



KAPLAN KIRSCH ROCKWELL

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Public Record

January 28, 2016

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

Re: *The Atlanta Development Authority D/B/A Invest Atlanta and Atlanta BeltLine, Inc. – Verified Petition for a Declaratory Order*, Finance Docket No. 35991

Dear Ms. Brown:

I am enclosing for filing a Supplement to the Verified Petition for Declaratory Order filed on January 8, 2016, by the Atlanta Development Authority D/B/A Invest Atlanta and Atlanta BeltLine, Inc. (collectively “the Atlanta Parties”) in the above-captioned proceeding.

The Atlanta Parties are reviewing the Reply filed yesterday in this docket by various parties asserting an interest in this proceeding and reserve our right to seek leave to file a response.

Please do not hesitate to contact me if you have any questions. Thank you very much for your assistance in this matter.

Sincerely,



Allison I. Fultz

Counsel for The Atlanta Development Authority
and Atlanta BeltLine, Inc.

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35991

**THE ATLANTA DEVELOPMENT AUTHORITY
D/B/A INVEST ATLANTA and
ATLANTA BELTLINE, INC.**

**FIRST SUPPLEMENT TO THE
VERIFIED PETITION FOR A DECLARATORY ORDER**

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Counsel for the Atlanta Development
Authority d/b/a Invest Atlanta and Atlanta
BeltLine, Inc.

Dated: January 28, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35991

**THE ATLANTA DEVELOPMENT AUTHORITY
D/B/A INVEST ATLANTA and
ATLANTA BELTLINE, INC.**

**FIRST SUPPLEMENT TO THE
VERIFIED PETITION FOR A DECLARATORY ORDER**

On January 8, 2016, the Atlanta Development Authority (the “Authority”) d/b/a Invest Atlanta and Atlanta BeltLine, Inc. (“ABI”) filed a Verified Petition for Declaratory Order (the “Petition”) to confirm the regulatory status of an abandoned portion of a line of railroad known as the Northeast Quadrant, and to resolve a controversy regarding the acquisition of the real estate underlying the Northeast Quadrant by the Authority and its immediate predecessors in interest. Since its initial filing, the Authority has determined that the portion of the underlying real estate that the owners of certain property abut and illegally encroach upon was not, as the Authority stated in the Petition, included in the abandonment the Norfolk Southern Railway Company (“NSR”) consummated in October 2010, and that NSR retains an exclusive freight rail operating easement and associated operating rights over that segment of the line. Accordingly, the Authority files this First Supplement to the Petition to clarify the facts related to its request.

As set forth more fully in the Petition, NSR conveyed the real estate underlying a line of railroad known as the Northeast Quadrant to six non-carrier entities (collectively, the “Mason Entities”) on December 30, 2004. NSR reserved to itself “all railroad tracks and railroad

facilities including, but not limited to, the railroad tracks, roadbed, ballast, culverts, bridges, tunnels, communications and signal facilities, fixtures and all other railroad appurtenances located on the [conveyed property],” and retained an exclusive, permanent “easement or right of way for all passenger and freight railroad purposes over, upon and across the [conveyed] property” See Petition, Exhibit A. With respect to the easement area *south* of the Montgomery Ferry Road Bridge, the Mason Entities acquired the right to require NSR to negotiate joint use of part of the line for rail passenger service, to approve NSR’s negotiation of other uses of the easement areas, and to request that NSR institute abandonment proceedings before the Board. See Petition, Exhibit B. The Mason Entities acquired no rights whatsoever with respect to the easement area *north* of the Montgomery Ferry Road Bridge. *Id.*

