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

ENTERED
Office of Proceedings
December 23, 2015
Part of
Public Record

**MOTION FOR LEAVE AND REPLY TO REPLIES OF CNJ
RAIL CORPORATION AND THE CITY OF JERSEY CITY**

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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DATED: December 21, 2015

**MOTION FOR LEAVE AND REPLY TO REPLIES OF CNJ
RAIL CORPORATION AND THE CITY OF JERSEY CITY**

The eight LLC intervenors (“Intervenor LLCs”)¹ hereby seek leave to respond to (a) the Reply that CNJ Rail Corporation (“CNJ”) filed in the above-captioned proceeding on December 9, 2015, and (b) the “Reply to LLCs’ Nov. 17 letter motion to compel” that the City of Jersey City (“City”) filed in the above-captioned and related proceedings on December 1, 2015.

CNJ and the City both assert that the Motion to Compel that Intervenor LLCs filed by letter on November 17, 2015, is now moot because they have complied with the Board’s orders, served November 2 and November 10, 2015, requiring the submission of a properly redacted public version of the shipper statement that CNJ initially produced and the City filed as part of the City’s successful December 23, 2014 motion to compel. But they have not complied. CNJ’s redactions, submitted almost a month later than the Board ordered, grossly exceed the limited scope of redaction allowed by the Board, and rendered the public version of the statement effectively useless. The City has done nothing except to defer its compliance obligation to CNJ.

The claims by CNJ and City that Intervenor LLCs’ November 17, 2015 motion to compel is now “moot” are specious. CNJ and the City still have not complied with the Board’s orders by filing a properly redacted public version. Instead, they have again demonstrated contempt for the Board and its processes, all for the purpose of

¹ Intervenor LLCs are 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, and 446 Newark Avenue, LLC.

creating further delay.

Accordingly, Intervenor LLCs are submitting under seal and by separate cover a version of the shipper statement, properly redacted in accordance with the Board's November 2, 2015 Order, and ask that it be accepted by the Board for filing as the public version of the shipper statement. Intervenor LLCs otherwise submit that good cause exists for accepting this instant filing, and further state as follows.

I. BACKGROUND

The Board's order served November 2, 2015, directed the City to file, by November 12, 2015, a public version, with only limited redactions, of the shipper statement that accompanied the City's successful motion to compel, filed December 23, 2014, one year ago. The City asserted at that time (2014) that the shipper statement demonstrated a strong and urgent need for rail service sufficient to support an offer of financial assistance ("OFA"). The day after the Board's November 2, 2015 order, the City contended that it could not be responsible for redacting the statement because the City obtained the statement from CNJ, and the City represented, with CNJ's endorsement, that CNJ would be responsible for complying with the Board's Order. *See* the City's request for clarification filed Nov. 3, 2015. The Board granted the clarification requested by both the City and CNJ in the decision of the Director of the Office of Proceedings served November 10, 2015, but did not alter the November 12, 2015 due date for filing a properly redacted public version.

CNJ did nothing to fulfill its assumed City obligation, and on November

17, 2015, Intervenor filed a letter seeking to compel compliance with the Board's order. The City replied on December 1, 2015, claiming that the matter was moot and should be dismissed.² On December 9, 2015, CNJ submitted its own reply, which included a revised version of the statement that was, as explained below, improperly redacted, and also claimed the matter was moot.

II. IMPROPER REDACTIONS

CNJ and the City still -- a year after CNJ submitted the shipper statement as part of its successful Motion to Compel -- have not complied with the Board's redaction requirements and the public has been left in the dark as to the unknown shipper alleged to need almost immediate rail service on the Harsimus Branch in 2014.

The Protective Order served September 24, 2014, at 1, states that only "proprietary or confidential information" may be designated confidential. The Board further specified in granting Intervenor LLCs' motion to compel that only "information in the shipper statement regarding the financial backing of the shipper, the shipper's projected production output, the identities of the shipper's suppliers and customers, carload projections, and origin and destination pairs" could be designated confidential since "this is the only information in the shipper statement that could potentially qualify

² Despite the claimed mootness of the shipper statement, the City is seeking to appeal the November 2, 2015 Order of the Board to the U.S. Court of Appeals. See: Notice of Court Action, STB Notice, December 14, 2015, Document 44961. No stay of proceedings has been sought, nor issued, and the Board should not be deterred in addressing the issues raised here because of the City's ill-founded and meritless attempt to appeal. It is only another tactic focused on delay.

as confidential under the Protective Order, based on the information currently before the Board.” Nov. 2, 2015 Order at 5.

CNJ’s redactions go far beyond those allowed by the Board. CNJ has redacted, among other things: (a) the name of the shipper and its principal that sponsored the statement, (b) the shipper’s address, (c) the location of its facility, (d) the product(s) that it seeks to ship by rail, (e) the date (now past) by which the shipper claims it needed to begin shipping by rail, and (f) background about the shipper and its transportation needs that the shipper, CNJ, and/or the City deemed sufficiently important to include in the statement in order to obtain favorable action from the Board. None of this information should have been redacted.

The additional exclusions are not trivial. The redactions prevent the public from knowing anything specific about the putative shipper and its ostensible need for rail service that CNJ and the City claim precludes redevelopment of the Sixth Street Embankment for a productive purpose.³ The excessive redactions also impede the ability of Intervenor LLCs and their counsel to discuss with others, including potential witnesses with relevant information, such matters as the identity of the putative shipper, the product it would ship, and its supposed need for rail service. Under CNJ’s and the City’s

³ Such claims are fabrications. Documents that the City has been required to make public under court order show that the City has no desire to resume rail service along the Embankment, but instead plans to develop the land itself without providing fair compensation to Intervenor LLCs. Attachment A consists of a transcript from a closed caucus meeting of the City Council for Jersey City where the Council improperly authorized the City to submit an OFA. The transcript shows that the City is only pretending to provide rail service so that it can obtain the right-of-way and utilize it for other purposes, all without paying just compensation to the LLCs.

approach, such matters can be discussed only if those other persons execute the protective order, which they may be reluctant to do. The redactions thus undermine participation in the Board's processes and allow the City to carry on the charade that rail service is actually needed.

Efforts to block the identity and transportation needs of the putative shipper are especially inappropriate when its ostensible needs are being proffered to extend these proceedings and block redevelopment of the Embankment by the LLCs. Even if the putative shipper is not a full party to the proceeding, it is still seeking to "avail [itself] of the Board's regulatory process," and thus "must be prepared to conform to that process."⁴ In that regard, the Board has allowed discovery directed to nonparty shippers (although Intervenor LLCs do not seek any discovery from the putative shipper at this time).⁵ The identity of the putative shipper and the nature of its ostensible need for rail service should not be shielded from disclosure.

III. UNEXCUSED DELAY

CNJ waited to file the public, heavily redacted version of the shipper statement until December 9, 2015, and thereby missed the Board's stated deadline by almost a month.

CNJ's contention that "it simply presumed that the Board would have reset

⁴ *Procedures to Expedite Resolution of Rate Challenges to be Considered Under the Stand-Alone Cost Methodology*, EP 638 (STB served July 31, 2003), at 2.

⁵ *Reasonableness of BNSF Ry. Co. Coal Dust Mitigation Tariff Provisions*, FD 35557 (STB served June 25, 2012), at 4-5 (allowing discovery of nonparty shippers).

the due dates if it issued a clarification decision in favor of the City” (Reply at 3), is completely contrived: the City’s request for clarification, which CNJ endorsed, did not even request an extension. Furthermore, CNJ acknowledges that it knew there had been no extension by November 13, 2015. *Id.* at 4. Yet, CNJ took almost an additional month to purport to comply, without requesting any extension or responding to Intervenor LLCs’ Motion to Compel.

CNJ’s position is thus that how long it takes to comply is irrelevant, so long as it eventually files a version of the shipper statement that it deems compliant, no matter how far it may fall short of good faith compliance. CNJ’s position -- that the Board’s rules and orders apply only when, and to whom, CNJ wants them to apply -- demonstrates actual and studied contempt for the Board’s processes.

IV. THE CITY SHOULD HAVE FILED A PUBLIC VERSION OF THE STATEMENT WITH ITS MOTION TO COMPEL IN 2014

Under the terms of the Board’s governing protective order, the City should have submitted a public version of the statement when it filed its Motion to Compel on December 23, 2014. “Any party filing with the Board a ‘CONFIDENTIAL’ or ‘HIGHLY CONFIDENTIAL’ pleading in this proceeding should simultaneously file a public version of the pleading.” Protective Order served Sept. 24, 2014, at ¶12 (original capitalization). The filing of public version of attachments is standard practice before the Board:

Parties typically file a public version of confidential

documents, and the Board has ordered parties to provide one when they have failed to do so. [Citation omitted.] While there have been a few cases in which the Board has permitted a party not to provide a public version ..., such instances have been limited to uncontroversial proceedings of limited scope. That is not the case here.⁶

The Board has explained that public disclosure contributes to open government and is particularly appropriate for those that seek regulatory benefits:

[P]ublic filings are intended to benefit the broader public interest and foster the spirit of open government. When parties such as those to SAC cases avail themselves of the Board's regulatory process, they must be prepared to conform to that process, including the requirement of simultaneously filing a suitably redacted public version of the submission.

EP 638, *supra*, at 2 (*cited in DHX, Inc.*).

In short, Intervenor LLCs' initial motion to compel should not have been necessary. The subsequent delay and unjustified redactions exacerbate the initial non-compliance, particularly in light of the City's other claims.

V. THE CITY'S DEFECTIVE MOOTNESS CLAIMS

The City employs the same mootness logic as CNJ to defend its (or CNJ's) failure to submit a redacted statement by November 12, 2015, as the Board ordered.

