

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1242

ENTERED
Office of Proceedings
October 30, 2017
Part of
Public Record

Hartwell First United Methodist Church – Adverse Abandonment and
Discontinuance –
The Great Walton Railroad Company, Inc.
in Hart County, GA

Reply of TORCH of Hartwell, Inc.
to Response of The Great Walton Railroad Company, Inc.
to Decision of Board dated August 31, 2017

By Decision of August 31, 2017, the Board (1) directed The Great Walton Railroad Company, Inc. (“GWRC”) to submit a response to the Decision by October 2, 2017, providing certain information, (2) directed GWRC to serve a copy of the Decision on TORCH of Hartwell, Inc. (“TORCH”) and Quality Holdings, LLC (“Quality”), (3) directed GWRC to certify to the Board that GWRC had served a copy of the Decision on TORCH and Quality by September 7, 2017, and (4) provided that any replies to GWRC’s response (which could be submitted by Hartwell First United Methodist Church (“Hartwell First”), TORCH, Quality, or any other interested person) would be due by October 30, 2017. TORCH submits this Reply in response to the Board’s Decision.

I. Background: Original Lease with Great Walton Railroad.

TORCH is a non-profit corporation, and has qualified as a tax-exempt organization under Section 501(c)(3) of the United States Internal Revenue Code. TORCH was formed primarily for the purpose of acquiring an interest in certain real property owned by GWRC in downtown Hartwell, Georgia (referred to as the “Railroad Street Park Project Area”), acquiring an interest

in certain personal property of GWRC (referred to as the “Personal Property”), developing the Railroad Street Park Project Area as a public park, and using the Personal Property in connection with the development and operation of the park. Toward that end, after extensive negotiations, TORCH and GWRC entered into a Lease Agreement with Option (the “Lease”) in May of 2015, which provided for TORCH’s lease of the Railroad Street Park Project Area and Personal Property from GWRC for these purposes.

At all times during and after the negotiation and execution of the Lease, GWRC advised TORCH that GWRC was not abandoning GWRC’s right-of-way or other property by leasing GWRC’s property to TORCH, but GWRC was instead retaining ownership of the right-of-way. Although TORCH understood that TORCH would have use and possession of the leased premises during the term of the Lease, TORCH at no time intended by any of TORCH’s actions (including entering into the Lease) to cause GWRC to abandon, or to be deemed to have abandoned, any of GWRC’s property. TORCH understood that GWRC’s abandonment of the property leased to TORCH would potentially cause GWRC’s title to the leased premises to fail, which would automatically terminate or at least threaten TORCH’s interest. Because TORCH has always contemplated substantial public investment in the Railroad Street Park Project Area, TORCH did not desire for any abandonment to occur. TORCH relied upon GWRC to structure the Lease so that no such abandonment would occur and TORCH’s investment in the Railroad Street Park Project Area would be protected.

II. TORCH Learns of Concerns of Hartwell First United Methodist Church.

TORCH became aware of the concerns of Hartwell First soon after the execution of the Lease was publicly announced. Hartwell First had significant interest in acquiring the portion of GWRC’s rail line that runs through Hartwell First’s property, and felt that GWRC’s leasing of

the Railroad Street Park Project Area to TORCH violated representations and promises that had been made by GWRC to representatives of Hartwell First. As a result, Hartwell First was opposed to TORCH's proposed use of that portion of the rail line and requested that TORCH alter its intended development of that portion of the line as a walking trail. Representatives of TORCH met on several occasions with representatives of Hartwell First over the course of several months. TORCH ultimately agreed to change its intended development of the portion of the rail line that ran through Hartwell First's property, and Hartwell First agreed to support the other phases of TORCH's plans to develop the Railroad Street Park Project Area.

TORCH understands and respects Hartwell First's desire to protect its property and property rights, and does not wish to take any action that would impede Hartwell First in what Hartwell First views as the pursuit and defense of its legitimate interests. On the other hand, TORCH also does not desire to take any action that might harm the interests of TORCH's landlord (GWRC). For that reason, TORCH has attempted not to take a position in this proceeding between Hartwell First and GWRC.

