

OFFICE OF THE COMMISSIONER OF RAILROADS
STATE OF WISCONSIN

Petition of the City of Madison for the Establishment of Two Public
Multiuse Pathway Crossings of the Wisconsin & Southern Railroad
LLC Tracks with Cannonball Path at the Madison Newspapers Railroad
Spur and Ridgeway Way in the City of Madison, Dane County

9170-RX-415

FINAL DECISION

This is the Final Decision in the Class 1 proceeding by the Office of the Commissioner of Railroads (Office) on the September 26, 2023, petition by the City of Madison for two new public pathway crossings of the Wisconsin & Southern Railroad's (WSOR) tracks at Ridgewood Way and the Madison Newspapers spur.¹

The City's petition, under Wis. Stat. §§ 195.28 and 195.29 (2021-22)², is DENIED without prejudice.

Introduction

The City of Madison proposes to extend the existing Cannonball Path east from Fish Hatchery Road to the Newspapers spur then north to the Wingra Creek Path. The project includes new crossings of the Madison Newspapers Spur and that of the WSOR tracks at Ridgewood Way. The Wisconsin Department of Transportation (WisDOT) owns the railroad right-of-way (ROW) at the proposed Ridgewood Way crossing location and Madison Newspapers owns the railroad ROW at the spur crossing location.

The Office held a videoconference hearing open to the public on January 30, 2024, where witnesses offered testimony and exhibits on behalf of the parties.³ The Office received one

¹ [Ex.-City-Canton-1 - PSC REF#: 480369.](#)

² All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

³ Notice of Hearing, [PSC REF#: 489168.](#)

written comment during the open comment period through January 29, 2024. The parties, for purposes of review under Wis. Stat. §§ 227.47 and 227.53, are listed in Appendix A.

Statutory Authority

In this type of case the issues are, as indicated in Wis. Stat. § 195.29(1): (a) will the proposed crossing promote the public safety; (b) by whom shall the same be made; and (c) because this is a new crossing, the advisability of allowing it to be established and the manner of making it. *Re City of Madison*, Docket 2-R-3108, 20 P.U.R.3d 255 (Wis. P.S.C., July 10, 1957). The equitable apportionment of costs between the municipality and the railroad is directed under Wis. Stat. § 195.29(2).

In enacting Wis. Stat. § 195.29(1), the Legislature did not establish any standard to apply in determining when a new at-grade crossing is to be permitted, or if advisable, whether the new crossing must be by overhead structure or underpass. *Green Bay & W. R. Co. v. Pub. Serv. Comm'n*, 269 Wis. 178, 186–87, 68 N.W.2d 828, 832 (1955). The statute purposely grants the Office wide discretion to determine the methods that should be required at the crossing to promote the public safety. *Id.*

Establishing New Crossings

Wisconsin Stat. § 195.29(1) requires that in establishing a new crossing, the Office must first find by a preponderance of evidence that the proposed crossing promotes public safety before considering the advisability of allowing the crossing to be established and the manner of establishing it.⁴ *Green Bay*, 269 Wis. at 183, 68 N.W.2d at 830. In considering the advisability

⁴ The findings of an administrative agency, however, do not need to reflect a preponderance of the evidence as long as the agency's conclusions are reasonable. *Kitten v. State Dep't of Workforce Dev.*, 2002 WI 54, ¶ 5, 252 Wis. 2d 561, 569, 644 N.W.2d 649, 652.

Docket 9170-RX-415

of allowing the crossing, the Railway-Highway Grade Crossing Handbook provides some guiding principles.⁵ The Crossing Handbook provides that a new crossing should not be permitted unless no other viable alternatives exist.

Findings of Fact

1. The WSOR operates as needed over the Madison Newspapers spur at a maximum timetable speed of 10 mph.
2. The WSOR operates 6-8 train movements per week, based on customer demand, over the Vita Plus spur tracks with Ridgewood Way at a maximum timetable speed of 10 mph.
3. The Federal Railroad Administration (FRA) track classification of the Vita Plus spur is excepted track and is considered unimproved track consisting of 72 lb. jointed rail that is approximately 120 years old with marginal to poor tie and drainage conditions that increases the risk of a derailment at any speed.
4. Fish Hatchery Road is a north-south, four lane divided roadway with center lane allowing right and left turns at various locations except immediately south of the crossing where only left turns are allowed.
5. Fish Hatchery Road intersects the WSOR tracks at an angle of 55 degrees, right-hand forward skew.
6. The Cannonball Path follows on the north side of the WSOR tracks in a northeast-northwest direction and crosses the southbound lanes of Fish Hatchery Road at an angle of 80 degrees and the northbound lanes at an angle of 54 degrees, 37 ft. from the near rail of the WSOR tracks at their closest point.

