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**BECKLEY & MADDEN**

ATTORNEYS AT LAW

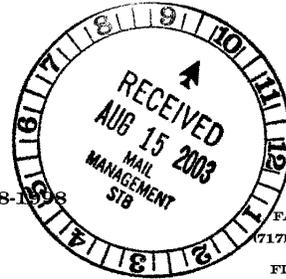
CRANBERRY COURT

212 NORTH THIRD STREET

POST OFFICE BOX 11998

HARRISBURG, PENNSYLVANIA 17108-1998

AREA CODE 717  
TELEPHONE 233-7691



FAX NO.  
(717) 233-3740

FILE NO.

35164

August 14, 2003

Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

VIA FED EX

**RE: STB Docket No. AB-55 (Sub-No. 568)  
CSX Transportation, Inc. -- Abandonment  
Exemption in Franklin County, Pennsylvania**

Dear Mr. Williams:

Please be advised that this office represents Frederick A. Fox, Kaye A. Fox and Frederick Armstrong Fox ("the Foxes"), who are parties to the above-referenced matter.

Enclosed herewith please find an original and 11 copies of the Foxes' Petition for Permission to File An Amended Offer of Financial Assistance, or, Alternatively, to Reopen the Decision Served by the Board on March 9, 1999, pursuant to 49 CFR §1152.25(e), to Permit the Filing of a New Offer of Financial Assistance, *Nunc Pro Tunc*.

Please file the original and 10 copies, and stamp and return one of the copies to us in the enclosed self-addressed, stamped envelope.

If you need anything further from us to complete the filing of the Petition, then please do not hesitate to contact me. Thank you for your courtesy and assistance in this matter.

Very truly yours,

BECKLEY & MADDEN

By:

Charles O. Beckley, II

ENTERED  
Office of Proceedings

AUG 15 2003

Part of  
Public Record

**BECKLEY & MADDEN**

Vernon A. Williams, Secretary  
August 14, 2003  
Page 2

cc: Natalie S. Rosenberg, Esquire (via Fed Ex)  
Lynn Y. MacBride, Esquire (via Fed Ex)  
David C. Finch, Assistant Borough Manager (via Fed Ex)  
Mr. Frederick Armstrong Fox

BEFORE THE  
SURFACE TRANSPORTATION BOARD



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DOCKET NO. AB-55 (SUB-NO. 568X)

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CSX TRANSPORTATION, INC.  
ABANDONMENT EXEMPTION  
IN FRANKLIN COUNTY, PENNSYLVANIA

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**PETITION OF FREDERICK A. FOX, KAYE A. FOX AND  
FREDERICK ARMSTRONG FOX FOR PERMISSION TO  
FILE AN AMENDED OFFER OF FINANCIAL  
ASSISTANCE, OR, ALTERNATIVELY, TO REOPEN THE  
DECISION SERVED BY THE BOARD ON MARCH 9, 1999,  
PURSUANT TO 49 CFR §1152.25(E), TO PERMIT THE  
FILING OF A NEW OFFER OF FINANCIAL ASSISTANCE,  
*NUNC PRO TUNC***

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ENTERED  
Office of Proceedings

AUG 15 2003

Part of  
Public Record

DATED: August 14, 2003

Thomas A. Beckley, Esquire  
Charles O. Beckley, II, Esquire

**BECKLEY & MADDEN**  
212 North Third Street  
P. O. Box 11998  
Harrisburg, PA 17108-1998  
(717) 233-7691

Attorneys for Petitioners

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



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DOCKET NO. AB-55 (SUB-NO. 568X)

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CSX TRANSPORTATION, INC.  
ABANDONMENT EXEMPTION  
IN FRANKLIN COUNTY, PENNSYLVANIA

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FREDERICK ARMSTRONG FOX FOR PERMISSION TO  
FILE AN AMENDED OFFER OF FINANCIAL  
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DECISION SERVED BY THE BOARD ON MARCH 9, 1999,  
PURSUANT TO 49 CFR §1152.25(E), TO PERMIT THE  
FILING OF A NEW OFFER OF FINANCIAL ASSISTANCE,  
*NUNC PRO TUNC***

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**I. INTRODUCTION**

Petitioners, Frederick A. Fox, Kaye A. Fox and Frederick Armstrong Fox (hereinafter referred to collectively as “the Foxes”), seek an order from the Board permitting them to amend the offer of financial assistance (“OFA”) that they filed on March 12, 1999.<sup>1</sup> Alternatively, the

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<sup>1</sup> When the Foxes made their offer of financial assistance, the Foxes’ Counsel also represented Frederick Armstrong Fox’s wife, Karla M. Fox. In March, 2002, Ms. Fox commenced an action for divorce against Frederick Armstrong Fox in the Court of Common Pleas of Franklin County, Pennsylvania. Consequently, the Foxes’ Counsel no longer represents Ms. Fox, and Ms. Fox has not joined in this petition. Ms. Fox is represented in the divorce proceeding by Lynn Y. MacBride, Esquire. A copy of this petition is being served on Ms. MacBride.

Foxes respectfully request the Board, pursuant to 49 CFR §1152.25(e), to reopen its Decision served on March 9, 1999, to permit the filing, *nunc pro tunc*, of a new offer of financial assistance.

The Foxes wish to expand their OFA to include the section of rail line owned by CSX Transportation, Inc. ("CSXT"), which extends from Fourth Street to Main Street in the Borough of Chambersburg, Franklin County, Pennsylvania.<sup>2</sup> The basis for the petition is that, during the pendency of this matter before the Board, the ownership and planned use of the property served by this section of CSXT's line has changed. The property formerly owned by the Chambersburg Engineering Company ("Chambersburg Engineering"), which comprises approximately 25 acres of land and 250,000 square feet of building space, is now owned by New Franklin Properties, LLC, a Pennsylvania limited liability company wholly owned by Frederick Armstrong Fox.

The Foxes' plan to develop the former Chambersburg Engineering facility, together with their properties situated along the portion of CSXT's line that extends from Main Street to South Street, into an industrial park. Ultimately, the success of this project, which will attract businesses and jobs to the Borough of Chambersburg, depends in large part upon the continued availability of rail service.