⁶ *Rapid City, Pierre & Eastern R.R., Inc. -- Acquisition and Operation Exemption-- Dakota, Minn. & Eastern R.R. Corp.*, FD 35800 (STB served Feb. 13, 2014), at 2 (addressing a transaction agreement); *DHX, Inc. v. Mason Navigation Co. and Sea-Land Service, Inc.*, WCC-105 (STB served Oct. 16, 2013), at 2 (denying request to defer filing of public version of evidence in a rate case as "contrary to the Board's policy of requiring that parties file a public version of their submissions simultaneously with any Highly Confidential or Confidential Version they might also chose to file").

Specifically, the City contends that the matter is moot because the Board already granted City's motion to compel and extended the (still unspecified) deadline for offers of financial assistance ("OFA"). *See* the City's Reply filed Dec. 1, 2015, at 2-3. In other words, since the City already obtained its requested relief, there is no reason to dwell further on the shipper statement that supported the requested relief.

The City then further distances itself from the shipper statement. The City announces that "the statement insofar as predictive is now dated, inasmuch as the shipper is now actively in business." *Id.* at 3. In other words, the matter is "moot" because the shipper that the City represented had the urgent need for rail service in order to commence its operations does not require rail service at all. Stated differently, the shipper statement was simply an inaccurate mis-step in the City's improper pursuit of a meritless OFA.

However, the City then virtuously seeks to wash its hands of the shipper statement altogether by noting that it "currently intends to rely on more timely information assembled by consultants." *Id.* In other words, having obtained favorable Board action based on one contrived set of claims, and improperly extended these proceedings, the City now proposes to move on to another group of perhaps non-existent shippers to maintain its meritless OFA charade. The Board does and should expect something more in parties' submissions. When those submissions are shown to be abusive of the OFA process, corrective action by the Board is fully warranted. This is such a case.

VI. INTERVENOR LLCs ARE SEPARATELY FILING A PROPERLY REDACTED VERSION OF THE SHIPPER STATEMENT UNDER SEAL

In the interests of limiting the additional delay that appears to be the objective of both the City and CNJ, Intervenor LLCs have taken it upon themselves to prepare and submit under separate cover a version of the shipper statement that shows the limited information that should be treated as “Confidential”, consistent with the Board’s November 2, 2015 Decision and Order.

The pleading is being served upon the City and CNJ, and copies will be provided to any party that indicates that it has executed the undertaking for the Protective Order. Intervenor LLCs ask that the Board accept the document for filing as a proper redaction and as the public version of the shipper statement that the public has been denied access to for an entire year in these proceedings. The LLCs urge the Board to act to end this extended and wholly unjustified delay.

VII. OTHER CITY DISTORTIONS

The City’s Reply distorts the record in other significant respects. In particular, the City accuses Conrail and the Intervenor LLCs of trying to shortcut applicable abandonment law and procedures. The City’s accusation is remarkable in that abandonments, especially of unused railroad lines, are supposed to be expedited and the instant proceeding has been pending for almost seven years.

The City further accuses Intervenor LLCs of engaging in costly, harassing,

and vexatious litigation. In fact, the opposite is true.⁷ Continued and unwarranted delay benefits the City and hurts Intervenor LLCs. The key fact is that the City and their CNJ cohorts have not -- in seven years -- presented any credible evidence that restoration of rail service on the Embankment is in any way feasible or that there is any real need for the resumption of such rail service, either before or now.

To the extent that the City believes some greater public purpose will or can be achieved through its own plans for the right-of-way, it has the ability to exercise eminent domain, which entails the obligation to provide just compensation to the Intervenor LLCs. The litigation before the Board and in other forums consists of nothing more than the City's desire to effectuate a regulatory taking through the Board's process at the expense of the United States as a substitute for the City providing just compensation to the LLCs. Any other claims by the City are simply distractions intended to obstruct, obfuscate, and delay, and thus force Intervenor LLCs into submission, in violation of the Board's rules and expectations.

VIII. CONCLUSION

CNJ and the City have flouted the Board's orders, rather than comply with them, which orders would be unnecessary if the City and CNJ had complied with the Board's standard procedures in the first place. The redacted version of the statement is untimely, and most of the redactions are improper. The assertions of CNJ and the City

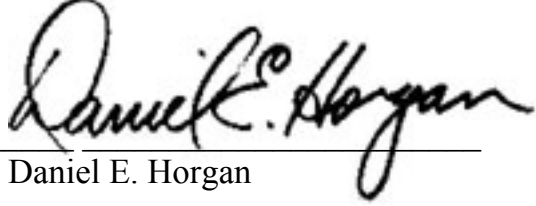
⁷ Among many other things, the litigation complained of by the City has produced the transcript at **Exhibit A** to this submission, fully documenting the City's callous abuse of the Board's OFA and historic review processes, and the mendacity of City Officials and their counsel.

that Intervenor LLCs' Motion to Compel is now moot are empty and designed to divert attention from their non-compliance and inability to meet the requirements for submitting a valid OFA. CNJ's contention that it had no reason to think the November 12 deadline remained applicable is specious. The only fair conclusion is that the City's and CNJ's true purpose is to seek delay for the sake of delay and otherwise to stymie the efforts of Intervenor LLCs to develop their valuable property. Those efforts are not made any more benign by the fact that the City and CNJ have collaborated with each other, rather than assume direct responsibility for each entity's own actions.

The Board has recently recognized the need to address abuse of the OFA procedures by striking material pursuant to 49 C.F.R. § 1104.8. *Pet. of Norfolk S. Ry. Co. to Institute a Rulemaking Proceeding to Address Abuses of Board Processes*, EP 727 (STB served Sept. 23, 2015), at 4; *R.J. Corman R.R. Co./Allentown Lines, Inc --Aban. Exempt.--in Lehigh Cty, PA.*, AB 550 (Sub-No. 3X) (STB served Nov. 25, 2015). Just this month, the Board initiated a new rulemaking to address OFA abuse. *Offers of Financial Assistance*, EP 729 (STB served Dec. 14, 2015). Sadly, the events here demonstrate the need for the Board to guard against such abuse and take appropriate corrective action promptly. Ample grounds exist for the Board to strike material or impose other appropriate sanctions. Most importantly CNJ and the City should not be allowed to benefit from further delay arising from non-compliance with the Board's orders and processes.

Respectfully submitted,

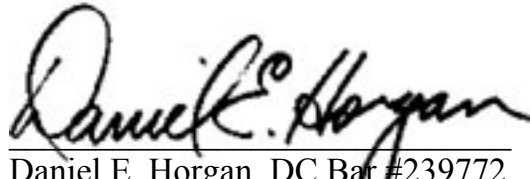
WATERS, McPHERSON, McNEILL, P.C.

BY: 
Daniel E. Horgan

Dated: December 22, 2015

CERTIFICATE OF SERVICE

I, Daniel E. Horgan, hereby certify that I caused a copy of the foregoing to be served by First Class mail upon those on the attached Service List by depositing same with the U.S. Postal Service on December 22, 2015 as to all known and available addresses.



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Exhibit A

To

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In

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And Related Proceedings
AB-55-686-X
AB-290-306-X**

December 21, 2015

STATE OF NEW JERSEY
CITY OF JERSEY CITY
MUNICIPAL COUNCIL

CLOSED CAUCUS

TRANSCRIPT OF
PROCEEDINGS

City of Jersey City Municipal Council
280 Grove Street
Jersey City, New Jersey 07302
September 8, 2014

RECEIVED
2014 SEP 22 P 2:10
CITY CLERK'S OFFICE
JERSEY CITY, N.J.

SCHULMAN, WIEGMANN & ASSOCIATES

CERTIFIED SHORTHAND REPORTERS

216 STELTON ROAD

SUITE C-1

PISCATAWAY, NEW JERSEY 08854

(732) - 752 -- 7800

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3 ROLANDO R. LAVARRO, Council President

4 JOYCE E. WATTERMAN, Councilman-At-Large

5 DANIEL RIVERA, Councilman-At-Large

6 FRANK GAJEWSKI, Councilman Ward A

7 RICHARD BOGGIANO, Councilman Ward C

8 MICHAEL YUN, Councilman Ward D

9 CANDICE OSBORNE, Councilwoman Ward E

10 DIANE F. COLEMAN, Councilwoman Ward F

11

12 ROBERT BYRNE, City Clerk

13 MAYOR FULOP

14 JEREMY FARRELL, ESQ., Corporation

15 Counsel

16 ROBERT KAKOLESKI, Business Administrator

17 DIANA JEFFREY, ESQ., Assistant Corporation.

18 Counsel

19 MICHAEL DOUGHERTY, ESQ., Assistant Corporation.

20 Counsel

21 ROBERT COTTER, Planning

22 JEFFREY WENGER, Planning

23 MARYANN BUCCI-CARTER, Planning

24

25 TRACEY R. SZCZUBELEK, C.C.R.

1 A L S O P R E S E N T :

2 Charles Montange, Esq.

3 John Jack Curley, Esq.

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Confidential

1 MR. BYRNE: Okay. Good afternoon,
 2 Everyone. This is a closed session of the Jersey
 3 City Municipal Council. It is 5:12 p.m. This
 4 closed session was authorized by a resolution just
 5 approved out in the Council chambers by the City
 6 Council by an eight-zero vote, a resolution
 7 authorizing a closed caucus of the Municipal Council
 8 on Monday, September 8th, 2014 at 5 p.m. to discuss
 9 pending litigations in matters within
 10 attorney-client privilege, the Sixth Street
 11 Embankment and Bright and Varick litigation.

12 MR. RAMCHAL: Council President.

13 MR. BYRNE: We have all nine members.

14 MR. RAMCHAL: Now Robert, Council
 15 President, I would like to excuse myself from this
 16 whole session because -- I didn't really miss a
 17 meeting because I can't sit in this because I have a
 18 personal issue with this.

