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**BEFORE THE SURFACE TRANSPORTATION BOARD**

**THE ATLANTA DEVELOPMENT  
AUTHORITY D/B/A INVEST ATLANTA  
and ATLANTA BELTLINE, INC.**

**FINANCE DOCKET NO. 35991**

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**MOTION FOR RECONSIDERATION OF DECISION OF THE SURFACE  
TRANSPORTATION BOARD DECIDED ON DECEMBER 13, 2016**

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5 U.S.C. § 554(c)(1)

Dated: January 4, 2017

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Pursuant to 49 CFR 1115.3, CYNTHIA VICK RAGAN; GORDON B. RAGAN, JR.; ELIZABETH A. ALBERT; MICHAEL LOVING; DAWN SMITH; RODERICK SMITH; JASON GODWIN; STEVEN R. GREEN; STACEY E. CLAY; SANDY FLORES; CHRISTOPHER DRAPER; DENNIS SABO, JR.; LAURA M. SHEPARD; ANGELA HEREDIA; HANNIBAL HEREDIA; PATRICIA S. JONES; DONNA M. FITZMAURICE; PATRICK J. FITZMAURICE; SAMANTHA C. BONTRAGER; DEWAYNE M. BONTRAGER; MOLLY TAYLOR; JOSH B. TAYLOR; THOMAS R. MARKOVIC; MEGAN COCHARD; MATTHEW R. COCHARD; AMANDA K. SAPRA; NEIL K. SAPRA; MARGARET N. CORBETT; NICOLAS ALBANO; ERIC BYMASTER; FULTON D. LEWIS, III; S. NEIL RHONEY; TOM PHILPOT; ANNA L. LENTZ; KURT LENTZ; (collectively, the “Flagler Owners”) file and submit this Motion for Reconsideration within twenty (20) days of the December 15, 2016 service date of the *Decision* (the “Decision”) of the Surface Transportation Board (the “Board”), as interested parties, respectfully requesting that the Board reconsider the Decision, and deny the *Verified Petition for a Declaratory Order* (the “Petition”) filed by The Atlanta Development Authority d/b/a Invest Atlanta (the “Authority”) and Atlanta BeltLine, Inc. (“ABF”) on January 8, 2016 in its entirety.

As has been well established by the pleadings in the above-styled action, the question presented in the Petition for decision by the Board is whether the conveyance of a line of railroad

known as the Northeast Quadrant located in Fulton County, Georgia (the “Northeast Quadrant Line”) from rail carrier Norfolk Southern Railway Company (“Norfolk Southern”) to non-rail carriers Ansley North BeltLine, LLC; Ansley South BeltLine, LLC; Piedmont BeltLine, LLC; North Avenue BeltLine, LLC; Corridor Beltline, LLC; and, Corridor Edgewood, LLC (collectively, the “Mason Entities”) was subject to 49 U.S.C. § 10901(a)(4), or whether the conveyance was exempt from 49 U.S.C. § 10901(a)(4) by virtue of State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad Company, 8 I.C.C.2d 835 (1991), and its progeny.

### **FACTUAL BACKGROUND**

On December 30, 2004, Norfolk Southern sold and conveyed the Northeast Quadrant Line to the Mason Entities pursuant to that certain undisputed deed filed and recorded in the Fulton County Real Estate Records at Deed Book 39115, Page 460 (the “Deed”), and subject to that certain easement attached to the Deed as Exhibit B (the “Easement”).<sup>1</sup> On June 11, 2007, Norfolk Southern entered into a *Deed of Correction*, filed and recorded in the Fulton County Real Estate Records at Deed Book 45194, Page 351, “to correct the error concerning certain post conveyance obligations of [Norfolk Southern] and [the Mason Entities].”<sup>2</sup>

The Northeast Quadrant Line consists of 4.14 miles of railroad line between mileposts 636.56 and 632.42.<sup>3</sup> The Northeast Quadrant Line consists of a 0.42 mile segment to the north of Montgomery Ferry Bridge Road (the “Northern Segment”), and a 3.72 mile segment to the south of Montgomery Ferry Bridge Road (the “Southern Segment”).<sup>4</sup>

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<sup>1</sup> Petition at Exhibit A.

