

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-1316X

**GNP RLY, INC. – ABANDONMENT EXEMPTION –
IN KING COUNTY, WASHINGTON**

NOTICE OF RECENT DEVELOPMENT

James H.M. Savage, Esq.
22 Rockingham Court
Germantown, MD 20874
(908) 361-7097
jsavagelaw@aim.com

Counsel for GNP Rly, Inc.

Matthew Cohen
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
Tel: 206-624-0900
Email: matthew.cohen@stoel.com

Counsel for City of Woodinville, WA

On March 18, 2022 GNP Rly Inc. (“GNP”) filed a Verified Notice of Exemption in this docket to abandon or railbank a 2.58 mile segment of its rail line in Woodinville, Washington (“the Woodinville Segment”). By decision served April 11, 2022 the Director of the Office of Proceedings (“the Director”) held the proceeding in abeyance to allow GNP to clarify the northerly endpoint of the line and to address a Board concern about whether the abandonment would strand a railbanked right of way south of the Woodinville Segment.¹ GNP and the City of Woodinville promptly addressed the Director’s questions with statements confirming that their intent is to railbank, rather than abandon, the segment, and that the segment ends at MP 26.38, not 26.58.²

On September 14, 2022 the Director issued a decision holding this proceeding in abeyance pending resolution of two state court quiet title actions – one involving the Woodinville Segment and a second quiet title action focused on an adjacent segment of active rail line in Snohomish County.³ The Director explained that a Board decision in another docket requires that GNP’s plans to railbank the Woodinville Segment in King County must await resolution of the Snohomish County state court case. *Id.*

GNP and the City (“Appellants”) appealed to the full Board that part of the Director’s decision that stayed GNP’s exemption proceeding pending resolution of the Snohomish County

¹ *GNP Rly, Inc. – Aban. Exemption – in King County, Wash.*, AB 1316X, slip op. at 1 (STB served Apr. 11, 2022) (“the April 11 Decision”).

² GNP, Supplement to Verified Notice of Exemption (filed Apr. 19, 2022); GNP, Second Supplement to Verified Notice of Exemption (filed May 4, 2022); Verified Statement of Brandon Buchanan In Support of GNP Rly, Inc. Verified Notice of Exemption (filed May 6, 2022).

³ *GNP Rly, Inc. – Aban. Exemption – in King County, Wash.*, AB 1316X, slip op. at 2 (STB served Sept. 14, 2022) (“the September 14 Decision”).

quiet title action.⁴ Appellants pointed out that this docket involves only the Woodinville Segment, that no part of the Woodinville Segment lies in Snohomish County and that the Snohomish state court action has no bearing on GNP's pending exemption proceeding. Snohomish County subsequently filed comments in support of GNP and the City's appeal.⁵ No one filed in opposition to the appeal.

On October 12, 2022 the Washington Supreme Court issued an order denying Eastside Community Rail's petition for review of a decision by the Washington Court of Appeals that affirmed a trial court decision quieting title to the Woodinville Segment in the City of Woodinville and GNP.⁶ The import of the Supreme Court order is that the litigation over title to the Woodinville Segment is now conclusively resolved. The City of Woodinville holds fee title to the real property comprising the Woodinville Segment, subject to a rail freight easement held exclusively by GNP.⁷ Neither Eastside Community Rail nor its principal Douglas Engle hold any property interest in the Woodinville Segment.⁸

The Washington Supreme Court decision underscores the urgency of Board action on the appeal of the Director's September 14 Decision. The resolution of the Woodinville/GNP quiet

⁴ GNP and City of Woodinville, Appeal of Director's Decision at 10-11 (filed Sept. 23, 2022).

⁵ Snohomish County's Comments on "Appeal of Director's Decision" filed by GNP Rly, Inc. and City of Woodinville and Motion To Correct Error (filed Sept. 29, 2022).

⁶ Order, *City of Woodinville v. Eastside Community Rail*, No. 101040-1, 2022 WL 6974621 (Wash. Oct. 12, 2022). For convenience a copy of the one page Supreme Court order is attached to this Notice.

