



Department of Planning &
Community Development

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GRANTED

Office of
Proceedings

DECISION ID NO.: 50202
DECIDED DATE: 3/26/2020
SERVED DATE: 3/27/2020
APPROVED: *Aimee Dini*

Director

Extended to 4/6/2021. For information
on further extensions, see Docket No.
☒ EP 749 (Sub-No. 1) served 12/4/2019.

March 17, 2020

300493

ENTERED

Office of Proceedings

March 19, 2020

Part of

Public Record

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Norfolk Southern Railway Company – Abandonment Exemption – In
Dayton, Montgomery County, Ohio, AB-290 (Sub-No. 390X)

Dear Ms. Brown,

The City of Dayton ("City"), a municipal corporation in and of the State of Ohio, hereby petitions the Surface Transportation Board ("STB") for an order extending the time period for negotiations for interim trail use and railbanking between the City and Norfolk Southern Railway Company ("NSR")¹ concerning property between Milepost ZX 12.1 and Milepost ZX 15.4 and Milepost ZQ 0.0 and Milepost ZQ 3.2 ("Line") located in Dayton, Ohio, for an additional year until April 6, 2021.

The City has been negotiating with NSR for mutually acceptable interim trail use and railbanking agreement since the STB issued its original Notice of Interim Trail Use ("NITU") on May 3, 2017. Recently, the City became aware of a regulatory change concerning the Board's handling of NITUs.² Pursuant to revised regulations, it appears from the City's interpretation that upon the Board establishment of a NITU, parties (1) are afforded a one-year initial period to negotiate trails, (2) may request up to three one year extensions of the negotiation period if the trail sponsor and the railroad agree, and (3) may be granted additional one-year extensions, beyond the four-year anniversary, if the trail sponsor and the railroad agree and extraordinary circumstances are shown. Over the past few years, the Parties have requested and received NITU negotiation period extensions to continue negotiating for the Line. The next NITU negotiation deadline is April 6, 2020.³

¹ The City and NSR are collectively referred to herein as "Parties".

² See Limiting Extensions of Trail Use Negotiation Periods, EP 749 (Sub-No. 1); Rails-To-Trails Conservancy – Petition for Rulemaking, EP 753 (STB served Dec. 4, 2019) ("EP 753")

³ See Norfolk Southern Railway Company – Abandonment Exemption – In Dayton, Montgomery County, Ohio, AB-290 (Sub-No. 390X) (October 8, 2019).

As of the next deadline, the Parties will have been engaged in NITU negotiations for slightly less than three years. During that time, significant progress has been made towards the establishment of a NITU, including the City's completion of its appraisal for the Line. As of the filing of this request, the Parties continue to negotiate towards a NITU, but more time is needed to complete the process. NSR has told the City that upon the City filing this request, NSR will consent to a one-year extension to complete negotiations towards a possible Trail Use Agreement.

Since the original issuance of the NITU, NSR at all times has maintained an intention to transfer the Line intact for interim trail use and railbanking. NSR has not sold, or offered for sale, any parcels of land that would interfere with interim trail use and railbanking portion of the Line. The Line remains intact and NSR has continued to negotiate with the City in good faith for the transfer or sale of the Line. Accordingly, the STB retains jurisdiction to extend its original order and allow for the City and NSR to continue bonafide and active negotiations for interim trail use of the Line.

Accordingly, the City respectfully requests that the Board extend the NITU negotiation period for another year, until April 6, 2021. Because negotiations have been ongoing for less than three years and both the City and NSR support the extension, the City does not believe based on its interpretation of the regulations established by EP 753 that it needs to demonstrate exceptional circumstances in support of this request. The City, as a governmental entity, respectfully requests a waiver of the Board's filing fees in accordance with 49 C.F.R. § 1002.2(e)(1). Should the Board have any questions, please do not hesitate to contact Ms. Susan Vincent in the City's Department of Planning and Community Development at (937) 333-3683.

Respectfully Submitted,



Shelley Dickstein
City Manager

Cynthia T. Brown, Chief

March 17, 2020

Page 3 of 3

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was sent by email on this 17th day of March, 2020 to:

William A Mullins
2401 Pennsylvania Ave., NW, Suite 300
Washington, DC 20037

Crystal Zorbaugh
2401 Pennsylvania Ave., NW, Suite 300
Washington, DC 20037

/s/ Martin W. Gehres
Martin W. Gehres
Assistant City Attorney