense. Landrio VS at 3.

There is substantial public opposition to restoration of rail service. Applicants' attempts to deceive the Board into thinking that the South Bend community, including its civic leaders, businesses, and individual citizens, uniformly oppose rail service restoration. Appl. at 11. Again Applicants are playing fast and loose with the truth. As Mr. Harris relates, South Bend's current Mayor and some members of the City Council actively and aggressively oppose rail service restoration. They have actively lobbied and in some cases intimidated others from

supporting rail service restoration. Harris VS at 6-7. Certain very vocal city officials persuaded those favoring rail service to keep quiet. They intimidated UND officials, specifically Paul Kempf and John Affleck-Graves, and persuaded them to change their position over use of rail. CLSSB believes that these officials persuaded NS to renege on its agreement to sell the line to CLSSB. Yet as the newspaper articles attached to Mr. Harris' statement indicate, there are members of the community who continue to support rail service.

Environmental and safety considerations. Applicants have identified a series of "quality of life" issues that support the adverse abandonment. These include such matters as "excessive" train whistles due to multiple crossings, numerous unprotected crossings, proximity of the line to parks, schools, and recreational centers, improper track and right of way maintenance, unkempt vegetation, and strewn trash. Appl. at 11. In response, CLSSB notes that it is NS that is responsible for the unsatisfactory condition of the track and right of way. CLSSB's budget assumes proper restoration of the track and right of way. Landrio VS at 1-2. Regarding whistles and crossings, CLSSB would install and properly maintain grade crossing warning devices and would be willing to implement a "whistle free"

policy if desired by the City and those adjacent to the right of way. Numerous railroads subject to Board jurisdiction such as the Dakota, Minnesota & Eastern Railroad, have implemented such a "whistle free" policy when so requested.¹⁵ Mr. Harris also notes that a substantial portion of the subject right of way goes through blighted and substantially vacant land and that the best solution would be to close off or dead end lightly used streets. Harris at 6. Despite these suggestions, the City has been aggressive in its refusal to explore equally beneficial solutions with CLSSB.

As to the perceived environmental impacts of the abandonment, in a notice served December 22, 2006, the Board's Section of Environmental Analysis noted that CLSSB has secured the Board's authorization to acquire and operate the line back in the Summer of 2006 (now withdrawn). Very significantly, it neglected to mention the second acquisition exemption published by the Board in Finance Docket No. 34960 only two days before (December 20, 2006), concluding that the abandonment (with the imposition of one condition not relevant here) of the line would not significantly affect the quality of the human environment.

¹⁵ The Federal Railroad Administration has published rules establishing "whistle free zones." See, Use of Locomotive Horns at Highway-Rail Grade Crossings, 70 FR 21844 (April 27, 2005), 49 CFR 222 and 229, specifically at 49 CFR 222.37.

However, the SEA did not consider the environmental implications of removing the coal carrying trucks from the City's streets and allowing the rail transportation of the UND coal. CLSSB's proposed operation of thrice weekly rail service would not come close to triggering the Board's threshold for a case by case review and imposing appropriate mitigation. In that regard, this case is similar to Morristown & Erie Railway, Inc.-Modified Rail Certificate, STB Finance Docket No. 34054, served June 22, 2004, aff'd sub nom., Town of Springfield v. the Surface Transportation Board, __ F.3d __ (D.C. Cir. 2005), in which the Board declined to review on environmental grounds and impose mitigation on the restoration of rail service over a rail line out-of-service for at least 13 years.

Nevertheless, unlike the railroad parties in that case, CLSSB is willing to agree to SEA review of its service restoration proposal and will work with the City and other affected parties to reach a mutually satisfactory accommodation of the community's needs.

Abandonment will facilitate at little or no expense the expansion of the property and facilities of the Brothers and Sisters. Applicants make no attempt to hide the real motivation behind their abandonment proposal. At pages 4, 5, 6, 8, and 14-16 of the Application, the

Brothers and Sisters boldly assert why they want this abandonment: to expand their facilities by acquiring for no or minimal cost real estate that would revert upon abandonment. In short, this abandonment is little more than a land grab, and CLSSB's proposed acquisition would frustrate that effort.

Balancing the interests of the carrier(s), the originating shipper, Buckeye, the consignee, UND, the public in the form of the community, and interstate commerce including the rail system in general, the Board must find that the public convenience and necessity does not warrant a grant of this abandonment. Cross Harbor at 1183. There is no basis for Applicants' assertion that there is no demand for the service. To the extent no demand exists, it is due to Applicants' efforts to discourage UND and other potential customers from using rail transportation and NS from cooperating with CLSSB to restore service. Regarding the other asserted abandonment justifications, CLSSB is willing to work with the Applicants and members of the community, if necessary under the Board's supervision, to accommodate their concerns so rail service can be restored. To the extent that the real motivation of the Brothers and the Sisters is to allow them to acquire NS property for little or no money, the Board

should reject that reason as a basis for granting abandonment authority.

CONCLUSION

For these reasons the Board should reject the subject adverse abandonment application as being contrary to the public convenience and necessity.

Respectfully submitted,


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Counsel for The Chicago, Lake Shore
& South Bend Railway Company

Dated: January 5, 2007

ORIGINAL

EXHIBIT A

I, Robert S. Harris, being duly sworn, deposes and states as follows:

My name is Robert S. Harris. I am the president of The Chicago, Lake Shore and South Bend Railway Co., LLC (CLSSB). My address is 404 Franklin, Porter, IN 46304. I hold an Associates Degree in Business from Indiana University South Bend, a Bachelor's Degree in General Studies from Indiana University Bloomington, and a Master's Degree in Park and Recreation Administration from Indiana University Bloomington. I have personal knowledge of the facts that I am presenting in response to claims in the adverse abandonment application of the City of South Bend, the Brothers of the Holy Cross, Inc., and The Sisters of the Holy Cross, Inc., Docket AB 290 (Sub-No. 286) of Norfolk Southern Railroad property in St. Joseph County, Indiana (the Lines). The response that follows refers to both the adverse abandonment application and sworn statements by page and paragraph.

Demand for Future Rail Service

The application on page 2, paragraph 2, it states that there is “no demonstrable need” for future rail freight service over the Lines. This statement is false. The failure to solicit traffic should not be evidence of the lack of traffic, but rather a lack of initiative on the part of the carrier to market its service. Throughout the recent history of railroading there have been lines that have seen no service that once in the hands of capable short line operators have become considerable success stories. One example in Indiana includes the recent start-up in LaPorte, Porter, and Starke Counties over former Pere Marquette and Chesapeake and Ohio lines that CSXT fought to abandon that currently serve a growing industrial district in North Judson and a grain terminal in

Malden. The project consultants included Mr. Gary Landrio of Stone Consulting, an officer of the South Bend Railway.

In South Bend, from discussions that we have had with Mr. Paul Kempf, P.E., Director of Utilities at the University of Notre Dame, and Mr. Jack Grinwis, Vice President of Marketing at Buckeye Industrial Mining, there is substantial coal traffic that is delivered to the University by truck. It is physically feasible for that coal to be delivered by rail and future expansion of the boiler facilities at the University will further increase the tonnage delivered annually. Further, there are two steel service centers on the Lines, Steel Storage & Supply, and Steel Warehouse Company, Inc. These businesses represent potential customers to the South Bend Railway.

