

ELLEN M. McNULTY-RYAN
Mayor
mayor@villageofgreenisland.com

OFFICE OF THE MAYOR

VILLAGE OF GREEN ISLAND
20 Clinton Street
Green Island, New York 12183

221343
SEAN E. WARD
Executive Assistant
seanw@villageofgreenisland.com

January 14, 2008

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423

Re: STB Docket No. AB-156 (Sub – No. 26X)
Abandonment of Trackage Located in Green Island, New York

ENTERED
Office of Proceedings

JAN 23 2008

Part of
Public Record

Dear Secretary Williams:

I am the Mayor of the Village of Green Island, New York and I am writing to you for the purpose of making my earlier letter, the letter of Congressman McNulty and the letters of Rita Graham, Guiseppe and Carol Casale and Scott Siegal, all of which are attached hereto, a part of the official record and I am enclosing proof of service of all these letters and attachments on the interested parties in this case.

I would like to take this opportunity to point out that the public health and safety issues that were litigated between the Village and Freedman were partially resolved by a stipulated agreement in open court "on the record." Freedman agreed that it would build an earthen berm 8 to 12 feet in height along a small portion of its westerly boundary, thence along the entire length of its southerly boundary to Cannon Street and then northerly a minimum of 150 feet along its easterly boundary with an additional length of berm from that 150 foot point north to its entrance gate. A copy of the entire transcript of that open court settlement is also attached as part of this filing. The relevant pages are highlighted, pages 3, 6, 10, 11, and 29. An aerial photo is attached as Exhibit 1 showing the area where the berm is to be constructed.

I believe that this offer of financial assistance has been made in bad faith for the purpose of securing the statutory exemption from local zoning and land use restrictions, including hours of operation, and to evade the clear terms of the settlement. In simplest terms I believe that when Freedman entered into this settlement it knew or should have known that it was precluding itself from making an Offer of Financial Assistance at any time in the future. The construction of this berm eliminates any rail line access to the Freedman property. In fact I had several conversations with Mr. Dawson of Freedman when negotiating the settlement that this line would not be reopened. If it was the intent of

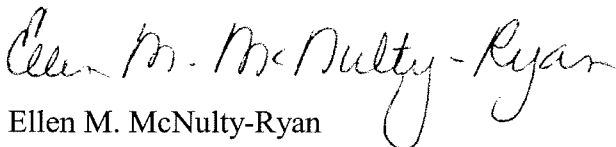
Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Page Two
January 14, 2008

Freedman to preserve the opportunity to reopen this line it should have been made part of the open court stipulation of settlement and you can search the transcript and you will find no such reference. In fact pages 10 and 11 make clear that the berm will run all along Tibbits Avenue, the southerly boundary of the property and then all the way along Cannon Street to the Freedman driveway access point on Cannon Street. Freedman can not deny that it made this agreement in open court.

Also attached are copies of aerial photos showing the Freedman facility and its proximity to our Village park and residential structures.

I again urge you to reject this offer as not being bona fide, not in the public interest and not in the best interests of the health, safety and welfare of our children and precluded by the State court settlement.

Very truly yours,

A handwritten signature in black ink that reads "Ellen M. McNulty-Ryan". The signature is written in a cursive, flowing style.

Ellen M. McNulty-Ryan
Mayor

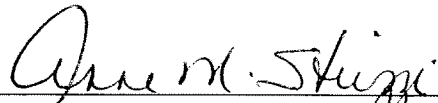
AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF ALBANY) SS.:
VILLAGE OF GREEN ISLAND)

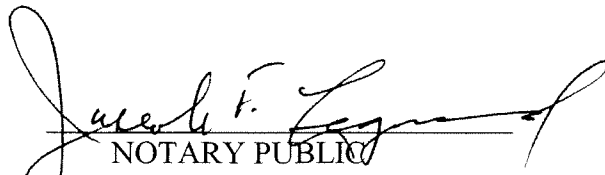
I, Anne M. Strizzi being duly sworn, deposes and says, that I am over the age of eighteen years and reside at 2 Tibbits Avenue, Green Island, NY 12183. That on the 14th day of January, 2008, I mailed the original letters, aerial photographs and court transcript copies of which are attached hereto, to all the parties addressed therein by depositing the same in the post office, located at 137 George Street, Green Island, NY, in a sealed postpaid wrapper, addressed to each of them respectively at the post office address therein given.

Keith O'Brien, Esq.
Baker & Miller, PLLC
Attorneys and Counsellors
2401 Pennsylvania Avenue NW
Suite 300
Washington, DC 20037

W. Karl Hansen, Esq.
Leonard Street and Deinard
150 South Fifth Street
Suite 2300
Minneapolis, Minnesota 55402


Anne M. Strizzi, Village Clerk

Sworn to before me this 14th day of
January 2008.


NOTARY PUBLIC

JOSEPH F. LEGNARD
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN SARATOGA COUNTY
#7476815
COMMISSION EXPIRES Nov 30, 2010

ELLEN M. McNULTY-RYAN
Mayor
mayor@villageofgreenisland.com

OFFICE OF THE MAYOR

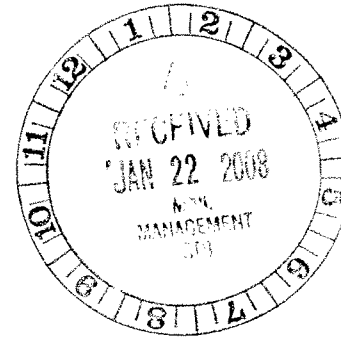
SEAN E. WARD
Executive Assistant
seanw@villageofgreenisland.com

VILLAGE OF GREEN ISLAND
20 Clinton Street
Green Island, New York 12183

COPY

December 27 , 2007

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423



Re: STB Docket No. AB-156 (Sub – No. 26X)
Abandonment of Trackage Located in Green Island, New York

Dear Secretary Williams:

I am the Mayor of the Village of Green Island, New York and I am writing to you to express my strong objection to the proposed re-opening of the rail line, which runs through the center of our Village.