19 MR. LAVARRO: You are excused, but
 20 you did miss a meeting.

21 MR. RAMCHAL: I am going to excuse
 22 myself from this closed session.

23 MR. BYRNE: Okay. We will hang out
 24 together, Chico.

25 MR. RAMCHAL: For personal reason.

1 So I don't want to be in here.

2 MR. BYRNE: I am just going to say

3 you recuse yourself. Okay.

4 MR. FARRELL: You can leave your

5 paperwork.

6 MR. BYRNE: Councilperson Boggiano,

7 you are present.

8 MS. COLEMAN: [REDACTED]

9

10 MR. BYRNE: He has a reason.

11 MS. COLEMAN: So do I.

12 MR. FARRELL: [REDACTED]

13

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18 MS. COLEMAN: Okay. I'm going to

19 stay.

20 MR. BYRNE: Councilperson Yun, you're

21 present.

22 MR. YUN: Here.

23 MR. BYRNE: Councilperson Osborne is

24 present, as is Councilperson Coleman, Councilperson

25 Rivera, Councilperson Watterman, Council President.

1 We also have our Business Administrator, Robert
2 Kakoleski. We have special counsel --

3 Why don't you introduce yourself,
4 Jack, to everybody.

5 MR. CURLEY: John Jack Curley,
6 representing the City on the embankment State Court
7 cases.

8 MR. FARRELL: You are correct; he
9 goes by Jack.

10 MR. BYRNE: I know that.
11 Charles Montange, M-o-n-t-a-n-g?

12 MR. MONTANGE: E.

13 MR. BYRNE: E.

14 MR. MONTANGE: Yeah, Montange.

15 MR. BYRNE: And we have, for staff,
16 Mr. Robert Cotter, Diana Jeffrey and Mike Dougherty.

17 D-o-u-g-h-e-r-t-y, correct?

18 MR. DOUGHERTY: Correct.

19 MR. BYRNE: Thank you. Okay. If you
20 need me, holler or call me.

21 (Whereupon, Robert Byrne and
22 Councilman Ramchal leave the closed
23 caucus.)

24 MR. FARRELL: All right, guys, before
25 we start I just want to explain -- I wanted to

1 explain a few things, as this is our first executive
2 session.

3 The first thing is that there will be
4 minutes taken at this meeting and that at some later
5 date, when the context or the discussion that takes
6 place here today is no longer deemed to be within
7 the attorney-client privilege, the minutes will be
8 made public.

9 All the rules that govern a normal
10 meeting of this body still govern our Council
11 President will run the meeting. And I do encourage
12 you to ask any questions you have but to remember
13 that whatever is said here will eventually become
14 public. So all the rules of decorum and respect
15 should still apply.

16 I also want to make clear to this
17 body that we're not taking a vote on anything today;
18 but, rather, this session is for informational
19 purposes and that any actual actions will be taken
20 at the regular meeting on Wednesday.

21 MS. COLEMAN: Regarding both matters?

22 MR. FARRELL: Regarding both
23 matters - regarding this matter. We are not
24 actually voting on anything on Bright and Varick.

25 And with that being said I want to

1 introduce you guys to Charles Montange, who has
2 flown in for this meeting. Charles will be
3 discussing with us the posture of the case right now
4 and our options as to how to best pursue the relief
5 sought.

6 Yes.

7 MR. BOGGIANO: What law firm is he
8 from?

9 MR. FARRELL: Charles Montange is
10 from his own law firm.

11 MR. MONTANGE: Law offices of.

12 MR. FARRELL: Charles Montange. He
13 is a solo.

14 MR. BOGGIANO: And you are from?

15 MR. CURLEY: John J. Curley, LLC on
16 Harborside Financial Center.

17 MR. FARRELL: Jack Curley is our
18 local counsel. Charles Montange is our special
19 counsel representing in railway law.

20 MR. LAVARRO: Resulting in what?

21 MR. FARRELL: Railway law.

22 MS. OSBORNE: Just so we know, we
23 share this attorney with the Embankment Preservation
24 Coalition.

25 MR. MONTANGE: And Conservancy.

1 MR. FARRELL: With that, Charles, go
2 ahead.

3 MR. MONTANGE: Again, I am Charles
4 Montange. I have actually been representing the
5 City since 2006 in this matter. This is not the
6 first time I have been in the room; however, for
7 many of you, this is the first time you have seen or
8 heard me, so I will try to start at the very
9 beginning and try to go very quickly. And if there
10 are questions, feel free.

11 I will try to get to the heart of
12 things. They have asked me to discuss the character
13 of the things and why we are considering a
14 particular ordinance, which is a recommendation that
15 I am making for the next steps in this case.

16 First of all, I do railroad law
17 before the Service Transportation Board. Although I
18 am located in Seattle, which is 3,000 and 2,000
19 miles from you, I do this stuff across the country
20 for cities and county governments and groups that
21 are interested in main -- keeping a railroad
22 corridor intact, usually for light rail or trail but
23 sometimes even for actual freight rail or passenger
24 services. And I represent other local -- usually
25 smaller governments and lot of nonprofit groups.

1 In this particular matter I was
2 retained by the City, along with Rails To Trails
3 Conservancy Embankment Coalition. You guys are
4 getting a reduced rate as part of that deal.

5 The whole matter starts in -- well,
6 really starts last -- well, over a century ago. The
7 Harsimus branch, which is called the Sixth Street
8 Embankment, was the main line for freight for
9 Pennsylvania Railroad to get product from the middle
10 West down to the East Coast, into the harbor for
11 international trade. This line was -- ultimately
12 ended up in the hands of Penn Central, and there was
13 bankruptcy. And under a reorganization, which
14 formed ConRail, the property was transferred to
15 ConRail as a line of railroad.

16 MS. COLEMAN: As what?

17 MR. MONTANGE: A line of railroad.

18 MS. COLEMAN: Okay.

19 MR. MONTANGE: When I start to use
20 this stuff, realize there is going to be jargon; and
21 it's going to have legal significance beyond what a
22 normal lawyer is going to call for.

23 So it's a line of railroad. And what
24 happened was ConRail in the late 1960 -- 1990's
25 ceased all use of it, tore out the bridges or

1 suffered them to be torn out, took out the track,
2 took out the rail structure and began to look for a
3 market to sell it for non-rail purposes, all without
4 any abandonment authorization.

5 Any line of railroad that the United
6 States -- anything that's a line of railroad in the
7 United States has to receive exit permission --
8 that's a license from the Service Transportation
9 Board -- before it's dismantled and sold off. If it
10 is not done in accordance with law, Federal law,
11 then the sale is unlawful or the action of doing the
12 sale and the tearing out of the material is
13 unlawful. And one can seek to have the railroad put
14 back together again.

15 So in 2005 this property -- by 2005
16 the City was interested in acquiring this property
17 for alternative public use, historic preservation,
18 park trail, open space; and there was some glimmer
19 maybe for light rail. And it was viewed by the
20 Planning Department, I think, as an underused
21 transportation corridor, the last one into Downtown,
22 maybe prudent to keep it intact for future use.
23 That's where things stood in 2005.

24 The Council at that point -- 2004, I
25 think, even started to document an ordinance of

1 imminent domain against this line, so you take it
2 under State law. If you look at the title practice
3 manual, as the gentleman on my right did, it says if
4 you are going to acquire ConRail property, you must
5 receive -- you must ask the railroad first for proof
6 of abandonment at the Service Transportation Board
7 or proof that no abandonment authorization is
8 required.

9 He made an inquiry along those lines
10 to ConRail and got a less than affirmative response.
11 They essentially admitted no abandonment
12 authorization, and they asserted that they
13 designated the line to be a spur.

14 MS. COLEMAN: They did what?

15 MR. MONTANGE: They designated the
16 line to be a spur. They classified it as a spur.
17 That has a technical meaning in railroad law. It
18 means you don't have to have an abandonment
19 authorization. However, it's also the law that you
20 cannot just claim the line of railroad as a spur and
21 get out of it. It's like saying, "I don't have to
22 have a driver's license because I don't have to have
23 a driver's license." They can't just excuse
24 themselves from compliance by relabeling the thing.
25 Once it's a line, it's a line. They can't alter its

1 status. It can be unused. They can even try to
2 dismantle it. But it's still a line.

3 So the manner -- while all this was
4 going on, at the same time they were kind of
5 postponing things with Mr. Curley and holding him
6 off. They sold the line to SLH Properties, and in
7 particular, eight LLC's in common control of
8 Mr. Steve Hyman?

9 At that point --

10 MS. COLEMAN: Is that mic working?

11 MR. FARRELL: These mics don't
12 amplify; they just record.

13 MR. MONTANGE: Okay. Can you hear me
14 okay?

15 MS. COLEMAN: When you get down to
16 the ending of your --

17 MR. MONTANGE: I am tapering off. I
18 will do my best. There is an air condition --

19 MR. RIVERA: Which property? You
20 said they sold it to what?

21 MR. MONTANGE: SLH Property -- eight
22 LLC's, limited liability corporations, owned by --
23 controlled by Mr. Steve Hyman.

24 MR. BOGGIANO: Isn't it true that the
25 City decided not to purchase this because the cost

1 of the railroad was too much money?

2 MR. FARRELL: No. And let's hold off
3 on the questions because there is a lot of
4 background to get through and it's going to take
5 some time.

6 MR. MONTANGE: Yeah, you can -- maybe
7 the best way is do that and hold off your questions
8 at the end. I will try to answer any questions you
9 have, at least give my best estimate of the answer.

10 So we get the eight LAC's own it.
11 Negotiations went on at the time because the City
12 was interested in acquiring it. They authorized
13 eminent domain. Nothing happened. And finally
14 Mr. Hyman's companies began to take out stanchions
15 adjoining the embankment. And I think they were
16 applying for demo permits at the same time. And the
17 City decided it would have to pursue relief at the
18 Federal level.