I was surprised by the University of Notre Dame's unwillingness to have coal delivered by rail. I have yet to hear of a single power company in the United States calling their supplier and *asking* for their coal to be delivered three miles from their plant and trucked in. Indeed, Mr. John Affleck-Graves for the University of Notre Dame said that "if the City and County were strongly opposed" (emphasis is mine) to the movement of coal by rail over the Lines, that the University would not receive coal by rail (South Bend Tribune, June 23, 2006). He did not simply say that "it has no intention of receiving coal by rail" as it was spun by Mr. Andrew R. Laurent in his comments on page 3, paragraph 1, of the Application (see attached letter from Mr. Affleck-Graves). The officers of the South Bend Railway assert that the delivery of coal to the University of Notre Dame should be a free-market outcome where-in we are allowed to compete with trucking companies for that business. In fact, Buckeye Industrial Mining (Buckeye) was so happy to see the coal returned to the rails that they offered us the same price per ton

for coal delivery that they were paying the trucking company at the time of the agreement. Buckeye believes that the trucking and transload operation is going to become even more costly in the near future. CLSSB only withdrew its notice on September 5, 2006, after local officials pressured NS to abrogate our agreement and withdraw its support for the sale, not because of an actual lack of demand for service.

On page 16, paragraph 4, the applicant states that we will electrify the Lines and implement a vintage trolley service. This is indeed correct, and there should be considerable Federal interest in this operation as it is a means of directly linking the currently operated interstate commuter operations of the Northern Indiana Commuter Transportation District (NICTD) with the University of Notre Dame campus. NICTD currently has two distinct groups of riders that use NICTD services directly to the campus, students departing for Chicago on Friday afternoons, and returning on Sunday evenings, and charter trains destined for University of Notre Dame home football games, a tradition that goes back over 80 years!

NICTD has indicated a willingness to consider operating their trains over the Lines directly to north end of the campus near the power plant where historically riders on Michigan Central and New York Central System football specials disembarked. Further, we believe that we can reasonably penetrate the market of students who travel to the Regional Airport with fares considerably lower than the taxi services. Again, we believe that we should be allowed the opportunity to compete in fair market environment.

Public Project Justifications for Abandonment

On page 4, paragraph 2, the City of South Bend's plans for the right-of-way are made clear. The City of South Bend, the Brothers of the Holy Cross, and The Sisters of the Holy Cross, are all trying to take the Lines for non-transportation purposes.

With regard to the City of South Bend, from the beginning of this process we had been told of the City's desire to make the right-of-way part of their trails network. We have stated to the City administration from the time we first contacted the City about our project that we would be eager to work with the City on a parallel trail project along the Lines. Trails development presents no problem whatsoever to Mr. Landrio and myself personally as we are both long-term members of the Rails to Trails Conservancy, a nationwide organization dedicated to trails development.

My personal track record on trails development is very clear and the results fairly spectacular. In early 1988, with Mr. John Laue of Gary, Indiana, and Mr. Ken Svitko of Hebron, Indiana, we formed the Northern Indiana Trails Alliance. We successfully lobbied for a \$10,000 planning grant from the Northwest Indiana Regional Plan Commission to study trails alternatives in Northwest Indiana. Today, a nearly completed bicycle trail network of 50 miles extends from Hammond, Indiana, near the Illinois State Line to Michigan City, Indiana, near the Michigan State Line. When the City of South Bend suggested that their need for a trail was more important than our proposed rail operation, Mr. Landrio and I said that we would be glad to share the needed portion of the right-of-way with the City of South Bend for trails use through a recreation easement. Consider that the right-of-way of the Lines is 100' wide over most of its length, and more than ample for trails and rails!

Perhaps astonished at our answer regarding trails, Mr. Gary Gilot, the Public Works Director, tossed in the idea that the right-of-way was really needed for a sewer project. Mr. Landrio and the staff at Stone Consulting began brainstorming on how we could accommodate the sewer, and came up with several alternatives for construction and funding. At the next meeting with Mr. Carl Littrell, City Engineer, Mr. Landrio and I were told that the preferred alternative was not to install the sewer along the Lines, but rather to run the sewer down Diamond Street because the neighbors there expected that moving the project to a City street would result in a needed repaving. In their adverse abandonment application, they insist that the sewer needs to be built on the Lines, but they have told us otherwise.

That there seems to be no consistent response from the City administrative staff with any alternatives to any issue became painstakingly clear when they published the "Proposed Railroad Spurline (sic) Issues & Concerns (attached)" for use at the Common Council Meeting of Monday, June 12, 2006. By way of example, in item 2, under the category "Minimum Requirements Requested," the City states that as to "cooperation in setting aside a continuous corridor for rails to trails bike and pedestrian walkways," that we would not respond. I stand on my previous record on trails development as evidence that I am very willing to work with the City of South Bend to dedicate a recreation easement along the Lines after we purchase them from Norfolk Southern. The same could be said for the sewer. Once the City has made up its mind as to where to build it, we will gladly make the sub-surface rights available. This is what we offered the City of South Bend in the past, and despite their disingenuous dealings with us, we still offer this

to the City of South Bend. There is no reason for the City of South Bend to be pleading a case before the STB for land for a trail or sewer easement.

Another reason the City gives for the abandonment is the quality of life in the neighborhoods. On page 14, paragraph 1, the City voiced its concerns regarding noise associated with our proposed railroad operations. But in another example of the disingenuous dealings with the City comes from our conversation regarding “Quiet Zones.” When I met with the Mayor in August 2005, this was a hot topic. Noise in the neighborhoods can be challenging to live with (see attached letter to the editor, July 10, 2006). So, I proposed during the meeting that in the neighborhood with multiple crossings (a quick succession of eight streets and five alleys), that we look at dead-ending the four really low-traffic volume streets at cul-du-sacs. These are most often the most valuable lots in a subdivision. My primary business is real estate development. Further, I suggested that we close the alleys and move trash pickup to curbside (the current standard in new subdivisions throughout much of the U.S.). The Mayor bristled at the suggestion. In response, I suggested that since 60% of the housing stock in that neighborhood is vacant or abandoned (Mr. Landrio and I have confirmed this by actual count during a neighborhood walk; see also the South Bend Tribune article, April 24, 2006) and that we could purchase all the available properties by contract or through the tax lien sale process and create green space.

Widespread Community Opposition

On page 9, paragraph 3, the City is being disingenuous. They state that there was widespread opposition to our rail plan. While certainly the South Bend Tribune editorial staff is against the rail plan, the community business leaders interviewed by the Tribune

were in favor of at least some aspects of it (see attached June 16, 2006 article). If the letters to the editor at the South Bend Tribune are any indication, there is no widespread opposition to the rail plan from within the community (see attached letters to the editor June, 20; June 23; June 24; and June 25).

Even the Mayor of South Bend must have come to the conclusion that there is no widespread opposition to our proposed rail operations. Apparently exasperated at the lack of opposition to our plan, on June 30, 2006, the Mayor wrote his own negative letter to the editor (see attached) in which he states “a few recent letters to the editor have criticized the city of South Bend for opposing plans by South Bend Railway to re-establish freight trains along the spur line that runs through a west side neighborhood.” By my count that makes it 6 letters in favor of resumed rail operations, 2 opposed, and 1 where I cannot quite comprehend the writer’s intent (the letter about bringing in Mitch Daniels). One of the two opposing views is the Mayor’s and he is entitled. But I do not see “widespread” opposition anywhere. Further, it is my understanding that the Mayor’s Office sent representatives to the community centers to *tell* them to be in opposition. But I have not tried to verify this. However, in a City that seems to be so upset with this idea of reactivating the Lines for passenger and freight service, it would occur to me that the STB would have received a landslide of mail in favor of the adverse abandonment application. Yet I have found only two letters from South Bend residents in favor of the adverse abandonment on the STB website.

