

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

305051

Finance Docket No. 36623

ENTERED
Office of Proceedings
July 26, 2022
Part of
Public Record

RAIL LINE ABUTTING LANDOWNERS. -
PETITION FOR DECLARATORY ORDER

RAIL LINE ABUTTING LANDOWNERS' REBUTTAL

Rail Line Abutting Landowners ("Landowners") respectfully submit their rebuttal to the reply of the Massachusetts Bay Transportation Authority ("MBTA") in the above-captioned proceeding. Since this petition for a declaratory order is clearly not premature, the Landowners want to support MBTA's receptiveness to a decision here by the Surface Transportation Board ("STB" or "Board") - whether the finding is the line at issue has been abandoned or not. Moreover, the Landowners want to clarify why any action in state land court would be timely.

On June 22, 2021, the Landowners filed their petition for declaratory order. The Landowners, who live next to the right-of-way at issue, simply asked the STB to provide a ruling on the abandonment status of this rail line in Massachusetts.¹ On July 12, 2022, MBTA filed a response to the petition, arguing, among other things, that the STB should deny the declaratory order request as premature and that a state court action by the Landowners would be time barred.

¹ MBTA appears to belittle the request by the Landowners to seek clarity here to protect their rights regarding their homes and businesses. However, the STB has advised in cases that a party should "devote full and proper attention to ensuring that it is in compliance with, and fulfills its responsibilities under, all regulatory requirements administered by this agency." *Adrian & Blissfield Rail Rd. – Cont. in Control – Charlotte Southern R.R. Company, et al*, FD 35498, slip op. at 5 (STB served Aug. 19, 2011). Landowners are only ensuring that they are moving forward in compliance with these rules as MBTA should want to do as it moves forward with the development of this railroad right-of-way.

However, MBTA did state it would be receptive to a declaratory ruling that the STB does not have jurisdiction over the corridor.

First, MBTA's argument that this petition is premature ignores the case cited by Landowners in its brief. *See Murray v. Mass. Dep't of Conservation and Recreation*, 2014 WL 4960872 (Mass. Land Court, Oct. 6, 2014). As noted in Landowners' petition, the court was asked to decide whether an easement for an old railroad line that included the plaintiffs' properties had been abandoned. They argued that the right-of-way had been abandoned by the railroad, thereby providing them title to their land through reversionary rights. The court held that under federal law it lacks jurisdiction to determine the parties' rights in the subject railway and the question whether the disputed easement has been abandoned or otherwise extinguished. *Id.* at *8. The court dismissed the case without prejudice advising the plaintiffs to seek an order from the Board. *Id.* This case was heard in Middlesex County where this line at issue is located. Therefore, it is clear how this existing uncertainty regarding the status of the rail line, that only the Board can resolve, directly impacts the ability of the Landowners to protect their property interests here in state court. While MBTA chose to ignore this case and the obvious need for an STB ruling now, that does not change the only path the Landowners have to resolve this matter which is through the Board.

Because this petition clearly is not premature, the Landowners concur with MBTA's receptiveness to have the Board issue a ruling on the status of the line. Otherwise, the Landowners have no options left. If they go to land court, their case will be dismissed with instructions to go to the Board first. This leaves this petition for declaratory order as their only way forward.

Finally, MBTA relies on a state law statute of limitations argument in support of its position that the Landowners' request here is unnecessary. The Landowners do not dispute that under applicable Massachusetts law regarding a taking, aggrieved landowners have three years to

seek damages for a taking and three years to challenge the lawfulness of a taking under G.L. c.

79, 16.² This statute in full states as follows:

A petition for the assessment of damages under section fourteen may be filed within three years after the right to such damages has vested; but any person, including every mortgagee of record, whose property has been taken or injured, and who has not received notice under section eight or otherwise of the proceedings whereby he is entitled to damages at least sixty days before the expiration of such three years, may file such petition within six months after the taking possession of his property or the receipt by him of actual notice of the taking, whichever first occurs, or, if his property has not been taken, within six months after he first suffers actual injury in his property.

Thus, the land court will consider whether a Landowners' action seeking to address a taking and to obtain an assessment of damages is timely filed in accordance with this statute.

Under G.L.c. 79, § 16, a person has three years from the time of a taking in which to file a claim pursuant to G.L.c. 79, § 14.³ If MBTA disputes the timeliness of Landowners action, that matter

²Also, Landowners could bring an action under G.L.c. 183, §58. *See, e.g., Rowley v. Massachusetts Elec. Co.*, 438 Mass. 793 (2003) (Owners of land abutting former railway who brought action against electric company to quiet title to land within railway had standing under G.L.c. 183, §58.) In pertinent part, § 58 provides that “[e]very instrument passing title to real estate abutting a way, whether public or private, watercourse, wall, fence or other similar linear monument, shall be construed to include any fee interest of the grantor in such way, watercourse or monument....”

³ While MBTA solely focuses on the date of the formal taking in 1977, Landowners can also bring an action for a taking caused by the right-of-way projects involving the rail trail and the transmission line. According to G.L.c. 79, § 10, the Landowners' right to damages and right to petition will vest upon the completion of the public improvements which cause the injury. *See United States Gypsum Co. v. Mystic River Bridge Authy.*, 329 Mass. 130, 142, 106 N.E.2d 677 (1952) (stating “[t]he statute requires a definite and distinct act as beginning the period in which a petition for damages may be filed. The Legislature did not intend to put the burden upon the landowner to determine when in the partial performance of a piece of work the period for bringing a petition would start to run against him”). In this case, the Landowners have three years from the end of construction of the transmission line or rail trail in which to commence suit to challenge the validity of MBTA's taking. *See Meldon v. Town of Barnstable*, 2006 WL 2006168 (Mass.Sup. Ct. 2006). Therefore, Landowners' claims will be timely filed as these projects have not been finished.

is for the state court to decide. It is axiomatic that the STB does not normally rule on matters of state law like this statute of limitations question. *See, e.g., Reading, Blue Mountain & Northern R.R. Company – Pet. for Declaratory Order*, FD 35956 (STB served June 6, 2016); *V&S Ry., LLC – Pet. for Declaratory Order – Railroad Operations in Hutchinson, Kan.*, FD 35459 (STB served July 12, 2012).

In conclusion, based on the foregoing and the Landowners' petition, the Board should issue a declaratory order regarding the abandonment status of the line at issue.

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June 26, 2022

CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. § 1104.12, I hereby certify that on June 25, 2022, I served a copy of this Rebuttal on counsel known to represent the following parties by the most expedient method, including email and first-class mail:

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