This line was closed by the D&H because of the unsafe condition of the track and ties. No repairs or maintenance activities have been conducted in over 7 years.

For over thirty years the junkyard operation has been a public irritation and a public nuisance to our residents. For several years explosions of propane tanks that were routinely fed into a metal shredder have shaken buildings, broken windows and vibrated glassware and pottery items off tables and shelves.

The Village has expended over \$100,000.00 in litigation costs to attempt to improve the quality of life for our residents and despite a court settlement "on the record" the formal settlement agreement has still not been signed by R. Kelly Freedman & Sons, Inc. If this offer of financial assistance is accepted, Freedman would be able to secure exemption from State law and the terms of the settlement.

To allow this company to reopen this line would be a disaster for our community. The safety of our children who all walk to school (there is no school bus service for students) is paramount.

I urge you to reject this offer as not being in the public's interest and not in the best interests of the health, safety and welfare of our children.

Very truly yours,

Ellen M. McNulty-Ryan
Ellen M. McNulty-Ryan
Mayor

COMMITTEE ON WAYS AND MEANS

CHAIR
SUBCOMMITTEE ON SOCIAL SECURITY
SUBCOMMITTEE ON INCOME SECURITY
AND FAMILY SUPPORT
MAJORITY WHIP AT-LARGE

WASHINGTON OFFICE:
2210 RAYBURN BUILDING
WASHINGTON, D.C. 20515-3221
(202) 225-5076
FAX: (202) 225-5077

DISTRICT OFFICE:
827 O'BRIEN FEDERAL BUILDING
ALBANY, NEW YORK 12207
(518) 465-0700



MICHAEL R. McNULTY
CONGRESS OF THE UNITED STATES
21ST DISTRICT, NEW YORK

376 BROADWAY, SUITE 2
SCHENECTADY, NEW YORK 12305
(518) 374-4547

33 2ND STREET
TROY, NEW YORK 12180
(518) 271-0822

2490 RIVERFRONT CENTER
AMSTERDAM, NEW YORK 12010
(518) 843-3400

FULTON COUNTY OFFICE BUILDING
223 WEST MAIN STREET, ROOM 10
JOHNSTOWN, NEW YORK 12095
(518) 762-3568

WEBSITE: <http://www.house.gov/mcnulty>
EMAIL: mike.mcnulty@mail.house.gov

December 17, 2007

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423

Re: STB Docket No. AB-156 (Sub – No. 26X)
Abandonment of Trackage Located in Green Island, New York

Dear Secretary Williams:

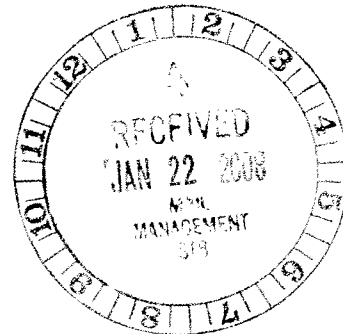
I write to express my opposition to the Offer of Financial Assistance submitted by R. Kelly Freedman & Sons, Inc. on the above matter.

The reopening of this rail line, which has been inactive for approximately 8 years, is not in the public interest of my constituents in the Village of Green Island. More importantly, it would create an unacceptable safety hazard to the residents -- especially the children.

Three decades ago, when I served as Mayor of this Village, there were several derailments on this line. The track was in deplorable condition then, and never received any substantial repairs. It was after one particularly severe derailment that left an overturned rail car within 15 feet of an occupied residence that I ordered our Department of Public Works to block the rail line until repairs were made. This line was closed by the owner precisely because of its deteriorated condition, and has lain dormant these many years. To reopen this line is to invite another disaster.

Over 300 school children in grades K through 12 attend the local public school, and most of these students walk to and from school. There is no school bus service for local students because of the short distances involved, and many of the students walk across these tracks twice a day.

Public safety is our paramount concern. The Mayor and Trustees of the Village have expressed their objections to this line being reopened. I agree with them completely. The interests of a single business entity, which has not used this line for over 8 years, cannot outweigh the interests of public safety -- especially when children are concerned.



I urge this Board to reject this Offer of Financial Assistance. Your consideration of this request consistent with current law, rules and agency policy, is deeply appreciated.

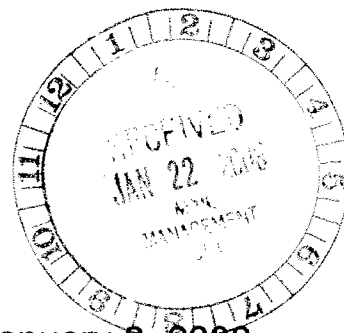
Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. McNulty", with a long horizontal flourish extending to the right.

Michael R. McNulty
Member of Congress

MRM/ibb

Rita Graham
16 Swan Street
Green Island, N.Y. 12183



January 8, 2008

Mayor Ellen McNulty-Ryan
Village of Green Island
20 Clinton Street
Green Island, N.Y. 12183

Dear Mayor McNulty-Ryan:

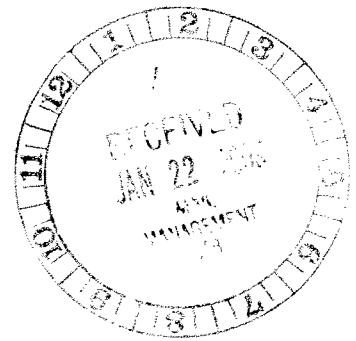
It has recently come to our attention that there is a strong possibility of R. Kelly Freedman and Sons buying and reopening the railroad tracks that run through our Village. This situation causes me, our neighbors and our family great concern.