III. TORCH's Response to STB Decision.

TORCH was alarmed by the Board's Decision of August 31 2017, however, and the potential threat it seemed to present to TORCH's interest in the leased premises. After much discussion and reflection, TORCH decided simply to relinquish any leasehold interest in the portion of the rail line that extended into or between property of Hartwell First. In order to accomplish this purpose, TORCH entered into the Amendment to Lease Agreement with Option, which GWRC has filed with the Board. TORCH did not act out of a desire to impede Hartwell First in its pursuit of Hartwell First's goals, but TORCH felt that it had to act in the best interest of TORCH as an entity, and that criterion was best satisfied by action that would protect the

legality and sanctity of the Lease, which is the sole basis of TORCH's interest in the leased premises.

IV. Request For Public Use Condition.

Additionally, although TORCH in no way supports a finding of abandonment, if and only if the Board finds that an abandonment has occurred on any portion of the rail line between Forest Avenue and Athens Street, in the City of Hartwell, Georgia, with the exception of the Excluded Area (hereinafter defined) (the portion of the rail line between Forest Avenue and Athens Street, in the City of Hartwell, Georgia, with the exception of the Excluded Area, is hereinafter referred to as the "Area of Interest"), TORCH hereby requests issuance of a Public Use Condition as well as an Interim Trail Use Condition rather than an outright abandonment authorization of the Area of Interest. The term "Excluded Area" shall mean and refer to that portion of the railroad right-of-way in Hartwell, Georgia, extending from the western side of South Webb Street, running behind the existing First United Methodist Church building and properties that bear the street addresses of 146 and 130 East Howell Street, to the eastern boundary of the right of way of Bank Street and continuing along the railroad right-of-way from Bank Street extending to the western boundary of church-owned property, but not including the spur track that extends from the western side of Bank Street to the existing railroad turntable, and also not including a small length (approximately 100 to 150 feet) of the main railroad right-of-way extending from south of the turntable to the western boundary of the Church's property.

If and only if the Board finds that an abandonment has occurred on any portion of the Area of Interest, TORCH asks the Board to find that this property is suitable for other public use, specifically trail use, and to place the following conditions on the abandonment:

1. An order prohibiting the carrier from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms.
Justification for this condition is: The corridor would make an excellent recreational trail and conversion of the property to trail use is in accordance with local plans. The time period sought is 180 days from the effective date of the abandonment authorization. TORCH needs this much time to assemble or to review title information, complete a trail plan, or begin negotiations with the carrier.
2. An order barring removal or destruction of potential trail-related structures such as culverts and a railroad turntable. The justification for this condition is that these structures have considerable value for recreational trail purposes. The time period requested is 180 days from the effective date of the abandonment authorization for the same reason as indicated above.

V. **Request For Interim Trail Use and Statement of Willingness to Assume Financial Responsibility.**

TORCH also contends that the Area of Interest is suitable for railbanking. In addition to the public use conditions sought above, TORCH also makes the following request: In order to establish interim trail use and railbanking under section 8(d) of the National Trails System Act, 16 U.S.C. §1247(d), and 49 CFR §1152.29, TORCH is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the Area of Interest. The right-of-way is part of a line of railroad that is the subject of this proceeding. TORCH acknowledges that use of the right-of-way is subject to the user's

continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

Respectfully submitted, this 30th day of October, 2017.

TORCH OF HARTWELL, INC., a Georgia
Nonprofit Corporation

By: _____/s/
Mary Gidley, Its President and
Authorized Agent

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served opposing parties or counsel with a true and correct copy of the within and foregoing Reply of TORCH of Hartwell, Inc. by causing said copy to be deposited in an envelope in the United States Mail, first-class postage prepaid, addressed as follows:

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This 30th day of October, 2017.

_____/s/
Robert F. Leverett
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