Safety & Environmental Concerns

The City of South Bend must be expecting a miracle to take place when the Lines are abandoned with regard to the behaviors of the City’s residents. On page 11,

paragraph 2, Mr. Laurent states the issue of illegal trash dumping (and other issues) along the Lines would be eliminated by the abandonment. I have seen neighborhood groups do cleanup along the Lines, notably in the area around Vassar Avenue. But upon returning to the area less than six months after each cleanup, the area is a mess of garbage once more. The railroad is not bringing in the plethora of discarded household goods that are routinely found there; the neighbors are. And with the railroad abandoned, the neighbors are still there.

Also from page 11, paragraph 2, we have found standing water in only one location consistently along the Lines. This between Portage Avenue and Kessler Boulevard, and the City is rightly concerned. Mr. Daniel J. Gornstein, formerly the Director of Equipment and Facilities for NICTD, and an officer of CLSSB and I noted that two metal culverts in the area are damaged and plugged and will need to be replaced. Using improvised implements made from trash found along the right-of-way, Mr. Gornstein and I did manage to clear out one of the culverts and improve flow, but this was a minimal effort and it will clearly need to be revisited. On page 13, paragraph 1, the City even makes the claim that the vegetation along the railroad provides habitat for various rodents and other undesirable pests. How is the vegetation along the railroad different from that found in the neighborhoods? Except in the extremely wet area near Portage Avenue (where we noted wetlands plants), all we found were grasses and woody plants consistent with the neighborhoods. I will say that the trash dumping poses a significant risk to the health and safety to the neighborhoods, as it is food waste, not vegetation, that exacerbates any rodent problem. Rodents will simply not survive in any habitat without food.

Also from page 11, paragraph 2, I also do not quite understand City's contention about safety and environmental concerns about running a freight train through residential neighborhoods. I know for certain that this is not the only location in the United States where freight trains run through residential neighborhoods. My wife and I live in a residential neighborhood in Porter, Indiana, in a home ½ block from the Amtrak line to Detroit. Norfolk Southern also operates over that line three times a week to serve freight customers in Michigan City, Indiana. We live within three blocks of Porter Junction which I am told hosts over 900 trains per week in a residential neighborhood. There is no resident of Porter that gets direct benefits from the trains that roll through the area with the exception of Lorain Bell who operates a transload site across the tracks from our house under the business name L.A. Bell Motor Lines. Yet I have never heard of a single Porter resident suggest that Norfolk Southern, Amtrak, or CSXT conduct their business elsewhere. I cannot find even one abandoned home in Porter, and there is one new subdivision being sold out within a block of the Norfolk Southern mainline.

Even in the South Bend area, residential neighborhoods are not immune from new railroad operations. NICTD has proposed to reroute the South Shore Line from an industrial area in South Bend to a residential neighborhood to speed up operations into the Regional Airport (also see letters to the editor, June 20, 2006). What we are proposing to operate is far less than the seven passenger trains per day at 35 to 40 m.p.h. that NICTD will operate to the Regional Airport, and considerably less than the 900+ trains per week that operate over Norfolk Southern and the Canadian National operate through South Bend. We are proposing to run an average of slightly more than one freight train each week in each direction at 10 m.p.h. to and from the University of Notre

Dame over a line that is less than four miles long to replace over 3000 truck hauls per year. The number of potential vehicle conflicts will be far less once the 3000 truck moves are consolidated into 52 train moves. And will someone please explain to me how these truck movements have absolutely no environmental or safety impact on the neighborhoods they travel? Is there no cost to the City of South Bend in accelerated paving needs on those streets where the truck carrier operates? On page 13, paragraph 4, the supposed benefit to the community of adverse abandonment is that it would “prevent the wasteful expenditure of public funds to cover the cost of reinstalling crossing protection gates and signals.” Yes, a one time expenditure that we said that we would provide the equipment for (some of which is already on hand at our storehouse in Michigan City), but in contrast, repaving City streets battered by heavy truck traffic is forever.

The Justification for Abandonment by the Brothers and the Sisters

It needs to be made clear that both the Brothers and the Sisters have been consistently bad actors with regard to neighboring real estate. By way of example, circa 1997, the Brothers attempted to adversely possess three acres +/- of railroad never legally abandoned by Conrail and 1/3 acre +/- of operating right-of-way also never legally abandoned and owned in fee from Conrail without advising the company. This was done for the construction of permanent streets.

Circa 2002, the Sisters removed rail and OTM from what had become Norfolk Southern property located south of the switch (the rail line was abandoned by Conrail north of that switch) that served St. Mary’s College that has never been legally

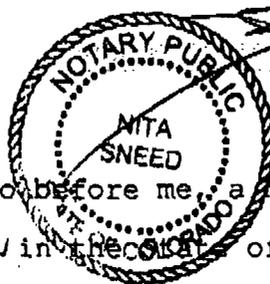
abandoned. The Sisters in correspondence with the STB somehow believed that if they removed the track material, that that made the abandonment effective.

From a development perspective, the Brother's and the Sister's contention that our project is incompatible with their redevelopments also does not make sense. It is inconceivable that a dedicated vintage trolley transit link to NICTD commuter and airline services would be of negative impact on residential retirement and hotel services. Indeed the opposite has been proven true in nearly 40 communities in the United States and Canada, including Memphis, Tennessee; Dallas, Texas; Tampa, Florida; and Kenosha, Wisconsin.

VERIFICATION

STATE OF)
) SS
CITY OF)

Robert S. Harris, being duly sworn according to law, hereby deposes and states that (s)he is authorized to make the Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of (her)his knowledge, information and belief.



Subscribed and sworn to before me, a Notary Public, in and for the City of Grand Junction in the State of Colorado, this 4th day of January 2007

Anita Sneed
Notary Public

My Commission expires:

My Commission Expires
01/18/2010



john heffner

From: "Bob Harris" <echocanyonranch@gmail.com>
To: "john heffner" <j.heffner@verizon.net>
Sent: Friday, January 05, 2007 1:32 PM
Subject: Fwd: Something positive to say!

----- Forwarded message -----

From: Gary Landrio <garylandrio@stoneconsulting.com>
Date: Jun 16, 2006 8:36 PM
Subject: Something positive to say!
To: Bob Harris <echocanyonranch@gmail.com>, "JohnPHankey@aol.com" <JohnPHankey@aol.com>, Randall Gustafson <randygustafson@stoneconsulting.com>, Mike Morris <mmorris@recycletoday.com>

Article published Jun 16, 2006

South Bend rail proposal may benefit area tourism

By JOSHUA STOWE
Tribune Staff Writer

SOUTH BEND — A rail arrangement that might ferry football fans from Chicago to the University of Notre Dame interests some local businesses but worries others.

Meanwhile, a prominent economic development expert likes the possibility of such passenger service but frowns on another part of the rail plan that would provide the service.

South Bend Railway's plan calls for running trains along an old, unused rail line stretching from the city's west side to Notre Dame.

Trains would haul such materials as coal under the arrangement, which could include a partnership with the South Shore line to carry passengers directly to campus for home football games.

The passenger arrangement would likely help such places as the College Football Hall of Fame, said Rick Walls, the hall's executive director.

"I think that any improvement in transportation is a positive thing," he said. "Consumers want options ... I believe it's not gonna be a negative thing, that's for sure."

But, Walls said, it's not clear how much such a plan would help the hall. Much depends on details, including how many runs trains would make, and how many stops there might be. More stops and more runs might draw more tourists downtown, he said.

Rebecca Bonham, executive director of the Studebaker National Museum, said the plan, if executed well, could be a good thing.

"I think it's an interesting proposition that needs study, and I'd sure be interested in hearing

more about it," she said.

