

LAW OFFICES
NAUMAN, SMITH, SHISLER & HALL, LLP

18TH FLOOR
 200 NORTH THIRD STREET

P. O. Box 840
 HARRISBURG, PENNSYLVANIA 17108-0840

TELEPHONE
 (717) 236-3010

TELEFAX
 (717) 234-1925

SPENCER G. NAUMAN, JR.
 J. STEPHEN FEINOUR
 CRAIG J. STAUDENMAIER
 BENJAMIN C. DUNLAP, JR.
 DENNIS E. BOYLE

L. RENÉE LIEUX
 LUCINDA C. GLINN

COUNSEL
 DAVID C. EATON
 JOHN C. SULLIVAN
 GUY P. BENEVENTANO

DIRECT E-MAIL ADDRESS
 NSSH@NSSH.COM
 WEBSITE ADDRESS
 WWW.NSSH.COM

May 6, 2005

**Via Telefax
 Confirmed U.S. Mail**

Michael F. Eichert, Esquire
 Chief Deputy City Solicitor
 City of Philadelphia Law Department
 One Parkway Building, 17th Floor
 1515 Arch Street
 Philadelphia, PA 19102

RE: ***CSX Transportation, Inc. v. City of Philadelphia***
U.S.D.C. Eastern District of Pennsylvania
Docket No. 04-CV-5023

Dear Mr. Eichert:

We were surprised by your letter of April 29, 2005. Based on your counterproposal of March 10, 2005, and other discussions, we believed that an overpass at Locust Street was being seriously considered by the City within the settlement negotiations. In fact, our impression was that one of the major issues for the City would be the funding of an overpass. Based on that impression, CSXT undertook a good faith effort to help locate funding for the project, a measure we thought would be well received.

Please be assured that CSXT has no desire to keep you "in the dark about initiatives that directly affect the terms of our negotiations." I agree that would be counterproductive, and in that regard note that I informed you of these discussions and CSXT's efforts to secure funding for an overpass soon after I learned of them. I also note that at a meeting Bob Sullivan had with members of the City Council, initiated at their behest, the question of funding was raised. CSXT is looking at ways to address that concern.

Most importantly, you stated in item 6 of your March 10, 2005, counterproposal that "[n]o overpass at Locust Street would be constructed at this time, although some type of above grade crossing might be built in the future." We naturally thought that meant the door was open

Michael F. Eichert, Esquire

May 6, 2005

Page 2

to an overpass, and that our helping to secure funding for it would make it both "doable and fundable."

CSXT cannot agree to an at-grade crossing at Locust Street as a permanent resolution of this matter. As you know from participating in our October 26, 2004, meeting with the City, CSXT Terminal Manager Lawrence Koster explained in great detail CSXT's operations in the area of Locust Street, and answered the City representatives' many questions on that matter. As he explained, those operations necessitate the periodic blockage of Locust Street due to train lengths and the fact that there is no other area between Baltimore and northern New Jersey where it is feasible to conduct operations such as crew changes, the holding of trains and the block swapping of cars on this main line north-south route.

We recognize that the City has made concessions during the course of our negotiations since the January hearing, and do not question its good faith in the negotiations. CSXT has also been negotiating in good faith and has similarly come a long way in attempting to accommodate the City. In this regard, after thoughtful and critical review of its operations, CSXT concluded that it could permit an at-grade crossing at Race Street and is in the process of designing circuitry to activate whatever warning devices the City constructs at that crossing. Due to that crossing's location at the north end of the double-tracked area of tracks, the crossing could be kept unblocked in all but extraordinary circumstances and thus should be usable and safe for pedestrians. Conversely, due to a crossing at Locust Street being more centrally located in the double-tracked area, it could not be kept unblocked in all but extraordinary circumstances without major and costly changes in CSXT's operations. Furthermore, CSXT remains extremely concerned about the dangers of pedestrians crawling between the cars of a stopped train, even with gates or movable fences.

The local community group has been adamant in its insistence that neither of these crossings be blocked. Their filings with the Court, however, do not evidence a reasonable acknowledgment that CSXT may have operational requirements which would sometimes necessitate the blockage of a crossing at Locust Street. Even if CSXT were to agree to an at-grade crossing at Locust Street, we believe that it would only invite further and prolonged litigation over its operations in the area. In this regard, I note that it would be the City and the community group that would be attempting to change the status quo of railroad operations that have taken place in the vicinity of the proposed Locust Street crossing for over 125 years.

Based on these facts and your April 29 letter, we unfortunately agree that we have reached a point in our discussions over the Locust Street issue where we should return to the Judge. As expressed by Judge Kauffman at the close of the January hearing and reiterated subsequently by his law clerk, he stands ready to assist the parties in attempting to resolve any issues standing in the way of a negotiated settlement. I suggest that you and I either call his law

Michael F. Eichert, Esquire
May 6, 2005
Page 3

clerk together to request such a meeting, or I draft a letter for your review and both our signatures requesting the meeting.

Sincerely yours,

A handwritten signature in cursive script that reads "Benjamin C. Dunlap, Jr." The signature is written in black ink and is positioned above the typed name.

Benjamin C. Dunlap, Jr.

BCDjr/jc

cc: R. Templeton Fitch, Esquire
Robert Sullivan