

**BEFORE THE SURFACE TRANSPORTATION BOARD
Washington, D.C.**

ENTERED
Office of Proceedings
June 11, 2015
Part of
Public Record

**Response Of LLC Intervenors
To City's Motion Regarding Schedule For Submission Of OFA's**

**By Intervenors:
212 Marin Boulevard, LLC
247 Manila Avenue, LLC
280 Erie Street, LLC
317 Jersey Avenue, LLC
354 Cole Street, LLC
389 Monmouth Street, LLC
415 Brunswick Street, LLC
446 Newark Avenue, LLC
Limited liability companies of New Jersey.**

**In
Conrail Petition For Exempt Abandonment
Hudson County, New Jersey
STB Docket: AB-167-1189-X
And Related Proceedings
AB-55-686-X
AB-290-306-X**

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Counsel for Intervenors

DATED: June 10, 2015

Intervenors LLC in this matter hereby respond to the City of Jersey City's Motion Regarding Schedule For Submission of OFA's, , which motion was filed on June 9, 2015.

LLC Intervenors understand and support the need for both orderly and prompt proceedings to resolve the status of the Harsimus Branch, and were encouraged on May 22, 2015 by the Board's statement that it "will set a due date for OFA's in a future decision." The City now urges the Board to set June 18, 2015 as a convenient date for the City and its counsel, but without regard for the Board's stated intention to render an additional decision on matters yet to be decided in these proceedings. LLC Intervenors urge the Board to proceed as it had originally intended, and stated it would, and make a reasoned decision on all issues relevant to the filing of any OFAs.

There are several reasons for this position. First and foremost is that it is somewhat presumptuous for the City to be pressing the Board for a decision that it has said it will soon make anyway.

Second, is the concern we have with the City's statement "...that CNJ Railroad [sic], the other party entitled to file an OFA, supports the proposed June 18 due date. See email attached." [City motion, page 4] That attached email states as follows:

As we also discussed; **provided that the City does, in fact, submit an OFA which includes a rail corridor east of Marin Boulevard** (like we discussed), **then CNJ will NOT file any OFA at all in this proceeding.** *CNJ will happily get behind and fully support the City's OFA.* [City's Motion, Exhibit B; emphasis in original]

Asking the Board to set a June 18, 2015 deadline for OFA submissions on the apparent representation by counsel for the City to CNJ Rail that the City will file an OFA to include property to the east of Marin Boulevard misrepresents the City's intentions for

two reasons. The first is that the enabling Ordinance of Jersey City does not include any area east of Marin Boulevard within the area authorized to be included in a City sponsored OFA.¹ The City has simply not authorized any such action, and that should've been made clear to Mr. Strohmeier. Apparently, it was not.

The second reason why the City is unlikely to file any OFA on the property to the east of Marin Boulevard is that it is currently entertaining proposals for a reported \$223 million urban development on that site. Despite that site being part of these proceedings, and containing former railroad lines not abandoned by Conrail, the City reportedly favors it for immediate development with construction beginning in a few months. The project is also favored for \$40 million in state tax credits and other governmental benefits-but no rail freight service is included.²

Mr. Strohmeier should be given an opportunity to file an OFA, whatever its merits, and the Board has made it clear that OFAs should be decided on their merits, not prejudged. Setting the June 18, 2015 filing deadline on any basis that may mis-lead CNJ Rail into not filing is simply unfair. We respectfully urge the Board to make the reasoned decision on OFA issues that it has promised.

Respectfully submitted,

s/ Daniel E. Horgan
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DATED: June 10, 2015

¹ City Ordinance 14-103 attached as Exhibit 1.

² The Jersey Journal, 8:51 a.m. June 10,, 2015, article attached as Exhibit 2.