## II. BACKGROUND

CSXT commenced this proceeding on November 16, 1998, by filing a petition for exemption. CSXT sought to exempt from the prior approval requirements of 49 U.S.C. §10903 its plan to abandon a portion of its railroad known as the Baltimore Service Lane, Lurgan Subdivision, extending from Fourth Street to Commerce Street in the Borough of Chambersburg,

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<sup>2</sup> The offer of financial assistance filed by the Foxes on March 12, 1999, covers the portion of CSXT's line that extends from Main Street to South Street.

Franklin County, Pennsylvania. For purposes of this petition, the section of rail line which CSXT intends to abandon may be divided into three separate parts: (1) the Fourth Street to Main Street Section; (2) the Main Street to South Street Section; and (3) the South Street to Commerce Street Section.

In its petition for exemption, CSXT indicated that Chambersburg Engineering was the only rail shipper located along the entire length of railroad which CSXT wants to abandon. CSXT stated that Chambersburg Engineering had made limited use of rail service in recent years, but that, despite the abandonment, Chambersburg Engineering would not lose rail service, because CSXT planned to reclassify the Fourth Street to Main Street Section as industrial sidetrack:

There is only one shipper located on the line proposed for abandonment. Chambersburg Engineering is located at the very southern end of the trackage proposed for abandonment between 4<sup>th</sup> Street and Main Street. ...Chambersburg Engineering will not lose rail service as a result of this abandonment. Post abandonment, CSXT will reclassify the trackage between 4th Street and Main Street in Chambersburg as industrial sidetrack and this trackage will be sold to a public entity for continued rail operations.

\* \* \*

The only rail patron physically located on the line has made very minimal use of rail transportation in recent years. Nevertheless, this patron will continue to have rail service available in the future since that portion of the line used to serve its facility [the Fourth Street to Main Street Section] will be reclassified as industrial sidetrack and sold for continued rail operations.

*CSXT Petition for Exemption*, pp. 2-3, 7.

CSXT further indicated in its petition for exemption that both the Main Street to South Street Section and the South Street to Commerce Street Section would be available for interim trail use. *Id.*, p. 5.

On or about November 23, 1998, the Borough of Chambersburg ("the Borough") filed a request for interim trail use/rail banking under the National Trails System Act, 16 U.S.C. §1247(d). The Borough's trail use request encompassed both the Main Street to South Street Section and the South Street to Commerce Street Section of CSXT's rail line. On March 9, 1999, the Board served a Decision which, *inter alia*: (a) granted CSXT's petition for exemption; (b) granted the Borough's request and issued a notice of interim trail use ("NITU") for the Main Street to South Street and the South Street to Commerce Street Sections; and (c) established March 19, 1999, as the deadline for filing offers of financial assistance.

On March 12, 1999, the Foxes timely filed an offer of financial assistance ("OFA"), pursuant to which they sought to purchase the Main Street to South Street Section of CSXT's railroad. On March 23, 1999, the Board served a decision which found the Foxes to be financially responsible, and postponed the effective date of the exemption authorizing abandonment of the Main Street to South Street Section of the line, in order to allow the OFA process to proceed.

By letters filed on April 9, 1999, by CSXT, and on April 22, 1999, by the Foxes, the parties informed the Board that they had agreed that CSXT would sell the Main Street to South Street Section to the Foxes for the purchase price of \$54,572.00. Thereafter, on May 7, 1999, the Board served a decision which authorized the Foxes to purchase the Main Street to South Street Section from CSXT, and dismissed CSXT's petition for exemption for the Main Street to South Street Section, effective on the date the sale is consummated.

The Foxes offered to purchase the Main Street to South Street Section because they wanted to maintain rail service to property they own along the rail line between Main Street and South Street. Specifically, the Foxes either own or have the option to purchase approximately 11

acres of land ("the Fox Properties") most of which is zoned for heavy manufacturing. The Fox Properties are bordered generally by South Street on the north, Black Avenue on the east, Main Street on the south and the railroad on the west. In March, 1999, Gaumer's Chassis Engineering, a heavy vehicle suspension components manufacturer owned by Frederick A. Fox and, at the time, managed by Frederick Armstrong Fox, maintained its offices and its casting, fabricating and service operations on the Fox Properties situated along the Main Street to South Street Section of the line.

The Foxes made their OFA in order to ensure that, in the future, scrap iron and steel bar stock could be delivered to Gaumer's Chassis Engineering's foundry by rail instead of by truck. The Foxes assumed that they would be able to gain access to CSXT's main line over the Fourth Street to Main Street Section, since CSXT had indicated in its petition for exemption that the Fourth Street to Main Street Section was to be converted into industrial sidetrack, in order to maintain rail service to Chambersburg Engineering.

By letter dated February 9, 2001, however, CSXT informed Counsel for the Foxes that:

Recently, we learned that Chambersburg Engineering no longer desires rail service to their facility, which is located between Fourth Street and Main Street. As there is no longer a purchaser for the rail between Fourth Street and Main Street, it is CSXT's intention to remove these track materials upon consummation of its abandonment authority.

Removal of these rail materials will leave your clients with an isolated railroad...

*February 9, 2001, Letter from CSXT to Charles O. Beckley, II, Esquire.*

Faced with the prospect that the Main Street to South Street Section of line that they had offered to purchase would be cut off from CSXT's main line, on February 22, 2001, the Foxes filed a letter with the Board in which they requested permission to withdraw their offer of

financial assistance. In a decision served on March 30, 2001, the Board granted the Foxes' request and terminated the OFA process.

On July 5, 2001, however, CSXT, through its Counsel, informed the Foxes' Counsel that Chambersburg Engineering had reconsidered its need for rail service, and that the Fourth Street to Main Street Section of the line would remain in place. Consequently, by letter dated July 19, 2001, the Foxes requested the Board to reinstate their OFA.<sup>3</sup>

On September 10, 2001, the Board served a decision granting the Foxes' request. The Board reasoned that, since the effective date of the exemption for abandonment of the whole line had been postponed, CSXT would not be burdened by reinstatement of the OFA:

The offerors' request for reinstatement of the OFA will be granted. Ordinarily, an OFA must be filed within 10 days of the decision authorizing or exempting the abandonment. The offerors met this deadline, but their subsequent withdrawal created a time lapse not provided for in the Board's abandonment regulations. The strict time frames imposed by the Board for OFAs are derived from statutory deadlines. These deadlines reflect Congressional intent to ensure that rail carriers are not burdened with unprofitable lines for longer than necessary. In this case, however, the effective date of the exemption for abandonment of the whole line, including the section subject to the OFA, has been postponed as a result of the continued negotiations for trail use with the Borough. Moreover, CSXT has indicated to the offerors that it is willing to sell the portion of its line from Main Street to South Street to the offerors in accordance with the terms of the original OFA. Thus, under the unique circumstances of this case, CSXT will not be burdened by the reinstatement of the OFA.