⁵ RAILROAD-HIGHWAY GRADE CROSSING HANDBOOK 3rd Ed (FHWA 2019) (Crossing Handbook) at 126- available at [Highway-Rail Crossing Handbook \(3rd Edition\) \(dot.gov\)](#).

7. Fish Hatchery Road carries an average daily traffic of over 30,000 vehicles at a posted speed limit of 30 mph, but prevailing speeds are much higher.
8. Fish Hatchery Road has on-road bike facilities northbound and southbound.
9. Fish Hatchery Road's bike lanes are not considered adequate for bicyclists of any age or ability due to the large volumes and high speeds of vehicles.
10. Sidewalks on the east side of Fish Hatchery Road run between the Cannonball Path and Wingra Drive; on the west side, sidewalks run from the path to Carver Street.
11. The east side sidewalks are 5 ft. wide and 5 ft. from the on-road bike lane through the Madison Newspapers driveway and 8 ft. wide and 15 ft. from the bike lane thereafter.
12. The publicly available Greater Madison Metropolitan Planning Organization's interactive Bicycle Level of Traffic Stress (LTS) system shows the Fish Hatchery Road on-road bike lanes to be higher stress segments based on speed limit, traffic volumes, number of travel lanes, and the unsignalized intersecting streets, but low stress using the wider sidewalk north of the Madison Newspapers driveway.
13. There are four driveways accessing the eastern side of Fish Hatchery Road between the Cannonball Path and Culmen Street all within a span of 300 ft. There are two driveways between Culmen Street and Carver Street both within a span of 95 ft.
14. Establishing the at-grade crossing of Ridgewood Way with the WSOR tracks in the city of Madison will not promote public safety because the unimproved 72 lb. jointed rail is approximately 120 years old with marginal to poor tie and drainage conditions that increases the risk of a derailment at any speed.

15. Establishing the at-grade crossing of the Madison Newspapers Spur in city of Madison will not promote public safety because there is already a nearby private crossing providing vehicular access to an electric substation to the east; a derailer only 30 ft. from the proposed crossing could derail a railcar toward the proposed path; the proposed crossing is planned at an unacceptable skew for use by Middle School aged children; and, does not provide needed visibility for those same children to see their surroundings or to be seen.

16. Establishing the crossings is not advisable under the circumstances because they would not promote public safety, and there are viable alternatives to the proposed crossings.

Conclusions of Law

1. The WSOR is a railroad as defined in Wis. Stat. § 195.02(1).
2. The Office has authority under Wis. Stat. § 189.02; Wis. Stat. §§ 195.03, 195.04, 195.06, 195.28, 195.285, 195.29, 195.30; Wis. Stat. § 227.47(1); and Wis. Admin. Code § RR 1.15 to issue this final decision denying the proposed at-grade crossing projects.

Discussion

The City states that the extension of the Cannonball Path is the final segment needed to complete the entire Cannonball Path corridor (5 miles in total) from the Military Ridge Path (by the McKee Road overpass) to the Wingra Creek Path⁶ and connection to the Capital City Trail. The City states that this is a key component of the larger path network, and the City's All Ages and Abilities Bike Network seeking to provide a safe and low-stress bike network for all.

The Cannonball Path follows the WSOR tracks on the north side in a northeast-northwest direction and intersects Fish Hatchery Road at an angle of 74 degrees, left-hand forward skew

⁶ Tr. at 8.

Docket 9170-RX-415

approximately 37 ft. north of the crossing of the WSOR tracks. The pedestrian crossing is equipped with Rectangular Rapid Flashing Beacons (RRFBs) that need to be upgraded in any event. The Commissioner has consistently disapproved of using RRFBs near railroad crossings.