EXHIBIT 1

Jersey City Ordinance 14-103

City Clerk File No. Ord. 14.103
Agenda No. 3.A 1st Reading
Agenda No. _____ 2nd Reading & Final Passage



ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 14.103

TITLE: ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, Consolidated Rail Corporation [Conrail] was the owner of certain property designated as Block 212, Lot M., Block 247, Lot 50A, Block 280, Lot 50A, Block 317.5, Lot 50A, Block 354.1, Lot 50A, Block 389.1, Lot 50 and Block 415, Lots 50 and 50.PL, Block 446, Lot 18A on the City of Jersey City's Official Tax Assessment Map and more commonly known as the Sixth Street Embankment [Property]; and

WHEREAS, the Property is part of a line of railroad known as the Harsimus Branch, which was the former main line of the Pennsylvania Railroad into Jersey City; and

WHEREAS, lines of railroad may not be abandoned and converted into non-rail use without the prior authorization of the Surface Transportation Board [STB], a federal agency, even if the railroad owning the line has ceased to use it for rail purposes; and

WHEREAS, Conrail ceased using the Property in or around 1996; and

WHEREAS, the Property and its extension to CP Waldo (in the vicinity of Chestnut and Waldo Streets) is the last underutilized transportation corridor available to address passenger and freight transportation needs in congested Downtown Jersey City; and

WHEREAS, the property also is part of the preferred route of the East Coast Greenway and is listed on the State Register of Historic Places; and

WHEREAS, in 2004 and 2005, City of Jersey City by adoption of Ordinances 04-096 and 05-064 authorized acquisition of the Property for its own use as open space and for eventual construction of a public park; and

WHEREAS, notwithstanding the City's expression of interest in acquiring the property in 2005 Conrail sold the Property to a private party [Developer] for \$3 million for non-rail purposes without any prior STB rail abandonment authorization; and

WHEREAS, the City of Jersey City along with Embankment Preservation Coalition [Coalition] and Rails to Trails Conservancy [RTC] filed a petition for a declaratory order at STB for a determination that the Harsimus Branch was a line of railroad such that the 2005 sale was illegal, and otherwise objected to the sale and redevelopment of the Property; and

WHEREAS, Conrail and the Developer sought to evade STB regulation (including historic preservation regulation by STB) by claiming that the Harsimus Branch was not a line of railroad; and

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

WHEREAS, the STB ruled that the Property was part of a line of railroad, but this ruling was appealed by Conrail and the Developer, resulting in litigation in federal courts that ultimately determined in 2013 that the Harsimus Branch in fact was a line of railroad for which STB abandonment authorization was required; and

WHEREAS, the Developer in some cases joined by Conrail filed multiple litigations against the City of Jersey City and its boards, agencies and employees as well as the Coalition and RTC and attorneys for City, Coalition and/or RTC; and

WHEREAS, the STB in a Decision served August 11, 2014, rejected the Developer's most recent efforts to assert that STB lacked jurisdiction over the Harsimus Branch; and

WHEREAS, in another Decision served August 11, 2014, STB reinstituted an abandonment proceeding (AB 167-Sub no. 1189X) for the Harsimus Branch from Marin Boulevard to CP Waldo (vicinity of Chestnut and Waldo Streets) in Jersey City; and

WHEREAS, an important remedy afforded under federal law to communities facing abandonment of lines is the Offer of Financial Assistance [OFA], whereby a community may purchase on terms set by the STB a line or portion thereof interconnecting to the freight rail system for, as construed by STB, continued freight rail and other compatible public purposes; and

WHEREAS, the governing statute (49 U.S.C. 10904) requires that the successful OFA applicant neither transfer nor discontinue service over such line for two years after purchase; and

WHEREAS, the City wishes to use the OFA remedy to secure the corridor for continued freight and passenger rail service in order to relieve congestion and pollution on City streets, especially from trucks, and to employ any surplus property as open space and for other compatible public purposes, all consistent with preservation of the historic Sixth Street Embankment; and

WHEREAS, under STB precedent in OFA proceedings, the presumptive price of fee title to the Property is the price paid by the Developer (\$3 million) and the presumptive price of easement title to the Property is zero; and

WHEREAS, the City under the OFA remedy also will need to acquire additional property to link to the national freight rail network (National Docks Secondary and/or CP Waldo), which will require a corridor of no less than 30 feet width and if otherwise feasible 50 to 60 feet width minimum across property believed owned by Conrail extending as far as the National Docks Secondary and/or by easement over said National Docks Secondary to CP Waldo; and

