



OFFICE OF THE
COMMISSIONER OF RAILROADS
STATE OF WISCONSIN

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Public Service Commission of Wisconsin
RECEIVED: 01/28/15, 8:56:21 AM

January 28, 2015

9170-RX-308

Re:

Petition of the City of Madison for the Alteration of the Public Crossing of the Wisconsin & Southern Railroad, LLC Tracks with North Shore Drive in the City of Madison, Dane County

To The Person Addressed:

Enclosed with this letter you will find the Proposed Decision of the Hearing Examiner. This proposed decision is the hearing examiner's recommendation and not the final decision of the Commissioner of Railroads. The Commissioner will issue a final decision only after considering any written comments on the proposed decision.

Comments, either in support or in opposition, must be filed in writing in time to reach the Office of the Commissioner of Railroads (OCR) not later than 15 days from the date of this letter. One copy of the comments must be filed with the OCR and one copy served by regular mail or in person upon each party of record. Generally, "parties" include those persons and organizations listed in the "Appearance" section of the proposed decision (but not including any members of the OCR staff).

This 15-day period is your opportunity to file any comments on the proposed decision. Comments need not follow any particular format nor do they need to be elaborate. A clear, concise and specific explanation of your comments is sufficient and helpful. Short extensions may be granted upon request in writing or by telephone.

Sincerely,

Douglas S. Wood, Hearing Examiner
Enclosure

9170P308/dw

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the Matter of the:

Petition of the City of Madison for the Alteration of the Public Crossing of the Wisconsin & Southern Railroad, LLC Tracks with North Shore Drive in the City of Madison, Dane County

9170-RX-308

PROPOSED DECISION

By letter dated September 30, 2014, the City of Madison petitioned the Office of the Commissioner of Railroads (OCR) pursuant to Wis. Stat. §§ 195.28 and 195.29 for the alteration of a public crossing of the Wisconsin & Southern Railroad, LLC (WSOR) tracks with North Shore Drive in the City of Madison, Dane County (crossing no. 391 716F / MP 138.55).

Pursuant to due notice, a public hearing was held in this matter on January 27, 2015 in Madison, Wisconsin with hearing examiner Douglas S. Wood presiding.¹

Appearances:

Parties

City of Madison, Petitioner
by
Anthony Fernandez, PE
Civil Engineer 4
210 Martin Luther King Jr. Blvd., Room 215
Madison, WI 53703

As Interest May Appear:

Wisconsin & Southern Railroad, LLC
by
Roger Schaalma
Superintendent of Maintenance of Way
1890 E. Johnson Street
Madison, WI 53704

PROPOSED FINDINGS OF FACT

The City of Madison plans to construct a 6'-wide concrete sidewalk along the north side of North Shore Drive to connect the existing sidewalk along Proudfit Drive at Lorillard Court to the Southwest Path. The sidewalk would cross the Wisconsin & Southern Railroad, LLC tracks. The sidewalk will go through the northern section of Brittingham Park.

The sidewalk will be located 13'8" behind the curb of North Shore Drive. The construction of this sidewalk crossing constitutes an 'alteration' pursuant to Wis. Stat. § 195.29 because it will be located outside of the existing roadway's

¹ The OCR now publishes all notices, orders, proposed decisions and final decisions on the Internet. These documents may be accessed at either <http://ocr.wi.gov/apps40/dockets/default.aspx> or on the Public Service Commission's website at <http://psc.wi.gov/>

right-of-way. In this case, the “right-of-way” was established by a permit granted by the Wisconsin Department of Transportation (DOT). The WSOR tracks are on land owned by the DOT. The City will need to obtain a new or amended permit from DOT for the sidewalk.

The sidewalk will cross the tracks at an angle of 90°. The crossing will consist of one mainline track.

New residential units have recently been added in the immediate vicinity of the crossing. In 2013, two developments added 176 new residential units. Another development with 80 residential units will be opened in 2015. Of these 256 units, 116 units are located south of the tracks and 140 units are to north. The sidewalk will provide access across the tracks for the new residential units and the nearby neighborhood along Proudfit Street.