19 And the Federal action -- I called up
20 the Service Transportation Board December 2005. And
21 honestly, Gang, they said they have been receiving
22 lots of cards and letters on this saying -- and they
23 were waiting for somebody to petition them for
24 relief. And they were the ones to first mention the
25 words "OPA" to me. They expected someone would try

1 to do that. And I will get into that in a moment.

2 But suffice -- in January 2006 we
3 filed Rail -- City of Jersey City, Rails To Trails
4 Conservancy Embankment Coalition filed a motion for
5 declaratory order of Transportation Board for
6 determination this was a line of railroad. We won.
7 In 2007 -- took a long time for STB to get its order
8 out because they have no time deadlines in most
9 proceedings. In 2007 they got an order out saying
10 it was a line of railroad at one point.

11 The LLC's, told by ConRail, took an
12 appeal to the D.C. Circuit. And they argued for the
13 first time that the only tribunal that can determine
14 whether this was a line of railroad was a U.S.
15 District Court in the District of Columbia. The
16 D.C. Circuit case of first impressions said, yeah,
17 you don't have to go to this U.S. District Court.

18 This sent us in a round of
19 litigation, which, as of February 2014, we won.
20 This is a line of railroad. It just clearly is
21 because it was the Penn Central -- Pennsylvania,
22 rather, Railroad line of freight to the East Coast.
23 There was no doubt about what it was. And Mr.
24 Hyman's companies even stipulated that there was a
25 line of railroad by that time and asserted -- I

1 don't know whether -- well, they have asserted in
2 pleadings filed in U.S. District Court ConRail
3 fraudulently misrepresented to them it was not a
4 line of railroad, but they say now clearly was a
5 line of railroad. Anyway, that's what they said in
6 court and upheld the appeals of court.

7 It's back to Transportation Board
8 now, where we should have been much earlier. But we
9 got chased around by ConRail, and the LLC's caused a
10 lot of litigation and turmoil. We are finally back
11 to where we should have been in 2006 -- where we
12 should have been before the sale was made.

13 MS. COLEMAN: Shouldn't have sold in
14 the first place.

15 MR. MONTANGE: No, shouldn't have
16 sold it in the first place. It was unlawful.
17 That's what the STB has said in orders relating to
18 things like this. The sale was unlawful.

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23 -- I have taken you through sort of the
24 history of where we're at to now.

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MS. OSBORNE: Just -- sorry, just to

1 make sure I am understanding everything you say, so
2 this Transportation Board said the sale was never
3 legal because they didn't do this abandonment; and
4 that was basically upheld through the U.S. Court of
5 Appeals?

6 MR. MONTANGE: Yeah, it's a line of
7 railroad now. We won; you were right.

8 MR. FARRELL: So our options going
9 forward are?

10 MR. MONTANGE: Yeah, the options
11 going forward -- let me, before -- I have talked
12 about the Federal litigation. And I should make
13 sure you guys are aware of the whole context first.
14 And then I will give you the options and why the
15 options become very important to you because that
16 helps set this up.

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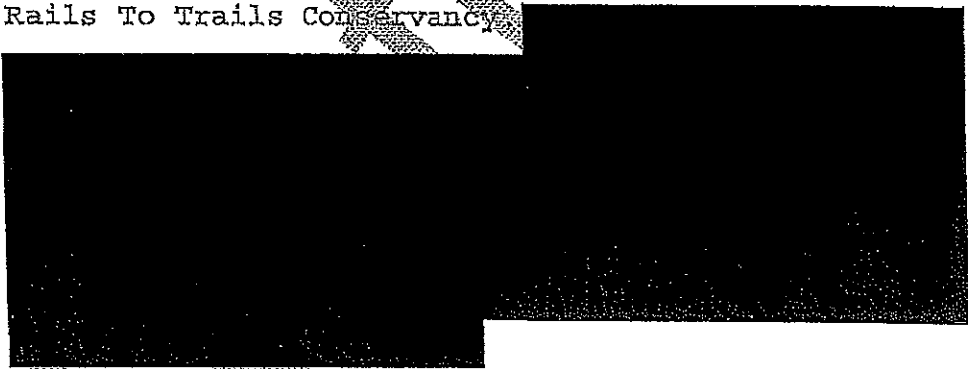
the LLC's,
sometimes joined by ConRail, were filing, I recall
from my vantage point, waves of State Court and
administrative tribunal litigation, perceived waves
against the City appealing this designation of the

1 Harsimus branch, appealing the refusal to grant demo
2 permits. Finally a Federal Civil Rights --

3 MR. FARRELL: Closed session, Sue.
4 This is a closed session.

5 MR. MONTANGE: Finally a Federal
6 Civil Rights action against the City alleging an
7 unconstitutional -- basically an unconstitutional
8 deprivation of property rights and threatening
9 inverse condemnation suit against the City for an
10 alleged taking of the property.

11 And there is additional suits that
12 have been filed, including suits against individual
13 officers of City Government. And they even filed a
14 suit against me at one point and general counsel of
15 Rails To Trails Conservancy.



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21 At this point I think I can safely
22 say essentially all of the State Court proceedings
23 have been stayed pending a resolution of the Federal
24 case. So we finally got all the State stuff held in
25 abeyance pending an outcome of the Federal level.

1 It's now back at the Service
2 Transportation Board finally, as of roughly
3 February. And then with the exhaustion -- so now
4 the STB has to consider relief. And they are
5 restarting an abandonment proceeding for ConRail.
6 So our -- what we ask at this point becomes really
7 germane.

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MS. COLEMAN: That's what I'm waiting
14 for.

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MR. MONTANGE:

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MS. COLEMAN:

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MR. MONTANGE:

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MS. COLEMAN:

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[REDACTED]

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MR. MONTANGE: Yes.

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MS. COLEMAN:

[REDACTED]

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[REDACTED]

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[REDACTED]

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MR. MONTANGE: Yeah.

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MS. COLEMAN:

[REDACTED]

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[REDACTED]

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MR. MONTANGE:

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[REDACTED]

MR. FARRELL: I don't want to get too bogged down with this because we have a lot to get through and a lot of questions that are going to be coming.

MR. MONTANGE:

[REDACTED]

[REDACTED]

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MS. COLEMAN:

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MR. MONTANGE:

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[REDACTED]

MR. FARRELL: Can we just add to the
record Mayor Fulop has joined the meeting.

MR. MONTANGE: Should I start at the

1 beginning?

2 MR. FARRELL: No.

3 MR. FULOP: I haven't seen you in a
4 long time.

5 MR. MONTANGE: Anyway, that leads up
6 to the OFA. The OFA stands for offer of financial
7 assistance.

8 [REDACTED]
9 [REDACTED] That's where OFA comes
10 from.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
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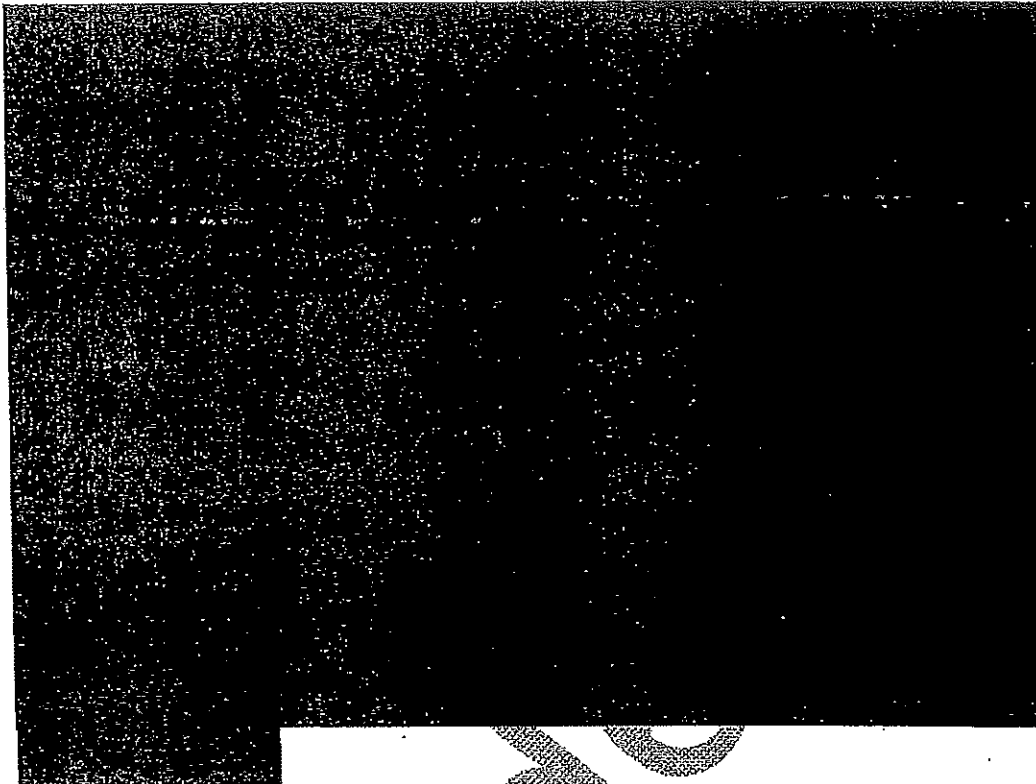
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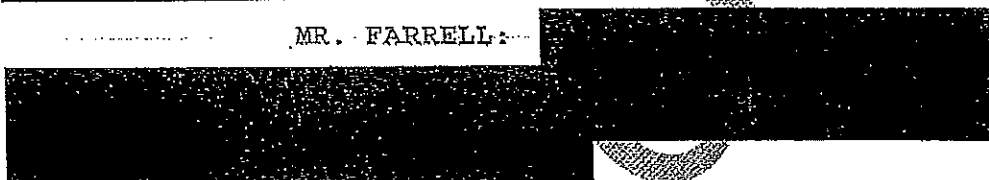
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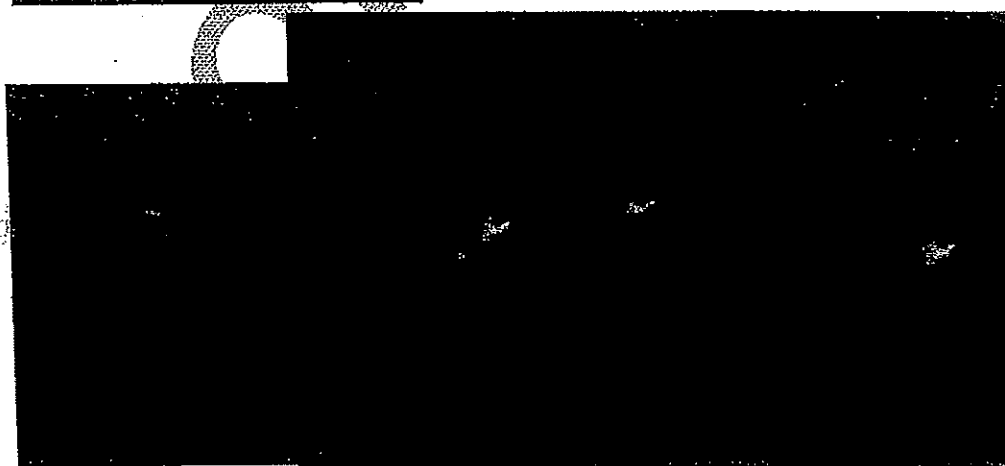
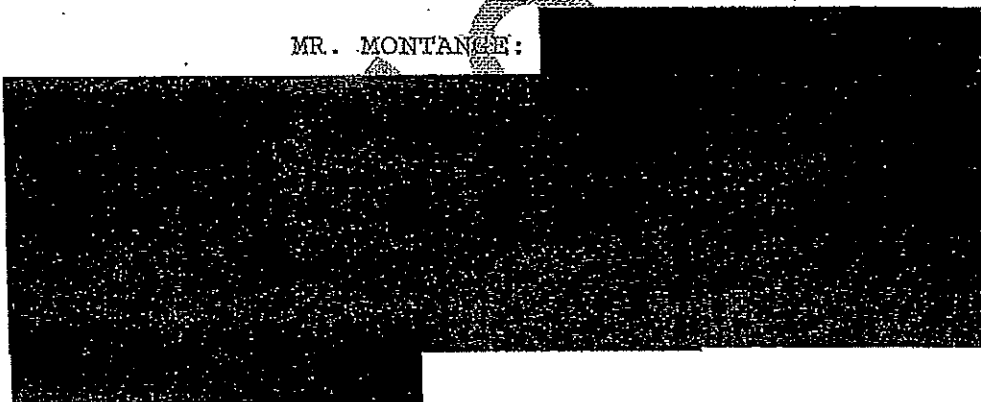
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MR. FARRELL:



MR. MONTAGNE:



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[REDACTED]

MR. FARRELL: Charles, with all that being said, let's open it up to the Council for questions.

MR. BOGGIANO: I would like to ask first how much does it cost us, the taxpayers, since 2006?

MR. FARRELL: That's a really hard number for us to put together. I will try to put something together for you.

MR. BOGGIANO: I want to ask another question. Who has been paying bills for this group Downtown to fight this?

MR. FARRELL: The litigation is financed primarily through the monies bonded to realize the vision of a open space.

MR. BOGGIANO: You are telling me no City money has been used?

MR. FULOP: No, that's City money. This has gone through four -- three mayors, just to put it in -- and three City Councils, Cunningham, Harvey Smith, Jerry Healy. And everybody has kind of found it prudent to move forward, despite these same questions that have come up.

We were very close to a settlement

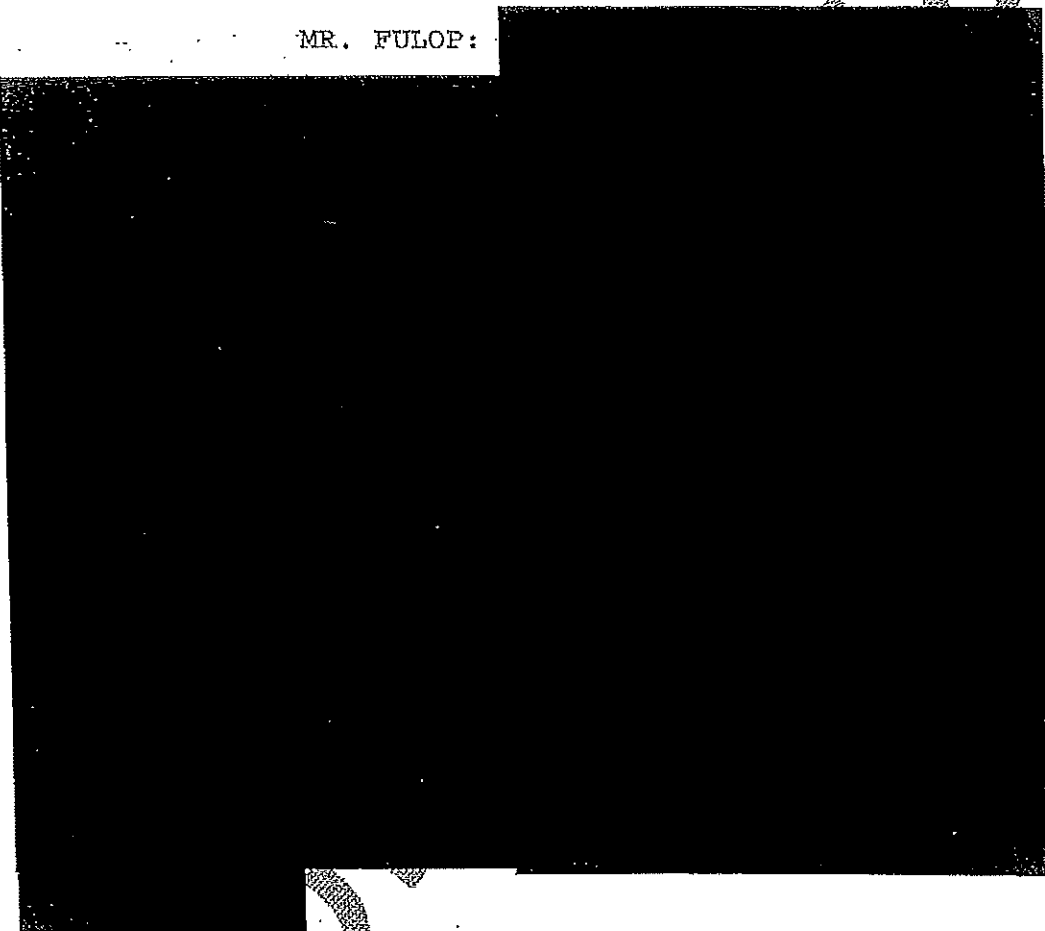
1 three years ago --

2 MR. MONTANGE: Yeah, several times.

3 MR. FULOP: -- but -- we bonded --
4 was it two years ago or three years ago?

5 MR. MONTANGE: Two years ago.

6 MR. FULOP:



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And what, I have

indicated, at least, is saying that whereas two

years ago we were ready to -- we put \$7 million that

we bonded for that we've said -- we have won the

1 last two court cases, right? [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 MR. FARRELL: To litigate

7 MR. FULOP: -- in order to

8 litigation.

9 MR. BOGGIANO: You know --

10 MR. LAVARRO: Counselperson, Coleman.

11 MR. BOGGIANO: I'm not finished with
12 questions yet.

13 MR. LAVARRO: In fairness, she was
14 trying to get her questions in.

15 MS. COLEMAN: I raised my hand, and
16 you started talking. I follow the rules. Raise
17 your hand. But you finish.

18 MR. BOGGIANO: I look at this this
19 way: You are picking this up. It's going to cost
20 us a fortune to maintain. It's contaminated land,
21 and we can't even take care of Pershing Field.
22 Can't take care of Van Weganen Park. Can't take
23 care of all the other parks in the City. Now we are
24 going to spend all this money on this entities? I
25 think it's ridiculous. It's been going on for

1 years.

2 I was also told by couple Council
3 people that when the opportunity came back in 2006,
4 the City Council did not want to buy it because it
5 was too much money at that time. Now, you know --

6 MR. FULOP: I would just say that if
7 that's the logic, that we can't take care of
8 something, so to take that -- because you believe
9 that we can't take care of something we should just
10 give a gift to Steve Hyman, well, we are gifting a
11 \$3 million property he has acquired with a value of
12 50 to --

13 MR. BOGGIANO: I would like to --

14 MR. LAVARRO: Which we are entitled
15 to. It's our property.

16 MR. FULOP: So you're giving him a
17 gift.

18 MR. BOGGIANO: It's worth nothing.

19 MR. FULOP: What are you saying; we
20 are basically giving Hyman --

21 MR. BOGGIANO: I don't want to give
22 Hyman anything. I don't care who it is.

23 MR. FULOP: Well, the developer, you
24 know him. He says you know him.

25 MR. BOGGIANO: What, are you going to

1 put the bridges back, rebuild them? It's going to
2 be a horror show. We can't take care of what we
3 have right now. I can't see getting involved
4 spending money on anything else right now.

5 MR. FARRELL: Guys, I think this
6 conversation is valuable, but we only have a limited
7 amount of time with our attorney, so I would love to
8 have --

9 MR. BOGGIANO: Are you part of --
10 were you from Newark Avenue?

11 MR. CURLEY: Yes.

12 MR. BOGGIANO: Jack Curley of Leviss
13 & Leviss?

14 MR. CURLEY: Yes.

15 MR. LAVARRO: Councilperson Coleman.

16 MS. COLEMAN: My question is: What
17 is the recommendation here? In other words, do
18 we -- the recommendation is for us to take the
19 property and then sell it or take the property and
20 develop it or -- what is the recommendation.