<sup>2</sup> Id. at Exhibit B.

<sup>3</sup> Decision at Page 2.

<sup>4</sup> Id. at Page 2.

Importantly, Norfolk Southern conveyed the entirety of the Northeast Quadrant Line to the Mason Entities in a single conveyance, and recorded such conveyance in the Deed.<sup>5</sup> Moreover, the subsequent conveyances of the Northeast Quadrant Line from the Mason Entities to NE Corridor Partners, LLC on October 31, 2007, and from NE Corridor Partners, LLC to the Authority on October 31, 2008 also conveyed the entirety of the Northeast Quadrant Line in a single transaction through a single deed.<sup>6</sup>

Despite the conveyance of the Northeast Quadrant Line from Norfolk Southern to the Mason Entities as a whole, the Decision evaluates such conveyance as if Norfolk Southern had, in fact, conveyed the Northeast Quadrant Line in two distinct transactions – the Northern Segment and the Southern Segment, respectively.<sup>7</sup> As such, the Decision concluded that the conveyance of the Northern Segment did not require the approval of the Board pursuant to 49 U.S.C. § 10901(a)(4), but that the Southern Segment, in fact, required approval of the Board.<sup>8</sup>

In support of this conclusion, the Decision found that the language of the Easement allowed the Mason Entities to unreasonably interfere with the common carrier obligations of Norfolk Southern with respect to the Southern Segment, but not the Northern Segment.<sup>9</sup> The Board further noted that because “that portion of the Southern Segment between milepost 633.10 and milepost 636.56 has since been abandoned with the Authority’s active support, the Board will not require the parties to either seek Board authorization or modify these particular transactions to comport with State of Maine after the fact.”<sup>10</sup> (citation omitted). See, State of Maine, 8 I.C.C.2d.

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<sup>5</sup> Petition at Exhibit A.

<sup>6</sup> Decision at Page 3.

<sup>7</sup> See, Id.

<sup>8</sup> Id. at Page 9.

<sup>9</sup> Id. at Pages 8-9.

<sup>10</sup> Id. at Page 9.

Accordingly, the Decision concluded that despite the fact that Norfolk Southern conveyed the Northeast Quadrant Line from Norfolk Southern to the Mason Entities as a whole, the Flagler Owners are without recourse concerning the Northern Segment, and that “the parties must either seek and receive after-the-fact Board authority to acquire control of [only the Southern Segment between milepost 632.84 and milepost 633.10] or promptly amend the relevant documents to omit the language....giving it control over [Norfolk Southern’s] ability to provide common carrier service.”<sup>11</sup>

### **LAW AND CITATION TO AUTHORITY**

The Decision concluded that the conveyance of the Southern Segment of the Northeast Quadrant Line, in fact, required the Board’s approval pursuant to 49 U.S.C. § 10901(a)(4) and in accordance with State of Maine and its progeny.<sup>12</sup> See, State of Maine, 8 I.C.C.2d. In support of this conclusion, the Decision found that the Easement allowed the Mason Entities to unreasonably interfere with the common carrier obligations of Norfolk Southern with limited regard to the Southern Segment.<sup>13</sup> The Decision further concluded that, as the Easement did not apply to the Northern Segment, the conveyance of the same from Norfolk Southern to the Mason Entities did not require approval from the Board subject to 49 U.S.C. § 10901(a)(4).<sup>14</sup>

However, in reaching the two distinct legal conclusions, the Board completely ignored the fact that Norfolk Southern conveyed the entire Northeast Quadrant Line, as a whole, pursuant to the Deed, and did not convey the Northern Segment and Southern Segment individually. As such, the Board failed to reasonably consider the true nature of the conveyance of the Northeast Quadrant Line as a whole.