Bonham said she's not sure how many of the people who'd ride trains to a Notre Dame game would be interested in stopping at the museum, which stands just blocks from where the train route would pass. But, she said, "We'll look at any opportunity to get people to look at our product."

At the same time, Bonham said the plan would have to address concerns of neighborhood residents who worry about noise, safety and falling property values.

Taxi companies worry that direct-to-campus train service could slice into their profits. Some companies count on the game-day passengers they pick up at South Bend Regional Airport, where the South Shore trains currently stop.

"A lot of our business involves runs between the airport and Notre Dame," said Jeff Gonyou, co-owner of Michiana Taxi. "It would not do any favors."

Although he said Michiana Taxi "would see some effect" from the proposal, Gonyou added that it certainly wouldn't cripple his company.

Greg Ayers, executive director of the South Bend/Mishawaka Convention and Visitors Bureau, said Notre Dame is the No. 1 reason people come to visit the area, and that the passenger service proposal would benefit consumers who visit.

But, he said, it's too early to predict how the plan would affect the local economy.

Gary Landrio, a representative of South Bend Railway, said the company is willing to work with the city to help boost tourism.

For instance, he said that if the city proposed that the train route include a loop through the downtown area, his company would be willing to build one.

Mayor Stephen Luecke said this week that he is skeptical of that idea, adding that it would raise traffic concerns and that he isn't sure how South Bend Railway would pay for its rail plan.

Although South Bend Railway sees passenger service as a possibility, it also hopes to haul materials for several potential customers, including Notre Dame.

Passenger service could be an "exciting project," according to Patrick McMahon, executive director of Project Future, an agency that promotes economic development for South Bend, Mishawaka and St. Joseph County.

That aspect of the rail plan could promote tourism on football weekends without hassling local people, he said.

But regularly running freight trains through residential neighborhoods is another matter, he said.

"This winds through an area with a lot of cross-streets," he said, adding that the line has many at-grade crossings where traffic would have to stop as trains passed.

That would "present a number of significant issues for the city," McMahon said, adding that he told Landrio about those concerns when the two discussed the rail plan about a year ago.

The South Shore line already has a plan to make route changes that would shave the commute time from South Bend to Chicago, McMahon said. "I would hate to see that clouded up by the coal train issues."

Tribune staff writer Jamie Loo contributed to this report.

john heffner

From: "Bob Harris" <echocanyonranch@gmail.com>
To: "john heffner" <j.heffner@verizon.net>
Sent: Friday, January 05, 2007 1:35 PM
Subject: Fwd: Letters to the Editor 7-10-06

Note the first letter regarding noise!

Bob

----- Forwarded message -----

From: Gary Landrio <garylandrio@stoneconsulting.com >
Date: Jul 10, 2006 12:00 PM
Subject: Letters to the Editor 7-10-06
To: JohnPHankey@aol.com, Bob Harris <echocanyonranch@gmail.com >

Bob,

Someone else has noticed the summer noise in SB. Gary

July 10. 2006 6:59AM

Noise patrol

If the South Bend Police Department is interested in increasing the number of traffic tickets it writes, I suggest spending an hour or so parked in the 1100 block of North Twyckenham. Drive on any given day or evening during the summer.

If our windows aren't being rattled by music emanating from our neighbors' homes, then surely the plethora of four-wheeled-stereos would provide ample opportunity to wear out pad and pen. I certainly would not expect my neighbors and/or other motorists to listen to my music, whatever type or genre it may be. I understand that there is a noise ordinance in place to deal with these sorts of problems, although I've never heard of any actually being enforced.

Perhaps if I park my car on my lawn during a University of Notre Dame home game and turn the volume up to maximum, I'll get a citation. Now there's a bonafide threat to the public!

Joel C. Schweisberger
South Bend

Get over it

Attention, opponents of the College Football Hall of Fame: The Hall of Fame opened in 1995. Eleven years ago. You fought the good fight. You lost. Stop whining. Give it up and move on. Get over it.

Don Severeid
Niles

john heffner

From: "Bob Harris" <echocanyonranch@gmail.com>
To: "john heffner" <j.heffner@verizon.net>
Sent: Friday, January 05, 2007 1:37 PM
Subject: Fwd: the first letters to the editor

----- Forwarded message -----

From: Gary Landrio <garylandrio@stoneconsulting.com>
Date: Jun 20, 2006 9:05 PM
Subject: the first letters to the editor
To: Bob Harris <echocanyonranch@gmail.com>, "JohnPHankey@aol.com "
 <JohnPHankey@aol.com>, Randall Gustafson <randygustafson@stoneconsulting.com>

June 20, 2006 6:59AM

Whose quality of life matters the most?

VOICE OF THE PEOPLE

So South Bend Mayor Stephen Luecke says it's a "quality of life" issue when he states opposition to refurbishing the rail line that runs to the University of Notre Dame. A line that's been there for more than 50 years.

Why is it not the same "quality of life" issue for people in the county when the mayor supports the Waggoner Farm development that most in the area opposed?

Why is it not a "quality of life" issue when the airport wants to spend millions of tax dollars to take over some houses and move the South Shore railroad into other people's backyards to save 10 minutes on the trip to Chicago?

Whose "quality of life" really matters to the mayor?

Ken Lubinski
 South Bend

Fair hearing

Regarding "Rail line revived?" and "Swift development of plan catches the city off guard" in the June 14 Tribune:

I, for one, hope that the apparent impolitic approach does not automatically kill what might be a very good idea. There seems no question from the articles that the promoter of this project didn't do much community relations work while planning was in progress. But does that mean that rejection out of hand is the most sensible conclusion for city management?

Would a revived, maintained and active railroad be better than a derelict right of way strewn with junk and overgrowth as the Page 1 photo depicts?

Would increased rail access to long-abandoned industrial sites provide potential for reviving the rotting structures that dot the west side skyline?

Would the potential for South Shore or local shuttle commuter stops at, say, Portage Avenue and

LincolnWay West, increase west side access to the airport, Amtrak station and University of Notre Dame campus?

Given that railroads historically are taxed at a very high rate, would rejection of this plan deprive the city of handsome tax revenue?

Here's hoping that, even with some community leaders understandably miffed, cooler heads will prevail and this proposal will get a fair hearing.

Leonard D. Holt
South Bend

john heffner

From: "Bob Harris" <echocanyonranch@gmail.com>
To: "john heffner" <j.heffner@verizon.net>
Sent: Friday, January 05, 2007 12:34 PM
Subject: Fwd: letter to the editor 6-23

----- Forwarded message -----

From: **Gary Landrio** <garylandrio@stoneconsulting.com>
Date: Jun 28, 2006 8:50 AM
Subject: letter to the editor 6-23
To: jmasters@nfmlaw.com
Cc: "Randall D. Gustafson" <randygustafson@stoneconsulting.com>, JohnPHankey@aol.com, Bob Harris <echocanyonranch@gmail.com>

I have now copied and sent all the letters to date. Overwhelmingly in favor.

Article published Jun 23, 2006

Beneficial

Given the lack of business and industry in this community, along with the high cost of truck transport, one would think the city of South Bend should encourage development of the South Bend Railway.

Be realistic. This will not be a high-volume, high-speed railway. It never was. It can, however, help businesses and the University of Notre Dame cut transportation costs and thereby be a benefit to the community.

