

LAW OFFICES

JOHN H. BROADLEY & ASSOCIATES, P.C.

CANAL SQUARE
1054 THIRTY-FIRST STREET, N.W.
WASHINGTON, D.C.
20007

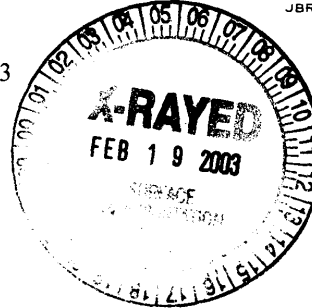
(202) 333-6025
(202) 333-5685 FAX

INTERNET
JBROADLEY@ALUM.MIT.EDU

January 13, 2003

JOHN H. BROADLEY

Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W. Suite 700
Washington, D.C. 20423-0001



Re: Chelsea Property Owners -- Abandonment--Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY. Docket No. AB-167 (Sub-No. 1094)A.

Dear Mr. Williams:

Enclosed please find an original and ten copies of CHELSEA PROPERTY OWNERS REPLY TO CITY OF NEW YORK'S MOTION TO STRIKE CPO'S LETTER TO THE BOARD OF JANUARY 23, 2003. I have also enclosed an additional copy which I request you file stamp and return to me with our messenger.



ENTERED
Office of Proceedings Yours very truly,

FEB 19 2003

Part of
Public Record

John H. Broadley

John Broadley

Enclosures
cc: All counsel w/enclosures

ENTERED
Office of Proceedings

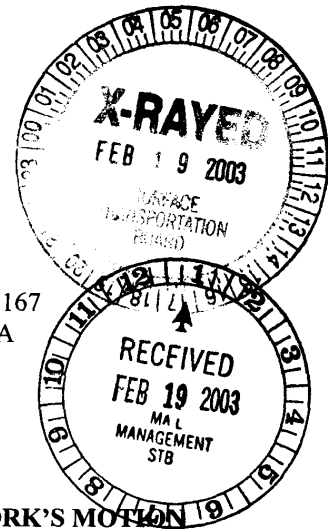
FEB 19 2003

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.

Chelsea Property Owners -- Abandonment --
Portion of the Consolidated Rail Corporation's
West 30th Street Secondary Track in New York, NY

Docket No. AB 167
(Sub-No. 1094)A



**CHELSEA PROPERTY OWNERS REPLY TO CITY OF NEW YORK'S MOTION
TO STRIKE CPO'S LETTER TO THE BOARD OF JANUARY 23, 2003**

The City of New York ("City") has filed a motion to strike Chelsea Property Owners ("CPO's") letter to the Board of January 23, 2003 responding to Friends of the Highline's ("FHL's") letter of January 10, 2003. The City's motion to strike should be denied for the following reasons.

The City characterizes CPO's letter of January 23, 2003 responding to FHL's letter of January 10 as a "reply to a reply." The FHL letter of January 10 does not characterize itself as a "reply," indeed, it is in the form of a *letter* and not a formal *filing* with the Board. The letter relates to the Board's procedural handling of FHL's August 16, 2002 Petition to Reopen the abandonment proceeding, not to the handling of the City's December 17, 2002 motion for leave to late-file a CITU application.

In its January 10 letter, FHL "suggested" that the Board suspend consideration of its August 16, 2002 Petition to Reopen. The reason FHL advanced was that FHL "endorses the efforts of the City of New York to obtain an agreement for trail use of the High Line as described in the City's Reply filed on December 17, 2002."¹ According to FHL, if the City is successful in

¹ Besides not being styled as a Reply to the City's December 17, 2002 filing, FHL's letter does not address any issue raised by the City's motion for leave to late-file a CITU, or indeed any

negotiating a Trails Act agreement, it "could make it unnecessary to decide the issues raised in Friends Petition to Reopen." FHL's letter in fact is a motion to hold further proceedings on its Petition to Reopen in abeyance pending resolution of the CITU/Trails Act agreement issue. As such, CPO has a right under the Board's rules to reply, whether FHL's request for relief is couched in the form of a "letter" or a motion.

The City's motion to strike attacks arguments CPO advanced in its January 23 letter. Both arguments unequivocally are addressed *to the relief sought by FHL in its January 10 letter* -- that the Board hold in abeyance decision on FHL's Petition to Reopen. FHL's argument that if a Trails Act agreement is reached it could be unnecessary to decide the issues raised in FHL's Petition to Reopen certainly raises a question as to FHL's good faith in filing it, given that the historic preservation and environmental issues involved in conversion of the Highline to a New York City Promenade Plantée are either the same or more severe than in its abandonment and demolition. Evidence that the Petition to Reopen was filed in bad faith for purposes of delay strongly counsels against the Board delaying final disposition of that Petition as this would simply contribute to the success of FHL's strategy.

Similarly, the issue of the City's willingness and ability to meet the indemnity conditions set by the railroads goes directly to the likelihood of success of the Trails Act negotiations between the City and the railroads, the hoped-for success of which is the factual predicate for FHL's request to hold proceedings on its petition to reopen in abeyance. If the City is unwilling or unable to meet the railroads' indemnity conditions, it is likely that the Trails Act negotiation, which is the

issue that is raised by the application for a CITU itself. As noted above, FHL's endorsement of the City's attempt to reach a Trails Act agreement is simply stated as the reason it advances for the procedural relief which is the object of FHL's letter.

predicate for FHL's request that Board withhold action on its Petition to Reopen, will fail. The likelihood of failure of the Trails Act negotiation counsels against the Board postponing disposition of FHL's Petition to Reopen as such a postponement is likely to further delay the final conclusion of this already lengthy proceeding.

CONCLUSION

Because CPO's January 23, 2003 letter was a proper and focused reply to FHL's January 10, 2003 request for procedural relief relating to its Petition to Reopen, the City's motion to strike should be denied.

Respectfully submitted,

CHELSEA PROPERTY OWNERS

By: John Broadley
One of its attorneys

John Broadley
(DC Bar No. 238089)
JOHN H. BROADLEY & ASSOCIATES
1054 31st Street NW, Suite 200
Washington, D.C. 20007
Tel. 202-333-6025
Fax 202-333-5685

Dated: February 19, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February 2003 I served a copy of the foregoing CHELSEA PROPERTY OWNERS REPLY TO CITY OF NEW YORK'S MOTION TO STRIKE CPO'S LETTER TO THE BOARD OF JANUARY 23, 2003 by causing copies thereof to be deposited in the United States mail, postage prepaid, addressed to counsel for the parties listed on the attached list.

John Bradley

Dated: February 19, 2003

|||||

.....

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

[illegible]

11111111111111111111

|||||||

XXXXXXXXXXXXXXXXXXXX

[illegible]