21 MR. FULOP: Can I -- the original
22 plan was -- with the settlement was that we would
23 take the five properties, okay, and that the first
24 one on the settlement would go to the developer.
25 And to think about the value, we would have zoned

1 that one for four 500 units. From his standpoint,
2 that one parcel would have compensated enough for
3 everything. That's how valuable you are talking
4 about the land is what you're talking about here.

5 The Embankment Coalition out there
6 was comfortable with that proposal. They were
7 willing at the time to say, You could take that one
8 piece of property; the other five will be open.

9 So, look, I'm just -- I would defer
10 to Jeremy and Chaz on -- I don't know how I feel
11 about the freight and all that and all the legal
12 stuff; but to walk away from literally 12 years
13 of -- of work, I mean, we are so far down the road
14 at this point and winning now, I mean, what choice
15 do we have. You know?

16 MR. FARRELL: I would add to that
17 answer that the idea is still to create some sort of
18 open space and to create a preserved line, which
19 could be for use for trails all the way out,
20 hopefully out to green space.

21 But what the Mayor highlights, which
22 is important, is a lot of money is going to be
23 involved in making that happen. There is also
24 embedded in this property value. So we could
25 preserve a line and still bring some of the value

1 out of one of these blocks to resell to a developer
2 to pay for all the rest of it, as long as we
3 maintain an easement so that the trails continue
4 through that property.

5 So there is options here, but the
6 idea is still to preserve an open space along that
7 line.

8 MR. FULOP: Bob Cotter came in front
9 of the Council probably four years ago and made a
10 very, very compelling argument about the
11 right-of-way and that these don't surface every so
12 often. So even if you want to believe what Rich
13 says, that we don't take care of our parks, well,
14 even if you want to believe what he says -- and you
15 said -- wait a second. I want to figure --

16 MR. BOGGIANO: Just take a look.

17 MR. FULOP: Let's say that's true.
18 Nobody is it advocating today to put a dollar into
19 building the park today okay. Like -- but it would
20 be foolish not to preserve the option, right? You
21 don't have to do anything. Nobody is going up there
22 cleaning today, cutting the weeds today. Nobody is
23 doing anything. So you could acquire the property
24 valued 50 to a hundred million dollars, and you are
25 leaving the City with an asset, when all of us are

1 one in four, eight, 12 years. Maybe another Council
2 could say, "We have the money today." But if you
3 don't make the decision today to actually try and
4 protect that, you're giving a gift to Steve Hyman, a
5 50 to a hundred million dollar property for
6 \$3 million.

7 MR. FARRELL: Candice has a question.

8 MR. LAVARRO: I'm sorry, Candice.

9 MS. OSBORNE: I completely agree with
10 you. We are a City. We are growing. We are not
11 getting more space. This is it. And to -- to give
12 it up would be foolish. And I'm sure when Roosevelt
13 said we need to have national park space and need to
14 preserve areas like had been happening all across
15 the United States, I am sure there are people that
16 said, "We don't have the money for it." But it is a
17 once-in-a-lifetime chance. I don't think we should
18 give it away.

19 MR. FULOP: There is \$3 million still
20 earmarked that Senator Menendez, then Congressman
21 Menendez, has sitting there for us to draw on
22 when -- when we acquire it. That is their -- you
23 would be walking away from that, as well. That is
24 earmarked money in Washington for this property.

25 MR. FARRELL: There is actually also

1 Green Acres money that is about to expire but is
2 currently still available for us for this project.

3 MR. LAVARRO: Councilperson Coleman,
4 then Yun.

5 MS. COLEMAN: My last question was I
6 heard it in the -- that at some point in time the
7 settlement was going to pay a certain amount.
8 ConRail was going to pay a certain amount and that
9 amount was to represent making the -- the owner
10 whole. Is that correct? But they changed that now
11 since that time?

12 MR. FARRELL: Yes.

13 MR. MONTANGE: [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 MS. COLEMAN: All of a sudden they --

23 MR. MONTANGE: [REDACTED]

24 MR. FARRELL: I want to bring it in

25 [REDACTED]

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MS. OSBORNE:

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MS. WATTERMEN:

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MR. FARRELL:

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12 And that -- there are real costs
13 associated with doing all this. And I think it's
14 important as a body you understand the scope that
15 we're taking on and weighs of the pros and cons.
16 That's why this discussion is valuable, because
17 while there is that cost, we have to also remember
18 the benefits of, one, preserving of the green space,
19 two, preserving of a line into a major urban
20 environment, which, if we do give up, we'll never
21 get back because to build this line they had to
22 condemn people's homes and tear down homes. You
23 know, so once we -- once we give up the line, homes
24 are going to go back there; and no one is going to
25 want to do that again, tear down all those homes to

1 create a line.

2 And then the final thing you have to
3 remember is that this is very valuable land. And so
4 if we had to buy this land today to even make a park
5 or to make a school or do anything, we could never
6 afford to buy it today because of the value of that
7 land. So this is a once in a -- in a City's life's
8 opportunity to preserve something pretty special.

9 Those are the balances that we have
10 to decide on Wednesday. And it's for you to make
11 your choice. But I wanted to put it in the right
12 context for you.

13 MR. LAVARRO: Councilman Yun.

14 MR. YUN: First, thank you for your
15 good job, really.

16 MR. MONTANCE: I wish it had happened
17 sooner.

18 MR. YUN: Thank you for good job.
19 But now my concern is that this is a great deal as a
20 business -- you know, yes, we going to have some
21 land; but my concern is that City of Jersey City
22 have put effort to provide rail service at least two
23 years to do that. What kind of -- we talking
24 about dollar amount, what kind of cost? That is the
25 key.

1 MR. MONTANGE: It's a fair question,
2 and I can only give you some preliminary numbers.
3 We're working on that. And, in fact, there will be
4 a meeting tomorrow to get a little bit better feel
5 for it. And I have a recommendation for you on
6 this. I can give you some actual concrete numbers.
7 If you were to put a transload in on the National
8 Docks line -- that would be right underneath the
9 freeway, essentially back behind those ball fields,
10 removed away from people -- it would cost 175,000
11 roughly. That is the estimate I have gotten to put
12 the switch in.

13 It's about \$125 per linear foot for
14 good quality track. So you figure roughly \$300,000
15 when we total up the track and the switch, just to
16 put that amount back, \$300,000. Engineering and
17 overhead, maybe another 50. And if you wanted to
18 make a fancier facility, then you add some more to
19 that. But you're around 300 to 400,000 minimum for
20 a five-car transload, where they can park five cars
21 out running in there, take it out on the Harsimus
22 branch right there at National Docks, fairly
23 removed.

24 MR. FULOP: I have a question.

25 MR. MONTANGE: Yeah.

1 MR. FULOP: The OFA would have a
2 freight line coming down the embankment basically,
3 is that what --

4 MR. MONTANGE: No, no. The advantage
5 of the embankment property is it crosses over what's
6 called National Docks. So it intersects National
7 Docks at grade level. There is an aerial structure
8 that went up, and that goes up to CP Waldo. But the
9 cheapest way to get a functional transload onto
10 the --

11 MR. FULOP: Come into --

12 MR. COTTER: Back of cemetery on
13 Brook Avenue, around the back.

14 MR. FULOP: By the historic cemetery?

15 MR. COTTER: Behind it.

16 MR. KAKOLESKI: By Jewel Electric.

17 MR. MONTANGE: Actually, the old CP
18 Waldo, that is where the trains went in, behind the
19 cemetery up -- up there.

20 MR. FULOP: I see.

21 MR. MONTANGE: Then came down this
22 trestle, then down to the embankment. But
23 underneath the embankment, in a sense, underneath
24 the freeway, back up right against that line, that
25 bluff where the Palisades are, there is a operating

1 line of railroad tucked in there called the National
2 Docks Secondary. That's in-use line of railroad
3 today. And, in fact, ConRail has -- wants to
4 upgrade service on it. So it's not an abandonment
5 candidate by any means.

6 (Whereupon, Mr. Byrne enters the
7 closed caucus.)

8 MR. BYRNE: I know we are still in a
9 closed session. It's filling up rather well
10 outside. I just wanted to let everyone know it's
11 about five after 6.

12 MR. FARRELL: Understood.

13 (Whereupon, Mr. Byrne leaves the
14 closed caucus.)

15 MR. FARRELL: I mean, this is the
16 more important issue for us to resolve today. So
17 are there any other really important questions for
18 counsel on this?

19 MR. BOGGIANO: You said 300,000 to
20 run a rail line?

21 MR. FARRELL: To build the transload.

22 MR. MONTANGE: Build a transload, not
23 run a rail line. Build a transload under the
24 freeway.

25 MR. FARRELL: Those are capital

1 costs.

2 MR. MONTANGE: There may be other
3 places in the City that are under the control of the
4 City that you can also locate a transload. [REDACTED]

5 [REDACTED]
6 [REDACTED]

7 [REDACTED]
8 [REDACTED]

9 [REDACTED]
10 [REDACTED]

11 [REDACTED]
12 [REDACTED]

13 [REDACTED]
14 [REDACTED]

15 MR. LAVARRO: Candice.

16 MS. OSBORNE: Just to -- I understand
17 what you're asking, but I also to a degree feel like
18 it's not really [REDACTED]

19 [REDACTED]
20 [REDACTED]

21 [REDACTED]
22 [REDACTED]

23 [REDACTED]

24 MR. FARRELL: So to be clear, what
25 the legislation is is to authorize the application

1 to STB. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8

MS. WATTERMAN: But we have to be
9 ready, though.

10

MR. FARRELL: You have to be ready.

11

MR. MONTANGE: [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15

MS. GEBORNE: Gotcha.

16

MR. MONTANGE: [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21

MR. FARRELL: Anything else of real
22 importance? Because I don't want to hold up the
23 caucus meeting and we have more issue to discuss.
24 Anything else?

25

Mayor? Anything else?