WHEREAS, the City wishes to comply fully with the requirements of 49 U.S.C. 10904; and

WHEREAS, pursuant to N.J.S.A. 48:12-125.1, City is also authorized to acquire Conrail properties subject to STB abandonment proceedings on terms offered by Conrail to other purchasers; and

WHEREAS, in order to pursue the OFA remedy, City will be required to pay an application fee of \$1,500, and, in order to obtain terms and conditions of purchase from STB, an additional fee of \$23,100; and

WHEREAS, in order to invoke the OFA remedy, City must also be prepared to offer expert evidence on valuation issues and upon other issues pursuant to conditions imposed by STB; and

WHEREAS, STB's terms and conditions ordinarily require conveyance of the property by quitclaim deed, as is where is; and

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WHEREAS, once STB sets terms and conditions, the OFA applicant is ordinarily given no less than ten (10) days to accept or to reject the terms and conditions; and

WHEREAS, if the terms and conditions are accepted, they are binding on the applicant; and

WHEREAS, funds are available for all costs to be incurred pursuant to this ordinance in Account No. 04-215-55-887-990.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City that:

1. The Corporation Counsel or his duly designated agent and the Business Administrator are authorized to file an Offer of Financial Assistance [OFA] to acquire title to the following property for purposes of continued freight rail and other compatible public purposes including passenger rail, open space, trail and historic preservation: Block 212, Lot M., Block 247, Lot 50A, Block 280, Lot 50A, Block 317.5, Lot 50A, Block 354.1, Lot 50A, Block 389.1, Lot 50, Block 415, Lots 50 and 50.PL, and Block 446, Lot 18A, on the City of Jersey City's Official Tax Assessment Map and more commonly known collectively as the Sixth Street Embankment [Property] for the presumptive sum of \$3 million for fee title to the portion of the Property purportedly sold to the Developer for that price in 2005, and for an additional amount such that the total expenditure does not exceed \$5.7 million for the Property and for all remaining property necessary to achieve a connection to the national freight rail network.
2. The Corporation Counsel of the City of Jersey City or his duly designated agent and the Business Administrator are authorized and directed to undertake any actions and execute any documents necessary or appropriate to acquire any property by purchase from Conrail under an Offer of Financial Assistance as provided in paragraph 1. In the event the STB sets terms and conditions exceeding \$5.7 million under the OFA, the Corporation Counsel shall advise the Council immediately so that the Council may accept or reject such terms and conditions within the time period set by STB.
3. The Corporation Counsel or the Business Administrator are authorized and directed to solicit proposals to engage the services of surveyors, title insurance companies, appraisers and any other professionals whose services are necessary or appropriate to pursue an OFA and otherwise to implement the purposes of this ordinance.
4. The Corporation Counsel or the Business Administrator are authorized and directed to take appropriate measures to meet the City's obligation, in the event of a successful OFA, to seek to provide rail service per 49 U.S.C. 10904, including, but not necessarily limited to, (a) to solicit proposals for construction or operation of interim freight rail transload facilities to serve freight rail customers of the Harsimus Branch on suitable property in the event City acquires all or a portion of the Harsimus Branch at issue in AB 167 Sub 1189X pursuant to an OFA, provided that respondents are encouraged to limit subsidization requests for construction of a switch and trackage or for operation in light of the possible interim nature of said transload operations, pending planning for reconstruction and further operation, and (b), in the event City successfully acquires the Harsimus Branch pursuant to STB's OFA procedures, further to solicit proposals from consultants to prepare plans and recommendations (including for contributions to offset reconstruction costs) for restoration of the Harsimus Branch for rail purposes to the extent practicable consistent with other public purposes.