On December 2, 2008, NSR filed a Verified Notice of Exemption to abandon a portion of the Northeast Quadrant between Milepost DF 633.10 to DF 637.40. *Norfolk Southern Railway Co. – Abandonment Exemption – In Fulton Cnty., GA*, STB Finance Docket No. AB-290 (Sub. No. 210X) (Notice of Exemption) (Filed Dec. 2, 2008). The portion of the Northeast Quadrant between Milepost DF 633.10 and DF 636.56 lay within the easement area *south* of the Montgomery Ferry Road Bridge and continued to the southern edge of the underlying real estate conveyed to the Mason Entities. The real estate underlying the rail line continuing south past Milepost DF 636.56 to 637.40 was not conveyed to the Mason Entities and is not at issue here. See Petition, at 2 n.2. NSR consummated the abandonment of the portion of the Northeast Quadrant from Milepost DF 633.10 to DF 637.40 on October 22, 2010. See *Norfolk Southern Railway Co. – Abandonment Exemption – In Fulton Cnty., GA*, STB Finance Docket No. AB-290 (Sub. No. 210X) (Consummation Notice) (Filed Oct. 22, 2010). To date, NSR has not abandoned or requested abandonment authority for any portion of the Northeast Quadrant within

the easement area *north* of Milepost DF 633.10 near the Montgomery Ferry Road Bridge. It is this property *north* of the Montgomery Ferry Road Bridge, over which NSR retains an operating easement and all of its common carrier obligations, that the owners of certain property abut and illegally encroach upon, and claim that they have the right to use, if not own outright.

To be clear, the Petition does not ask the Board to make any determination about the validity of the property owners' claims on the property that is north of the Montgomery Ferry Road Bridge. The Authority and ABI provide this Supplement solely for the purpose of confirming that it has accurately stated the regulatory status of the Authority's property that is the subject of the adjacent property owners' erroneous claims, and seek no change to the relief requested in the Petition in connection with the above-stated clarification. Throughout the transactions described in the Petition, NSR retained the exclusive regulatory and property rights necessary to fulfill its common carrier obligation. The Authority and ABI accordingly have sought this Board's confirmation that NSR's and subsequent transfers of the real property underlying the rail line did not require STB authorization.

Specifically, as requested in the Petition and for the reasons stated in the Petition and in this First Supplement, the Authority seeks a declaratory order from the Board that (1) the Mason Entities' acquisition of the underlying real estate from NSR – both north and south of the Montgomery Ferry Road Bridge – did not require Board approval, and therefore the absence of Board approval is not a basis for voiding the transaction; (2) the Authority and its predecessors-in-interest's acquisition of the Mason Entities' interest in the underlying real estate – both north and south of the Montgomery Ferry Road Bridge – did not require Board approval, and therefore the absence of Board approval is not a basis for voiding the transaction; and (3) the Board has no continuing jurisdiction over the portion of the line of railroad lying *south* of the Montgomery

Ferry Road Bridge, as particularly described in NSR's Verified Notice of Exemption dated December 2, 2008, following NSR's consummation of abandonment of the Line in October 2010, and therefore need not approve any future conveyance of real estate underlying this portion of the railroad line.

Respectfully submitted,



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BeltLine, Inc.

Dated: January 28, 2016

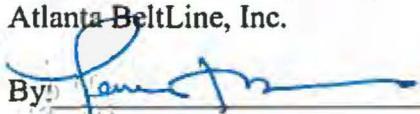
VERIFICATION

I, Paul F. Morris, verify under penalty of perjury that the factual statements made in the foregoing Petition for Declaratory Order are true and correct, to the best of my knowledge, information and belief.

Further, I certify that I am qualified and authorized to file this verification.

Executed on January 28th, 2016.

The Atlanta Development Authority
d/b/a Invest Atlanta by its Special Agent
Atlanta BeltLine, Inc.

By: 

Paul F. Morris, FASLA
President and CEO,
Atlanta BeltLine, Inc.

Sworn to and subscribed before me

this 28th day of January, 2016.


Notary Public

My commission expires: 10-24-2017



**Before the
Surface Transportation Board
Washington, D.C.**

Finance Docket No. 35991

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of January 2016, I have caused a copy of the foregoing First Supplement to the Verified Petition for a Declaratory Order to be served upon the following individuals via first class mail, postage prepaid:

R. Kyle Williams
Nicolas Bohorquez
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Dated: January 28, 2016