Our home is one of the homes which is situated very close to these railroad tracks. When the railroad stopped passing by our home about seven years ago, we were very relieved because our family thought it was a very dangerous situation at that time. One major danger was the over loading of the railroad cars with scrap metal, and the cars hitting bumps in the tracks or weak spots on the railroad ties, causing the sharp metal pieces to fly off the sides of the cars and be deposited right next to our fence. In this situation our family and neighbors had to remove, and cart away the scrap metal deposited right near our property. Besides the danger of the flying metal, we were never sure whether this metal had been in contact with toxins or other hazardous material when we were trying to clean up the mess.

Over the seven years that these railroad tracks have been closed to traffic, I have noticed the cars getting larger and larger, towering over the old railroad cars. If any of these cars derailed today, they would surely hit our home. Because we are in such close proximity to the gates which work or many times refuse to work automatically, we have been spectators to sundry near misses with trains, trucks and automobiles. The gates near our home are also dangerous for the little children walking to and from school. They love to hang on the gates as they rise in the air after the train passes, and there have been many close calls of children getting caught in the mechanism.

Guiseppe and Carol Casale
53 Arch Street
Green Island, NY 12183
518-273-1536

January 3, 2008



Dear Honorable Vernon A. Williams:

I am most concerned about R. Kelly Freedman & Sons request to reopen the rail line that travels through our village of Green Island, NY. As you are aware D & H Railway, AKA Canadian Pacific Railway, ceased the use of these lines due to unsafe conditions approximately seven years ago. It is apparent nothing has been done to remedy the issues that caused a major railway to stop operating on such lines. Derailments occurred back then and as you can assume the tracks have decayed over time. Further, the gate crossings and signaling devices have not been in operation either and appear to be in disrepair. Permitting the rail line to reopen in Green Island, NY will seriously jeopardize the residents in this small town.

I have resided in this town all of my life, as has my mother, and her mother. I intend on raising my children here as well. It's a small, homegrown community where children can play and you know that they are safe. The houses here are so close together and close to the rail lines that this requested reopening would be very disruptive to such a small town. I am concerned for our children as it borders two town parks where children run freely. As a young child I have a vivid memory of a child in our community losing his foot due to a train accident.

The train runs almost through the center of our town. Trains have the right of way over everyone; including fire trucks, police vehicles and ambulances. This could mean life or death for someone in an emergency when the train was passing through. My family would be personally affected as we live on the other side of the train tracks from our police and fire department. Also our town is so small that our students walk to and from school, there is no bus transportation. Therefore, children would need to travel through these dangerous crossings.

I hope that you will seriously consider the potentially deadly impact this request could have on our community. While I support rail transportation and local business' efforts, I feel strongly the negative impact on our community far outweighs the benefits this would bring to R. Kelly Freedman & Sons. It is my belief that this company could benefit from an alternative transportation method. Thank you for attention to this matter.

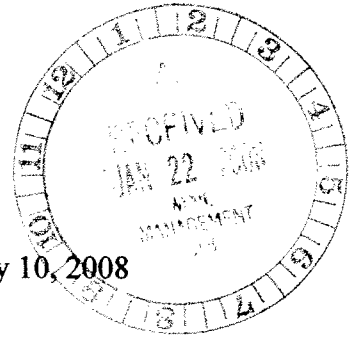
Sincerely,

Guiseppe + Carol Casale

Guiseppe and Carol Casale

Scott Siegel
145 Hudson Avenue
Green Island, New York 12183

January 10, 2008



Mayor Ellen McNulty-Ryan
Village of Green Island
20 Clinton Street
Green Island, NY 12183

Dear Mayor McNulty-Ryan:

I write to express my strong opposition to allowing R. Kelly Freedman & Sons, Inc. to re-open the rail line through Green Island. To do so would be welcoming disaster.

I have many concerns regarding the re-opening of the rail line, but my biggest concern is safety. These lines have not been used in years because they were not safe. Why would they be allowed to re-open, especially by a company who has absolutely no concern for safety? I think that all of their past explosions prove that point. Almost half of the community's children cross the tracks several times a day to go to school. The tracks also run right next to our park. Our children are near these tracks every single day and we need to do everything in our power to protect our children and keep them safe.

In the past several trains have derailed right in the middle of town extremely close to houses. What will be done to make sure that this never happens again? The tracks are now in much worse condition than when the derailments happened.

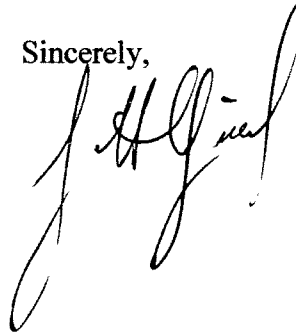
Our community has one police department and one fire department. Both are located on the east side of the tracks. If there is an emergency on the west side of the tracks while a train is in motion, what will happen? Is putting this line back in service possibly cutting off emergency services to half of the Village? Will substations need to be constructed on the other side of the tracks? If so I certainly hope that Freedman is responsible for that cost.

For years residents of this Village have had to deal with Freedman and their un-neighborly ways. When our windows aren't being broken and our houses shaken from explosions, we are having scrap metal removed from our tires and washing our cars because of the filth that they leave on our streets. I will admit that I haven't had a flat tire recently but I know that that is only because of the new access roads that the Village constructed for truck traffic, not because Freedman decided to clean up their act. This business refuses to keep its property clean and now they want to be able to bring everything right through the center of the Village. When their scrap metal is falling off of the trains, who will be responsible for cleaning it up? You can be certain that Freedman will not do it because they refuse to do it now.

I hope that the Village will do everything in its power to make sure that this line remains closed. I can't believe that one business' interests could possibly be more important than an entire community's safety.