*September 10, 2001, Decision of the Board, p. 2 (footnote omitted).*

Since September 10, 2001, the Board has served a series of decisions extending both the deadline for exercising the authority to abandon the line, and the NITU negotiating period. By

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<sup>3</sup> By a separate letter dated July 19, 2001, addressed to Natalie S. Rosenberg, Esquire, CSXT's Counsel, the Foxes, through their Counsel, offered to purchase the Fourth Street to Main Street Section directly from CSXT, outside of the OFA process, for \$23,534.00, the price for which CSXT had previously indicated it would sell the Fourth Street to Main Street Section. (A copy of the July 19, 1999, correspondence from the Foxes' Counsel to CSXT's Counsel is attached hereto as Exhibit A.)

letter dated June 24, 2003, CSXT again requested the Board to extend both the date for consummation of the abandonment, and the NITU negotiating period, until January 30, 2004. On July 29, 2003, the Board served a decision granting CSXT's request.

At the present time, the three sections of the approximately 1.9 mile section of railroad that CSXT intends to abandon in the Borough of Chambersburg will be disposed of as follows: (1) the Fourth Street to Main Street Section will be converted to industrial sidetrack and sold, presumably to the Borough of Chambersburg; (2) the Main Street to South Street Section will be purchased by the Foxes; and (3) the South Street to Commerce Street Section will be conveyed to the Borough of Chambersburg for use as a recreational trail.<sup>4</sup>

**III. CHANGED CIRCUMSTANCES WARRANT  
PERMITTING THE FOXES TO AMEND THEIR OFA TO  
INCLUDE THE FOURTH STREET TO MAIN STREET  
SECTION, OR, ALTERNATIVELY, TO FILE A NEW OFA,  
*NUNC PRO TUNC***

In December, 2001, or January, 2002, Chambersburg Engineering ceased operating and went out of business. On July 30, 2002, Chambersburg Engineering conveyed all of its real property, which consisted of approximately 25 acres of land and approximately 250,000 square feet of building space, to New Franklin Properties, LLC (New Franklin Properties), a Pennsylvania limited liability company wholly owned by Frederick Armstrong Fox. (A copy of the July 30, 2002, deed from Chambersburg Engineering Company to New Franklin Properties, LLC, is attached hereto as Exhibit B.) The property now owned by New Franklin Properties and controlled by Frederick Armstrong Fox is served by the Fourth Street to Main Street Section of CSXT's rail line.

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<sup>4</sup> The Borough's trail use request has at no time included the Fourth Street to Main Street Section. The stated intent has always been, except for a brief period between February and July, 2001, to use this Section of the line to maintain rail service to the Chambersburg Engineering property.

As a result of New Franklin Properties' acquisition of the former Chambersburg Engineering property, the Foxes now own or control more than 30 acres of land, most of which is zoned for heavy manufacturing, and approximately 300,000 square feet of industrial/warehouse building space. Moreover, on the land they have available, they could easily double or triple the area under roof. All of this land is served by, and the majority of it abuts, the Fourth Street to Main Street and the Main Street to South Street Sections of CSXT's rail line. Additionally, Frederick Armstrong Fox holds a right of first refusal to purchase four additional acres of land which is contiguous to the Fox Properties and has several hundred feet of rail frontage along the Main Street to South Street Section.

In short, the Foxes now own or control approximately five times as much land, and approximately six times as much leaseable building space, as they did four and a half years ago, in March, 1999, when they filed their OFA for the Main Street to South Street Section. The demise of Chambersburg Engineering and the acquisition of the former Chambersburg Engineering property together constitute a significant change of circumstances which the Foxes could not have anticipated when they filed their original OFA.

The Foxes plan to develop the former Chambersburg Engineering property and the Fox Properties along the Main Street to South Street Section into a single industrial park, whose anchor tenants will be Gaumer's Chassis Engineering Company, which is owned by Frederick A. Fox, and Gaumer Industries, a manufacturer of parts for heavy trucks which is owned by Frederick Armstrong Fox. Gaumer Industries already conducts all of its operations at the former Chambersburg Engineering property; Gaumer's Chassis Engineering moved its offices to and began consolidating its operations at the former Chambersburg Engineering property in the fall of 2002.

The Foxes view the continued availability of rail service as critical to their effort to develop their properties into a viable industrial park. Since New Franklin Properties acquired the former Chambersburg Engineering facility, Frederick Armstrong Fox has received numerous *unsolicited* inquiries concerning the availability of the property for logistics activities, most of which would require rail service. The Foxes also want to preserve rail service to their properties as a means of achieving economies of scale for their own businesses, Gaumer's Chassis Engineering and Gaumer Industries.

As noted above, the Foxes offered to purchase the Fourth Street to Main Section from CSXT in July, 2001, when they sought and ultimately received the Board's permission to reinstate their OFA. The Foxes did so primarily to ensure continued access to the Main Street to South Street Section from CSXT's main line, because they had been told, over the course of a relatively short period of time: (a) that the Fourth Street to Main Street Section would remain as industrial sidetrack to serve Chambersburg Engineering; then, (b) that Chambersburg Engineering no longer wanted rail service, and that the Fourth Street to Main Street Section would be removed; and, finally, (c) that Chambersburg Engineering in fact wanted to retain rail service, and so the Fourth Street to Main Street Section would remain in place. (There was never any suggestion at this time that Chambersburg Engineering might go out of business.)

The Foxes have reiterated their offer to CSXT to purchase the Fourth Street to Main Street Section several times since 2001, particularly after New Franklin Properties acquired the former Chambersburg Engineering property. In response, CSXT, through its Counsel, has indicated to the Foxes' Counsel that CSXT believes that at the outset of this proceeding it made a "gentlemen's agreement" to convey the Fourth Street to Main Street Section to the Borough of Chambersburg, and that it will not sell that Section to the Foxes outside of the OFA process.