The City Proposed Two Alternatives To The Public But Just One To The Office

The City considered two alternatives to extending the Cannonball Path.⁷ One alternative was to remove the on-street bike lane and sidewalk on one side of Fish Hatchery Road to install a multi-use path on that side of the street at the same grade as the existing sidewalk. Dane County, however, was not in favor of reducing traffic lane widths or removing the on-road bicycle facilities.⁸

The second alternative was to continue the path eastward on the City's right-of-way north of the WSOR tracks and turn north through Bowman Park to Plaenert Drive. This would require two crossings of the WSOR tracks. The WSOR was aware of the proposed crossing of the Newspapers spur during an onsite visit in the Summer 2023 but was unaware of the proposed Ridgewood Way crossing until the City filed its petition.⁹ After receiving input at a December 4, 2019, Wright Middle School public informational meeting, and through additional correspondence, the City's preferred alternative was the off-street route requiring the crossing of the WSOR tracks at two locations.¹⁰

⁷ City of Madison Engineering, Cannonball Path Phase 6, at [Cannonball Path Phase 6 | Engineering | City of Madison, WI](#).

⁸ [PSC REF#: 489498](#).

⁹ Transcript ("Tr.") at 30-31. (Citations to the hearing transcript ("Tr.") refer to the volume for the January 30, 2024, proceedings unless otherwise noted: [Tr. Vol. I Prefiled Transcript - PSC REF#: 505993](#)).

¹⁰ Tr. at 54-55.

Under Any Alternative, Eastbound Path Users Must Safely Cross Fish Hatchery Road

Fish Hatchery Road has an average daily traffic of over 30,000 vehicles at a posted speed limit of 30 mph. There are no other traffic lights in the 0.86 miles between Badger Road and Wingra Drive. The three reported vehicle-bicycle accidents in 2019 (1) and 2023 (2) took place at or near the non-traffic light-controlled intersections.¹¹ There is a northbound posted speed reduction between Carver Street and south of the Madison Newspapers driveway and again just before Wright Middle School to Wingra Drive of 20 mph when children are present. Southbound traffic has a school zone speed restriction from Wingra Drive to just south of the Middle School.

The City submitted a traffic study for this section of roadway dating to Thursday and Friday, November 7 and 8, 2019, respectively.¹² Looking at the speed study for the most likely times to see children to and from the Wright Middle School, 7-9 am and 3-5 pm, we see that 66 percent of northbound morning traffic and 60 percent of afternoon traffic is traveling in excess of 20 mph while 23 percent of morning traffic and 17 percent of afternoon traffic is traveling in excess of 35 mph. The study recorded a total of 48 vehicles traveling faster than 45 mph including 3 vehicles traveling over 55 mph.¹³

The data for southbound traffic indicates that for the same morning and afternoon time periods, 98 percent of the traffic was moving at over 25 mph with 49 percent of morning traffic and 30 percent of afternoon traffic exceeding 35 mph. To say that Fish Hatchery Road is not

¹¹ [Ex.-City-Canton-11 - PSC REF#: 489504.](#)

¹² [Ex.-City-Lynch-3 - PSC REF#: 487286.](#)

¹³ See also Tr. at 15 (“... about 43 [percent] of vehicles in the portion next to Cannonball Path are routinely exceeding 35 mph A significant portion of vehicles, roughly 9 [percent], exceed 40 mph”)

Docket 9170-RX-415

adequate for bicyclists is an understatement; the Fish Hatchery Road on-road bike paths are outright dangerous.¹⁴

Fish Hatchery Road Crosswalk RRFBs

The Cannonball Path currently ends at Fish Hatchery Road. To connect to the Wingra Creek Path, bicyclists may travel on a five-foot wide unprotected bike lane along northbound Fish Hatchery Road or use the sidewalk. There is a similar bike lane for southbound users but no sidewalk between Carver Street and Wingra Drive. Fish Hatchery Road's bike lane is not considered adequate for bicyclists of any age or ability due to the large volumes and high speeds of vehicles.¹⁵

The Cannonball Path crosswalk of Fish Hatchery Road is controlled by RRFBs. The Commissioner's position on RRFBs at pedestrian crosswalks parallel to and close to railroad crossings has been clear – RRFBs are a safety concern.¹⁶ Office staff have observed vehicles unprepared to stop at a safe distance from such crossings and instead have stopped on railroad tracks as pedestrians and bicyclists cross. This puts the vehicle in a high-risk position as it dwells on railroad tracks with the threat of oncoming trains.