Thank you for taking the time to hear my concerns. Please let me know if there will be an opportunity for residents to publicly voice their concerns. I would like to participate in this process in any way that is appropriate.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. H. G.", written in black ink.



Line depicts location of continuous berm 8' to 12' in height which R. Freedman & Son, Inc. agreed to construct. See pages 10 and 11 of transcrip attached.

Exhibit I



R. FREEDMAN & SONS, INC.

VILLAGE PARK
&
BABY POOL
&
BASKETBALL COURTS

GREEN ISLAND UNION FREE
SCHOOL DISTRICT
K-12



R. FREEDMAN & SONS, INC.
PROPERTY



VILLAGE OF GREEN ISLAND

D & H RAIL LINE
Bisecting Village

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In The Matter of:

HONEYWELL INTERNATIONAL, INC., and THE VILLAGE OF
GREEN ISLAND,

Plaintiffs,

ORIGINAL

-against-

R. FREEDMAN & SON, INC., also known as R.K. FREEDMAN
& SON JUNKYARD, and RICHARD KENT, Individually, and
as Manager of R. Freedman & Son, Inc.,

Defendants.

Albany County Courthouse
16 Eagle Street
Albany, New York 12207
April 1, 2004

STIPULATION

B e f o r e:

HONORABLE CHRISTIAN F. HUMMEL,
Acting Supreme Court Justice.

A p p e a r a n c e s:

BOND, SCHOENECK & KING, LLP
111 Washington Avenue
Albany, New York 12210-2280

BY: ROBERT H. FELLER, ESQ., and
JENNIFER TSYN, ESQ.
Attorneys for Plaintiffs.

THE HERZOG LAW FIRM
7 Southwoods Boulevard
Albany, New York 12211

BY: JAMES M. REILLY, ESQ.
Attorneys for Defendants.

CHERYL M. MOORE
SENIOR COURT REPORTER

1 Appearances (Continued):

2 LEWIS OLIVER, ESQ.
3 156 Madison Avenue
4 Albany, New York 12202
5 Co-Counsel for Defendants.

6 A l s o P r e s e n t:

7 Ellen McNulty-Ryan, Mayor

8 John J. McNulty, Jr., Former Mayor

9 Tony Dawson, R. Freedman & Son, Inc.

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CHERYL M. MOORE
SENIOR COURT REPORTER

(In Chambers.)

MR. REILLY: I can start. Based upon discussions we've had over the past couple of days, R. Freedman & Son, Inc. has reached an agreement on certain of the issues to -- that were part of this trial, and those agreements are as follows:

First of all -- and these are for immediate implementation -- number one, Freedman will close its Tibbits Avenue entrance and the Village will grant, at such time as it has the power to, both a second access on Cannon Street toward the northerly portion of Freedman's site, and it will also guarantee that Freedman will have access from Cannon Street to its property line because the Village is about to acquire some property on Cannon Street which is currently owned by Canadian Pacific Railroad.

The second access, the northerly access, will not be used for exit, except in an emergency, unless it has a tire wash installed to keep the dust off the streets.

CHERYL M. MOORE
SENIOR COURT REPORTER

1 Secondly, Freedman will confine all of
2 its facility operations within the
3 parameter of its fence line and will not
4 store scrap or other containers, or the
5 like, outside of the fence line.

6 Toward that end, Freedman will give
7 notice to its customers, and also put
8 signs, and the Village may put signs up, to
9 try to discourage people who currently
10 leave scrap outside of the Freedman
11 property.

12 Third, the -- I guess I will -- the --
13 Freedman will stipulate or consent that the
14 Village be removed as a party in an
15 unrelated case regarding a water bill.
16 That whatever vehicle that takes, which is
17 through other counsel other than Mr. Feller
18 and I, will be without prejudice to
19 Freedman's rights against third parties,
20 Berccrane (phonetic) and the owner of the
21 property.

22 We have also agreed as follows with
23 respect to the height of the scrap piles --
24 and I guess I wouldn't say this is

1 immediate. I don't know how quickly we can
2 do this, but we will negotiate a reasonable
3 time here -- that the scrap piles that are
4 within 150 feet from Freedman's property
5 line on Tibbits Avenue will not exceed, in
6 height, 25 feet. And throughout the rest
7 of the site will not exceed, in height, 45
8 feet.

9 If as a result of the remaining trial
10 Freedman is -- is permitted to operate its
11 shredder then Freedman will not permit
12 scrap piles to exceed 20 feet in height
13 during -- or within the area 150 feet from
14 the Tibbits Street property line; 35 feet
15 from that area to the line of the current
16 building on the property; and then 45 feet
17 elsewhere on the site.

18 Freedman agrees that the entrances to
19 its facility will be swept daily with its
20 street sweeper, and Freedman will train and
21 supervise the operator of the street
22 sweeper and maintain it so that it does its
23 job.

24 And finally, Freedman will utilize a

1 pickup truck with a magnet device to pick
2 up scrap. Scrap from Cannon Street and
3 Veterans' Memorial Drive. That will be
4 done on a daily basis at a schedule that
5 Freedman will inform the Village of.

6 Those are all of the immediate items.

7 THE COURT: All right. Do you want a
8 minute to talk to the Mayors McNulty before
9 I ask you if that is your understanding of
10 the immediate agreements?

11 MR. FELLER: No. Do we need any time?

12 MS. McNULTY-RYAN: Do you have a
13 concern?

14 MR. McNULTY: Yes. I want to address
15 the height of the scrap pipes.

16 MR. FELLER: Off the record.

17 THE COURT: Off the record, please.

18 (An off the record discussion was
19 had.)

20 THE COURT: Back on the record.

21 MR. REILLY: Next, and these are
22 items -- well, this is an item to be
23 completed by September 1st of 2004, and
24 this -- with the understanding that there

1 can be some leeway so long as it is not
2 Freedman's fault in connection with the
3 completion.