Tressa A. Mackey
South Bend

john heffner

From: "Bob Harris" <echocanyonranch@gmail.com>
To: "john heffner" <j.heffner@verizon.net>
Sent: Friday, January 05, 2007 12:36 PM
Subject: Fwd: letter to the editor 6-24

----- Forwarded message -----

From: **Gary Landrio** <garylandrio@stoneconsulting.com>
Date: Jun 28, 2006 8:46 AM
Subject: letter to the editor 6-24
To: jmasters@nfmlaw.com
Cc: "Randall D. Gustafson" <randygustafson@stoneconsulting.com>, JohnPHankey@aol.com, Bob Harris <echocanyonranch@gmail.com>

Article published Jun 24, 2006

Revival

Years ago South Bend had streetcars everywhere with track in the streets. The automobile popularity changed most of that. Now South Bend Railway wants to bring something back. The owner has a formidable interest in the preservation and history of the railroads.

The University of Notre Dame had coal delivered by railroad but I have no clue why that stopped. South Bend Railway could bring the line back to life.

Its operators also plan to connect to the South Bend Regional Airport with passenger service from Notre Dame and the South Shore can have football fan specials right up to Notre Dame.

Any railroad has operating rules for the safety and protection of the crew and everything else to prevent accidents and problems.

The people around the railroad need to be railroad appreciative. Because the line has been inactive neighbors are not used to the trains. Mischievous children attracted to trains should not be around trains, cars, buses or ordinary people. Control your children, parents.

Believe me, South Bend Railway has some super plans and they are nothing but positive.

Lynn Willer
Sodus

john heffner

From: "Bob Harris" <echocanyonranch@gmail.com>
To: "john heffner" <j.heffner@verizon.net>
Sent: Friday, January 05, 2007 12:39 PM
Subject: Fwd: Voice of the people

----- Forwarded message -----

From: Gary Landrio <garylandrio@stoneconsulting.com>
Date: Jun 24, 2006 2:24 PM
Subject: Voice of the people
To: JohnPHankey@aol.com, Bob Harris <echocanyonranch@gmail.com>
Cc: "Randall D. Gustafson" <randygustafson@stoneconsulting.com>

The second one is not bad at all. Gary

June 23. 2006 6:59AM

Bring Daniels on board the railway issue

VOICE OF THE PEOPLE

Why was there such a fuss at the South Bend Common Council meeting regarding reviving an old rail line? If South Bend Railway had just hired Gov. Mitch Daniels to represent the company, it could activate the railway first, and hold the public meeting at a later date. Or maybe the state could activate the railway and then lease it to South Bend Railway for 75 years?

Tom Selsor
Granger

Beneficial

Given the lack of business and industry in this community, along with the high cost of truck transport, one would think the city of South Bend should encourage development of the South Bend Railway.

Be realistic. This will not be a high-volume, high-speed railway. It never was. It can, however, help businesses and the University of Notre Dame cut transportation costs and thereby be a benefit to the community.

Tressa A. Mackey
South Bend

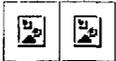
john heffner

From: "Bob Harris" <echocanyonranch@gmail.com>
To: "john heffner" <j.heffner@verizon.net>
Sent: Friday, January 05, 2007 12:38 PM
Subject: Fwd: Sanity in the public?

----- Forwarded message -----

From: Gary Landrio <garylandrio@stoneconsulting.com>
Date: Jun 25, 2006 11:38 AM
Subject: Sanity in the public?
To: Bob Harris <echocanyonranch@gmail.com>, "JohnPHankey@aol.com "
 <JohnPHankey@aol.com>, jmasters@nfmlaw.com, Mike Morris <mmorris@recycletoday.com >

Three letters today to the Tribune. All saying that we should at least have a chance and deriding the City Government. Great cartoon of the Mayor. John you are correct, this could easily become a campaign issue. Gary



Tribune Illustration/RON ROGERS

June 25, 2006 6:59AM

Opposition to reactivating rail line isn't based on facts

I have read with amusement all the outcry to stop the reactivation of the rail line to the University of Notre Dame. I lived and worked in that line's neighborhood when it was cleaner, safer and growing. My grandfather lived there when it contained many small businesses, some even served by the line. Never do I recall any motion to get rid of the

railroad. That was back when there were many trains at all times of the day and night.

As far as safety of children, we ran trackside as soon as we heard that familiar bell blocks away and no one ever got hurt. That part of town has many problems now and I suggest that the local politicians put all their energy into addressing each one. If they can't decide which problem to fix first they should ride the train and take a good look out both the engine and caboose windows.

Bruce Wukovits
South Bend

Impotent

When South Bend Mayor Stephen Luecke was told about a proposal to buy and bring to life a deserted railroad track a year ago he apparently didn't discuss the information with the Common Council.

Public officials should not ignore such situations. They should find out exactly how the city could stop the plans before they are put into operation. The current city administration appears to be impotent on too many occasions. The delays on the South Bend Chocolate Co. expansion is another illustration of missed opportunities.

Let's hope the administration profits from this experience.

Lynn Hanson
South Bend

Arrogant

I never realized just how badly the arrogance and incompetence of South Bend's elected and hired officials has hurt the local economy until I read the pair of stories about South Bend Railway, a company that is planning to refurbish abandoned train tracks and bring them back into service (June 14).

City engineer Carl Littrell was quoted as saying, referring to the rail company operator, "He's been working behind the scenes, apparently unconcerned he didn't have the backing of the city government," after Littrell and other city officials failed to support the proposal a year ago when the company presented it to them.

The article proceeds to include whining about how South Bend Railway didn't keep in contact with the city about the progress of the plan.

And why would it? I am not sure how South Bend Railway does things, but when I find out I don't have the support of someone for something I want to do, I don't waste my time talking to them further; I focus on the people who do support my goals and give them my time.

Thankfully, not everyone feels they need the blessing of the city's elite before they open a business. Maybe there is still hope that we'll get some jobs here after all.

Keith Kimmel
Niles

john heffner

From: "Bob Harris" <echocanyonranch@gmail.com>
To: "john heffner" <j.heffner@verizon.net>
Sent: Friday, January 05, 2007 12:40 PM
Subject: Fwd: Abandoned neighborhoods in SB

----- Forwarded message -----

From: Gary Landrio <garylandrio@stoneconsulting.com>
Date: Apr 27, 2006 10:27 AM
Subject: Abandoned neighborhoods in SB
To: JohnPHankey@aol.com, Bob Harris <echocanyonranch@gmail.com >
Cc: "Randall D. Gustafson" <randygustafson@stoneconsulting.com>

Article published Apr 24, 2006

S.B. officials take tour

They see vacant houses, desolate streets, but also areas of regrowth.

NANCY J. SULOK

The numbers are appalling. Forty percent to 60 percent of houses in some South Bend neighborhoods are vacant, many of them boarded up.

Entire city blocks -- and entire city neighborhoods -- are dying.

Common Council members had heard the numbers but wanted to see for themselves what the statistics look like when viewed from the sidewalk. Seven of the nine council members piled onto a Transpo Trolley last week and spent an afternoon on a tour of the inner city. The tour comes a month after The Tribune's multipart series on vacant houses titled "Empty Promises."

A handful of other city officials tagged along, including Mayor Stephen Luecke.

The purpose of the trip, according to the Rev. Timothy Rouse, council president, was "to seek some information." The bus ride became a Tragical Misery Tour.

Councilman Derek Dieter arranged the itinerary, which started in his own 1st District.

The first stop was at the corner of Harrison and Lindsey streets. Dieter mentioned that 41 percent of the 570 homes in the area were vacant.

Not only that, but some of them have been stripped of anything that can be sold for salvage. They are missing aluminum siding, copper plumbing and other materials.

"Anything that's available is taken," Dieter said. Police had visited a house one block over, at 633 Cottage Grove Ave., earlier that day to oust a group of squatters. Dieter said they were prostitutes and drug dealers who had taken up residence in the vacant house.

That stretch of Cottage Grove had 25 occupied houses and 16 vacant, Dieter said.

The vacancy problem ripples through the neighborhood and beyond.