CSXT has also indicated, however, that it will not take a position for or against this petition by the Foxes to amend their OFA to include the Fourth Street to Main Street Section, and CSXT has previously stated to the Board, in its reply to the protest filed by the Foxes to CSXT's petition for exemption, that it will sell the Fourth Street to Main Street Section to the Foxes under the OFA process:

CSXT has furnished counsel for the Foxes information concerning the net liquidation value of the rail line between Fourth Street and South Street and between Main Street and South Street. ***If the Foxes choose to purchase this trackage under the Board's OFA process, CSXT will sell them the rail line.***

*January 28, 1999, Reply of CSXT to Protest to Petition for Exemption Filed by the Foxes, p. 3 (emphasis added).*<sup>5</sup>

As CSXT set forth in the petition for exemption by which it commenced this proceeding, the stated purpose of retaining the Fourth Street to Main Street Section has always been to maintain rail service to the Chambersburg Engineering property. New Franklin Properties, the limited liability company owned by Frederick Armstrong Fox, now owns, and the Foxes' businesses already occupy, the former Chambersburg Engineering property. In addition to growing their own businesses, the Foxes are committed to developing the remainder of that property, in conjunction with their Black Avenue Properties, into an industrial park that will attract jobs and businesses to the Borough of Chambersburg. Preserving rail service to the properties that will comprise that park is vital to their plans.

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<sup>5</sup> In correspondence dated June 17, 2003, from CSXT's Counsel to the Foxes' Counsel, CSXT indicated that it intends to sell the Fourth Street to Main Street Section to the Borough of Chambersburg. CSXT also indicated, however, that if the Foxes "are able to procure permission from the STB to extend the limits of the earlier filed OFA to include the portion of the line between 4<sup>th</sup> Street and Main Street, it is likely that CSXT would then be required to sell the area between 4<sup>th</sup> Street and Main Street to the Foxes." (A copy of CSXT's Counsel's June 17, 2003, letter to the Foxes' Counsel is attached hereto as Exhibit C.)

Since the purpose of retaining the Fourth Street to Main Street Section has always been to maintain rail service to the Chambersburg Engineering property, which Frederick Armstrong Fox's company now owns, it makes sense, given the substantial change of circumstances that has occurred in the almost five years that have passed since CSXT first filed its petition for exemption, to allow the Foxes to purchase both the Fourth Street to Main Street and the Main to South Street Sections of CSXT's rail line through the OFA process. This will allow the Foxes to ensure that rail service remains available to all of their properties.<sup>6</sup>

With the aid of perfect hindsight, it might be argued that the Foxes should have included the Fourth Street to Main Street Section in their original OFA. If the Foxes had known in March, 1999, that, three-and-a-half years later, the opportunity to acquire the Chambersburg Engineering property would present itself, they certainly would have. Chambersburg Engineering Company was, however, a Franklin County institution, and had occupied the same facility for more than 100 years. But it was not a public company, and there was no way for the Foxes reasonably to predict that it was on the brink of extinction.

In order to further the rail transportation policy articulated by Congress in 49 U.S.C. §10101, the regulatory framework applicable to offers of financial assistance should retain the flexibility to adapt to circumstances relating to the ownership and use of property served by a rail line which evolve during the pendency of an abandonment exemption proceeding. This seems particularly true where, as here, the railroad has not yet exercised the abandonment authority granted to it, and has recently requested an extension of time in which to do so; where, as here,

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<sup>6</sup> In this regard, since the Chambersburg Engineering Company no longer exists, it is not at all clear whether the Borough of Chambersburg has and is willing to commit the resources to maintain the Fourth to Main Street Section, which includes at least two bridges, in a condition suitable for rail use. If the Borough purchases the Fourth Street to Main Street Section as industrial sidetrack, then it will have no obligation to provide continued rail service to any of the Fox properties. Allowing the Foxes to purchase the Fourth Street to Main Street Section through the OFA process will ensure its continued availability for railroad use.

the ownership and planned use of a significant industrial property served by the line to be abandoned has changed during the pendency of the proceeding; where, as here, the new property owner has already filed a timely OFA and been determined by the Board to be financially responsible; where, as here, permitting the new property owner to amend its previously-filed OFA will in no way prejudice the railroad; where, as here, the railroad has previously indicated that it will sell the affected portion of line to the new property owner through the OFA process; and where, as here, permitting amendment of the previously-filed OFA will in no way interfere with the trail use application filed by the local municipality.

Permitting the Foxes to amend their OFA to include the Fourth Street to Main Street Section, or, alternatively, to file, *nunc pro tunc*, a new OFA that includes the Fourth Street to Main Street Section, will in no way prejudice CSXT. The abandonment of CSXT's line has not yet been consummated; the Board, at CSXT's request, recently extended both the date by which abandonment authority must be exercised, and the NITU negotiating period, until January 30, 2004; and CSXT has previously indicated to the Board that it will sell the Fourth Street to Main Street Section to the Foxes under the OFA process.

Nor will permitting the Foxes to amend their OFA in any way prejudice the Borough of Chambersburg. As noted above, the Borough's trail use/rail banking request has never included the Fourth Street to Main Street Section. Granting the Foxes' request will not interfere with the Borough's plan to create a recreational trail. Moreover, since the sole purpose of retaining the Fourth Street to Main Street Section as industrial sidetrack was to maintain rail access to the Chambersburg Engineering facility, the property now owned by New Franklin Properties and controlled by Frederick Armstrong Fox, it would appear that there no longer exists any reason for the Borough to acquire this portion of CSXT's rail line.

For all of these reasons, due to the substantial change in the circumstances relating both to the ownership and planned use of the former Chambersburg Engineering property that has occurred during the course of the almost five years that have elapsed since CSXT filed its petition for exemption, the Board should permit the Foxes to amend their OFA to include the Fourth Street to Main Street Section of CSXT's rail line. Alternatively, the Board should allow the Foxes to file, *nunc pro tunc*, a new OFA that incorporates both the Fourth Street to Main Street and the Main Street to South Street Sections of the line.