1 President?

2 MR. LAVARRO: Let's move along.

3 MR. FARRELL: Thank you,

4 Mr. Montange.

5 We are going to go right into the
6 next topic because we only have about five minutes
7 to do it.

8 MS. COLEMAN: Can I just say we are
9 voting for the authorization to submit the
10 application --

11 MR. FARRELL: That's right.

12 MS. COLEMAN: -- is that what we're
13 voting for?

14 MR. FULOR: This is a resolution, not an
15 ordinance.

16 MR. FARRELL: It's an ordinance
17 because there is an expense associated with it.

18 Mike, if you can just ask Robert
19 Byrne to come back in.

20 MR. MONTANGE: And if you want to get
21 in touch with me, these guys know my telephone
22 number.

23 MS. COLEMAN: Can Chico come back in
24 now?

25 MR. FARRELL: Yeah, he can come back

1 in. He is with Robert.

2 So this one we are going to move as
3 quickly as possible. But I want to remind the
4 Council that we initiated this lawsuit and we just
5 got the actual written opinion from the judge today,
6 so we're still absorbing.

7 (Whereupon, Mr. Byrne and Councilman
8 Ramchal enter the closed caucus.)

9 MR. BYRNE: Go right into Bright and
10 Varick. Okay. We are now doing -- we are now
11 having a closed caucus about Bright and Varick.

12 Good afternoon, Mayor.

13 MR. FULOP: Hey.

14 MR. BYRNE: We have Councilman
15 Ramchal back in the room. At 6:07.

16 MR. FARRELL: I would add --

17 MR. BYRNE: We have Mayor Fulop. Did
18 we have anyone besides our special guests before
19 during my absence?

20 MR. FARRELL: Mayor Fulop joined, and
21 I put it on the record.

22 MR. BYRNE: Besides Mr. Fulop?

23 MR. FARRELL: No. Now we also have
24 the planners in the room now for this discussion.

25 MR. BYRNE: Sure.

1 MR. FARRELL: Okay.

2 MR. LAVARRO: Jeff Wenger and Maryann
3 Bucci-Carter.

4 MS. JEFFREY: I will try to make this
5 quick, as quickly as I can.

6 In 2012 there is a very small parcel
7 of land on the corner of Bright and Varick in Van
8 Vorst that was being used. It was an empty lot.
9 It's still an empty lot. It was being used by the
10 school. It was -- the City sold the property to the
11 agency, the JCRA. The JCRA then designated a
12 developer for that site. And afterwards there were
13 proposed development to the redevelopment plan.

14 Prior to the proposed changes to the
15 redevelopment plan the zoning for that area was R-1,
16 which restricted -- it's a historic area. But this
17 was a tiny little parcel of land that was sort of in
18 an island in the middle of a historic district. But
19 the zoning was restricted to one and two-family
20 homes and some commercial uses.

21 The developer had a plan to build
22 what was called a "micro-unit" project. He was
23 going to build a five-story building with 85 to 87
24 units, about 350 square feet, small, almost like
25 efficiency apartments. And his vision was that

1 recently graduated students would come there and
2 would purchase these units or rent them and live
3 there in lieu of renting two and three-bedroom
4 apartments other places in the City.

5 The changes to the redevelopment plan
6 changed -- there is some controversy about whether
7 or not -- what the zoning was after these changes to
8 the redevelopment plan, but most agree that it
9 was -- many people didn't understand that the
10 changes to the redevelopment plan would have
11 resulted in increase in density that would have
12 permitted a project of this size or of this nature.

13 In August of 2013 the developer
14 submitted his site plan. And at that point the
15 residents of Van Vorst realized that this project
16 was being proposed, and they became very upset.
17 Their concern is that a micro-unit project
18 could essentially give way and turn into an SRO with
19 transients, that it would tend to compromise or
20 jeopardize the integrity of the neighborhood. That
21 is their position.

22 A set of events occurred in which the
23 application was going through the planning process,
24 and there is a question at -- the law says, NJSA
25 40:55-46A and 10- -- .3 -- I am saying this for the

1 record -- stipulate that once an application is
2 deemed complete it has to be -- the Planning Board
3 has to make a decision on that application within a
4 certain period of time.

5 When, if ever, this application was
6 deemed complete was at issue. What was also at
7 issue is what was the underlying density for this
8 area. The City argued that the density in the
9 redevelopment plan was ambiguous and it was not
10 possible to tell what the density was. And in
11 January of 2000 -- 2014 Anthony Cruz, in his
12 capacity as the chief zoning officer denied the
13 application, site -- stating that the density was
14 too ambiguous and it needed to go before the Zoning
15 Board for determination whether -- as to what the
16 density was.

17 Meanwhile, the site plan -- there was
18 an e-mail in October from the planners that said the
19 site plan was substantially complete. Not complete
20 but substantially complete.

21 Thereafter, the developer submitted
22 revised architectural plans which changed the
23 address -- it changed the nature of the project. It
24 stripped the project of the amenities. And Planning
25 determined at that point that it required new agent

1 review.

2 There was a hearing that was
3 scheduled for December 17th; but Planning said
4 because there are new architectural plans, we are
5 going to postpone the hearing until March. The
6 developer, instead of waiting to March to have a
7 hearing before the Planning Board, filed action in
8 lieu of prerogative writ.

9 MS. COLEMAN: What?

10 MR. FARRELL: A lawsuit.

11 MS. JEFFREY: Sorry. Lawsuit. It is
12 a lawsuit saying the government is not doing the
13 right thing and we want to force the government to
14 do the right thing. So the lawsuit basically said
15 Cruz had no right to refuse our application on
16 density, the density is clear; and because the
17 Planning Board didn't render a decision in December
18 and didn't hold our site plan is deemed
19 automatically approved.

20 The court -- the long and short of it
21 is the court agreed with the developer and ruled in
22 the developer's favor. The application was deemed
23 automatically approved.

24 [REDACTED]

25 [REDACTED]

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[REDACTED]

[REDACTED]

I am going through this very quickly.

You are nodding so --

MR. FULOP: We lost. Can I say
anecdotaly just two things on this?

MR. FARRELL: Yeah.

MR. FULOP:

[REDACTED]

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[REDACTED]

We spent how much money on this now

MR. FARRELL: The Planning Board
attorney has cost us about 25,000, a little bit
more, to pursue this matter.

[REDACTED]

MR. FULOP: So I -- this is just
anecdotal. Maybe you could --

MR. FARRELL: Tell --

MR. FULOP:

[REDACTED]

MR. FARRELL:

MR. FULOP:

[REDACTED]

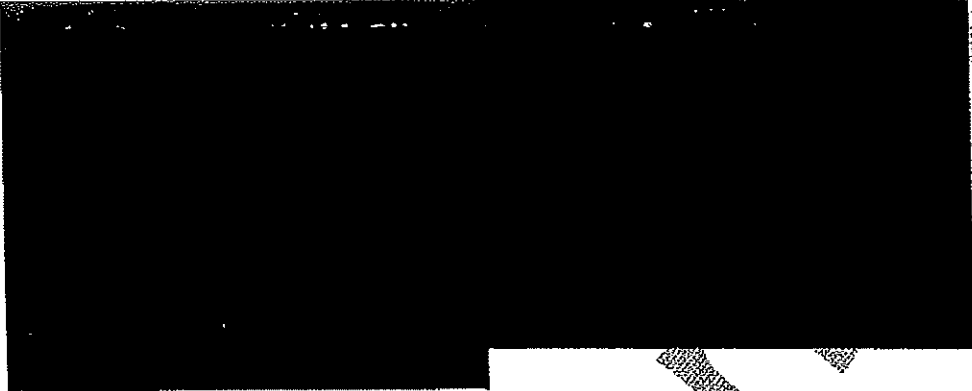
MR. FARRELL: That's correct.

MR. FULOP: But that doesn't change

1 the overall picture.

2 MR. FARRELL: That's right.

3 MR. FULOP: 

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21 MR. FARRELL: 

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MR. LAVARRO: Councilperson Coleman.

MS. COLEMAN: My question is: Can
you -- what do you, Corporate Counsel, recommend?

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[REDACTED]

Are we voting on

something that's --

MR. FARRELL: No, today you are not
voting on anything -- sorry, Wednesday. You are not
voting on anything right now. This is a discussion.
And it was asked for because of the community people
that have been reaching out to these members.

MS. COLEMAN: Right.

MR. FARRELL: And people didn't know
exactly what happened or where we are.

MS. COLEMAN: So what does Corporate
Counsel recommend?

MR. FARRELL:

[REDACTED]

[REDACTED]

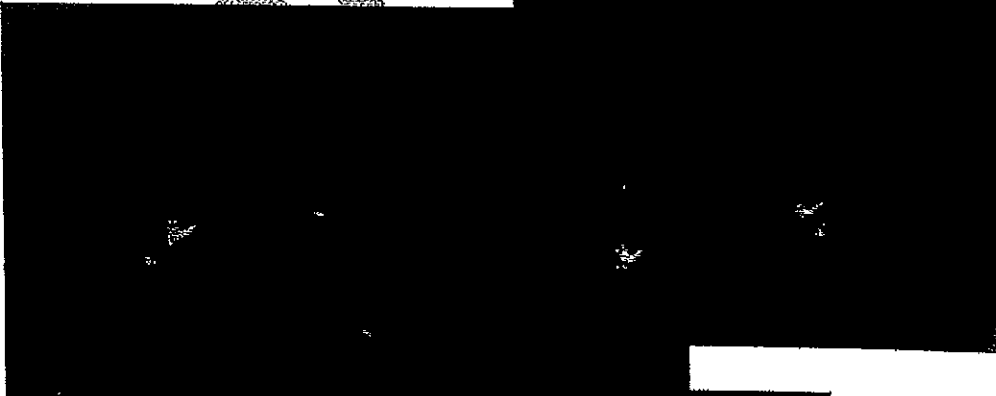


MR. LAVARRO: Councilperson.