4 We will be submitting a paving plan to
5 the Village or the village engineers for
6 approval. We have had a discussion about
7 the specifications for that paving plan.
8 I'm not going to dictate them into this
9 record, but we have reached an agreement
10 with the specifications that were set forth
11 in the Clough Harbour e-mail to the Mayors
12 McNulty -- no, Mayor McNulty-Ryan and John
13 Brown and Shawn Ward, and the only change
14 that we will make to that is that we will
15 be putting -- this is a blacktop paving
16 plan. We will be putting that, basically,
17 on the north-south road that is immediately
18 parallel to Cannon Street, and we will use
19 concrete construction, however, for
20 crossings because there are track -- the
21 equipment there, that would chew up the
22 asphalt if we didn't have some concrete in
23 there, and both engineers had a discussion
24 about that and have reached an agreement on

CHERYL M. MOORE
SENIOR COURT REPORTER

1 that.

2 At the point we are doing our paving,
3 we are also going to install the necessary
4 mechanicals for a possible future tire wash
5 facility. The mechanicals, as I understand
6 them, being the water lines and electric.

7 The -- this is an item that the
8 Village wanted us to agree to put in at the
9 same time and we have agreed, after both
10 consulting with our engineers, that we will
11 give the pavement a chance to prove whether
12 or not the existing tire wash, which quite
13 apparently doesn't work with the unpaved
14 site, whether it will work with the paved
15 site so that Freedman will be maintaining
16 its interior roadway with the street
17 sweeper as well with the hopes that the
18 existing wash is not -- or will be
19 sufficient to prevent mud and the like from
20 being tracked out into the village streets.

21 If, however, it proves unsuccessful,
22 we will then, within a reasonable time, put
23 in a more active tire wash system with some
24 sort of sprays to take the mud and dirt off

1 the truck wheels and that's, again, in the
2 same e-mail, an item as suggested by Clough
3 Harbour or Equal. That will be agreed on
4 before the mechanicals are roughed in
5 because there are probably different sizes.

6 So, those are the -- that's the
7 September 1, 2004 items.

8 THE COURT: Okay, Mr. Feller?

9 MR. FELLER: Yeah. I have a couple of
10 additions to that.

11 First, with respect to the compliance
12 date, September 1, 2004, we have agreed
13 that inadequate funds is not a defense
14 under any circumstances, and we have also
15 agreed that any extension that would be
16 granted either by Freedman, or any court
17 that would be involved, cannot be granted
18 beyond the period of construction for this
19 year, which we are estimating to be around
20 mid-November. And at that point, if it is
21 not completed that we would be entitled to
22 an injunction to shut them down.

23 THE COURT: Mr. Reilly, does that --
24 Mr. Feller's addition, is that in accord

1 with your understanding?

2 MR. REILLY: That's correct, your
3 Honor.

4 THE COURT: Okay. Go ahead,
5 Mr. Reilly.

6 MR. REILLY: Okay. Now, there is a
7 group of items that are to be completed by
8 September 1, 2005.

9 The first of these are earth and berm
10 which will be constructed along -- the
11 short distance along the westerly property
12 line by Tibbits and then all the way across
13 Tibbits --

14 THE COURT: Okay.

15 MR. REILLY: -- generally as shown on
16 the site plan that was used for the special
17 use permit of the shredder, except the berm
18 will continue to the easterly property
19 line. When that was done there was this
20 curb cut and access road, so that will be
21 closed in, and then we'll go down Cannon
22 street a distance of 150 feet from the
23 Freedman's property line on Tibbits Avenue.

24 The earth and berms will be eight to

1 twelve feet high. We expect that they will
2 have a -- the flat area on top will be
3 approximately eight feet. They -- the
4 grade will be a two to one slope. And the
5 engineers generally have agreed that
6 subject to environmental review of the
7 demolition materials for the existing
8 railroad building, principally brick, that
9 those materials can be used as part of the
10 berm. We don't know yet, but there will
11 be -- there is a state law requirement that
12 we get an environmental analysis anyway,
13 even if we were going to dispose of it in a
14 landfill. So that will be happening.

15 THE COURT: Okay.

16 MR. REILLY: Then, possibly later on
17 there will be an additional berm or berm
18 and retaining wall constructed from that
19 150 feet point up to the Freedman gate.
20 When I say possibly, it will be done. It
21 may be done by September 1, 2005, but the
22 deadline to have it done would be September
23 1, 2006.

24 Next item.

1 MR. FELLER: Can I?

2 THE COURT: Sure.

3 MR. FELLER: I would add to that
4 agreement, we have agreed in the event that
5 a court of competent jurisdiction allows
6 them to reopen the shredder, or to
7 re-operate the shredder, that they have
8 agreed that the shredder will not be
9 operated until the initial berm described
10 by Mr. Reilly, the one that goes on Tibbits
11 Street and goes 150 feet along Cannon, is
12 completed. And if -- obviously, in the
13 event it occurs before September 1, 2005,
14 the berm would have -- the due date for the
15 berm would move up.

16 And again, with respect to these
17 items, that the ultimate due dates, the
18 initial berm of September 1, 2005 and the
19 secondary berm of September 1, 2006, if
20 those dates are not met the Village would
21 be entitled to an injunction preventing
22 further operation on the site.

23 THE COURT: Do you want a moment, off
24 the record, Mr. Reilly to talk to

1 Mr. Dawson and Mr. Oliver or --

2 MR. REILLY: Yes. Sure.

3 (An off the record discussion was
4 had.)

5 (A brief recess was taken.)

6 THE COURT: Back on the record.

7 Mr. Reilly, I know I gave you an
8 opportunity to meet with Mr. Oliver and
9 Mr. Dawson. Does what Mr. Feller put on
10 the record reflect your understanding or is
11 there some difference here?

