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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
August 30, 2022
Part of
Public Record

Finance Docket No. 36623

RAIL LINE ABUTTING LANDOWNERS -
VERIFIED PETITION FOR DECLARATORY ORDER

MOTION TO JOIN NEW PARTIES

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Rail Line Abutting Landowners

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Petitioners Rail Line Abutting Landowners ("Landowners") hereby respectfully move the Surface Transportation Board ("STB" or "Board") to join new parties ("New Parties") to this proceeding as additional petitioners. On June 22, 2022, Landowners asked the Board for a declaratory order to eliminate uncertainty pursuant to its authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, finding that a line of railroad in the County of Middlesex, Massachusetts, owned by the Massachusetts Bay Transportation Authority ("MBTA") is or is not abandoned and does or does not remain subject to the jurisdiction of the STB. The New Parties also are rail abutting landowners and have a very strong interest in how this proceeding could impact their property interests in their homes.

As noted in their petition, Landowners are over 50 individuals and businesses who each own land in Sudbury, Stow, and Hudson, Massachusetts, County of Middlesex, that abuts the rail line owned by MBTA at issue in this proceeding ("the Line"). If the Line has been abandoned, these Landowners may have reversionary rights to this rail property that abuts their existing properties and certainly will have rights to bring an action for a taking if the new trail and transmission line are built on the Line.

The New Parties include Jon L. Hart, 35 Bridle Path, Sudbury, MA; Christiane P. and William Densel, 109 Austin Way, Sudbury, MA; The Optical Place, 215 Boston Post Road, Sudbury, MA; Spencer Financial, LLC, 327A Boston Port Road, Sudbury, MA; Pam S. Baldi, 53 Robert Best Road, Sudbury, MA; and Wayne and Carole Parrish, 35 Maple Avenue, #203, Sudbury, MA. (Copies of the signed requests to seek a declaratory order at the STB on the status of the Line by the New Parties is attached hereto as Exhibit A.)

The addition of the New Parties will not prejudice the only party to oppose the Landowners Petition, the MBTA, who claims to own the right-of-way abutting the properties of these homeowners and local businesses. The New Parties have the same interests and legal position as the Landowners and will not assert any new or additional positions. However, the addition of these New Parties does demonstrate the significance of this proceeding to these individuals and this community. While MBTA continues to belittle these individuals for their concerns about their property next to the Line, this matter is extremely important to them.

This existing uncertainty regarding the status of the Line has a direct effect on the ability of these New Parties to protect their property interests in Massachusetts Land Court. Landowners are before the STB for only one reason which is to obtain a ruling on the status of the Line. MBTA continues to ignore why the Landowners are compelled to come to the STB before going to Land Court. In Middlesex County, MA, where the Line sits, the Massachusetts Land Court was faced with an almost identical situation to what the Landowners are confronted with here. *See Murray v. Mass. Dep't of Conservation and Recreation*, 2014 WL 4960872 (Mass. Land Ct., Oct. 6, 2014) *aff'd*, 475 Mass. 99 (2016) ("Because there is no evidence that Penn Central abandoned the branch line at any time, either by obtaining a certificate of abandonment from the ICC or the STB, or by utilizing the procedures under the 1973 Act's narrow window of opportunity, the judge determined

that the question of abandonment of the branch line remains in the exclusive jurisdiction of the Federal government, and that the Land Court does not have subject matter jurisdiction over the plaintiffs' action to quiet title.") *See also Stover v. Mass. Dep't of Conservation and Recreation*, 2017 WL 2960298 (Mass. Land Ct., July 11, 2017) (also in Middlesex County) *aff'd*, 93 Mass. App. Ct. 1114 (2018).

In *Murray*, the court was asked to decide whether an easement, authorizing the running of a portion of an old railroad line over a stretch that included the plaintiffs' properties, had been abandoned. The plaintiffs owned land over which the railroad once operated. 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 or not 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.* Therefore, it is clear how this existing uncertainty regarding the status of the Line, that only the Board can resolve, has an effect on the ability of the Landowners to protect their property interests. In other words, without clarification here by the Board, the Landowners will not be able to bring a case to Massachusetts Land Court in Middlesex County.