On April 27, 2018, the Federal Highway Administration (FHWA) granted the WisDOT approval to use pedestrian-actuated RRFBs on a blanket basis at uncontrolled marked crosswalk

¹⁴ This record contains no information on bicycle counts for either the Cannonball Path or the Fish Hatchery Road bike path.

¹⁵ Tr. at 15.

¹⁶ See, i.e., *Final Decision, On the Commissioner's Own Motion for a Determination of the Adequacy of Warning Devices and the Exemption of the Public Crossing of the BNSF Railway Tracks with Ward Avenue in the City of La Crosse and Town of Shelby, La Crosse County*, docket 9020-RX-182 (Wis. O.C.R., Mar. 19, 2024) ([PSC REF#: 494367](#)); *Final Decision, Petition of the Wisconsin Department of Transportation for a Determination of the Adequacy of Warning Devices and Exemption of the Public Crossing of the Wisconsin & Southern Railroad, LLC tracks with Mequon Road/STH 167 in the City of Mequon, Ozaukee County*, docket 9170-RX-411 (Wis. O.C.R., Nov. 13, 2023) ([PSC REF#: 483642](#)).

Docket 9170-RX-415

locations statewide where WisDOT or local highway agencies install RRFBs under the technical conditions of the FHWA’s March 20, 2018, Interim Approval for the optional use of RRFBs (IA-21). IA-21 has been incorporated into the 2023 Manual on Uniform Traffic Control Devices (MUTCD), providing:

Conditions of Interim Approval

2. Allowable Uses

c. Except for crosswalks across the approach to or egress from a roundabout, an RRFB shall not be used for crosswalks across approaches controlled by YIELD signs, STOP signs, traffic control signals, or pedestrian hybrid beacons.¹⁷

On May 7, 2018, the WisDOT notified municipalities that it had been approved for statewide use of RRFB’s under IA-21. A municipality need only notify the WisDOT by email verifying acceptance of the MUTCD and IA-21 requirements in the email. Subsequent installations would not require WisDOT notification. The WisDOT required nothing else of the municipalities – no review, no approvals, just generalized assertions to abide by IA-21 even at locations very near railroad crossings that present unique circumstances requiring a different analysis and arguably, Commissioner approval as a device affecting crossing protection.

Wisconsin Stat. § 195.286(5) prohibits any sign between railroad advance warning (W10-1) signs except signs or signals required by law or permitted by the Commissioner for protection at railroad crossings. RRFBs are not required by law and no municipality has sought approval from the Commissioner to install such signals between the railroad crossing and the advance crossing warning signs.

¹⁷ This provision is now included verbatim in § 4L.01.04 of the MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES, 11th Ed. (FHWA, 2023), § 4L.04 (RRFBs). Available at [MUTCD 11th Edition - FHWA MUTCD \(dot.gov\)](https://www.fhwa.dot.gov/mutcd/11thedition/).

The WisDOT Traffic Engineering, Operations and Safety Manual (TeOPs) prohibits RRFBs on the state highway system for use in conjunction with train crossings.¹⁸ The WisDOT TeOPs provides no analysis why it prohibits flashing beacons used in conjunction with train crossings on the state highway system but is indifferent when flashing beacons on all other highways also used in conjunction with train crossings even when prevalent speeds equal or exceed those of state highways.

The addition of a pedestrian crossing near a railroad crossing with controlled approaches requires a clear signal to drivers to stop prior to the tracks on one side and prior to the crosswalk on the other side. Use of RRFBs at such crosswalks raise significant safety concerns when vehicles stop on the tracks. Moreover, none of the RRFB installations reviewed to date include an audio information device for persons with impaired visibility alerting those users when it is safe to cross and cautioning users that they are in the immediate vicinity of active railroad tracks.

The Commissioner's intent is to promote and protect public safety at both the railroad crossing and the crosswalk given its proximity to the railroad crossing. To that end, Dane County shall file a plan to remove and replace the RRFBs with Pedestrian Hybrid Beacons or other pedestrian signals that can be interconnected with the railroad crossing warning devices to ensure the crosswalk and crossing is clear of any stopped vehicles prior to a train's arrival.

First Alternative: Along Fish Hatchery Road

The City states that the crash history on Fish Hatchery Road shows that the existing facilities are not safe; given that vehicle collisions with bicyclists using both the on-street bike

¹⁸ TRAFFIC ENGINEERING, OPERATIONS AND SAFETY MANUAL, § 4-5-1 (WisDOT, 2018). Available at [TEOps 04-05 \(wisconsindot.gov\)](https://wisconsindot.gov/TEOps/04-05).