#### IV. RELIEF REQUESTED

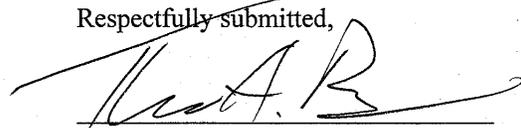
The Foxes respectfully request the Board to enter an order granting the Foxes permission to amend the offer of financial assistance that they filed on March 12, 1999, to include that portion of CSXT's rail line in the Borough of Chambersburg that extends from Fourth Street to Main Street. Alternatively, the Foxes respectfully request the Board, pursuant to 49 CFR §1152.25(e), to reopen its Decision served on March 9, 1999, and to grant them permission to file, *nunc pro tunc*, a new offer of financial assistance that includes the Fourth Street to Main Street Section.

DATED: August 14, 2003

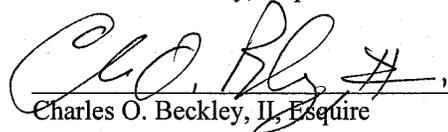
Of Counsel

**BECKLEY & MADDEN**  
212 North Third Street  
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Harrisburg, Pennsylvania 17108-1998  
(717) 233-7691

Respectfully submitted,



Thomas A. Beckley, Esquire



Charles O. Beckley, II, Esquire

Attorneys for Petitioners

**BECKLEY & MADDEN**

ATTORNEYS AT LAW

CRANBERRY COURT

212 NORTH THIRD STREET

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TELEPHONE 233-7891

FAX NO.

(717) 233-3740

FILE NO.

35164

July 19, 2001

Natalie S. Rosenberg, Esquire  
CSX Transportation, Inc.  
Law Department  
500 Water Street  
Jacksonville, FL 32202

**VIA FED EX**

**RE: STB Docket No. AB-55 (Sub-No. 568)  
CSX Transportation, Inc. -- Abandonment  
Exemption in Franklin County, Pennsylvania**

Dear Natalie:

This will confirm our telephone conversation of this morning.

As you know, the Foxes are seeking to purchase, through the OFA process, the portion of CSXT's rail line that extends from Main Street to South Street in the Borough of Chambersburg. As I indicated to you when we spoke, the Foxes have authorized me to offer to purchase as well the section of CSXT's line that extends from Fourth Street to Main Street.

Obviously, if the Foxes were to purchase this additional section of the line, it would assist them in maintaining rail service to their plant. We would prefer, however, to purchase this section of track privately, outside of the OFA process.

The Foxes are willing to pay \$23,534.00 for the additional section of line. We have based this figure on numbers provided to us by Charlie Rosenberger in a letter dated January 27, 1999. Charlie indicated that "CSXT has estimated the net liquidation value of its rail line between Fourth Street and South Street at \$78,106 and between Main Street and South Street at \$54,272." (For your convenience, I am enclosing herewith a copy of Charlie Rosenberger's January 27, 1999, letter.)

To arrive at the price for the piece between Fourth and Main, we simply subtracted the price for the section between Main and South from the total: \$78,106.00 - 54,572.00 =

Exhibit A-1

**BECKLEY & MADDEN**

Natalie S. Rosenberg, Esq.  
July 19, 2001  
Page 2

\$23,534.00. If this price needs to be adjusted due to the passage of time, then the Foxes will entertain any reasonable counteroffer.

The Foxes are prepared to close on the sale at CSXT's convenience, and would be willing to forward an additional deposit to CSXT as a sign of good faith.

Please let me know if we can provide you with any additional information concerning the Foxes' offer to purchase privately the section of line that extends from Fourth Street to Main Street. Thank you for your courtesy and assistance in this matter. We will look forward to receiving CSXT's response.

Very truly yours,

BECKLEY & MADDEN

By: 

Charles O. Beckley, II

COBII/gs  
Enclosure

cc: Mr. Frederick Armstrong Fox (w/encl.)

**DEED**

This Deed is made the 30th day of July, 2002, between CHAMBERSBURG ENGINEERING COMPANY, a Pennsylvania corporation, with its principal place of business situated at 150 Derbyshire Street, Chambersburg, Franklin County, Pennsylvania (hereinafter referred to as the "Grantor"),

AND

NEW FRANKLIN PROPERTIES, LLC, a Pennsylvania limited liability company which maintains an office at 521 Black Avenue, Chambersburg, Franklin County, Pennsylvania (hereinafter referred to as the "Grantee").

WITNESSETH, that the said Grantor, for and in consideration of the sum of ONE DOLLAR (\$1.00) lawful money of the United States of America, unto the Grantor well and truly paid by the said Grantee at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged and the Grantor being therewith fully satisfied, does by these presents grant, bargain, sell and convey to the Grantee, its successors and assigns:

ALL that real estate located and being situated within the Borough of Chambersburg, Franklin County, Pennsylvania, being more particularly bounded and described as follows:

TRACT NO. 1: BEGINNING at a point in the public road leading from Chambersburg to Waynesboro and called the Waynesboro Road. The said road is intersected by Lincoln Street; thence along the line of said public road South 13 degrees and 47 minutes East 326 feet to a point on the line of the Cumberland Valley Rail Road; thence along the line of said railroad South 21 degrees West 203 feet to a point; the corner of lands now or formerly of Mrs. Ellen H. Culbertson and formerly of Dr. Edmund Culbertson; thence by lands of said Culbertson North 78 degrees and 27 minutes West 722 feet to a point on the east side of twelve foot alley; thence by said alley North 16 degrees and 8 minutes East 474 feet to a point on the south line of said Lincoln Street; thence along the south line of said Lincoln Street South 80 degrees and 19 minutes East 578.5 feet to place of beginning. CONTAINING 8 acres, more or less.

TOGETHER with a right-of-way over the lands now or formerly of Ellen H. Culbertson and a right-of-way over the lands formerly of Weisgarber's heirs.

BEING the same real estate which Joshua W. Sharpe, Trustee et al., by their deed dated December 6, 1897, and recorded in the Office of the Recorder of Deeds for Franklin County, Pennsylvania, in Deed Book

Volume 110, Page 69, conveyed to the Chambersburg Engineering Company.

