

RESOLUTION OF THE CITY COUNCIL

No. 392

Approved October 8, 2008

WHEREAS, The Providence and Worcester Railroad ("P&W") entered into a contract with the City of Providence ("City") on August 7, 1985, identified in the Recorder's Office of the City in book 1304 at page 726, conveying to the City all the line of railroad owned by P&W, formerly being the Penn Central Transportation Company's line of railroad known as the "Harbor Junction Industrial Track;" and

WHEREAS, P&W reserved an easement to conduct railroad operations on and over the entirety of the property conveyed to the City (the "Property") which includes, but is not limited to, the following rights:


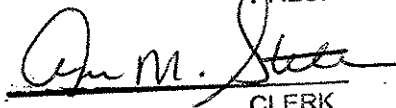
"To construct, operate and maintain additional or substitute facilities which are reasonably necessary or legally required in connection with the provision of rail service, subject to the prior written approval of the City, which approval shall not be unreasonably withheld."

"To construct contiguous or adjacent additional rail lines and trackage and install necessary track connections, subject to the prior written approval of the City, which approval shall not be unreasonably withheld;" and

WHEREAS, On December 1, 2002, the City of Providence leased land subject to P&W's easement to Broomfield & Sons, Co. ("Broomfield"), which has in turn subleased land to Coastal Recycling, Inc. ("Coastal"); and

WHEREAS, P&W now intends to exercise its rights to construct additional trackage upon the Property and will require the totality of the area of the Easement, to the exclusion of Broomfield and Coastal.

NOW, THEREFORE, BE IT RESOLVED, That His Honor, the Mayor, or his designee, is authorized to approve said additional trackage upon condition that, to recompense the City for lost revenue, P&W be charged \$1,800.00 per annum for use of the Easement for a period of nine years commencing on the date that Broomfield and Coastal vacate the Easement.

IN CITY COUNCIL
OCT 2 2008
READ AND PASSED

PRES.

CLERK

APPROVED

10/8/08
MAYOR

April 30, 2008

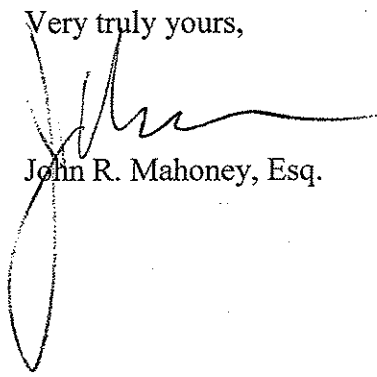
Mr. Stephen Broomfield
J. Broomfield & Sons Co., Inc.
473 Allens Avenue
Providence, RI 02905

RE: PROVIDENCE AND WORCESTER RAILROAD COMPANY
VS: J. BROOMFIELD & SONS CO., INC. and COASTAL RECYCLING, INC.

Dear Stephen:

Enclosed please find a copy of a memo I have prepared with regard to the above referenced matter for your review. Kindest regards.

Very truly yours,


John R. Mahoney, Esq.

JRM:las
Enc.

RE: Providence and Worcester Railroad Company
VS: J. BROOMFIELD & SONS, CO., INC. and Coastal Recycling, Inc.
FROM: JRM
DATE: APRIL 30, 2008

MEMO TO FILE

An easement may be extinguished by adverse possession; however, in order to succeed under such a theory, use of the easement by the party claiming adverse possession must show that the party exercised complete dominion over the property. Thomas v. Ross, 477 A.2d 950.

Adverse possession must be actual, open, notorious, hostile, under claim of right, continuous and exclusive. Finocchiaro v. Francescone, 97 RI 371 (1964).

The length of time that a party claiming adverse possession must exclusively use the property is ten (10) years. The notoriety of possession element in adverse possession means that the claimant not only goes upon the land openly but uses it adversely to the true owner.

Carnevale v. Dupee, 853 A.2d 1197 (2004).

A holder of an easement can also abandon the easement. It appears that in a railroad context the railroad can only abandon the easement after a petition has been received by the Federal Surface Transportation Board (STB) and has been granted by the Board. A railroad may no longer abandon or discontinue use of a railroad corridor without the STB's approval.

National Association of Reversionary Property Owners v. Surface Transportation Board of US, 158 F.3d 135 (1998).

Accordingly, I do not believe that an adverse possession or abandonment claim in this particular case would be successful. It is obvious that any abandonment issue has to be handled by the Federal Surface Transportation Board. In terms of adverse possession, in light of the law, we cannot prove that we held the property notoriously. We held the property pursuant to a lease

that we had with the City of Providence. We lawfully possessed the property. At the same time, the railroad had a lawful interest in an easement. Consequently our possession of the property or Coastal's through a sublease with us, was not necessarily notorious or hostile to the easement interest of the railroad.

The real issue in the case relates to whether the Providence and Worcester Railroad Company can now take for its exclusive use the very property that it sold to the City of Providence in 1985 and retained the easement described in the closing papers. The August 7, 1985 Deed and Agreement between the City of Providence and the Providence and Worcester Railroad Company contains the language that is significant in paragraphs 2 and 3. Paragraph 2 indicates that the City grants to P&W an easement " to conduct railroad operations on and over the railroad tracks owned by the City running through and easterly of Allens Avenue and serving that area of the City of Providence known as the Port of Providence;". In other words, the easement relates to all existing railroad operations on and over existing railroad tracks.

