

Before the U.S. Surface Transportation Board

242178

**James Riffin Petition for Declaratory Order
Docket No. FD 36078**

ENTERED
Office of Proceedings
December 2, 2016
Part of
Public Record

NOTICE and REQUEST

by

**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
and
NZ Funding, LLC**

DANIEL E. HORGAN, DC BAR #239772
ERIC D. McCULLOUGH, NJ BAR #02417-2001
Waters, McPherson, McNeill, P.C.
300 Lighting Way
Secaucus, NJ 07094
Phone: 201-330-7453
Attorneys for 212 Marin Boulevard, LLC, et als

DATED: December 2, 2016

NOTICE

The nine foregoing listed limited liability companies of New Jersey (hereafter "LLCs") have material interests in this matter and intend to participate as intervenors should the Board proceed under its Modified Procedures, 49 C.F.R. §1112 et seq., as has been requested by Petitioner, James Riffin. Upon the Board determining to proceed and issuing a Decision and Schedule pursuant to 49 C.F.R. §1112.2, the LLCs intend to file a formal Petition to Intervene, as provided for by 49 C.F.R. §1112.4, *Petitions to Intervene*. Such intervention would be in opposition to Mr. Riffin's Petition.

REQUEST FOR DECISION UNDER MODIFIED PROCEDURES

The LLCs note that CNJ Rail Corporation, and Eric Strohmeier, individually, have made a filing in this docket on December 1, 2016 indicating their joint intent to participate. Mr. Strohmeier has also advised counsel in AB-167-1189-X by e-mail on December 1st as follows:

CNJ will be moving to **DISMISS** Mr. Riffin's petition for lack of jurisdiction. The Board lacks the jurisdiction to address the question he is asking it resolve.

It does not matter how Conrail may, or may not have, used the Hudson Street Industrial Track. That track is specifically mentioned in the Final System Plan. If the line was conveyed as a line of railroad, no amount of unilateral reclassification by Conrail will undo the FSP conveyance. Since the Board's inquiry must begin with an evaluation of the initial conveyance, they lack the jurisdiction to make that review.

The LLCs believe that it is, and should be, discretionary with the Board to allow or deny participation in Mr. Riffin's petition, particularly under the Modified Procedures. However, our purpose now is not to argue who should participate, because there is a greater threshold issue that the Board should address first, and before proceedings on Mr. Riffin's petition becomes crowded with all of the usual suspects.

That primary issue is whether Mr. Riffin has any standing to proceed with his petition; the LLCs believe that he may not. The question turns on whether he remains in AB-167-1189-X as an OFA participant. Judge Dring has dismissed him from the exempt abandonment action, and Mr. Riffin's appeal is now before the Board. Unless the Board reverses Judge Dring, Mr. Riffin has no cognizable, legitimate interest in pursuing any relief, anywhere, concerning the subject of his present petition on the Hudson Street Industrial Track ("HSIT"). Therefore, Mr. Riffin's appeal to the Board from Judge Dring's ruling should be decided before any other related proceedings are permitted to move forward. The Board can accomplish that procedural task by issuing an appropriate Decision and any related Scheduling Order that may be appropriate.

There are other reasons, beyond mere procedural good order, for the Board to address the LLCs' request. The Hon. Ester Salas, U.S.D.J. sitting in Newark, N.J. has just addressed the same issues of the location of regulated rail lines along the Harsimus Branch in downtown Jersey City, including the HSIT, by terminating a case pending before her, without prejudice to reinstate, without being time-barred, but with a request for a status report by February 18, 2017. District Judge Salas' order of

December 1, 2016 is attached as **Exhibit A**. That determination was made in cognizance of Mr. Riffin's pending petition to the Board. If Mr. Riffin, on appeal to the Board, remains out of AB-167-1189-X, it is likely, perhaps almost certain, that the matter before Judge Salas will then be dismissed with prejudice.