Docket 9170-RX-415

lanes and the off-street sidewalk occurred mostly at intersections where cars were turning onto or off-of Fish Hatchery Road.¹⁹ But there are solutions available.

Between the Cannonball Path crossing of Fish Hatchery Road and the Wright Middle School, there are two unsignalized intersections – Carver Street and Culmen Street. Carver Street terminates across Fish Hatchery Road where it becomes one of two driveways to the Madison Newspapers. The east-west crosswalk is controlled by RRFBs. The remaining Plaenert Drive t-intersection with Fish Hatchery Road near Wingra Drive is also unsignalized. The County and City could install traffic lights at these intersections and limit vehicle right turns into and out of the side streets when pedestrians or bicyclists are in the crosswalk.

The City also argues that the number of commercial driveways along Fish Hatchery Road increases the likelihood of collisions between bicyclists and turning vehicles whether the bicycle facilities are on-street or off-street.²⁰ But here again, there are solutions.

There are four driveways inside a 300-foot span between the Fish Hatchery Road Cannonball Path crosswalk and Culmen Street. These driveways could be consolidated or closed with access provided from Culmen Street. There are two other driveways between Culmen Street and Carver Street serving a single auto dealer / repair business with ready access from Culmen Street. The next driveway is that of the Madison Newspapers.

Wisconsin Stat. § 83.027 grants authority to the counties to control traffic entering or leaving intensively traveled highways in the interest of public safety, convenience, and general welfare. Fish Hatchery Road appears to be such intensively traveled highway. The County has adopted County of Dane, Wis., Rev. Ord. ch. 79 (2023). The ordinance appears to give the

¹⁹ Tr. at 54.

²⁰ *Id.*

Docket 9170-RX-415

County sufficient authority to consolidate driveways. While § 79.13(d) specifies a minimum horizontal distance between access points of 300 ft., there are 4 driveways within a span of 300 ft. and another 2 within a span of 90 ft. just 200 ft. from the first set of driveways.

The City adds that it has very limited authority to condemn private property along Fish Hatchery Road to widen the existing sidewalk, referring to Wis. Stat. §§ 32.015's and 62.23(17)(am)'s restriction on municipal acquisition of property by condemnation to establish or extend a recreational trail; a bicycle way, as defined in Wis. Stat. § 340.01(5s); a bicycle lane, as defined in Wis. Stat. § 340.01(5e); or a pedestrian way, as defined in Wis. Stat. § 346.02(8)(a).²¹ The Wisconsin Supreme Court, in *Sojenhomer LLC v. Village of Egg Harbor*, 2024 WI 25, ¶ 26, however, recently held that the limitations on condemnation in § 32.015 did not prohibit the municipality from condemning property to build a sidewalk because the definition of pedestrian way in § 346.02(8)(a) did not include sidewalks.

Thus, it appears that the City could expand the sidewalk adjacent to Fish Hatchery Road and in doing so, permit bicycles on the sidewalk under Wis. Stat. § 346.804.

A Wider Sidewalk Is Preferable To An On-Road Bike Lane

The Greater Madison MPO maintains an interactive map for finding low-stress bike routes by providing recommended route directions between an origin and destination using three different routing settings of a Bicycle Level of Traffic Stress (LTS) system.²² The LTS system rates or scores streets and paths by calculating an LTS score from low to high stress (1, 2, 3, or

²¹ 2017 Wis. Act 59.

²² [Ex.-City-Lynch-2 - PSC REF#: 487285](#).

Docket 9170-RX-415

4) for each street or multi-use path segment, intersection approach, and intersection crossing, and then assigning the highest of the three scores to the segment.²³

LTS scores street segments based on the posted speed limit, traffic volumes, number of travel lanes, and bicycle lane or bicycle/parking lane dimensions. Multi-use paths are classified as the lowest stress (LTS score of 1). There are LTS levels for street segments depending on the number of lanes, ADT and speed limits (posted not prevailing); LTS levels at intersections based on number of lanes and posted speed; and LTS levels for intersection crossings (signalized v. unsignalized). Crossing streets at signalized intersections does not present a significant barrier for bicyclists and thus does not affect the LTS score unless a right turn lane is present. None of the relevant intersections along Fish Hatchery Road are signalized. The combination of these calculates an LTS score.