The railroad requested that the City be required to install a fence extending from the sidewalk crossing for an unspecified distance and running parallel to the tracks to deter trespassers from cutting across the tracks to walk between the Southwest Path and the new sidewalk. In support of its request, the railroad cited the increased pedestrian traffic generated by the new residential developments. The railroad also referenced the long-term, ongoing trespassing problem at the Kohl Center, located slightly less than a half-mile to the west. The City opposed a fencing requirement. This **proposed order** does not require that the City install a fence. The City recognized that the new residential developments will increase pedestrian traffic in the area and proposed the sidewalk to address that need. A primary purpose of the sidewalk crossing is to provide pedestrians with an improved legal place to cross the tracks. An existing ditch that runs between the tracks and the Southwest Path will discourage trespassing. Unlike the Kohl Center, there is no destination location that will attract large crowds. Requiring fencing is not necessary.

At the hearing, the City originally proposed a timber plank and asphalt crossing surface rather than concrete panels due to cost concerns. The railroad expressed a preference for a concrete panel crossing surface due to its lower maintenance cost. The railroad indicated the cost difference between timber plank and asphalt and concrete panels for a sidewalk crossing would be in the ballpark of \$3,000. The City indicated that cost increment was acceptable. The order requires a concrete panel surface. If the cost differential is greater than expected, the City can request an amendment to the order.

From April to November, the railroad operates 6 to 8 trains per week over this crossing. During the winter, the railroad operates one to two trains per week. The timetable speed is 10 mph. Trains range in length from 22-cars to 100-car unit trains.

The sidewalk will be adjacent to the roadway crossing of North Shore Drive with the WSOR tracks. The City proposed to install crossbucks for the sidewalk. The North Shore Drive roadway crossing has cantilevered 12” LED automatic flashing lights with gates. There are flashing lights on the vertical support post as well as the horizontal arm. Installing crossbucks on the approaches to the sidewalk crossing will provide an additional measure of warning to pedestrians, especially.

In summary, the alteration of the crossing at-grade of the Wisconsin & Southern Railroad, LLC tracks with North Shore Drive will promote public safety and convenience by providing an improved legal crossing for pedestrians.

Source of funding: The City of Madison agreed to pay all costs for the crossing construction. The railroad shall maintain the crossing surface and the City shall maintain the sidewalk within the railroad right-of-way.

Timing: The City of Madison proposes that the Wisconsin & Southern Railroad, LLC install the sidewalk crossing by July 31, 2015.

PROPOSED ULTIMATE CONCLUSIONS ON THE ISSUES

1. That the alteration of the crossing at-grade of North Shore Drive with the Wisconsin & Southern Railroad, LLC tracks in accordance with the design plans of the City of Madison in the City of Madison, Dane County will promote public safety and convenience.
2. That in order to adequately protect and promote public safety, it is necessary to install and maintain reflective crossbucks.
3. That it is reasonable that the City of Madison bear the cost for the crossing construction.

PROPOSED CONCLUSION OF LAW

That the Office of the Commissioner of Railroads has jurisdiction under Wis. Stat. §§ 195.28 and 195.29 and the Office enters an order consistent with the findings of fact.

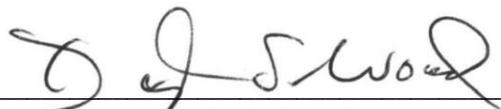
PROPOSED ORDER

The hearing examiner recommends:

1. That the **Wisconsin & Southern Railroad, LLC** shall install and maintain a concrete panel sidewalk crossing along the north side of **North Shore Drive** with its tracks in accordance with the design plans of the City of Madison in the City of Madison, Dane County by **July 31, 2015** (Crossing No. 391 716F / MP 138.55). The crossing shall extend at least 2' beyond the edge of the sidewalk on each side.
2. That the **Wisconsin & Southern Railroad, LLC** shall install and maintain retroreflective back-to-back crossbucks with YIELD signs on the same posts with 2" wide reflective vertical strips on the front and back of the support posts on each approach to the **sidewalk** crossing of its tracks with **North Shore Drive** at-grade in the City of Madison, Dane County by **July 31, 2015** (Crossing No. 391 716F / MP 138.55).
3. That the **Wisconsin & Southern Railroad, LLC** shall bear no part of the cost of the crossing construction.
4. That notwithstanding any other cost apportionment in this order, the **Wisconsin & Southern Railroad, LLC** shall bear any cost assessed to the railroad pursuant to Wis. Stat. § 195.60 for the investigation of this matter by the Office. The railroad shall not pass on those assessment costs either directly or indirectly.
5. That jurisdiction is retained.

Dated at Madison, Wisconsin, January 28, 2015.

By the Office of the Commissioner of Railroads.



Douglas S. Wood
Hearing Examiner