Mr. Strohmeyer is likely to move forward on his plan stated in his e-mail to give Mr. Riffin the jurisdictional excuse he seeks to bring an action in the Special Railroad Court (U.S.D.C., District of Columbia). The thinly-veiled purpose of Mr. Strohmeyer is to give Mr. Riffin an arguable basis to seek adjudication of the location of regulated rail lines on property along the Harsimus Branch that were not adjudicated in the previous Special Court proceedings on the Harsimus Branch - in part because Jersey City and Conrail opposed it, and prevailed. Since any new adjudication sought by Mr. Riffin in the Special Court would involve the un-adjudicated status of the eastern remainder of the Harsimus Branch, AB-167-1189-X will likely go back into limbo for years. That is clearly what Mr. Riffin and Mr. Strohmeyer want.

The other parties in AB-167-1189-X are likely to be of no help in resolving that delay either. The entities developing the property that is the subject of Mr. Riffin's petition are a combination of a landowner, commonly referred to as "Metro Plaza" with a subsidiary of the Forest City company as the developer. (Hereafter collectively "Metro"). Metro has recently submitted documentary evidence in its arguments against Mr. Riffin before Judge Salas that Jersey City strongly supports the Metro development going forward without any delay. **Exhibit B**. Mr. Riffin proclaims, essentially correctly, that he is merely using the very same arguments

that the City previously used against the LLCs and Conrail in AB-167-1189-X. For Metro to oppose Riffin on the merits of those claims would cause it to become aligned with the LLCs' arguments, and against the City, and perhaps Conrail.¹ Conrail certainly would not be likely to view that sort of alignment as a good development since the LLCs have expressed fraud and mis-representation claims against Conrail in connection with the sale of the fee interest in the Embankment property over which the Harsimus Branch runs. And the City would probably not appreciate its chosen developer for the Metro Plaza high-rise development undercutting its position against the LLCs. Further, the City's co-party, the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition ("Coalition"), has repeatedly objected to any development, especially the kind of "high-rise" development being implemented (before abandonment of any portion of the Harsimus Branch) by Metro. Rails-To-Trails Conservancy, the City's other joint, co-litigant ("Rails"), is not likely to be pleased by the City's position on development of the Metro property, as expressed by the City's Mayor in his letter, because it makes no mention (nor does it otherwise allow for) any Northeast Greenway Trail. Nor do the Metro plans, approved by the City, envision the fictional light rail corridor, or any other transportation corridor, along the Metro portion of the Harsimus Branch.

¹ Despite its Mayor's strong support, and the importance to the City of Metro's development moving forward, the City has not moved to intervene in Mr. Riffin's suit against Metro before Judge Salas. Nor had Metro sought any intervention in any STB proceedings, despite being similarly situated to the LLCs and perhaps having even more at stake and facing potentially critical development time frames, and similar issues.

The point now respectfully made from this twisted tale, for the Board's consideration, is not that there are troubling conflicts, inconsistencies, disputatious parties, and agendas-within-agendas. That is already manifest from the record in AB-167-1189-X. The point is that allowing any of this to go forward will further delay resolution of AB-167-1189-X, perhaps for another twelve years, to the detriment of the LLCs. That is the evil to be avoided. And the LLCs believe that evil can be avoided by deciding Mr. Riffin's appeal from Judge Dring's order on an expedited basis; and, by prohibiting any further interim filings by Mr. Riffin, Mr. Strohmeyer, or anyone in Mr. Riffin's present petition. The LLCs are mindful that deference to Judge Salas also argues for an expedited decision on Mr. Riffin's petition, and do not suggest in any way that those proceedings should be allowed to become protracted. However, if Mr. Riffin's appeal is denied and he loses his standing on these issues before Article III courts, his only recourse will be to appeal the Board's decision to the D.C. Circuit Court of Appeals - something he will almost certainly do. However, in that case, the present petition by Mr. Riffin will have become ripe for dismissal, ex-parte by the Board if it so chooses, and the proceedings in AB-167-1189-X can move forward.

Respectfully submitted

S/ Daniel E. Horgan

Daniel E. Horgan, DC Bar # 239772

One of the Attorneys for the LLCs

CERTIFICATION OF SERVICE

I, Daniel E. Horgan, hereby certify that on this date I have caused copies of this document to be served upon James Riffin and Eric S. Strohmeyer, who are the only persons whose names appear on the Service List. Service has been made by depositing copies in the Regular Mail of the United States Postal Service at Secaucus, NJ on December 2, 2016. As a courtesy, I have also provided these individuals, and all counsel in AB-167-1189-X, with copies by e-mail transmission.