12 MR. REILLY: Judge, I don't recall a
13 specific agreement that we would not
14 operate the shredder until the berm was
15 completed, and particularly since the --
16 the berm target date is September 1, 2005,
17 and there is no particular way of telling
18 when -- I mean, this case will now start,
19 on the shredder, on April, whatever next
20 Monday is, but it may be -- I would expect
21 the Court's decision and even an appeal
22 would likely precede that date, so what we
23 would propose is that we will -- we may
24 have the berm done before the decision, but

1 we can't be certain of it. The shredder is
2 a very important item in our operation, so
3 our proposal would be that we complete
4 the -- the initial berming that we
5 discussed within 90 days of starting to
6 operate the shredder.

7 THE COURT: Mr. Feller, do you want a
8 minute to talk to your clients about that?

9 MR. FELLER: Yeah, I think we will
10 need to talk about that.

11 THE COURT: We'll go back off the
12 record.

13 (An off the record discussion was
14 had.)

15 (A brief recess was taken.)

16 THE COURT: Back on the record.

17 MR. FELLER: After some further
18 discussions, we have agreed that in the
19 event that the Court allows the shredder to
20 operate, that within 45 days of commencing
21 operation the berm that was previously
22 discussed along Tibbits and 150 feet along
23 Cannon Street would be fully in place. If
24 it were not, we would have the right to

1 have the Court enjoin further operations of
2 the shredder.

3 THE COURT: Yes?

4 MR. REILLY: Yes, your Honor.

5 THE COURT: Is that your
6 understanding?

7 MR. REILLY: Yes, your Honor.

8 Now, appearing still under the
9 September 1, 2005 list, but not belonging
10 there, is the connection to the village
11 sewer system.

12 Freedman will connect to the sewer
13 system, in fact, not later than September
14 1, 2004. That -- the sewer line being
15 something that will need to be run before
16 the paving is done, and it may be done
17 sooner in as much as Judge Malone has
18 ordered it to be hooked up --

19 THE COURT: All right.

20 MR. REILLY: -- in a different case
21 already, but in any event, it will also be
22 part of this agreement that we will hook it
23 up.

24 There was another issue that will --

1 that remains in that other case, and that
2 is whether or not the -- whether or not
3 there is any process water from the misting
4 system in the shredder that requires
5 connection with a sewer system. We -- the
6 shredder is not operating now, so there is
7 no accurate way to determine that. And I
8 believe our agreement is that that will be
9 litigated in that other case and we
10 won't -- we will neither be settling it nor
11 bringing it to this Court for decision.

12 Freedman will promptly apply, as soon
13 as it gets the necessary environmental
14 permit for a demolition permit for the
15 portion of the existing old railroad
16 building that is not -- not the part that
17 includes its office building, and I don't
18 think there is any dispute about the part
19 that is falling down and needs to be
20 demolished, and the Village will grant the
21 demolition permit in the ordinary course of
22 business.

23 Freedman will also be applying to the
24 Village for a new metal building which is a

1 replacement of the existing in the sense
2 that the scrap metal recycling that will
3 occur in that building is the same that has
4 already been occurring in the other
5 building. It is our understanding that so
6 long as the -- so long as that building
7 uses the current footprint, the current
8 foundation, that it will not be subject to
9 the -- what otherwise might be an
10 applicable zoning setback, nor will it be
11 viewed as an expansion of the prior
12 nonconforming use.

13 In addition, as part of that, there
14 will be likely some open area between the
15 northerly end of that building and the gate
16 for the second access point to the Freedman
17 property. And as part of the site plan
18 processing, there may be a berm from that
19 northerly portion forward. The existing
20 building will be, essentially, at the
21 Freedman property line, but there -- to the
22 extent there is a gap there, the planning
23 board, as part of that site plan review,
24 will be determining what type of visual

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1 and/or noise shield is necessary, and the
2 Village has indicated to us that they will
3 process that promptly and that the only
4 apparent issue with respect to site plan is
5 some sort of, perhaps, decorative
6 brickwork, columns and the like, to relieve
7 the long expansive metal building.

8 MS. McNULTY-RYAN: Can I make one
9 clarification in the planning board? It is
10 important. It isn't the footprint or the
11 foundation. It is the foundation. You
12 can't remove that foundation. I want to
13 clarify that. That's all.

14 MR. FELLER: Can I make a -- are you
15 done with this?

16 THE COURT: Sure.

17 MR. FELLER: Just two comments. I
18 think we are in agreement on this. One is
19 that the -- the new building -- the issue
20 of the new building will be limited to
21 nonferrous processing, which the old
22 building is used for, the structure.

23 And then a point we wanted to make is
24 that the berms -- it is agreed that the

1 berms are not -- are going to be free of
2 any scrap materials. That it will be soils
3 and brick in whatever quantities are
4 necessary, but they -- there will not be
5 any scrap materials mixed in there.

6 THE COURT: That's agreeable,
7 Mr. Reilly?

8 MR. REILLY: That's agreeable, your
9 Honor.

10 In addition, on that line, Freedman
11 has agreed that it will not use any of that
12 area, you know, where the building was, as
13 an additional scrap metal storage facility.

14 There will be no outside piles of
15 scrap, I guess --

16 THE COURT: Okay.

17 MR. REILLY: -- is the easiest way to
18 say it.

19 Then we have got an item on the thing
20 here that says all other code violations
21 will be corrected.

22 Freedman will apply for a certificate
23 of occupancy for its metal maintenance
24 building that was constructed five years

1 ago -- four years ago -- somewhere in the
2 late '90s.

3 Currently we are aware of building
4 code violations in connection with the
5 risers on the staircase, and Freedman will
6 correct those violations together with any
7 other violations that would be found upon
8 the inspection for the new CO, and that
9 will all be done by September 1, 2005.

