



206478

MICHAEL A. CARDOZO  
Corporation Counsel

ENTERED  
Office of Proceedings

OCT 23 2002

Part of  
Public Record

THE CITY OF NEW YORK  
LAW DEPARTMENT

100 CHURCH STREET  
NEW YORK, NY 10007

October 23, 2002



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

Re: Finance Docket No. 34259 - *Chelsea Property Owners – Petition for Declaratory Order – Highline*

Dear Sir:

I am enclosing for filing the original and 10 copies of the Reply of The City of New York in Opposition to Chelsea Property Owners Petition for a Declaratory Order.

In accordance with the Board's regulations I am also enclosing a diskette that includes the text of this document.

I have also enclosed one additional copy, that I ask you to date stamp and return to our messenger.

Thank you.

Sincerely,

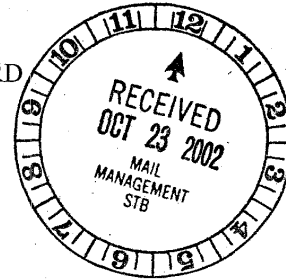
Joseph T. Gunn  
Senior Counsel

BEFORE THE SURFACE TRANSPORTATION BOARD

ENTERED  
Office of Proceedings

OCT 23 2002

Finance Docket No. 34259



Part of  
Public Record  
CHELSEA PROPERTY OWNERS -- PETITION FOR DECLARATORY ORDER -  
HIGHLINE

**REPLY OF THE CITY OF NEW YORK IN OPPOSITION TO CHELSEA PROPERTY OWNERS PETITION FOR A DECLARATORY ORDER**

Pursuant to 49 C.F.R. 1104.13(a), the City of New York ("the City") submits this reply in opposition to Chelsea Property Owners' ("CPO") Petition for a Declaratory Order (the "CPO Petition").

1. The City opposes the Petition. There is no dispute for this Board to address at this time. The CPO Petition purports to state a position of the City that the City has not in fact taken. The City has taken no position, publicly or privately, on the legal principles governing the Board's jurisdiction over the High Line. As a result, there is no basis for the Board to commence a proceeding or to enter the Declaratory Order sought by CPO.

2. The decision whether to commence a Declaratory Order proceeding is committed to the Board's discretion. ICC Docket No. 40220, *Bessemer and Lake Erie R. Co. - - Petition for Declaratory Order - - Interchange Facilities and Trackage Rights, slip op.*, 1990 WL 288377 (I.C.C.), Decided July 10, 1990.

In exercising its discretion, the Commission considers many factors, including significance to the industry and ripeness of the controversy. The

Commission may deny a petition where it finds that the need for the determination petitioners seek is premature.

*Id.* at \*3.

3. Here, the issue that CPO attempts to raise is in fact an interesting one and is one that, if in fact it were a viable dispute at this time, would be of considerable interest in the industry. Sadly, though, for those interested in this (at the moment) entirely academic issue, this Board must follow its own sound practice and await the existence of an actual controversy before it attempts to resolve one.

4. The CPO Petition seeks a Declaratory Order based primarily on the allegation that “a dispute has arisen regarding the scope of the Board’s jurisdiction under the Interstate Commerce Act and the Trails Act” (CPO Petition, par. 11). This purported dispute is based on the allegation that at a meeting with Deputy Mayor Daniel Doctoroff and “Laurie” (sic) Blatchford to “discuss the City’s plans with respect to the Highline” the “differing views of the [Board’s] jurisdictional issue” were “crystallized” before CPO. (CPO Petition, para. 14). The attached Verified Statement of Laurel Blatchford (“V.S. Blatchford”)(attached as Exhibit A) confirms that CPO has created a controversy where none in fact exists.

5. Since he first assumed his post in January 2002, Deputy Mayor Doctoroff has met on occasion with various parties involved in the debate regarding the Highline’s future, almost always at their request. The meeting to which the Petition refers was precipitated by a request from CPO, and intended to be an informal meeting, granted as a matter of courtesy to CPO. Deputy Mayor Doctoroff and staff member Laurel Blatchford did not ask the City’s lawyers to attend, and none attended. V.S. Blatchford at 1, para. 3. Minutes were not kept, nor was a court

stenographer present to keep a record of statements made. *Id.* The City issued no memoranda nor any written release. At no time did Deputy Mayor Doctoroff or Laurel Blatchford state any firm position that the City has taken, for itself or anyone else, with respect to the future of the Highline over the west side rail yards north of 34<sup>th</sup> Street. *See* V.S. Blatchford at 2, para. 5.