Who wants to move into a neighborhood that is filled with boarded-up, stripped-down houses? Who wants to raise a family in that environment, which attracts mostly the criminal element?

"When you have crackheads and whores walking around," Dieter said, "you can't ask people to move into the neighborhood." If the city is a living organism, its heart is in danger of failing.

City officials are trying to revive it, with a few success stories.

Pam Meyer, director of community development for the city, pointed down Cottage Grove Avenue, where the Near Northwest Neighborhood Inc. has been buying and rehabbing houses, with the help of various grants.

The city is repairing broken-down curbs and uneven sidewalks, Meyer said.

A private-public partnership seems essential, Luecke said, because it's not a money-making arrangement. It might take \$70,000 to \$90,000 to rehab a house, he explained, but the house can fetch only about \$40,000 when sold. A few blocks away, Dieter noted that Van Buren Street has 16 occupied houses and 30 vacant between Portage Avenue and Sancome Street.

But positive things are happening there, too. Karen Ainsley, director of the NNN, was out checking the rehab progress of some big, beautiful houses along Portage. She said the NNN has had an effect on 11 properties that sell from \$69,000 to \$75,000.

But the oohs and aahs of the tour group gave way to icks and ughs as the trolley stopped in the 500 block of Cleveland Avenue. More vacant houses and trash-filled yards. Another dying neighborhood.

Catherine Toppel, director of Code Enforcement, said her department is trying to deal with all of the problem properties, but it's an overwhelming task.

The answer in some areas has been to tear everything down and rebuild an entirely new neighborhood. That has happened around the Washington-Walnut street area and parts of the southeast side, two of the stops on the tour. But the housing issues in some ways are merely a symptom of a larger urban ailment. It's the people who bring a neighborhood down. It's the law-breaking, drug-dealing, gang-affiliated people who infect a neighborhood and eventually kill it.

In South Bend, urban renewal efforts have tended to shift that element from one part of the city to another.

Rouse recalled when Chapin Street was the worst part of town. When urban renewal came along, the bad element shifted to the southeast side. When that area was cleaned out and redeveloped, the bad guys moved to the northwest side.

If the northwest side is targeted for renewal, where will the bad guys move next, and what neighborhoods are at risk?

Luecke said the city needs to keep dealing with the problem element and hope they get the

message that they're not welcome anywhere in South Bend. The council members got an eyeful on their tour, and now they have to figure out what to do with what they learned.

"We need to do some strategizing with an end in mind, then decide how we can go about making changes," Rouse said.

Creating change will require a collaborative effort involving several city departments in partnership with private organizations, he said.

Doing nothing is not an option.

"We can't be like an ostrich and put our heads in the sand," Rouse said. "We have to do what we can to address these issues." **Nancy J. Sulok's columns appear on Sundays, Mondays and Thursdays. You can reach her at nsulok@sbtinfo.com , or by writing c/o South Bend Tribune, 225 W. Colfax Ave., South Bend, IN 46626, telephone (574) 235-6234.**



City Councilman Derek Dieter, who also is a South Bend police officer, leads council members and other city officials on a tour of Lindsey Street.

john heffner

From: "Bob Harris" <echocanyonranch@gmail.com>
To: "john heffner" <j.heffner@verizon.net>
Sent: Friday, January 05, 2007 12:34 PM
Subject: Fwd: letter to editor 6-26

----- Forwarded message -----

From: **Gary Landrio** <garylandrio@stoneconsulting.com>
Date: Jun 28, 2006 7:31 AM
Subject: letter to editor 6-26
To: jmasters@nfmlaw.com
Cc: JohnPHankey@aol.com, Bob Harris <echocanyonranch@gmail.com>

Bob suggested this to the Mayor last August. Gary

Article published Jun 26, 2006

Rails to trails

After reading, "Notre Dame drops coal-by-rail option" (Tribune, June 22) I wondered why the city, the University of Notre Dame and other interested parties did not consider converting this rail line to a bike trail. Other cities have done it in northern and north western Indiana and now have scenic urban bike trails connecting cultural centers such as the ND campus to the city and to housing for employees and giving residents a nice quality-of-life option.

I think that this would be a solution that the community could live with. Residents and Notre Dame students could take a nice bike ride across the Saint Joseph River, through the campus, and then again through the city creating another bridge between "town and gown." If the city created more bike lanes south of campus and perhaps one or two through campus linking these to the other nearby bike trails and lanes, our city and campus could have safe bike-able trails and streets for students, families and bike enthusiasts alike.

Marc Rodriguez
South Bend

Response to City of South Bend questions:

1. Will you provide a business plan/pro forma for a sustained existence of the SB Railway in the South Bend area. **Attached**

2. What is the schedule/time line of proposed capital improvements to the physical plant of the SB Railway (track work, crossing improvements, bridge, catenary, NICTD connection, etc.)?

Phase One - First three months after closing:

Cut brush and control weeds.

Correct drainage issues under Portage Avenue bridge

Replace crossings on Lincolnway and Linden so that on-track maintenance equipment can rebuild the track.

Replace 1,500 ties, tighten bolts, gauge track.

Install crossbucks at all public crossings

Phase Two - spring 2007:

Replace an additional 1,500 ties

Rebuild three of the worst public crossings

Install 1,000 tons ballast, align and surface track

3. What do you believe is the cost to put the rail lines in safe condition? What is the basis for that estimate? Upon what standards will you be using to base the definition of "safe"? How long will it take to put the line in safe operating condition?

The cost of phase one is estimated at \$195,000, phase two is \$267,000. These estimates are based on relying on certified Federal Railroad Administration track inspectors, contractor inspections and current contracting and supplier pricing. The Federal Railroad Administration Track Safety Standards Part 213 is being used as required by Federal regulations. The first phase to make the track safe will take 60 to 90 days depending on contractor schedules and material deliveries.

4. How much money is the SB Railway planning to spend on capital improvements and acquisitions? What are the sources of those funds?

The SB Railway plans on spending approximately \$1.2 million dollars in the first two years. The \$700,000 of these funds will be equity and the remainder mortgage based loans.

5. What improvements does the SB Railway plan to make to the St. Joseph River bridge? What is the time line for those improvements?

The railroad plans on installing rip rap around pier four to prevent future possible undermining. Before passenger operations are conducted the bridge will be leveled, through a combination of shim adjustment and installation of new bridge seats.

6. What City involvement is the SB Railway seeking (funding, support, property, etc.) in this endeavor?

No funding is being requested. The installation of active crossing warning devices at Lincolnway West would need the support letter of the City to the Indiana DOT. Any future requests for additional active warning devices would also need City support letters.

7. What type of locomotive are you proposing to use (model type)? What is your time line for acquisition of that equipment? Where will this locomotive be stored when not in operation?

Negotiations are under way for the locomotives needed. The locomotive acquired will be of sufficient horsepower and tractive effort to handle the movement of freight as needed. Every locomotive acquired will meet the requirements of the Federal Railroad Administration Part 229. The locomotive will be stored at the maintenance facility of the railroad.

8. How long do you believe the locomotive whistle will be required to sound on each trip, particularly in the area of high crossing density north of Washington Street? At 5-10 mph, will it require a 12 minute continuous sounding of the whistle to safely get through the closely stacked crossings between Van Buren and Washington Streets?

The distance between Washington and Van Buren Streets is approximately 4,000 feet. A train at 10 mph will take 4.5 minutes to travel that distance. Including the advance warning required for the first crossing, the horn will not blow for more than five minutes.

9. If the SB Railway were to develop a transloading/team track facility, where would the likely/possible locations be for that operation?