10 MR. FELLER: 2005 or 2004?

11 MR. REILLY: Off the record.

12 THE COURT: Off the record.

13 (An off the record discussion was
14 had.)

15 THE COURT: Back on the record.

16 Mr. Feller, are you all right with the
17 2005 date?

18 MR. FELLER: Yes. We are okay with
19 that.

20 THE COURT: All right.

21 MR. REILLY: And now, these are items
22 that I don't know that we had attached any
23 particular date to, so I guess we would
24 just, perhaps, say a reasonable time.

1 Number one is the Village has a local
2 law requiring Freedman's Metal Recycling,
3 Inc. facility to have a junkyard license or
4 permit. I'm not sure which it is. And
5 Freedman will -- will apply for that permit
6 and the appropriate village officials will
7 consider it in the ordinary course, and it
8 is our understanding that the Village will
9 approve the license or permit, and not
10 revoke it, and approve any -- I think it is
11 annually -- renewal -- usually they are --
12 so long as Freedman is in compliance with
13 the terms of that local law and this
14 agreement.

15 Finally, Freedman -- Freedman may, at
16 such time as it pays up its delinquent
17 taxes to the Village and Albany County,
18 apply to the County of Albany, or whatever
19 state agency is appropriate, to have its
20 property redesignated into the Empire Zone.

21 Our understanding is that if the
22 County agrees to that the Village must
23 also -- I think the Village Board must also
24 approve it, and we -- if we get County

1 approval then we understand that the
2 Village will also give its approval, and
3 then the Mayor has agreed that so long as
4 she is in office that she will give Tony
5 Dawson notice when either the Planning
6 Board or the Village Trustees are
7 considering issues that directly affect the
8 Freedman properties.

9 THE COURT: Mr. Feller, your client
10 has a question.

11 Off the record.

12 (An off the record discussion was
13 had.)

14 THE COURT: It is my understanding,
15 with respect to the issue of the Empire
16 Zone, the Mayor of Green Island is willing
17 to commit that when, and if, Albany County
18 makes additional lands available within the
19 Village of Green Island for Empire Zone she
20 agrees to advise, in writing, Mr. Dawson so
21 he can apply, along with any other
22 qualified applicants in the Village of
23 Green Island.

24 Is that correct, Mayor?

1 MS. McNULTY-RYAN: Correct.

2 THE COURT: Okay.

3 MR. REILLY: Now, that is all I have
4 as matters of substance. I think it was
5 also our understanding that -- that this
6 constitutes a binding settlement agreement
7 as to those issues.

8 The parties contemplate negotiating
9 and executing a written agreement which we
10 would then submit to the Court to then be
11 so ordered, but as of this point we are
12 settled on those things and we would like
13 the Court's approval.

14 That would then leave for adjudication
15 the issue of the shredder's operations,
16 which I believe involve the explosions,
17 whether or not the shredder's operation
18 causes a particular matter to be
19 distributed in the neighborhood, and
20 whether the fluff constitutes some sort of
21 hazard.

22 Is that it?

23 MR. FELLER: Yeah. I guess I would --
24 I -- I think the explosions, clearly, would

1 be -- we -- I guess I would say the
2 Village's position is that the shredder
3 should operate with some air pollution
4 control equipment, which it doesn't
5 currently, for the purpose of controlling a
6 particular matter, and I think -- I think
7 it is also our position that the fluff
8 constitutes both a fire hazard and a -- an
9 air pollution hazard.

10 So, I think those are the issues that
11 are all shredder related.

12 MR. REILLY: Yeah.

13 MR. FELLER: I would also add, if I
14 may, a couple of things. That number one,
15 we do contemplate a written agreement, as
16 Mr. Reilly indicated. I think it is our
17 intent that written agreement supersede
18 this stipulation when it is agreed to and
19 so ordered by the Court.

20 THE COURT: Okay.

21 MR. FELLER: And I think also that I
22 would just add, as sort of a catch all,
23 that I think we are agreeing that if any of
24 the significant terms of this agreement are

1 not complied with that the Village would be
2 entitled to injunctive relief and that
3 except for the areas that we note, that
4 this is an injunctive relief that should be
5 granted not based upon -- or based upon the
6 explicit terms of the agreement and that
7 only where particular extenuating
8 circumstances are included in the agreement
9 would there be any defense to Freedman to
10 take advantage of those.

11 MR. REILLY: Well, there could be
12 factual defenses, I suppose.

13 MR. FELLER: There could be factual
14 defenses as to whether the agreement was
15 violated, clearly.

16 THE COURT: Sure. Let me ask each one
17 of the parties some questions. Assuming
18 they're in agreement, you can reduce it to
19 writing, circulate it amongst yourselves
20 and your clients.

21 If you need a transcript you can
22 contact Cheryl Moore. I'm sure she'll be
23 glad to prepare that for you. The cost of
24 any transcript will be split between you

1 gentlemen.

2 MR. FELLER: Certainly.

3 THE COURT: Let me ask you a few
4 questions, okay, Mayor?

5 Mayor, do you understand if you agree
6 to the terms of this settlement that was
7 just placed on the record that is going to
8 fully and finally resolve those issues?
9 They're not going to be part of the trial.
10 Do you understand that?

11 MS. McNULTY-RYAN: Yes.

12 THE COURT: I know you and Mr. Feller
13 and --

14 Is it Tsyn?

15 MS. TSYN: Tsyn.

16 THE COURT: I apologize.

17 -- have had an opportunity to discuss
18 this matter at some length. Is this
19 agreeable to you as a way to resolve these
20 issues?

21 MS. McNULTY-RYAN: Yes, it is.

22 THE COURT: If it is later reduced to
23 writing and I so order it making it an
24 order of the court, that's acceptable to

1 you?