6. The statement attributed to the Deputy Mayor that “everyone wants the Highline north of 30<sup>th</sup> Street to be demolished” (Petition, par. 15) is taken completely out of context and given undue importance in the Petition. The Deputy Mayor at no time intended to convey the impression that under all circumstances that section of the Highline should be demolished. Instead, his statements during that meeting were informal musings about an ideal conclusion and were in no way intended be complete, comprehensive or duly considered policy positions of the City. In addition, the Deputy Mayor had every reason to believe that the conversation was off the record. He did not believe at the time that there was reason to guard his statements, lest they be misconstrued and misstated in the course of litigation. V.S. Blatchford at 2, para. 3.

7. The City has not taken a position contrary to CPO’s view that the Highline, if “rail-banked”, must maintain a connection to the interstate rail network. In order for there to be a dispute for this Board to resolve in a declaratory proceeding, there must be certain existing facts to which to apply the principle of law, which principle the parties differ as to its application to the facts. Such facts do not exist, and CPO’s attempt to seek this Board’s intervention in a dispute-that-may-arise-but-has-not-yet arisen is premature. *See, e.g.,* STB Finance Docket No. 33220, *CSX Corp. et al. - - Control and Merger - - Conrail Inc. et al., slip op.* 1997 W.L. 5993 (I.C.C.), Service Date January 9, 1997 (STB refused to initiate declaratory proceeding where the case was “founded on the uncertainty of future events, rather than on any actual controversy . .

.”) There must be “a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality”. *Bessemer and Lake Erie R. Co.*, slip op., 1990 WL 288377 at

\*3. There is none here.

8. As the City has previously explained to this Board in its request for additional time filed on September 19, 2002, the City has been awaiting the results of studies and analyses of possible alternatives for the High Line. CPO correctly identifies a possible request for a Certificate of Interim Trail Use as one of the alternatives that may be presented, but there ends the validity of the issues it raises. It relies heavily on a 1989 study issued by the Metropolitan Transportation Authority (“MTA”) and refers to it as if facts and circumstances surrounding the use and development of the rail yards and properties on the West Side of the City have remained static since that time. Nothing could be further from the truth. For example, the west side rail yard development proposals today were not contemplated at the time of the 1989 MTA study, nor was there at the time any serious proposal for converting the Highline to public trail use. While the City appreciates CPO’s support for the creation of circumstances that will benefit the City’s bid to host the 2012 Summer Olympics, the City believes that its officials, including the Deputy Mayor, are in the best position to make decisions and articulate positions officially (and not in the context of informal, off the record meetings with interested citizens) about the projects that are required to ensure the City’s success in future development plans for the west side rail yards.

9. The City has directed The Friends of the High Line, Inc. (“FOHL”) to address this (interstate rail linkage) question and other questions in the feasibility study. The City has received the study, including a letter from Parsons Brinckerhoff Quade & Douglas, Inc. which

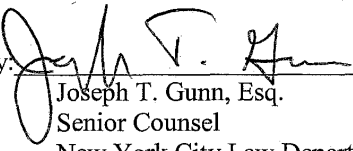
suggests several possible solutions to the issue of maintaining a rail link between the Highline and the interstate rail network in a manner consistent with west side rail yard development goals (this letter was received by the undersigned counsel via email on Friday, October 18, 2002). In the coming weeks, the City, in conjunction with other interested parties, will comprehensively consider the study in light of engineering practicality, financial feasibility, legalities and current plans and conditions. At this time, the City has not taken any position on the question of the feasibility of interstate rail linkage.

10. The City suggests that CPO and this Board should wait until the City has considered the study and has taken a position on the issue of linkage between the Highline and the interstate rail network before undertaking any further litigation on the issues CPO is attempting to fabricate here. The time is not ripe for a decision on this issue because the facts are not all available and the City has not had the opportunity to evaluate the study with interested parties. Presumably, at this time the facts are not available to CPO nor has CPO had the opportunity to carefully consider the study either.

11. WHEREAS, and in view of all of the foregoing, the City respectfully requests the Board to deny the CPO Petition and decline the invitation to institute a premature declaratory order proceeding.

Respectfully submitted,

THE CITY OF NEW YORK

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

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

Dated: October 22, 2002

Certificate of Service

I, Joseph Gunn, certify that on the 23rd day of October, 2002, I caused a copy of the foregoing REPLY OF THE CITY OF NEW YORK TO OPPOSITION OF CHELSEA PROPERTY OWNERS PETITION FOR A DECLARATORY ORDER to be served by first class mail on the parties listed below.