That has not been determined. The railroad property is 100 feet wide at some locations and adjacent parcels currently zoned industrial might be available for such use.

10. What is the level of upkeep the SB Railway will maintain for brush and debris on the rail line right of way?

Federal regulations require a railroad to control vegetation. Additionally visibility for highway crossing safety will require the control of brush on all railroad property near each crossing. This effectively means that no brush can grow between Washington Street and north of Vasser.

11. What is the contingency plan for interchange/transfer of coal cars between SB Railway and Norfolk Southern if the level of close timing and coordination you have proposed does not prove feasible/possible? It seems very likely that cuts of loaded or empty coal cars will be spotted for interchange awaiting pickup (particularly the returning empties) in the Washington Street area.

We are working with NS operating people to clarify this issue. The intention is that if we move coal, the train would not leave Notre Dame until it is reported to us that the NS crew is ready to receive the cars. That is practical, as it will only take 20 minutes to run the 3.5 miles.

These questions refer to the start-up of the freight service. There are many more regarding the plan for passenger service, the suggestion to bring trains down Washington Street, and the proposed museum/visitor's center at the Toll Road exit.

Andy Laurent
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City of South Bend
227 W. Jefferson
Suite 1200
South Bend, IN 46601
Phone: 574-245-6112
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alaurent@SouthBendIN.gov

EXHIBIT B

Gary E. Landrio, being duly sworn, deposes and states as follows:

My name is Gary E. Landrio; I am the Vice President Rail Operations for Stone Consulting & Design, Inc. in Warren, Pennsylvania. I have a degree in Transportation Engineering and Management from Clarkson University.

I have been working in various positions of operations and management in the rail industry for over thirty years. During this time I have been involved in the set up of over twenty shortline and regional railroads. I have had a position of Superintendent or General Manager at four of these.

The initial rebuilding of the railroad upon acquisition will cost \$200,000. The second phase project a year later will cost an additional \$267,000. This total of \$467,000 exceeds \$125,000 per mile. These costs are based on current supplier and contractor quotations.

The first work items upon acquisition will be to address the environmental concerns. Ditching and culvert improvements will be implemented to eliminate the current drainage issues under the Portage Avenue bridge. The railroad then intends to cut and mow the vegetation between Washington Street and the City line east of North Shore Drive.

The Federal Railroad Association Track Safety Standards are used for all railroads. The track will be rebuilt in two phases. Phase 1 will reopen the railroad and exceed Federal Railroad Administration (FRA) standards for Class 1 safe track of trains running at 10 mph. The FRA requires 6 good railroad ties on straight and 8 on curved track for every 39 feet of track. The track averages 3 to 7 good ties per 39 feet now. We will install 1,450 ties which will result in 7 to 9 good ties on tangents and 8 to 10 on curves per 39 feet.

Joints will be tightened and track will have gauge and alignment corrected. Linden will be replaced with a standard rubber flangeway and asphalt crossing. The railroad does not believe that a standard crossing would be maintainable over the long term at Lincolnway West due to the heavy traffic volumes. The railroad will invest an additional \$12,000 to install a heavy duty concrete crossing at this location. Preventive maintenance will be conducted at the one significant bridge structure on the line.

Per the requirements of the Manual for Uniform Traffic Control Devices, the regulations of the Indiana Department of Transportation and the regulations of the Federal Railroad Administration all public crossings will be brought into compliance. New signage will be installed at crossings as required.

The phase two project goal will be to increase the standard to exceed FRA Class 2 for speeds of up to 25 mph. And additional 1,380 ties will be replaced. 5,000 tons of crushed stone ballast will be installed and tamped into the track to further correct surface and alignment conditions. Three road crossings will be rebuilt in this second phase.

The line will be in safe operating condition upon the completion of the phase one rebuilding.

This railroad line currently has two operating active warning devices at West Washington and West Orange Streets. They are to this day still being maintained by signal maintainers of Norfolk Southern. No change except for the CLS&SB taking over the maintenance is anticipated. We are in agreement with the City of South Bend that even with only 2.3 trips anticipated per week, that an active warning device should be installed at the Lincolnway West crossing. Indiana law requires that the installation of active warning devices be subject to an application process to the Indiana Department of

Transportation. The CLS&SB is willing to work with the City on an application that answers their concerns for this location. The CLS&SB has available to it the equipment needed for this installation. It is anticipated that the costs of installation will be absorbed by the railroad.

EXHIBIT C

JOHN P. HANKEY
HISTORIAN AND CULTURAL RESOURCE MANAGEMENT CONSULTANT
836 MILL CREEK ROAD
ARNOLD, MARYLAND 21012
410-212-8555

December 30, 2006

Robert S. Harris
404 Franklin Street
Porter, Indiana 46304

Dear Mr. Harris:

In connection with the development of the South Bend Railway project, in December of 2005 I participated in a series of meetings in South Bend. On December 5 and 6, I was part of at least five formal conversations with University of Notre Dame staff, project consultants, potential suppliers, and with Jack Grinwis, Vice President of Buckeye Industrial Minerals. Our principal contacts were Mr. Grinwis and Paul Kempf, UND's Director of Physical Plant. Buckeye holds a long-term contract as UND's coal supplier.

The meetings had two explicit goals: To brief UND and BIM representatives on the status of the South Bend Railway project, and to address specific logistical and design issues leading to a CY 2006 start up. My recollection of these meetings is that they were cordial, productive, and that all of the parties assumed that the project would unfold in an orderly and rational fashion.

There were three primary areas of discussion.

1. Creation of the South Bend Railway

These discussions involved the status of the purchase negotiations with Norfolk Southern Corporation, related strategic issues, and the general levels of traffic we could expect. Gary Landrio of Stone Consulting and Design took the lead in those conversations, as his firm had primary responsibility for the transaction and the traffic agreements.

At that time, NS had agreed in principle to a sale of the track and operating franchise from a point of connection with its main track to the end of ownership in the vicinity of UND. There were collateral issues still to be decided, such as whether NS would replace the main line connection at its previous location or establish a new connection at a nearby location. There were potential crossing gate circuit issues to be resolved, and we discussed SBR's longer term goals of connecting with to-be-acquired South Shore Freight trackage.

In these preliminary discussions, the SBR agreed that the primary goals would be to provide more seamless and efficient transportation of passengers from Chicago to the UND campus. As with coal, this traffic presently exists and is handled the final few miles by motor vehicles over city streets. Restoring rail access would permit this traffic to reach the campus without transfer and at considerable savings in time, fuel, and cost.

d. As part of South Bend Railway's long range planning, it envisioned a variety of local transportation and transit opportunities. South Bend enjoys a substantial cultural community and hosts several regionally and nationally significant museums—including the Studebaker Museum, the College Football Hall of Fame, the Northern Indiana History Center, and the cultural institutions associated with the University of Notre Dame and the City of South Bend.

The South Shore Line Heritage Foundation envisioned locating its museum treating the history of the South Shore Line somewhere along the route of the SBR. In turn, the SBR would operate excursion trains, heritage railroad operations, and local special trains at times when coal trains were not operating. These heritage operations would compliment existing area heritage, cultural, and tourism entities and tap into a substantial existing tourism economy.

As part of long range planning underway by the South Bend Regional Airport Authority, there was the real possibility of establishing a rail transit link between the University of Notre Dame, downtown South Bend, the Amtrak station, and the South Bend Regional Airport.

We did not consider this in our five year business plan. But it was clear that the potential existed for an entirely new category of service which would serve local transportation markets and fulfill Indiana transportation policy goals.

2. Infrastructure and Operations Planning

Our second set of objectives comprised specific engineering and technical questions and service standards and operating procedures to accommodate Norfolk Southern's service design, Buckeye Industrial Minerals' contract and logistics, and the needs of the University and its surrounding communities.