TRACT NO. 2: BEGINNING at a post in the middle of the road leading from Chambersburg to Greencastle; thence by lands now or formerly of E. Culbertson, South 78-3/4 degrees East 677.08 feet to a post; thence along line of land now or formerly of Cumberland Valley Railroad Company, South 20-7/8 degrees West 662.76 feet to a point in the middle of the right-of-way of the Western Maryland Rail Road Company; thence along the middle of said right-of-way, North 32-1/2 degrees West 824.39 feet to a post in the middle of the said Chambersburg-Greencastle road; thence along the middle of said road, North 16-1/4 degrees East 92.4 feet to the post, the place of beginning. CONTAINING 5 acres and 30 perches.

BEING the same real estate that Ellis E. Foust and Sally G. Foust, his wife, by their deed dated June 27, 1903, and recorded in the Office of the Recorder of Deeds for Franklin County in Deed Book Volume 130, Page 38, conveyed to Chambersburg Engineering Company, and that Irvin C. Elder and Ariana R. K. Elder, his wife, and Walter K. Sharpe and Helen M. Sharpe, his wife, by their deed dated June 29, 1903, and recorded in the Office of the Recorder of Deeds for Franklin County at Deed Book Volume 130, Page 40, conveyed to Chambersburg Engineering Company.

TRACT NO. 3: BEGINNING at a point in the centerline of the Chambersburg-Greencastle Road (now South Main Street) at a corner common to the within described real estate and other lands of the Grantor herein; thence in said centerline, North 16 degrees 8 minutes East 715 feet 4 inches to a point in the centerline of the Chambersburg-Greencastle Road (now South Main Street) where it intersects with the south property line of Lincoln Street (now Derbyshire Street); thence in the south property line of Lincoln Street (now Derbyshire Street), South 80 degrees 19 minutes East 192 feet, more or less, to a point common to the within described real estate and Tract No. 1 above; thence along the aforesaid Tract No. 1, South 16 degrees 8 minutes West 474 feet to a point; thence continuing along Tract No. 1 herein, South 78 degrees 27 minutes East 673 feet to a point; thence by lands now or formerly of the Cumberland Valley Railroad Company, South 21 degrees West 272 feet to a point; thence by other lands of the Grantor herein, North 76 degrees 30 minutes West 874 feet to a point in the centerline of the Chambersburg-Greencastle Road (now South Main Street), the place of beginning. CONTAINING 6.9 acres.

BEING the same real estate which Ellen H. Culbertson, individually and as executrix of Edmund Culbertson, late of the Borough of Chambersburg, by her deed dated October 1, 1903, and recorded in the Office of the

Recorder of Deeds for Franklin County, Pennsylvania, in Deed Book Volume 130, Page 422, conveyed to the Chambersburg Engineering Company.

TRACT NO. 4: BEGINNING at an angle in the northwesterly line of land now or formerly of the Pennsylvania Railroad Company at the distance of 80.67 feet measured North 76 degrees 32 minutes West from a point in the line established as the centerline (bearing North 20 degrees 53 minutes East) of the eastward bound main track of the Cumberland Valley Division of its railroad, said point in the centerline being distant 5,459.2 feet measured southwestwardly along the same from a point therein opposite the middle of Chambersburg Passenger Station; extending thence by other land now or formerly of the Pennsylvania Railroad Company as follows, viz: First, on a line parallel with the said centerline and 80 feet distant northwestwardly therefrom, South 20 degrees 53 minutes West 90.77 feet; and, second, North 69 degrees 7 minutes West 150 feet; and thence by land now or formerly of the Chambersburg Engineering Company as follows, viz: First, on a line parallel with the said centerline and 230 feet distant northwestwardly therefrom, North 20 degrees 53 minutes East 71.24 feet; and, second, South 76 degrees 32 minutes East 151.3 feet to the place of beginning. CONTAINING 12,150.75 square feet, more or less.

TRACT NO. 5: BEGINNING at a point in the northwesterly corner of the parcel of land hereinabove described as Tract No. 4 at the distance of 231.97 feet measured North 76 degrees 32 minutes West from a point in the said line established as the centerline (bearing North 20 degrees 53 minutes East) of the eastward bound main track of the Cumberland Valley Division of the Pennsylvania Railroad Company, said point in the centerline being distant 5,459.2 feet measured southwestwardly along the same from a point therein opposite the middle of the Chambersburg Passenger Station; extending from the said beginning point South 20 degrees 53 minutes West by the said parcel of land hereinabove described as Tract No. 4, 12.02 feet to a point; thence North 76 degrees 32 minutes West by land now or formerly of the said Chambersburg Engineering Company 675.34 feet to the middle of state road; thence along same and by land now or formerly of William Boyer, North 16 degrees 6 minutes East 12.02 feet; and thence by other land now or formerly of the Chambersburg Engineering Company, South 76 degrees 32 minutes East, 676.3 feet to the place of beginning. CONTAINING 8,109.84 square feet, more or less.

TOGETHER WITH any and all the rights and privileges to use same as a driveway as mentioned and set forth by the Indenture from Ellis E. Foust and wife to the Cumberland Valley Railroad Company, its successors and

assigns, dated June 27, 1903, and recorded in Franklin County Deed Book Volume 130, Page 37.

SUBJECT, HOWEVER, to the existing rights and privileges relating to maintaining and using the railroad, branch sidings and connections now crossing the said strip or piece of land and extending from the tracks of the Western Maryland Railway Company to those of the Pennsylvania Railroad Company.

TRACT Nos. 4 and 5 being the same two tracts of real estate which the Pennsylvania Railroad Company, by deed dated March 18, 1929, and recorded in Franklin County, Pennsylvania in Deed Book Volume 236, Page 10, conveyed to the Chambersburg Engineering Company.

TRACT NO. 6: BEGINNING at a point in a Northeasterly line of land of the Western Maryland Railway Company, at the distance of 60 feet measured Northeastwardly and at right angles from a point in the line established as the center line of the main track of railroad of the Western Maryland Railway Company; said beginning point being also at the distance of 80 feet measured Westwardly and at right angles from a point in the line established as the center line of the Eastbound main track of railroad of the Pennsylvania Railroad Company, known as the Cumberland Valley Branch; said last mentioned point being at the distance of 6,200 feet and 8/10 of a foot measured Southwestwardly along said center line of the Eastbound main track of railroad from another point therein, opposite the center and said railroad company's Chambersburg Passenger Station.