⁷ *City of Woodinville v. Eastside Community Rail*, 22 Wn.App.2d 121, 132, 510 P.3d 355, 361, rev. denied 2022 WL 6974621.

⁸ *Id.*, 22 Wn.App.2d at 126, 510 P.3d at 359.

title action means that the Director's September 14 Decision holds GNP's exemption in abeyance awaiting the outcome of an unrelated state court quiet title action in an adjacent county. This docket involves no property or rail service in Snohomish County. GNP's Notice of Exemption does not seek to abandon rail service in Snohomish County. GNP, Woodinville and Snohomish County urge the Board to vacate the Director's September 14 decision and lift the April 11, 2022 Director order holding GNP's exemption in abeyance, so that GNP and Woodinville can implement their agreement to railbank the Woodinville Segment.

The purposes of Congress in enacting the Interstate Commerce Commission Termination Act included reduction of regulatory barriers to entry into and exit from the railroad industry and the expeditious handling and resolution of proceedings subject to regulation. 49 U.S.C. § 10101. The Board's exempt abandonment rules were fashioned to achieve those purposes, and GNP's notice describes precisely the type of abandonment that the Board meant to exempt – a small segment of rail line on which no local or overhead traffic has moved in more than two years. When GNP filed its Notice the Director sought additional information on whether abandonment of the Woodinville Segment would strand railbanked rights of way downstream from Woodinville.⁹ Appellants responded with assurances that they intend to railbank and not abandon the Woodinville Segment.¹⁰ The parties submitted an agreement documenting that intent.¹¹ The Appellants assume that their filings put those concerns to rest, as the September 14 Order does not mention any concern about stranding downstream segments.

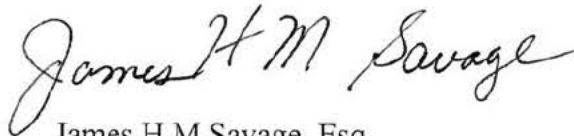
⁹ April 11 Decision, slip op. at 1.

¹⁰ See filings cited at note 2, *supra*.

¹¹ The agreement between Woodinville and GNP to railbank the Woodinville Segment was filed as Ex. A to GNP's Second Supplement To Verified Notice of Exemption (filed May 4, 2022).

GNP and the City trust that their filings fully addressed the Board's concerns. They urge the Board to vacate the stay so that the Appellants can implement their agreement to railbank the Woodinville Segment.

Respectfully submitted this 19th day of October, 2022.



James H.M. Savage, Esq.
22 Rockingham Court
Germantown, MD 20874
(908) 361-7097
jsavagelaw@aim.com

Counsel for GNP Rly, Inc.



Matthew Cohen
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
matthew.cohen@stoel.com

Attorneys for the City of Woodinville, Washington

CERTIFICATE OF SERVICE

I certify that on October 19, 2022 I served by email an e-filed copy of the foregoing document upon all parties of record in this proceeding as listed below per the STB service list.

Charles H. Montange
426 NW 162nd Street
Seattle, WA 98177
Tel: (206) 546-1037

Email: c.montange@frontier.com

Attorney for Snohomish County

DATED: October 19, 2022

s/ Michele Brandon

Michele Brandon, Practice Assistant
Stoel Rives LLP

THE SUPREME COURT OF WASHINGTON

CITY OF WOODINVILLE,	)	No. 101040-1
	)	
Respondent,	)	ORDER
	)	
v.	)	Court of Appeals
	)	No. 82660-3-I
EASTSIDE COMMUNITY RAIL, LLC, et al.,	)	
	)	
Petitioners.	)	
	)	
	)	

Department I of the Court, composed of Chief Justice González and Justices Johnson, Owens, Gordon McCloud, and Montoya-Lewis, considered at its October 11, 2022, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Clerk's motion to strike the reply to the answer to the petition for review is granted.
The petition for review is denied.

DATED at Olympia, Washington, this 12th day of October, 2022.

For the Court


CHIEF JUSTICE