Meeting with representatives of several UND departments (led by Physical Plant and including the University's Architect, planners, transportation officers, security people, and senior administrators) we were briefed on what the University's objectives were at that point. We understood that the Campus Master Plan would not permit the extension of track beyond the current end-of-track at the Powerhouse. The University understood how the existing track could accommodate a variety of freight, passenger, and special train movements.

At that point we regarded UND and Buckeye as our primary customers, and as potential partners in future rail traffic opportunities. We wanted both to understand fully the operating, economic, and service logic of the entire South Bend Railway project.

We identified four potential sources of rail traffic:

- a. Existing carload coal from the NS connection to the power plant on the UND campus.

At the time of the meetings, Jack Grinwis and Paul Kempf described the existing traffic as between [REDACTED] carloads annually. It was likely to increase with the increasing heat, cooling, and electrical demands of the UND campus. Paul Kempf also explained that UND had recently upgraded its coal plant and was committed to using coal fuel for at least twenty years.

We also spoke of potential rail traffic ancillary to the existing coal loadings. Paul Kempf described the University's desire to begin using Powder River Basin coal to meet emission standards. Because PRB coal has a lower heat density, it would require additional carloads of coal to deliver the equivalent energy—perhaps as many as [REDACTED] cars per year.

We also discussed delivery of carloads of limestone to UND for their scrubbers, and outbound loads of fly ash. In all, we estimated the initial and near-term loadings as being between [REDACTED] and [REDACTED] cars per year, with the probability that it would increase steadily as UND's needs increased.

- b. Gary Landrio of Stone Consulting had spoken with former on-line customers regarding their willingness to ship by rail if service were restored. As expected the industries were reluctant to commit to specific plans or traffic potential.

But several firms indicated great interest in receiving and originating carloadings if rail service were available. Landrio and I agreed not to include the marginal or transitioning firms in our estimates. We agreed that the potential new traffic for the line would range from nothing (if the existing on-line potential customers and potential new customers were blocked by the city from using rail) to as many as several hundred cars per year if the firms were permitted to freely choose their shipping mode.

- c. In at least four meetings with University of Notre Dame and Northern Indiana Commuter District officials, we identified a category of new traffic for the line. On at least ten occasions each year, and potentially as many as twenty, NICTD would operate multiple special trainsets from Chicago to the UND campus. These trains would transport up to 5,000 alumni and fans per game. This would have reinstated a category of service available on the line between its construction in the early 1900s and the cessation of special train service in the 1960s.

Robert Harris
December 30, 2006
Page 4

We discussed in some detail UND's clear wish not to be directly involved in coal or passenger transportation and its primary goal of having a reliable and effective fuel supply at its power plant. UND stated that it regarded rail access to the campus and the possibility of special trains for athletic events as beneficial. We worked through a number of scenarios for unloading facilities, layover tracks, shuttle transportation, security, and other broad issues.

In several meetings over two days, SBR, UND, and BIM representatives went over issues of service design and actual operations. Jack Grinwis of BIM and Paul Kempf of UND explained the operations and fuel requirements of UND's power plant and briefed us as to the sequence of coal deliveries and the need for blending different grades of coal to suit different boilers. Grinwis explained how NS handled the traffic in thirty-car cuts from the mines in Ohio to a transloading site in South Bend, where a local contractor unloaded the coal for transport to UND by truck.

We discussed in detail how Buckeye would work with NS and UND to develop a logistics plan which would maximize car utilization, take advantage of unit train or contract economies, minimize neighborhood disruption by careful scheduling of the terminal moves, and permit UND to establish and maintain appropriate stockpiles.

Buckeye and UND shared information so that we could identify salient issues and confirm the practicality of reestablishing rail service to the campus. At all times UND made it clear that it was a customer of Buckeye Industrial Minerals, and that it was BIM's responsibility to deliver the coal to the UND campus. However, UND was willing to cooperate with BIM and the South Bend Railway to make that process as reliable and efficient as possible.

In turn, BIM's formal position was that if the South Bend Railway could provide last-mile, switching, and terminal services at a competitive rate, it would consider entering into a contract in cooperation with Norfolk Southern.

All of the parties were clear that the goal would be to provide efficient and effective all-rail routing for upwards of [REDACTED] carloads of fuel per year directly to the coal yard on the UND campus. We understood how that service would be contracted, what the legal and logistical relationships would be, and that the overall provision of the service would be dictated by BIM.

The primary role of the South Bend Railway would be that of a terminal or industrial carrier. It would provide flexible, responsive, efficient switching and terminal services to enable UND to stage its fuel and BIM to turn the empties back to Norfolk Southern. We discussed a range of per-car charges which both worked within the existing UND-BIM contract and which would permit the South Bend Railway sufficient revenue to operate as a stand-alone private enterprise.

Robert Harris
December 30, 2006
Page 5

At the conclusion of these meetings, there was consensus that restoring rail service to the UND campus would serve multiple policy goals, provide options for new rail traffic, create benefits to UND and the community, and increase the reliability and reduce the adverse consequences of UND's present fuel supply process. Throughout this period we had requested meetings with the City of South Bend and attempted to brief city staff on issues and project design. Consistently their reply was to return at a later point with a more fully developed plan, which we did.

3. Engineering and Logistics

Throughout these meetings we worked down to the level of maintenance responsibilities, crew assignments, capital investment planning, and track design.

As an example, Landrio and I described locomotive options and reassured UND and BIM that we could acquire locomotives with the desired operating characteristics, and maintain them to a high level of reliability. We regarded UND's locomotive as a backup and would work with NS to provide emergency power or even operate to the UND power plant if necessary.

At the conclusion of our formal meetings with the University of Notre Dame and Buckeye Industrial Minerals, I was convinced that we had a clear understanding of the salient issues. I was confident that we had a viable project and that we had addressed the major concerns of the University, the city, the community, and other potential rail users.

I have been particularly puzzled by the city's belated opposition to our operating plans. At all stages in these discussions we considered how to make the rail operations as safe as possible and minimally disruptive. Our operating program would involve as few as two round trips to UND every other week, as opposed to the 2700 truck round trips presently required.

I continue to believe that this project would serve multiple state and local policy goals and would offer material benefits to South Bend. Please advise if you need more detailed summaries of our meetings, or if I can provide further background.

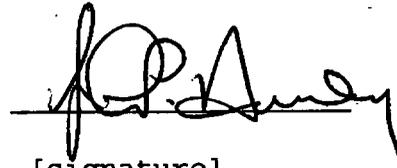
Sincerely,

John P. Hankey

Under 28 USC 1746, the following language converts any statement into a verified statement, equivalent to a statement made under oath, and evidentiary in all federal agency proceedings otherwise requiring affidavits or other verification:

"Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: DEC. 5, 2007.



[signature]

JOHN P. HANKEY
836 MILL CREEK RD
ARNOLD MD 21012
410-212-8555

DEC 5 2007

CERTIFICATE OF SERVICE

I, John D. Heffner, certify that a copy of the Protest of the Chicago, Lake Shore & South Bend Railway Company, was served on January 5, 2007 by hand-deliver and first-class mail to the following:

James R. Paschall
Senior General Attorney
Norfolk Southern Corp.
Law Department
Three Commercial Place
Norfolk, VA 23510-9241

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Deputy City Attorney
227 West Jefferson Boulevard
South Bend, IN 46601

Mr. Richard H. Streeter (Hand-deliver)
Barnes and Thornburg, LLP
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Ms. Sandra M. Seanor
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Sister Joy O'Grady, President
Sister of Holy Cross
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John D. Heffner