2 MS. McNULTY-RYAN: Correct.

3 THE COURT: Do you have any questions
4 you want to ask your counsel before you
5 agree to this?

6 MS. McNULTY-RYAN: No.

7 MR. FELLER: I have one question.

8 THE COURT: Okay.

9 MR. FELLER: Not a question, but I
10 believe that we may have to get the Village
11 Board to approve it. I don't think that it
12 is a problem to get the Village Board to
13 approve it, but I don't know that without
14 Village -- the Village Board authorized
15 this lawsuit and I don't know that the
16 Mayor, without the Village Board's
17 approval, has the authority to do this. I
18 don't think that that is a problem. I
19 think --

20 MR. OLIVER: I think under the statute
21 the Mayor has the authorization and was
22 authorized by the resolution to prosecute
23 the action, and that includes settling it.

24 MR. FELLER: If the Mayor has the

1 authority there is no problem.

2 MS. McNULTY-RYAN: If there is a
3 question I will call a special board
4 meeting and get the authorization.

5 MR. FELLER: If there is an authority.
6 If the Mayor has the authority.

7 THE COURT: If not, Mayor, you will
8 use your powers of persuasion to get the
9 Village Board to approve this in an
10 expeditious fashion?

11 MS. McNULTY-RYAN: That won't be a
12 problem.

13 THE COURT: Mr. Dawson, sir, did you
14 listen as I asked the Mayor those
15 questions?

16 MR. DAWSON: I did.

17 THE COURT: Have had you a chance to
18 talk to Mr. Oliver and Mr. Reilly about
19 this matter?

20 MR. DAWSON: Yes, I did.

21 THE COURT: And do you understand if
22 you agree to this we are not going to try
23 these issues, but rather they'll be
24 resolved along the terms of this

1 settlement?

2 MR. DAWSON: Yes, I do.

3 THE COURT: Have your lawyers answered
4 all your questions?

5 MR. DAWSON: Yes, they have.

6 THE COURT: Do you have any questions
7 you wish to ask me?

8 MR. DAWSON: Nope.

9 THE COURT: This is okay by you as a
10 way to resolve these matters?

11 MR. DAWSON: Yes, it is.

12 THE COURT: Sir, Mayor -- Sheriff
13 McNulty, I didn't mean to ignore you. Do
14 you understand what we are doing here?

15 MR. McNULTY: No, I don't.

16 THE COURT: I'm glad your retired,
17 sir.

18 MR. McNULTY: I'm a special
19 consultant.

20 THE COURT: Okay. What I'm going to
21 do then is consider all these issues
22 resolved.

23 All right. Your respective lawyers
24 will reduce this to writing. I assume

1 Jennifer, being the low person on the totum
2 pole, will be the person that does it.
3 She'll circulate it. Sign it and I will so
4 order it for you. That will resolve all
5 those issues.

6 All that remains are the shredder
7 issues which Mr. Reilly concisely put upon
8 the record.

9 We'll go off the record.

10 (An off the record discussion was
11 had.)

12 THE COURT: Folks, what we are going
13 to do, we are going to resume promptly
14 Monday morning at nine o'clock. I know
15 Mr. Oliver has a conference with the Second
16 Circuit, so your appearance is excused,
17 sir. If you can get up here for part of
18 it, you're certainly welcome to come in
19 whenever you can.

20 It is my intention to start everyday
21 around nine and go to at least five
22 o'clock, maybe a little later, depending
23 where we are with the witnesses.

24 If the lawyers have a witness

1 problem -- I will try to be reasonable with
2 you. If you have a problem with a witness,
3 let me know. I will accommodate you.

4 There will be a couple of days I will
5 have to start late. This isn't my real
6 job. I'm the Surrogate over in Troy. I
7 have some adoptions already scheduled. I'm
8 not willing to reschedule people's
9 adoptions. They've waited a long time, and
10 frankly, I enjoy adoptions.

11 Anything else I can do for you,
12 Mr. Reilly or Mr. Oliver?

13 MR. REILLY: No, your Honor. Thank
14 you.

15 THE COURT: Anything else I can do for
16 you folks?

17 MS. TSYN: No.

18 MR. FELLER: No. Thank you.

19 THE COURT: Either of the Mayors have
20 a question?

21 MS. McNULTY-RYAN: No.

22 MR. McNULTY: No.

23 THE COURT: We'll see you Monday at
24 nine o'clock. Enjoy the weekend.

1 I appreciate your hard work in
2 resolution of these issues.

3 (At which time the matter was
4 concluded.)
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CHERYL M. MOORE
SENIOR COURT REPORTER

C E R T I F I C A T I O N

I, CHERYL M. MOORE, Senior Court Reporter
in and for the Third Judicial District of the State
of New York, do hereby CERTIFY that the foregoing is
a true and correct transcript, to the best of my
knowledge and ability, of the proceedings held in
the aforementioned matter before HONORABLE CHRISTIAN
F. HUMMEL, Acting Supreme Court Justice, on April 1,
2004.



CHERYL M. MOORE
SENIOR COURT REPORTER

Dated: 4-5-04

CHERYL M. MOORE
SENIOR COURT REPORTER

***** ACTIVITY REPORT *****

RECEPTION OK

TX/RX NO.	2301
CONNECTION TEL	518 533 3299
CONNECTION ID	BS AND K
START TIME	08/12 16:14
USAGE TIME	18'47
PAGES	35
RESULT	OK



VILLAGE OF GREEN ISLAND

D & H RAIL LINE
Bisecting Village



R. FREEDMAN & SON, INC.

VILLAGE PARK
&
BABY POOL
&
BASKETBALL COURTS

GREEN ISLAND UNION FREE
SCHOOL DISTRICT
K-12



R. FREEDMAN & SONS, INC.
PROPERTY



Line depicts location of continuous berm 8' to 12' in height which R. Freedman & Son, Inc. agreed to construct. See pages 10 and 11 of transcript attached.