S/ Daniel E. Horgan

Daniel E. Horgan, DC Bar # 239772

Exhibit A

to

**NOTICE and REQUEST
of**

212 Marin Boulevard, LLC

**James Riffin Petition for Declaratory Order
Docket No. FD 36078**

**ORDER of the U.S. District Court for the District of New Jersey
Hon. Esther Salas, U.S.D.J.
Dated: December 1, 2016**

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JAMES RIFFIN,

Plaintiff,

v.

**FOREST CITY RATNER COMPANIES,
et al.,**

Defendants.

Civil Action No. 16-4433 (ES) (JAD)

ORDER

SALAS, District Judge

This matter comes before the Court following the hearing held on November 17, 2016 before the Honorable Joseph A. Dickson, U.S.M.J. Upon careful consideration of the Parties' filings to date, and for the reasons discussed at the hearing, and for good cause shown;

IT IS on this 1st day of December 2016,

ORDERED that for the reasons stated on the record on November 17, 2016, Plaintiff's Complaint (ECF No. 1) is hereby administratively terminated without prejudice to Plaintiff's right to file a new complaint upon the conclusion of any administrative proceeding currently pending before the U.S. Department of Transportation Surface Transportation Board ("STB"); and it is further

ORDERED that any applicable statute of limitations available to Defendants in this action is tolled pending further Order of the Court; and it is further

ORDERED that Plaintiff shall submit a status letter to the Court on or before February 18, 2017; and it is further

ORDERED that the Clerk of the Court shall terminate the case.

SO ORDERED.

s/Esther Salas
Esther Salas, U.S.D.J.

cc: Hon. Joseph A Dickson, U.S.M.J.

Exhibit B

to

**NOTICE and REQUEST
of**

212 Marin Boulevard, LLC

**James Riffin Petition for Declaratory Order
Docket No. FD 36078**

**Letter to Hon. Joseph A. Dickson, U.S.M.J.
Dated: November 29, 2016
by Brendan Judge, Esq.**



Connell Foley LLP
One Newark Center
1085 Raymond Blvd., 19th Floor
Newark, New Jersey 07102
P 973.436.5800 F 973.436.5801

Brendan Judge
Partner
BJudge@connellfoley.com

November 29, 2016

Via ECF and Regular Mail

Honorable Joseph A. Dickson, U.S.M.J.
United States District Court
District of New Jersey
M.L. King Jr. Federal Building & Courthouse
50 Walnut Street
Newark, New Jersey 07102

**Re: Riffin v. Forest City Ratner Companies, G&S Investors et al.
Civil Action No. 16-cv-04433**

Dear Magistrate Judge Dickson:

This firm represents the Defendants in this matter. As Your Honor will recall, on November 17, 2016, Your Honor decided to terminate this matter without prejudice while Plaintiff, James Riffin, pursued certain relief before the Surface Transportation Board (the "STB") pursuant to a Petition for Declaratory Order that Mr. Riffin filed on the eve of last week's hearing. During the hearing, we discussed the appropriate time period during which Mr. Riffin could file a new Complaint with this Court.

At the time I was unfamiliar with the STB's procedures, so I was unable to assist Your Honor in determining what length of time would be appropriate. After some discussion, Your Honor set the time period at six months during which Mr. Riffin could either file a new Complaint or seek an extension.

I have since learned that the STB's decision whether or not to accept a Petition for consideration is discretionary. That is, the mere filing does not give the Petitioner the right to have his or her grievance heard. Additionally, any opposition to the Petition before the STB is due on December 6, 2016. No reply submissions are permitted. Therefore, Mr. Riffin's Petition will be ripe for decision as soon as December 6, 2016.

Consequently, Defendants respectfully request that the time frame during which Mr. Riffin can file a Complaint in this Court be limited to 90-days from the November 17, 2016 hearing.

