

TAB 2

POINT PAPER
DISCUSSION - POTENTIAL PURCHASE OF CSX PROPERTY
FEBRUARY 4, 2008

Issue:

CSX has offered the City the opportunity to purchase a portion of property that they own within city limits. Staff requires input from the Mayor and City Commission regarding how to proceed.

Background:

Investigation into the removal of a portion of the CSX Parrish Spur (the Spur) from east of 5th Ave. W. to the west side of 11th Ave. W. was initiated several years ago when the City expressed a desire to remove the unused rail crossings from 5th, 7th, 8th, 10th and 11th Avenues, so that those roads could be better maintained. Additionally, during the CRA's process of acquiring property to accommodate keeping Palmetto Elementary at or near its current location, we approached CSX about acquiring two parcels fronting 10th Ave. W. and south of 9th St. W.

After finally contacting the proper CSX person and inquiring about the parcels, we also inquired about abandoning the unused spur and committed to pay the abandonment application fee of \$3,500, which is consistent with CRA redevelopment objectives. The processes were rather complicated and required a letter from the City stating abandonment of the Spur was consistent with our long-term planning, as well as letters from any affected County Agencies stating they were not impacted. Abandonment was approved and finalized on July 10, 2007.

The track removal was then bid out by CSX. They advised us it would cost \$58,000 for track removal and asked if the City would pay. We countered by asking whether the tracks would remain in place if we didn't pay, and alternatively, if the City could remove the tracks. They answered that the tracks would be left in place, although abandoned, if we did not pay, but that we could remove the tracks ourselves if we were to buy the underlying property.

CSX has offered the City approximately 3.22 acres (140,263 sq ft) that lie between 8th Ave. W. and 10th Ave. W. at a cost of \$12.00 per sq. ft. (or \$1,680,000) with significant deed restrictions that limit the future use of the property.

The rail right-of-way east of 5th Ave. W. is owned by CSX and/or the adjoining property owners. West of 10th Ave. W. midway to 11th Ave. W. the rail right-of-way appears to lie on easements upon the adjoining properties. Discussions with County officials that deal with CSX lead staff to believe it is likely CSX owns the rail rights-of way for the street crossings of 5th, 7th, 8th, 10th and 11th Avenues, although CSX has not provided confirmation of the same.

On Wednesday, January 16, 2008, Jim Free walked the abandoned portion of the Spur from east of 5th Ave. W. to the Fertilizer Plant, west of 11th Ave. W.

- The Spur tracks east of 5th Ave. W. are visible but all the crossties are substantially covered over with accumulated dirt and asphalt.
- The Spur tracks from 5th Ave. W. to 7th Ave. W. are substantially the same and in some areas completely covered or grown over. Immediately west of 5th Ave. W., the Spur track crossing for the main line track from Bradenton to Tampa has been removed by CSX. West of that crossing, two small spurs split off to the north and south, and parallel the Spur. They are partially visible most of the way to, and extend across 7th Ave. W. These small spurs end before reaching 8th Ave. W.
- From 7th Ave. W. to its terminus, most of the Spur rail and a few crossties are visible. Approximately a hundred feet of rail west of Saw Dust Joe's has been removed.

Alternatives:

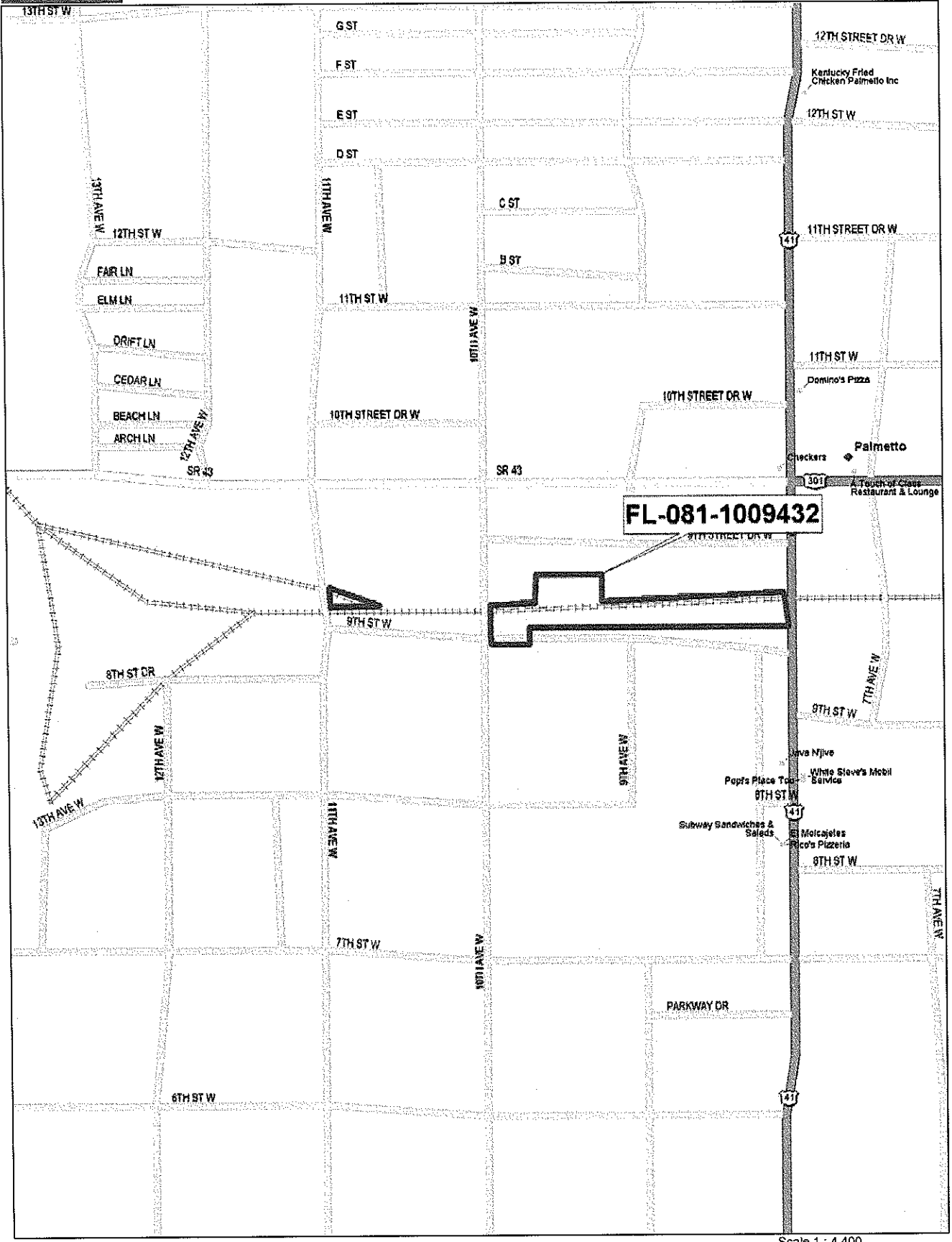
#1 - Charge the CRA to negotiate with CSX to:

- Acquire the 3.22 acres at an amount less than \$12/sq. ft., changing the deed restrictions so that they can be removed upon clearing the property of environmental concerns; and
- Remove the tracks and crossing equipment from 5th, 7th, 8th, 10th and 11th Avenues, and to deed those rights-of-way to the City; and
- Acquire the remaining CSX rights-of-way along this spur through the Rails-to-Trails Program.

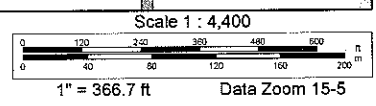
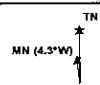
#2 – Pay approximately \$58,000 for CSX to remove the unused tracks.

3 - Do nothing.





FL-081-1009432



City of Palmetto
Questions for CSX
November 30, 2007

1. What does *abandonment* mean to CSX? **Filing with the Surface Transportation Board to cease CSX's common carrier obligation.**
2. What is the normal process that occurs when CSX abandons a length of railroad track? **The initiation of abandonment varies with different projects. Many times an interested buyer (such as the City of Palmetto in this case) will be the reason CSX will study a corridor and file with the Surface Transportation Board for authority to abandon the line and cease its common carrier obligation. Once the STB approves, CSX can then discontinue rail service. As you might know, an abandonment is a complicated legal process that is federally controlled by the Surface Transportation Board (STB). The STB's process and rules governing abandonment can be found on the STB's website:
http://www.stb.dot.gov/stb/public/resources_abandonment.html**
3. When CSX abandons railroad tracks that cross city streets does that ROW revert to the city? If not, does the city have to obtain permission from anyone in order to bore under or otherwise route utilities across that abandoned crossing?
Reversion only occurs if CSX had easement title for railroad operating purposes only. If CSX has fee title, it would not revert. It looks like 10th Avenue was easement title for CSX so if the City owns the street, then the 40ft right of way across 10th Avenue would most likely revert to the City. A title company hired by the City would have to confirm that. However, CSX's signals on 10th Avenue are not included in the sale either. And, CSX will most likely remove those signals on 10th Avenue. Eddie Pollock is to confirm.
4. Must abandoned railroad tracks be removed from city street crossings? **No, they do not need to be removed.** If yes, at whose expense?