Counsel

Represents

Elizabeth Bradford  
655 West 34<sup>th</sup> Street  
New York, New York 10001-1188

(NYCCDC)

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

(NYDOT)

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

(Conrail)

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

(CSX and CSXT)

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

(MTA)

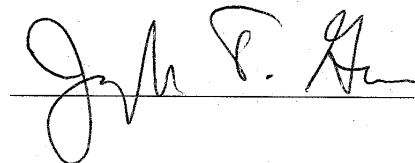
Carolyn F. Corwin  
Kimberly K. Egan  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

(Friends of the  
High Line)

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

(CPO)

Dated: 10/23/02

A handwritten signature in dark ink, appearing to read "Joseph P. Gunn", is written over a horizontal line.

A

BEFORE THE SURFACE TRANSPORTATION BOARD

---

Finance Docket No. 34259

CHELSEA PROPERTY OWNERS -- PETITION FOR DECLARATORY ORDER --  
HIGHLINE

---

**VERIFIED STATEMENT OF LAUREL BLATCHFORD**

1. I am Laurel Blatchford, Senior Policy Director to the City of New York's Deputy Mayor for Economic Development and Rebuilding, Daniel Doctoroff. On or about September 23, 2002 I attended a meeting with the Deputy Mayor and representatives of Chelsea Property Owners, Inc. ("CPO").

2. I am submitting this statement in support of the City's Reply (the "Reply") to CPO's Petition for a Declaratory Order (the "Petition"). The Petition alleges that certain positions were taken as a result of statements made by the Deputy Mayor. Such statements, as described below, are mischaracterized, and the City has not taken the positions that CPO alleges in its Petition.

3. The above-referenced meeting was held at the request of CPO, and granted by the Deputy Mayor as a matter of courtesy. The meeting was intended to be informal. The City's lawyers were not asked to attend (and none attended), minutes were not kept, and no formal preparation or presentation was made by the City. The Deputy Mayor and his staff understood and had every reason to expect that all conversation during the meeting was to be kept off the record.

---

4. A number of topics were discussed relating to the Highline at the meeting. CPO purports to quote the Deputy Mayor as saying, at one point in the conversation, that "everyone wants the Highline north of 30<sup>th</sup> Street to be demolished". (Petition, par. 15) CPO further describes the alleged statement as the unequivocal position of the City. (Petition, par. 15)

5. At no time did the Deputy Mayor state, imply or convey the impression that under all circumstances the portion of the Highline over the west side rail yards should be demolished. The Deputy Mayor's statement was an informal musing about an ideal conclusion, not a complete, comprehensive or duly considered formal policy statement.

6. Furthermore, the City has not taken a position contrary to CPO's view that the Highline, if "rail-banked", must maintain a connection to the interstate rail network. The City recognizes the legal principles governing the Board's jurisdiction. The question is whether it is feasible to maintain a linkage between the Highline south of 30<sup>th</sup> Street and the interstate rail network that is consistent with the City's development goals for the west side rail yards. Answering this question will require a careful and comprehensive logistical analysis, in coordination with the Metropolitan Transportation Authority and other interested parties. To this end, the City has directed The Friends of the High Line, Inc. ("FOHL") to address this and other questions in a feasibility study. The City last week received the study, along with a letter from Parsons Brinckerhoff Quade & Douglas, Inc. which suggests several possible solutions to the issue of maintaining a rail link between the Highline and the interstate rail network in a manner consistent with west side rail yard development goals (I am informed that this letter was received by the City's counsel via email on Friday, October 18, 2002). In the coming weeks, the City, in conjunction with other interested parties, will comprehensively consider the study in light of engineering practicality, financial feasibility, legalities and current plans and conditions. At this

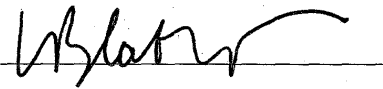
time, the City has not taken any position on the question of the feasibility of interstate rail linkage.

7. Because the City has not staked out the position that CPO describes, the alleged dispute between the City and CPO over Board jurisdiction does not exist.

**DECLARATION UNDER 49 C.F.R. Sec. 1104.5(b)**

I, Laurel Blatchford, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on October 22, 2002.

A handwritten signature in black ink, appearing to read "L. Blatchford", is written over a horizontal line.