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<sup>11</sup> Decision at Page 9.

<sup>12</sup> Id. at Page 9.

<sup>13</sup> Id. at Page 9.

<sup>14</sup> Id. at Page 8.

As has been well established by the pleadings in the above-styled action, under 49 U.S.C. § 10901(a)(4), a non-rail carrier may only acquire a “railroad line” from a rail carrier if the Board issues a certificate authorizing the conveyance, unless such conveyance satisfies the standard of State of Maine and its progeny. See, State of Maine, 8 I.C.C.2d.

As “‘railroad line’ is an ambiguous term and the ICCTA is silent on its meaning, it is left to the [Board] to reasonably interpret the term.” See, Brotherhood of R.R. Signalmen v. Surface Transp. Bd., 638 F.3d 807, 812 (2011). A railroad line “include[s] not only the physical railroad property but also the interstate freight transportation authority attached to the physical property.” See, Id. at 812. Moreover, a railroad line “is not necessarily limited to a ‘portion’ of a railroad’s assets.” See, Id. at 812.

With regard to the Northeast Quadrant Line, the Decision incorrectly interpreted the term “railroad line” to mean the Northern Segment and Southern Segment as separate and distinct “portions” of the Northeast Quadrant Line, rather than the Northeast Quadrant Line as a whole. See, Id. at 812. This interpretation of railroad line is incorrect because it does not reflect that Norfolk Southern conveyed the Northeast Quadrant Line in its entirety pursuant to the Deed, and did not convey the Northern Segment and Southern Segment individually.

Moreover, had Norfolk Southern, a rail carrier intimately familiar with the rules, regulations, and procedures of the Board, wished to subject only its conveyance of the Southern Segment to the Board’s approval, it possessed the competence and expertise to convey the Northern Segment and the Southern Segment of the Northeast Quadrant Line, separately, through individual deeds. Instead, Norfolk Southern deliberately conveyed the Northeast Quadrant Line in its entirety, and subjected the entire conveyance to the Board’s approval. Accordingly, the

Decision's interpretation of "railroad line" inappropriately apportioned the conveyance of the Northeast Quadrant Line into the Northern Segment and Southern Segment.

The Decision's distinct legal conclusions concerning the Northern Segment and Southern Segment effectively altered Norfolk Southern's deficient and deliberate conveyance of the Northeast Quadrant Line in its entirety. As such, the Decision has impermissibly left the Flagler Owners without a remedy at law.

### **CONCLUSION**

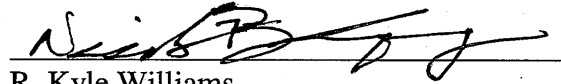
The Flagler Owners respectfully move the Board, pursuant to 49 CFR 1115.3 to reconsider the Decision. In doing so, the Flagler Owners request that the Board consider the true nature of the December 30, 2004 conveyance of the Northeast Quadrant Line from Norfolk Southern to the Mason Entities. Specifically, the Flagler Owners request that upon reconsideration, the Board review the conveyance of the Northeast Quadrant Line from Norfolk Southern to the Mason Entities under the interpretation that the term "railroad line" refers to the Northeast Quadrant Line as a whole, and not as the Northern Segment and Southern Segment individually.

Accordingly, upon reconsideration this Board should void the entire conveyance of the Northeast Quadrant Line from Norfolk Southern to the Mason Entities, as the Board did not approve such conveyance as required under 49 U.S.C. § 10901.

**[SIGNATURE PAGE FOLLOWS]**

This the 4<sup>th</sup> day of January, 2017.

WILLIAMS TEUSINK, LLC

A handwritten signature in black ink, appearing to read 'R. Kyle Williams', is written over a horizontal line.

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**CERTIFICATE OF SERVICE**

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This is to certify that I have this day served counsel in the foregoing matter with a copy of the foregoing by depositing a copy of same in the United States Mail in a properly addressed envelope with adequate postage thereon, as follows:

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This the 4th day of January, 2017.

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