5. Who owns the real property under the tracks that have been abandoned? Please describe the rail bed and/or right of way; e.g., how wide is the ROW? **CSX's right of way is approximately 40 ft wide between the western boundary of 8th Avenue and the eastern boundary of 10th Avenue. However, the exact width of the right of way will be obtained when the survey is completed during your due diligence phase. The attached exhibit shows the right of way and out parcels that we own in fee and which are included in the sale area which is shown as the hatched areas. Those areas not hatched cannot be sold since we only had easement title for rail operating purposes. That property which is not hatched looks like it is that portion of the 40ft right of way between the eastern boundary of 10th Ave and the eastern boundary of 11th Ave. That would be property that would revert to either adjacent land owners or former owners, but that would have to be confirmed by your title company. I would think that if the City owns the street on either side of the 40ft rail corridor, then, the 40ft rail corridor, once abandoned, would revert to the City., but, you would have to have a title company confirm that. The rest of the easement 40ft rail corridor runs from the western boundary of 10th Avenue to the eastern boundary of 11th Avenue and that also would revert as well. But, the City, if it wanted that property, could use eminent domain authority to obtain it from the adjacent land owners or whoever it might revert to – former owners, etc.**
- Note there is another triangular hatched parcel which is included in the hatched sale area on the Exhibit located north of the that 40ft right of way beginning about midway between 11th Avenue. All in all, according to our Exhibit attached, we can sell the City 3.22 acres, plus or minus, with the final exact measurement being determined by the survey during the City's due diligence phase.**
6. What happens to real property adjoining tracks abandoned by CSX? **It depends on ownership type. If CSX owned it in fee title, it will be shown on the exhibit as sale area. If CSX did not own it in fee title, it would revert to adjacent land owners or former owners, depending on how the deeds read. This would have to be confirmed by your Title Company. However, once again, if the City wanted that property, it could use its eminent domain power to obtain it.**
7. Does Palmetto have first right of refusal on the tracks and associated ROW abandoned by CSX? **No, there is no right of first refusal on tracks and associated right of way abandoned by CSX.**

8. Referring to the map drawing provided by CSX to portray the segment of track abandoned, what happens to the segment from the "End Abandonment" point on the drawing westward to the end of the track along the north side of the Heartland Fertilizer plant? **We show that property as already being sold and you would have to check court records to determine who the current owner is of that property.**
9. We understand that a segment of track has been removed somewhere between Heartland and the point where the spur branches off from the Ellenton railroad. Do you have information on how much track was removed and specifically where it was removed? **No, that property was sold almost 20 years ago.**
10. Are the rails associated with the abandoned tracks required to be removed by CSX if CRA and/or city choose not to pay for the removal? **No the track does not have to be removed by CSX. The track will be included in the sale of the property.**
11. There is a CSX-provided "Street Atlas USA" map that shows two parcels outlined in black. One of the parcels has an annotation "FL-081-1009432." Do these two outlined parcels make up the 3.2 acres? **Yes, approximately, but the exact acreage will be determined by the surveyor in your due diligence phase.** If so, what about the tracks, rail bed or property associated with the rail bed? **Once the City buys the property, the City can either remove the track and sell it for scrap value or leave it in place.**
12. What does the city have to do if it wants a portion of the tracks to remain in place and connected to the Ellenton track? **CSX will include the track in the property sale. If the track is not included in the sale area as depicted in the Street Atlas Exhibit, then that track can still be included and sold to the City, since the track is owned by CSX. However, the land under that track which is not included in the Street Atlas Exhibit cannot be included in the sale to the City and the City would have to seek legal advice as to what it can or can't do with the track if it is sitting on land that is not owned by the City. However, the City does have eminent domain authority and could condemn the land that is not included in the sale area so that the City would have a continuous ownership of the rail corridor. Once again, the City would have to seek legal advice to confirm that.**
13. If CSX removes tracks and rail bed, does the City get a chance to approve the finished product to make sure that all debris is removed and the job is acceptable? **CSX is not going to remove the track.**

14. Are potential environmental issues identified and dealt with by CSX in the track removal process? **Once again, CSX is not going to remove this track. It will be included in the sale area.**

15. Does CSX have any problem with an agency like the Florida Gulf Coast Railroad Museum, or another public or private entity using the tracks for their purposes, such as an excursion from Parrish to Palmetto? **The City will own the track and the land that is included in the exhibit area once it buys the property and works out the other land issues that would not be included in the sale. The City, if it decided to implement an excursion train would have to run that operation on its own, fully independent of any CSXT operations and would have to indemnify CSX against any liability arising from such use.**

16. **The proposed deed restrictions on the 3.2 acres significantly diminish the property value, are they negotiable? The residential deed restrictions are not negotiable. However, there is a method to get the restrictions removed once the City buys the property. To get the residential deed restrictions removed, see the language below which is included in our standard purchase agreement.....:**

In the event that Buyer desires the removal, post-closing, of the deed restrictions contained in Section 6.3 of this Agreement (“Environmental Use Restrictions”), Buyer must: (a) submit the Premises into a voluntary or other cleanup program administered by the Environmental Agency in the state in which the Premises is located; (b) complete remediation of any environmental contamination of the Premises to comply with the most stringent applicable standards for residential use; and (c) receive a formal Closure from the State Environmental Agency stating that the Premises has been remediated to a degree that allows residential use. If Buyer satisfies these conditions, Seller will release the Environmental Use Restrictions, provided that Buyer will protect, indemnify, and hold harmless Seller from and against any and all damages, penalties, fines, claims, demands, causes of action, liens, suits, liabilities, and expenses of every kind and nature suffered by, incurred by or asserted against Seller of Buyer as a direct or indirect result of any hazardous materials, hazardous substances, wastes or other environmentally regulated materials located on, in, at or under the Premises. **NOTWITHSTANDING THE FOREGOING, THE GROUND WATER USE RESTRICTION CONTAINED IN THE LAST SENTENCE OF SECTION 6.3 CONTINUE AND SHALL NOT BE REMOVED OF RECORD.**