The LTS is represented on the Low-Stress Bike Route Finder as green for low stress routes, blue and amber for moderate stress routes, and red for presumably higher stress routes. Fish Hatchery Road is usually amber from the railroad crossing north to the Madison Newspapers driveway followed by a combination of amber for the on-road bike lane to Wingra Drive or green if using the 8-foot-wide sidewalk that runs directly to the Wingra Creek Path that is just 1,870 ft. from the intersection of the Cannonball Path and Fish Hatchery Road.

The City Has Constructed Other Bike Paths Adjacent To Busy City Roads

The WSOR argues that the City has installed adjacent bike lanes on Atwood Avenue from Cottage Grove Road north to Oakridge Avenue and along Walter Street to the Capitol City Trail across numerous residential and business driveways, local neighborhood road intersections

²³ <http://cityofmadison.maps.arcgis.com/apps/webappviewer/index.html?id=5d9b5793e6404b8c89872c06bd5f26c2>.

Docket 9170-RX-415

and City parks.²⁴ The Capital City Trail also runs parallel to John Nolen Drive and North Shore Drive and traverses an active at-grade railroad crossing at North Shore Drive and Blair/Wilson/John Nolen Drive in the City of Madison.²⁵ John Nolen Drive is one of the heaviest traveled roadways in Madison [an ADT of 36,900 near Olin-Turville Court and 45,200 near South Broom Street] with a posted speed limit of 35 mph but higher prevalent speeds.

The WSOR states that Fish Hatchery Road is certainly not as heavily traveled as is John Nolen Drive and other roadways and should not be viewed as an exception warranting two new at-grade public railroad crossings. The WSOR adds that the City should modify or improve, if it needs to, the existing sidewalks and dedicated bike lanes along Fish Hatchery Road to provide a short connection between existing paths that already connect to Wright Middle School and the Wingra Creek Path.²⁶

Second Alternative: Alongside The WSOR Tracks With Two Track Crossings

The second alternative is a route from Fish Hatchery Road east along the railroad tracks to just past the Madison Newspapers spur where the path heads north through Bowman Park to connect to Plaenert Drive. This route requires new crossings opposite Ridgewood Way and another across the Madison Newspapers spur.

The Proposed Crossing of Ridgewood Way Would Not Promote Public Safety

The City states that a new crossing of the WSOR tracks at the Ridgewood Way street-end is necessary to provide access to the neighborhood immediately southeast of the WSOR tracks that was formerly located in the town of Madison and attached to the city of Madison in 2022.²⁷

²⁴ Tr. at 35; [Ex.-WSOR-Schaalma-6 - PSC REF#: 488961](#)

²⁵ *Id.*

²⁶ Tr. at 35-36.

²⁷ Tr. at 9-10.

Docket 9170-RX-415

The City states that both proposed crossings will include adequate sight distances but provided no measured sight triangles.²⁸

The crossing is proposed to cross the tracks at a 90-degree angle on reinforced concrete panels and widen out to 12 feet from 10 feet.²⁹ Storm sewer culverts would be added underneath the Ridgewood Way path connection on either side of the WSOR tracks to maintain existing drainage patterns and detectable warning fields will be included on either side of the path crossing for the full width of the path.

The right-of-way that includes the proposed path is 100 ft. wide. The City owns the northern 25 ft., and the WisDOT owns the remaining 75 ft. that includes the tracks.

The street network in the former town of Madison neighborhood (southeast of the WSOR track) is not well-connected or gridded and is surrounded by barriers, including the WSOR track themselves. The platted streets of the second addition to the Oak Ridge Subdivision that abuts the WSOR tracks did not include any crossings of the tracks. The turnarounds and cul-de-sacs of the three east-west streets abutting the tracks in the original plat indicates that the neighborhood has never had access to Fish Hatchery Road to the west.

The City states that a key component of integrating the former town of Madison neighborhood is a path connection via Ridgewood Way to access Fish Hatchery Road, Bowman Park, Wright Middle School, and other nearby destinations.³⁰ A future extension of North

²⁸ Tr. at 11.

²⁹ Tr. at 11; [PSC REF#: 480375](#), [PSC REF#: 487282](#).