ORDINANCE AUTHORIZING THE CITY OF JERSEY CITY TO FILE AN OFFER OF FINANCIAL ASSISTANCE [OFA] TO ACQUIRE CERTAIN PROPERTY COLLECTIVELY KNOWN AS THE SIXTH STREET EMBANKMENT FROM CONRAIL AND SUCH OTHER CONRAIL PROPERTIES AS ARE NECESSARY TO CONNECT WITH THE MAIN LINE IN THE VICINITY OF CP WALDO

5. In the event STB does not permit City to OFA the Property, or the OFA is unsuccessful, the Corporation Counsel with the cooperation of the Business Administrator are authorized and directed to pursue all other possible remedies that may result in acquisition of the Property, including connections for rail and other public purposes such as trail at the STB and by means of N.J.S.A. 48:12-125.1.
6. This Ordinance shall take effect at the time and in the manner as provided by law.
7. This Ordinance shall not rescind Ordinance 04-096 or 05-064 which authorized the acquisition of the Embankment solely for open space and a park by purchase or condemnation.
8. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this Ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All material is new; therefore, underlining has been omitted.
For purposes of advertising only, new matter is indicated by **bold face**
and repealed matter by *italic*.

APPROVED AS TO LEGAL FORM

APPROVED: _____

Corporation Counsel

APPROVED: _____
Business Administrator

Certification Required ☐

Not Required ☐

EXHIBIT 2

The Jersey Journal, 8:51 a.m. June 10, 2015, article:

“Developer for new Jersey City tower getting \$40M in state tax credits”

Developers for new Jersey City tower getting \$40M in state tax credits

Terrence T. McDonald | The Jersey Journal By Terrence T. McDonald | The Jersey Journal

[Email the author](#) | [Follow on Twitter](#)

on June 10, 2015 at 8:51 AM, updated June 10, 2015 at 8:54 AM

Developers behind a planned 35-story residential tower in the heart of the Downtown will receive \$40 million in state tax credits for the \$223 million project.

The state tax deal, approved yesterday morning by the state Economic Development Authority, will pave the way for 85 affordable units, 20 percent of the building's 421 total, according to developer Abe Naparstek.

Naparstek, working for a subsidiary of Forest City, the developer behind Brooklyn's Barclays Center, told The Jersey Journal that without the tax credits — to be paid over 10 years — it would not be financially "feasible" to offer as many affordable units as the plan now has.

Market-rate rents for the building are expected to range from \$2,325 for one-bedroom apartments to \$3,500 for two-bedroom units. Rents on the affordable units will range from \$954 for one-bedroom units to \$1,194 for two-bedroom apartments.

The tower, to be located on the site of the old Marin Boulevard Pep Boys, just west of Newport, will be the first phase of a two-phase project, the second of which, an adjacent 35-story tower, was set to receive initial approval at last night's Planning Board meeting. There is a 15,000-square-foot public plaza planned for outside the two towers.

Mayor Steve Fulop considers the Forest City project, tentatively dubbed Hudson Exchange West, the first step toward a new affordable-housing plan for Jersey City, one he touted during his February state of the city address. Instead of allowing developers to pitch into a fund to build affordable units elsewhere, the Hudson Exchange West plan includes on-site affordable housing in a part of the city where rents are rapidly escalating.

"As we continue to develop and expand Jersey City, we also want to bring diversity to every single community, which means a mix of age, race, religion, economics and of corporate and residential development," Fulop said in a statement.

Construction on the first building is expected to begin in August and wrap up by the end of 2017. Plans include 10,126 square feet of ground-floor retail space and a 144,253-square-foot parking garage with 264 parking spaces.

The tax credits will come from the state's Residential Economic Redevelopment and Growth Grant Program, which the EDA says offers incentives to finance development projects that "demonstrate a financial gap."

Jon Whiten, deputy director of liberal think tank New Jersey Policy Perspective, called affordable housing "a laudable goal," but expressed doubt that the project hinged on whether it received a state tax break.

"Are we really expected to believe that the developers couldn't make enough money with 336 luxury apartments in New Jersey's hottest real estate market to also provide an additional 85 moderately affordable units?"

CERTIFICATION OF SERVICE

I, Daniel E. Horgan, hereby certify that I have caused a copy of the foregoing to be served by First Class mail upon those on the attached Service List by having same deposited with the U.S. Postal Service on or before June 11, 2015, and via e-mail on Charles H. Montange, Esq., counsel for the City of Jersey City the Coalition and RTC, Robert M. Jenkins, Esq., counsel for Conrail, and Eric Strohmeyer.

s/Daniel E. Horgan

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858787.1

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