The reason Defendants are making this request is that there is considerable urgency from Defendants' perspective to bring certainty to its massive redevelopment project. As the

Roseland

Jersey City

Newark

New York

Cherry Hill

Philadelphia

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November 29, 2016

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Mayor of Jersey City acknowledged in his February 18, 2015 letter to the New Jersey Economic Development Agency, a copy of which is attached hereto as Exhibit A, the "project is one of [the Mayor's] administration's highest economic development priorities and represents the first phase of a landmark redevelopment at Harsimus Cove that will redefine that area for years to come." As the Mayor explained:

The Harsimus Cove Redevelopment project will benefit the City in numerous and significant ways. First, this project is the critical first step in the broader Harsimus Cove Redevelopment Plan, which envisions thousands of residential units, over 300,000 square feet of retail, and 2.5 acres of open space as it will redevelop what is now an underutilized big box retail site into a vibrant 24/7 live, work and play environment and will reconnect this section of our waterfront to the City's existing street grid, second and very important of our administration, Forest City has committed to reserve 20% of its residential units in this first phase for workforce (moderate income) housing, a critical group of Jersey City residents for whom affordable housing options are scarce. Finally the Harsimus Cove project will be a significant economic development engine, both during construction and in its continued operations. The \$200+ million project is expected to produce 300 on-site construction jobs and over 15 permanent jobs from property management.

As they pursue this critical redevelopment project, Defendants are entitled to be free as soon as possible from the specter of Mr. Riffin's vexatious and frivolous lawsuit and from his threat to have construction enjoined.

Therefore, Defendants respectfully request that Mr. Riffin be given only **90-days from the November 17, 2016 hearing** to return to this Court to file a Complaint or seek an extension.

Your Honor's attention to this matter is appreciated.

Respectfully submitted,


Brendan Judge

cc: Mr. James Riffin (via e-mail and regular mail)
Kevin J. Coakley, Esq.

EXHIBIT A



STEVEN M. FULOP
MAYOR OF JERSEY CITY

CITY OF JERSEY CITY
OFFICE OF THE MAYOR

CITY HALL | 280 GROVE STREET | JERSEY CITY, NJ 07302
P: 201 547 5500 | F: 201 547 5442



STEVEN M. FULOP
MAYOR OF JERSEY CITY

February 18, 2015

Mr. Timothy Lizura
President & COO
New Jersey Economic Development Authority
P.O. Box 990
Trenton, NJ 08625

Reference: Forest City, 430 Marin Boulevard, Jersey City, NJ

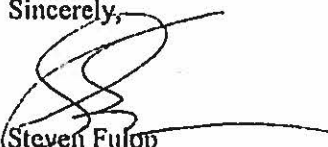
Dear Mr. Lizura:

I am writing in support of Forest City's application for a residential Economic Redevelopment and Growth (ERG) grant (applicant "GS FC Jersey City Pep I, LLC") for the first phase of its Harsimus Cove (aka Hudson Exchange West) Redevelopment. This project is one of our administration's highest economic development priorities and represents the first phase of a landmark redevelopment at Harsimus Cove that will redefine that area for years to come.

The Harsimus Cove Redevelopment project will benefit the City in numerous and significant ways. First, this project is the critical first step in the broader Harsimus Cove Redevelopment Plan, which envisions thousands of residential units, over 300,000 square feet of retail, and 2.5 acres of open space as it will redevelop what is now an underutilized big box retail site into a vibrant 24/7 live, work, and play environment and will reconnect this section of our waterfront to the City's existing street grid, second and very important for our administration, Forest City has committed to reserve 20% of its residential units in this first phase for workforce (moderate income) housing, a critical group of Jersey City residents for whom affordable housing options are scarce. Finally, the Harsimus Cove project will be a significant economic development engine, both during construction and in its continued operations. The \$200+ million project is expected to produce 300 on-site construction jobs and over 15 permanent jobs from property management.

Our Administration is in active conversation with Forest City regarding the project. The residential ERG grant will play a critical role in bridging the current financing gap of this important project. Please do not hesitate to contact me for any follow-up related to our support for the Harsimus Cove project. We look forward to the NJ EDA's favorable review of Forest City's application and to seeing this catalytic project proceed.

Sincerely,



Steven Fulop
MAYOR