EXTENDING from said beginning point the following four courses and distances: (1) North 32 degrees and 26 minutes West, along said Northeasterly line of land of the Western Maryland Railway Company, on a line parallel with and distant 60 feet measured Northeastwardly and at right angles from said center line of the main track of railroad of the Western Maryland Railway Company, 187.04 feet to a point in an Easterly line of land of the Chambersburg Engineering Company; the following two courses and distances being by said land of the Chambersburg Engineering Company; (2) North 20 degrees and 53 minutes East, on a line parallel with and distant 230 feet measured Westwardly and at right angles from said center line of the Eastbound main track of railroad of the Pennsylvania Railroad Company, 528.81 feet to a point; (3) South 69 degrees 7 minutes East, 150 feet to a point; and thence (4) South 20 degrees 53 minutes West, by land of the Pennsylvania Railroad Company, on a line parallel with and distant 80 feet measured Westwardly and at right angles from said center line of the Eastbound main track of railroad of the Pennsylvania Railroad Company, 640.55 to the place of beginning. CONTAINING 2.013 acres, more or less.

TRACT NO. 7: BEGINNING at a point at a corner common to land of the Western Maryland Railway Company and common to a corner of land of the Chambersburg Engineering Company, at the distance of 20 feet measured Northeastwardly and at right angles from a point in the line established as the center line of the main track of railroad of the Western Maryland Railway Company; said beginning point being also at the distance of 230 feet measured Westwardly and at right angles from a point in the line established as the center line of the Eastbound main track of railroad of the Pennsylvania Railroad Company, known as the Cumberland Valley Branch; said last mentioned point being at the distance of 6,138 feet and 9/10 of a foot measured Southwestwardly along said center line of the Eastbound main track of railroad from another point therein, opposite the center of said Railroad Company's Chambersburg Passenger Station;

EXTENDING from said beginning point the following five courses and distances: (1) North 32 degrees 26 minutes West, along a Northeasterly line of land of the Western Maryland Railway Company, on a line parallel with and distant 20 feet measured Northeastwardly and at right angles from said center line of the main track of railroad of the Western Maryland Railway Company, crossing the Easterly line of State Road, 829.85 feet to a point in the center line of said State Road; (2) North 16 degrees 6 minutes East, along said center line of State Road, 16.01 feet to a point; the following two courses and distances being through land of the Chambersburg Engineering Company; (3) South 32 degrees 26 minutes East, on a line parallel with and distant 32 feet measured Northeastwardly and at right angles from said center line of the main track of railroad of the Western Maryland Railway Company, recrossing said Easterly line of State Road, 752.98 feet to a point; (4) South 69 degrees 7 minutes East, 62 feet and 98 one-hundredths of a foot to a point in the Westerly line of the parcel of land containing 2.013 acres, more or less, as hereinbefore described; and thence (5) South 20 degrees 53 minutes West, partly along said Westerly line of the parcel of land as hereinbefore described, and partly along a Westerly line of land of the Western Maryland Railway Company, on a line parallel with and distant 230 feet measured Westwardly and at right angles from said center line of the Eastbound main track of railroad of the Pennsylvania Railroad Company, 61.88 feet to the place of beginning. CONTAINING 263 one-thousandths of an acre, more or less.

TRACT NOS. 6 and 7 being the same two tracts of real estate which the Pennsylvania Railroad Company, by its deed dated September 4, 1942, and recorded in the Office of the Recorder of Deeds for Franklin County, Pennsylvania, in Deed Book Volume 300, Page 91, conveyed and quit claimed, respectively, to the Chambersburg Engineering Company.

TRACT NO. 8: BEGINNING at an iron pin in Wayne Avenue on the southern boundary line of land now or formerly of Jere Senseny, being 7.7 feet from the curb line of Wayne Avenue and 12 feet from the property line thereof; thence across Wayne Avenue and along land now or formerly of Jere Senseny, South 79 degrees 54 minutes East 261 feet to an iron pin on the centerline of a 16-foot alley; thence with centerline of said alley, South 10 degrees 46 minutes West, 185.9 feet to an iron pin; thence South 53 degrees 12 minutes East 14.8 feet to an iron pin on the northern right-of-way line of railroad siding of track connecting the Pennsylvania Railroad Company tracks with tracks of the Western Maryland Railway Company; thence with a line 15 feet from and parallel to the centerline of the track connecting the Pennsylvania Railroad and the Western Maryland Railroad 198.2 feet to an iron pin in Wayne Avenue, said line being the arc of a circle having a radius of 410.3 feet, the chord thereof being 195.9 feet and running South 67 degrees 11 minutes West; thence in said Wayne Avenue, North 9 degrees 31 minutes West, 318.4 feet to an iron pin, the place of beginning. CONTAINING 1 acre and 45.5 perches, more or less, as shown by draft entitled "Draft of Land, Chambersburg, Franklin Co., Pa., surveyed May 20, 1943 for the Chambersburg Engineering Co., Scale 1" 30 ft., John H. Atherton, C.S."

BEING the same real estate which Mabel H. Schaff, widow, by her deed dated June 4, 1943, and recorded in the Office of the Recorder of Deeds for Franklin County, Pennsylvania, in Deed Book Volume 310, Page 504, conveyed to Chambersburg Engineering Company.

TRACT NO. 9: BEGINNING at an iron pin located North 57 degrees 34 minutes East, 20 feet from a point in the center line of the main track of the Western Maryland Railway Company, which point is South 32 degrees 27 minutes East, 824.39 feet from the intersection of said main track and the center of South Main Street; thence North 32 degrees 30 minutes West, 14.89 feet to an iron pin at other lands of the Chambersburg Engineering Company; thence by the same, North 20 degrees 53 minutes East, 49.87 feet to an iron pin; thence South 32 degrees 26 minutes East, 44.7 feet to an iron pin at lands of the Western Maryland Railway Company; thence by said lands South 57 degrees 34 minutes West, 40 feet to an iron pin, the place of beginning. CONTAINING 1,191.8 square feet.

BEING the same real estate which the Western Maryland Railway Company, by its deed dated March 10, 1955, and recorded in the Office of the Recorder of Deeds for Franklin County, Pennsylvania, in Deed Book Volume 464, Page 395, conveyed to the Chambersburg Engineering Company.