Paragraph 3 of the aforesaid agreement specifically Paragraph 3(d) reads:

To construct contiguous or adjacent additional rail lines and trackage and install necessary track connections, subject to the prior written approval of the City, which approval shall not be unreasonably withheld.

Rhode Island law is clear that the rights of an easement owner and the rights of a land owner are not absolute and uncontrolled but are so limited, each by the other, that there may be a due and reasonable enjoyment of both. Sharp v. Silver Realty Corp., 86 RI 276 (1957).

The grant creating an unrestricted or undefined easement should not be construed to burden the servient (City of Providence property) beyond intention disclosed in terms of grant or intention of statement of taking. Valone v. City of Cranston, 97 RI 248 (1964).

Generally, an easement does not grant its holder the right to exclusive possession of the servient estate (Providence property) or the right to deprive the owner of his or her beneficial interest in the land that is the subject of the easement. R.I. Economic Development Corp. v. The Parking Company, 892 A.2d 87 (2006).

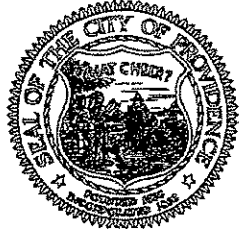
The above cited law presents us with a better argument than I originally envisioned in this case. The law would suggest that both the easement holder and the owner of the property should, under normal circumstances, be given the right to their use of the land recognizing that it is not absolute and uncontrolled. The owner of the property and the easement holder are restricted by the other so that there may be due and reasonable enjoyment of the land achieved for both parties.

The easement language clearly provides the Providence and Worcester Railway with use of the existing railways. The City of Providence is entitled to reject the current proposal by the railway because if they grant it they will in effect give to the railway exclusive and uncontrolled use of the property. There is a very good argument that the City of Providence could refuse the railway's request to build additional railroad tracks because the nature of the negotiations between the parties in 1985 that led to the sale gave each party something. The City of Providence obtained the land and was therefore free to lease it as they have done to Steve. The railroad benefitted because it no longer had to pay taxes on the land and it could continue to use the existing railway and any appurtenances that were necessary thereto. Now the railway is attempting to benefit in all respects. It does not want to pay taxes. It wants exclusive use and control of the property toward the end that the City of Providence and its tenant will no longer be able to use the property or benefit by it.

This issue is distinctly different from the issue we faced a year ago. At that time we were not talking about all of the property and we were addressing what might be perceived as reasonable use of the easement by the railroad company immediately adjacent (thirteen feet) to its tracks. I thought we were wise to settle the case in that instance the way we did. I believe there is a strong argument in this particular case for the reasons given that the railroad company has gone too far in this instance.

**PROVIDENCE POLICE DEPARTMENT**

Colonel Dean M. Esserman
Chief of Police

**TRAFFIC/PARKING ENFORCEMENT**

Sergeant Paul F. Zienowicz, Commanding

9-3-08

To: Anna Stetson, City Clerk
From: Sgt. Paul Zienowicz
Subject: Prov. Worcester Railroad V. J. Broomfield

Dear Ms. Stetson,

In reference to the above, the Police Department is of the opinion that this matter would best be handled by the City of Providence Law Department, as the police department has no interest in the outcome.

Thank you,


Sgt. Paul Zienowicz

GEORGE S. FARRELL
Chief of Department



DAVID N. CICILLINE
MAYOR

Department of Public Safety, Fire Department
"Building Pride in Providence"

July 7, 2008

Councilman Leon F. Tejada
Chairman Committee on Public Works
Providence City Council

Dear Chairman Tejada,

I have reviewed the proposed resolution which would authorize an easement for the use of additional trackage for the Providence and Worcester Railroad at the property located on or near the Coastal Recycling Inc. Please be advised the Providence Fire Department has no objection to said easement being granted.

Should you have any questions please contact me at my office.

Sincerely,

George S. Farrell
Chief of Department


Cc; Anna M. Stetson, City Clerk



Department of Public Works
"Building Pride in Providence"

MEMORANDUM

TO: Anna Stetson, City Clerk

FROM: John D. Nickelson, P.E., Director 

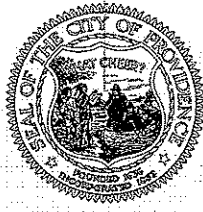
DATE: June 30, 2008

RE: Resolution concerning Providence and Worcester Railroad Harbor
Junction Industrial Track

In response to the request for comment it is my opinion that the issue is legal and financial. The Solicitor must determine the rights of the parties involved; and then the Assessor and finance should determine the impact on the city.

From a public works view, we support recycling and support the efforts of companies who are a part of the process.

JDN:cs



Providence City Plan Commission

DAVID N. CICILLINE.
Mayor

July 3, 2008

Anna Stetson
City Clerk's Office
Providence City Hall
25 Dorrance Street
Providence, RI 02903

**Re: Committee on Public Works Referral for the Providence & Worcester
Railroad and the City of Providence Easement Agreement**

Dear Ms. Stetson:

This letter is in response to the referral submitted to the City Plan Commission (CPC) by the Committee on Public Works regarding the above-reference matter. The referral is dated June 20, 2008.

After speaking with Adrienne Southgate at the Law Department, it has been determined that the CPC does not need to take any action on this matter.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Ise", is written over the typed name.

Christopher J. Ise
Principal Planner