MS. COLEMAN: My last question is:

The plans that we saw as a Council and discussion of, Candice and I, we looked at they have a lot of great amenities to go with it. Even though the community didn't like the project because it was micro-units, it had a lot of amenities, like study room, study -- gym and things on the outside. Now, from my understanding, they resubmitted something and now other plans have been approved. So my question is: The approved plans don't include all of those things.

MR. FARRELL:



MS. COLEMAN:

1 MR. FARRELL: [REDACTED]

2 [REDACTED]

3

MS. COLEMAN: okay

4

MR. FARRELL: [REDACTED]

5 [REDACTED]

6 [REDACTED]

7

MS. COLEMAN: [REDACTED]

8 [REDACTED]

9 [REDACTED]

10

MR. FARRELL: In the first instance?

11

MS. COLEMAN: Yeah

12

MR. FARRELL: Understood.

13

MR. LAVARRO: [REDACTED]

14 [REDACTED]

15 [REDACTED]

16

MR. FARRELL: [REDACTED]

17

MR. LAVARRO: [REDACTED]

18

MR. FARRELL: Yes.

19

MR. LAVARRO: -- if it's necessary to

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do that.

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MS. COLEMAN: Thanks, Rolando.

22

MS. OSBORNE: [REDACTED]

23 [REDACTED]

24 [REDACTED]

25

MR. FARRELL: Yeah, I did see that.

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One other point I want you to

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understand about the contract of sale too is the

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JCRA sold the property to the developer but the

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developer hasn't actually paid for it yet. Those

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deeds are being held in escrow. So there is --

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there hasn't been a closing on that sale.

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MS. COLEMAN: What was already done.

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MR. FARRELL:

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MS. WATTERMAN:

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MR. FARRELL:

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Anything else?

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MR. LAVARRO: Council --

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MS. COLEMAN: I didn't hear.

16

MR. LAVARRO: Sorry. Frank.

17

MR. GAGLEWSKI: Just a quick question.

18

What are the restrictions on discussing anything

19

that went on in closed session?

20

MR. FARRELL: That is a great

21

question. So this -- both issues were discussed in

22

closed session. It's being discussed in closed

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session under the attorney-client privilege,

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exception to the Open Public Meetings Act. You, as

25

members of the Board, are part of our what's called

1 "attorney-client group." And so to protect the
2 information that was discussed here you guys have to
3 preserve that. You can't discuss this with anybody
4 outside of this group.

5 At some point in time these minutes
6 will become public, and at that point in time you
7 will be free to discuss them with anybody. If you
8 do get some questions from folks, you can answer
9 their questions; you just can't provide them any
10 information you learned about in this meeting here
11 today.

12 MR. RAMCHAL: Frank, that's why I
13 recused myself.

14 MR. LAVARRO: Which is pretty much
15 nothing.

16 MS. OSBORNE: I am just going to
17 say -- yeah, because I have learned kind of a lot
18 here today that I didn't know.

19 MS. COLEMAN: What did you say?

20 MS. OSBORNE: I learned a lot today
21 that I didn't know. I kind of know what they know
22 until I walked in here, so I'm --

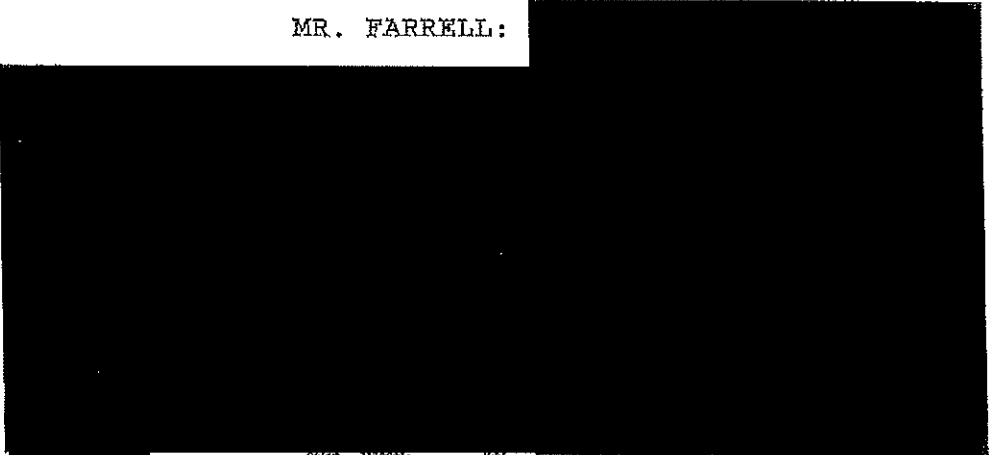
23 MR. FARRELL: It's complicated.

24 MS. OSBORNE: Can't figure out how I
25 should respond other than Jeremy.

1 MR. FARRELL: I know. Councilwoman,
2 I am going to get right to your question; but one
3 point I want to raise is tomorrow -- Wednesday, when
4 we go into Council and consider the OFA application
5 you guys should feel free to make whatever comments
6 you feel you want to make on the record, but you
7 should preserve our attorney-client privilege in
8 this room.

9 MR. RAMCHAL: Right here.

10 MR. FARRELL:



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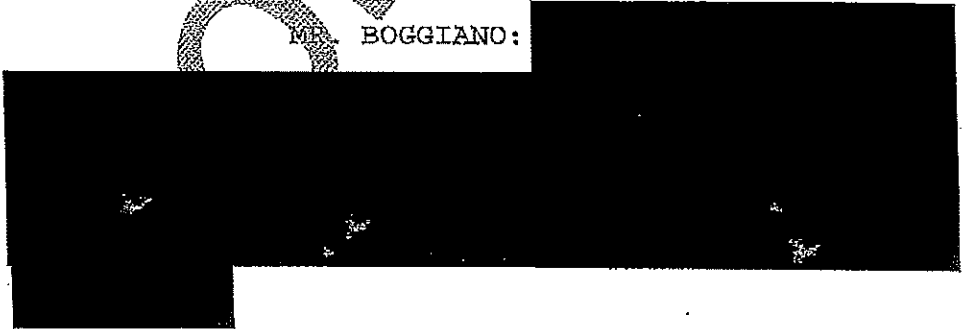
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Okay?

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MR. BOGGIANO:



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MR. FARRELL:



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MS. OSBORNE: This is our attorney.

4

He is on our side. We hired him. It's not like one

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side -- he is on our side.

6

MR. RAMCHAL: Check with you -- come

7

to you or e-mail?

8

MR. FARRELL: Call me on my cell.

9

All right. Guys, we really should

10

get to our caucus. We are half meeting late.

11

MR. LAVARRO: What is our action,

12

Robert?

13

MR. BYRNE: We have a motion to

14

adjourn?

15

MR. RAMCHAL: Motion.

16

MS. COLEMAN: Second.

17

MR. BYRNE: Ramchal, seconded by

18

Councilwoman Coleman. By acclamation, say good

19

night.

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(Whereupon, the proceeding is

21

concluded at 6:25 p.m.)

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1 CERTIFICATE

2
3 I, TRACEY R. SZCZUBELEK, a Certified Court
4 Reporter and Notary Public of the State of New
5 Jersey, do hereby certify that the foregoing is
6 a true and accurate transcript of the
7 stenographic notes as taken by and before me, on
8 the date and place hereinbefore set forth.
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13
14
15
16
17

18 Tracey R. Szczubelek, C.C.R.

19 TRACEY R. SZCZUBELEK, C.C.R.

20 LICENSE NO. XIO1983
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**BEFORE THE SURFACE TRANSPORTATION BOARD
Washington, D.C.**

Supplemental Certificate of Service

of

**MOTION FOR LEAVE AND REPLY TO REPLIES OF CNJ
RAIL CORPORATION AND THE CITY OF JERSEY CITY**

And Related Papers

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**

DANIEL E. HORGAN, DC BAR # 239772
WATERS, McPHERSON, McNEILL, P.C.
300 Lighting Way
Secaucus, New Jersey 07096
Telephone: 201-863-4400
Fax: 201-863-2866
E-mail: dehorgan@lawwmm.com
Counsel for Intervenors

DATED: December 22, 2015

Supplemental Certificate of Service

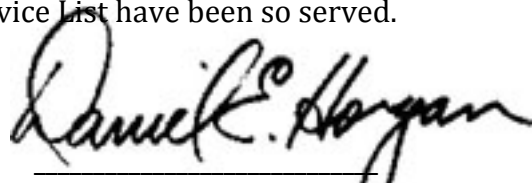
I, Daniel E. Horgan, hereby certify that I caused a copy of the foregoing motion papers in AB-167-1189-X and related matters, and a copy of the cover letter to Cynthia T. Brown, Director of the Office of Administration, dated December 22, 2015 and electronically filed contemporaneously with this motion, on all parties on the current service list for this matter as published on the STB website, including the following individuals, not listed on the original certification of parties served:

Hon. Brian P. Stack
411 Palisade Avenue
Jersey City, NJ 07307

Hon. Carmelo G. Garcia
N.J. General Assembly
80 River Street, 2nd Floor
Hoboken, NJ 07030

James Riffin
P.O. Box 4044
Timonium, MD 21094

The aforesaid service was accomplished by depositing those documents, the motion papers and the letter (without its enclosure which was filed under seal and provided only as provided for in a prior Protective Order issued in this matter), with the U.S. Postal Service on December 22, 2015, First Class Main, postage prepaid. All known and available parties on the current Service List have been so served.

A handwritten signature in black ink, reading "Daniel E. Horgan". The signature is fluid and cursive, with the first name "Daniel" being the most prominent.

Daniel E. Horgan, DC Bar #239772
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Secaucus, New Jersey 07094
Phone: 201-330-7453
Fax: 291-863-2866
E-mail: dehorgan@lawwmm.com
Counsel for Intervenors
Dated: December 22, 2015