THERE IS EXCEPTED AND EXCLUDED from these tracts of real estate the tract of real estate conveyed to The Pennsylvania Railroad Company by deed dated March 2, 1929, and recorded in the Office of the Recorder of Deeds for Franklin County, Pennsylvania, in Deed Book Volume 236, Page 8.

THERE IS ALSO EXCEPTED AND EXCLUDED from these tracts of real estate two tracts of real estate conveyed to the Borough of Chambersburg by deed dated February 11, 1942, and recorded in the Office of the Recorder of Deeds for Franklin County, Pennsylvania, in Deed Book Volume 291, Page 463.

THERE IS ALSO EXCEPTED AND EXCLUDED from these tracts of real estate the tract of real estate conveyed to William D. Amsley and C. Larry Amsley by Deed dated June 14, 1999, and recorded in the Office of the Recorder of Deeds for Franklin County, Pennsylvania, on June 15, 1999, in Record Book Volume 1436, Page 361.

The premises hereby conveyed are known collectively as 150 Derbyshire Street, Chambersburg, Franklin County, Pennsylvania, and have been assigned parcel number 04-1E33.-029.-000000 by the Franklin County, Pennsylvania, tax assessment office.

The premises hereby conveyed are shown on the Property Layout of CECO, drawing number 9956, which is attached hereto as Exhibit A and incorporated herein by reference.

It is the express intent of Grantor to grant, bargain, sell and convey to Grantee by this deed, and Grantor does grant, bargain, sell and convey to Grantee by this deed, all of the real property situated in the Borough of Chambersburg, Franklin County, Pennsylvania, which Grantor owns, has title to, and/or in which Grantor has any interest whatsoever.

UNDER AND SUBJECT to all easements, encumbrances and restrictions as appear of record or are visible upon the land.

TOGETHER with all and singular the buildings and improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of the Grantor, both at law and in equity, of, in and to the same.

TO HAVE AND TO HOLD all and singular the above-described premises, with the messuage or tenement thereon erected, hereditaments and premises hereby granted, or

mentioned and intended so to be, with the appurtenances, unto the said Grantee, its successors and assigns, to and for the only proper use and behoof of the said Grantee, its successors and assigns, forever.

AND the said Grantor, for itself and its successors and assigns, does covenant promise and agree, to and with the said Grantee, its successors and assigns, that it, the said Grantor, and its successors and assigns, all and singular the hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the said Grantee, its successors and assigns, against it, the said Grantor and its successors and assigns, and against all and every person and persons whomsoever lawfully claiming or to claim the same or any part thereof, by from or under the Grantor, its successors or assigns, shall and will, subject as aforesaid, SPECIALLY WARRANT and forever DEFEND.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Grantor has caused this deed to be signed by its duly authorized representative and its corporate seal to be affixed hereto the day and year first above written.

WITNESS:

CHAMBERSBURG ENGINEERING  
COMPANY



By:   
Samuel C. Clarke, Chairman of the Board of  
Directors

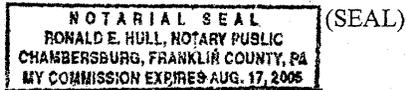
(SEAL)

COMMONWEALTH OF PENNSYLVANIA :  
 : SS:  
COUNTY OF FRANKLIN :

On this, the 30<sup>TH</sup> day of July, 2002, before me, the undersigned officer, personally appeared SAMUEL C. CLARKE, who acknowledged himself to be the Chairman of the Board of Directors of CHAMBERSBURG ENGINEERING COMPANY, a corporation, and that he as such Chairman of the Board of Directors, being authorized to do so, executed the foregoing deed for the purpose therein contained by signing the name of the CHAMBERSBURG ENGINEERING COMPANY by himself as Chairman of the Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public







**NATALIE S. ROSENBERG**  
Senior Counsel

35167  
Law Department  
500 Water Street  
Speed Code J-150  
Jacksonville, FL 32202  
Fax (904) 359-1248  
Telephone (904) 359-3100

Writer's direct telephone line:  
**(904) 359-1253**

June 17, 2003

Charles O. Beckley, II, Esquire  
Beckley & Madden  
Cranberry Court  
212 North Third Street  
Post Office Box 11998  
Harrisburg, Pennsylvania 17108-1998

**Re: STB Docket No. AB-55 (Sub-No. 568X) -  
CSX Transportation, Inc. -Abandonment Exemption in  
Franklin County, Pennsylvania**

Dear Mr. Beckley:

In confirming our telephone conversation in response to your letter of May 28, 2003, CSX Transportation, Inc. ("CSXT") intends to sell the portion of the relevant line between 4th Street and Main Street to the Borough of Chambersburg. In the event that the Foxes are able to procure permission from the STB to extend the limits of the earlier filed OFA to include the portion of the line between 4th Street and Main Street, it is likely that CSXT would then be required to sell the area between 4th Street and Main Street to the Foxes.

CSXT would like to conclude this transaction as soon as possible. Please keep us posted of any developments, and CSXT will continue to progress the sale of the property between Main Street and South Street, which includes a highway-rail at-grade crossing that will become the responsibility of the Foxes. It is my understanding that you earlier provided some comments on a proposed Purchase and Sale Agreement. CSXT will work to progress it to the next step so that it can be signed in the near future.

Please feel free to give me a call if you have any questions.

Very truly yours,

  
Natalie S. Rosenberg

NSR/pkw

Exhibit C

**CERTIFICATE OF SERVICE**

I Charles O. Beckley, II, Esquire, hereby certify that a copy of the foregoing document was served this day upon the persons and in the manner indicated below:

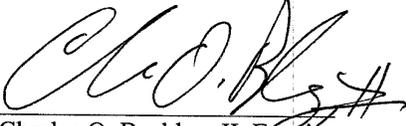
**SERVICE BY FED EX:**

Natalie S. Rosenberg, Esquire  
Senior Counsel  
CSX Transportation, Inc.  
Law Department  
500 Water Street  
Jacksonville, FL 32202

Lynn Y. MacBride, Esquire  
Barley, Snyder, Senft & Cohen, LLC  
247 Lincoln Way East  
Chambersburg, PA 17201

David C. Finch, Assistant Borough Manager  
Borough of Chambersburg  
100 South Second Street  
Chambersburg, PA 17201

DATED: August 14, 2003



Charles O. Beckley, II, Esquire