³⁰ Pages 1 and 3 of [Ex.-City-Canton-1-2 - PSC REF#: 480372](#) are pages 37 and 50, respectively, of the 2022 South Madison Plan. The full plan is available at [SMP Plan PDF Version FINAL.pdf \(cityofmadison.com\)](#).

Docket 9170-RX-415

Avenue north to Plaenert Drive and east to Fish Hatchery Road and Culmen Street would provide needed access west to the rest of the city.³¹

The City states that a worn path south of the tracks shows the need for not only this extension of the Cannonball Path to facilitate safe and convenient access to nearby destinations, but also the need for the crossing of the WSOR track at the Ridgewood Way street-end to create the safest possible crossing for people coming from the former town of Madison neighborhood.³² Providing immediate access to Ridgewood Way, however, could be accomplished now without having to endanger the public by crossing the tracks at the proposed site. It appears just as safe, if not safer, for the City to construct a 450-foot pathway on the south side of the WisDOT right-of-way from Ridgewood Way to Fish Hatchery Road and expand the existing 5-foot sidewalk another 880 ft. to the north to meet the existing 8-foot path (and expand that one as well) that already connects to the Wingra Creek Path. An improved north-south sidewalk along the east side of Fish Hatchery Road would move the in-road bike lane away from high-speed traffic. An improved sidewalk would allow middle school-aged children to better see their surroundings and be seen.

Not all users will be heading to the Middle School. Having crossed Fish Hatchery Road from the west, not all users can be expected to travel an additional 1,200 ft. east to the Newspapers spur, another 2,560 ft. north to cross a new pedestrian bridge at Murphy Creek, then 230 ft. west along Wingra Creek path to the intersection of Fish Hatchery Road and Wingra

³¹ South Madison Plan, supra, note 30, at 44.

³² [Ex.-City-Canton-4 - PSC REF#: 487283](#), [Ex.-City-Canton-8 - PSC REF#: 489501](#).

Docket 9170-RX-415

Drive.³³ It's 3,200 ft. straight north alongside Fish Hatchery Road to the same intersection with Wingra Drive – a savings of about 800 ft.

The Proposed Crossing of the Newspapers Spur Would Not Promote Public Safety

The proposed crossing of the Madison Newspapers spur would not promote public safety. First, the crossing is proposed to cross the Newspapers spur at an angle of 64-degrees, left-hand forward skew.³⁴ Railroad crossings should ideally be straight and at a 90-degree angle to the rails, but the Commissioner recognizes that 60 degrees is the minimum. However, the more the crossing deviates from the ideal 90-degree angle, the greater the potential for a bicyclist's front wheel to be diverted by the gap on either side of the rail — or even by the rail itself.³⁵ This would not be an ideal situation for middle school-aged or younger children on what could be an isolated crossing between warehouses in the northwest quadrant, an electrical power substation in the northeast quadrant, and both a private vehicular crossing for the substation and a derailer immediately north of the proposed crossing.

Madison Newspapers receives paper deliveries by railcar as needed at door no. 4 at the south end of the middle of three warehouses.³⁶ The Madison Newspapers spur descends from north to south on a 1.2 percent grade. Federal rules require that the railroads maintain operating rules on the use of derails, a device used to prevent free rolling, uncontrolled rail cars by lifting the wheels up and over the rail. These are installed to protect people and operations from unattended railcar movements.

³³ The City's route shows a straight connection from the Wright Middle School driveway, across Plaenert Drive straight to the Wingra Creek path. While no mention is made of an additional pedestrian bridge in the testimony, a City letter from September 20, 2023, does say that one will be constructed. ([PSC REF#: 480369](#))

³⁴ Tr. at 7; see also [PSC REF#: 490845](#).

³⁵ WISCONSIN BICYCLE FACILITY DESIGN HANDBOOK (Ed.)(2018) at 2-23. (available at <http://wisconsindot.gov/Documents/projects/multimodal/bike/facility.pdf>).

³⁶ [Ex.-City-Canton-13 - PSC REF#: 491290](#).