The New Parties have owned land next to the Line for years that has been a peaceful place to live or conduct business. Suddenly, they are told that a major transmission line and rail trail will soon be constructed and used right behind their quiet properties. While MBTA apparently views their interests as simply a nuisance as it steamrolls its plans to upset this quaint little community, the New Parties simply want to demonstrate to the Board how important this matter is to them.

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Counsel for Landowners

August 30, 2022

CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. § 1104.12, I hereby certify that on August 30, 2022, I served a copy of this Motion to Join New Parties on counsel known to represent the following parties by the most expedient method, including email and first-class mail:

David S. Rosenzweig
Keegan Werlin LLP
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drosen@keeganwerlin.com
Counsel for Eversource Energy

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Counsel for Town of Sudbury

Robert Wimbush
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Counsel for MBTA

Peter Denton
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pdenton@steptoe.com
Counsel for CSX

Thomas LaRosa
Massachusetts Department of Conservation and Recreation
251 Causeway Street, Suite 600
Boston, Massachusetts 02114
Thomas.LaRosa@state.ma.us

/s/ Daniel R. Elliott

EXHIBIT A

Petition to the Surface Transportation Board Regarding Railroad Line Status

I attest that I am the owner of property that abuts the former Mass Central railroad right of way. I request that the Surface Transportation Board make an official determination regarding whether the railroad right of way is ACTIVE or ABANDONED.

Signed,



Name: Jon L. Hart Date: 5-26-22

Address: 35 Bridle Path

Sudbury Ma 01776

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Signed,

Christiane P. Densel
Name: CHRISTIANE P. DENSEL Date: 6/1/22

William Densel Jr
Address: WILLIAM DENSEL JR

109 AVSTIN RD

SUDBURY, MA 01776

Petition to the Surface Transportation Board Regarding Railroad Line Status

I attest that I am the owner/manager/responsible party of a business property that is abutting or in close proximity to the former Central Mass railroad right of way. I am requesting that the Surface Transportation Board make an official determination regarding whether the railroad right of way is either ACTIVE or ABANDONED.

If ACTIVE, I support maintaining the railroad right of way as an active railroad. In the event that freight service is restored at some future time, The Optical Place will consider receiving freight service depending upon the cost of the service and availability of product.

The Optical Place
Business Name

215 Boston Post Rd Sudbury MA 01776
Business Address

Stephen F. Michels
29 Cortland Dr Hudson MA 01749
Name and Address

6/10/22
Date



Petition to the Surface Transportation Board Regarding Railroad Line Status

I attest that I am the owner/manager/responsible party of a business property that is abutting or in close proximity to the former Central Mass railroad right of way. I am requesting that the Surface Transportation Board make an official determination regarding whether the railroad right of way is either ACTIVE or ABANDONED.

If ACTIVE, I support maintaining the railroad right of way as an active railroad. In the event that freight service is restored at some future time, Spencer Financial, will consider receiving freight service depending upon the cost of the service and availability of product.

Spencer Financial, LLC
Business Name

327A Boston Post Rd., Sudbury MA. 01776
Business Address

William Spencer  6-16-2022
Name and Address 206 Concord Rd. Date
Sudbury, MA. 01776

Petition to the Surface Transportation Board Regarding Railroad Line Status

I attest that I am the owner of property that is abutting the former Central Mass railroad right of way. I am requesting that the Surface Transportation Board make an official determination regarding whether the railroad right of way is either ACTIVE or ABANDONED.

Pam S. Baldi

8/26/2022

Name and Address

Date

Pam S. Baldi

Signature

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Wayne & Carol Pannich 35 Maple Street #203 5/19/22

Name and Address

Date

Include a copy of GIS property map showing owners names and location of ROW