The April 1, 2020, General Code of Operating Rules (GCOR) governs the operation of the adopting railroads and supersede all previous GCOR rules and instructions. See generally, 49 C.F.R. Parts 217-242, Operating Practices. The GCOR provides that "[a] train or engine moving on or entering tracks where fixed derails are located, must stop at least 100 feet from derail in derailing position. Movement must not continue until the derail is placed in the non-derailing position."³⁷ GCOR, § 8-8. The derail will be located at least 30 ft. north of the proposed crossing. The WSOR states that even with a required 30-foot clearance, there remains the risk the public could get severely injured by a standard 60-foot-long railroad car [weighing about 280,000 lbs.] that derails or even turns on its side in the direction of the path, all dependent upon speed and the load of the railroad car.³⁸

Because the track curves to the south (south westerly), the derail needs to be on the "high" side of the curve, resulting in any derailed cars heading in the direction of the proposed crossing and path. The proposed path is planned to be constructed parallel with the industry track at an unspecified distance away. If a car rolls away from the building on the downhill grade toward the mainline due to faulty brakes, mishandled equipment, or even tampering by trespassers and hits the derail, the derailed or overturned boxcar [could] land partially or entirely on the proposed crossing and path.³⁹

The move into Madison Newspapers is a shove move because the industry track has only one switch off the mainline.⁴⁰ WSOR crew consists of an engineer in the cab of the engine with the conductor riding the rear of the car allowing the conductor to "protect the shove" by seeing if

³⁷ [PSC REF#: 490844.](#)

³⁸ *Id.*

³⁹ [PSC REF#: 490845.](#)

⁴⁰ Tr. at 28.

any people, vehicles, or other obstructions and unsafe conditions exist that would warrant stopping the shove consistent with 49 C.F.R. § 218.99. Determining that the track is clear at the proposed new public crossing and down the proposed path in both directions would be difficult because the conductor can only be mounted on one side of the rail car. The train whistle is sounding from the head end and not the rear of the rail car, making it difficult to warn trail users of an oncoming train.

The move out of the Newspapers spur could require WSOR crews to occupy the proposed crossing for extended periods of time while pumping up air to the train including the rail cars just coupled at the loading dock. Due to location of the proposed public crossing, a WSOR locomotive could be parked on the crossing if holding onto one additional car. With no other way around, there is the possibility of trail users crossing through or under a train occupying the crossing.⁴¹

The WSOR adds that the petition, if granted, would decrease the quality of life for the very neighborhood residents for whom access would be provided due to the sounding of the locomotive whistle each time locomotives approach either of the two new at-grade crossings.⁴²

Conclusion

Establishing the crossings is not advisable under the circumstances because they would not promote public safety, and there are viable, safer alternatives to the proposed crossings.

Order

1. The **City of Madison**'s petition for a new at-grade crossing of the WSOR Vita Spur tracks at Ridgewood Way is DENIED without prejudice.

⁴¹ Tr. at 29.

⁴² Tr. at 43.

Docket 9170-RX-415

2. The **City of Madison**'s petition for a new at-grade crossing of the Madison Newspapers spur tracks at Ridgewood Way is DENIED without prejudice.

3. **Dane County** shall file a plan to remove and replace the RRFBs near the crossing of the WSOR tracks with Fish Hatchery Road with Pedestrian Hybrid Beacons or other pedestrian signals that can be interconnected with the railroad crossing warning devices by **October 11, 2024**.

4. Notwithstanding any other cost apportionment in this order, the **WSOR** shall pay the expenses attributable to this investigation under Wis. Stat. § 195.60.

5. This Final Decision is effective upon service.

6. Jurisdiction is retained.



Don Vruwink
Commissioner of Railroads

DA/ss/DL: 02019472

See attached Notice of Rights

OFFICE OF THE COMMISSIONER OF RAILROADS
4822 Madison Yards Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES
ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE
NAMED AS RESPONDENT**

The following notice is served on you as part of the Commissioner's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Office of the Commissioner of Railroads (Office) for rehearing within 20 days of the date of service of this decision. Wis. Stat. § 227.49. The date of service is shown on the first page. The petition for rehearing must be filed with the Office and served on the parties. The filing of a petition for rehearing does not suspend or delay the order's effective date. Wis. Stat. § 227.49(2). An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed in circuit court and served upon the Commissioner by personal service or certified mail within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Office serves its original decision.¹ The Office must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2018

¹ See *Currier v. Wisconsin Dept. of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

Docket 9170-RX-415

Appendix A

OFFICE OF THE COMMISSIONER OF RAILROADS

(Not a party but must be served per Wis. Stat. § 227.53)

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