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MAR 07 2024

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(Date)

Shaun J. Todd
(Signature)

STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION

Admin Asst. I
(TITLE)

At the Office of the Department
of Transportation in the City
of Albany on March 05, 2024

PRESENT:

PATRICK BARNES, Assistant Commissioner
Operations Division

CASE 7026 - Petition of the Village of Castleton-on-Hudson, pursuant to Section 91 of the Railroad Law, for an order by the Commissioner to approve the upgrade of a public at-grade rail crossing at Scott Avenue in the Village of Castleton-on-Hudson, located on the Empire Corridor South, in the vicinity of Mile Post 134.20, in the Town of Schodack, County of Rensselaer.

* * *

The Village of Castleton-on-Hudson ("Village"), petitioned the New York State Department of Transportation by letter for the upgrade of a public, at-grade crossing located at MP 134.20 at Scott Avenue in the Town of Schodack, County of Rensselaer on or about October 3, 2023, and a public hearing having been held after due notice with respect thereto; and it having been determined that the upgrade of the above-described crossing is not in the public interest, it is so O R D E R E D:

1. The request to upgrade the at-grade rail crossing at Scott Avenue in the Village of Castleton-on-Hudson, located on the Empire Corridor South, MP 134.20, in the Town of Schodack, County of Rensselaer is denied.

By the Operations Division

Patrick Barnes

ADOPTED: MARCH 7, 2024

STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION

Case 7026 - Petition of the Village of Castleton-on-Hudson, pursuant to Section 91 of the Railroad Law, for an order by the Commissioner to approve the upgrade of a public at-grade rail crossing at Scott Avenue in Village of Castleton-On-Hudson, located on the Empire Corridor South, in the vicinity of Mile Post 134.20, in the Town of Schodack, County of Rensselaer.

PETITIONER'S REPRESENTATIVES AND ADDRESS:

Peter M. Melewski, P.E., F. ASCE,
P.O. Box 117
New Baltimore, NY 12124

Lissa D'Aquanni, Trustee
Village Hall,
85 South Main Street,
PO Box 126
Castleton, NY 12033

INTERESTED PARTIES:

Howard Beyer, Esq. Associate Counsel,
New York State Department of Transportation (the Department)
Division of Legal Affairs
50 Wolf Road, Albany, NY 12232

Gerald T. Ford, Esq., (on behalf of Amtrak)
Landman Corsi Ballaine & Ford P.C.,
One Gateway Center, 22nd Floor,
Newark NJ 07102

BACKGROUND:

By a letter dated October 3, 2023, the Village of Castleton-On-Hudson requested a hearing to consider its request to upgrade the Scott Avenue public at-grade rail crossing. The proposal put forward in the petition requests that NYSDOT approve the reopening of the at-grade crossing at Scott Avenue and install "state of the art" crossing equipment to facilitate access to the proposed park on the Hudson River.

The parties participated in two (2) conciliation conferences—the first on October 26, 2023, and again on November 14, 2023. A public hearing with the New York State Department of Transportation (Department) was subsequently scheduled for January 30, 2024, with notices mailed on January 12, 2024 (ALJ Exhibit #2) to interested parties and published in local paper, The Record, on January 12, 2024 (ALJ Exhibit #3). Prior to the hearing, the parties were instructed to submit any documentation they sought to be considered to my office by January 26, 2024. Respondent's submission was received on January 25th and 26th, Amtrak's submission was received on January 26th, and the Department's submission was received on January 26th. All submissions were entered into the record as ALJ Exhibits.

A public hearing was held on January 30, 2024, at the Castleton Fire Department, 11 Green Avenue, Castleton-on-Hudson, NY 12033, where testimony was taken with members of the public in attendance. Public comments were accepted at the close of testimony. Additionally, members of the public were instructed to submit their written comments by February 12, 2024. All documents received by February 12, 2024, were accepted, and considered.

After the hearing, but prior to February 12, 2024, Amtrak submitted a letter addressing the Petitioner's request at the hearing to have Amtrak cover costs associated with the construction of an at-grade crossing. Additionally, the Village's representatives submitted written comments prior to the February 12, 2024 deadline.

FACTS:

As a threshold matter, the Petitioner requested that if my recommendation was in the Petitioner's favor, all costs for the design, construction, and inspection should be paid for by the Department and Amtrak, as well as any attorney's and professional engineering fees required to facilitate the upgrade.¹ Lastly, the Petitioner requested that any language allowing for the automatic rescission of approval be excluded from the order and that the imposition of penalties be added if the crossing work is not completed in a timely fashion.²

Peter Melewski, accompanied by Trustee Lissa D'Aquanni, represented the Village of Castleton-on-Hudson (Petitioner) throughout the proceeding. Melewski and D'Aquanni both testified concurrently on behalf of the Petitioner. Melewski testified that the Petitioner had proposed an Americans with Disabilities Act (ADA) compliant crossing to the riverfront park it intends to build only for the use of pedestrians and bicyclists, and only occasional emergency and village maintenance vehicles.³ Melewski testified that Amtrak and the Department were focused on policies and procedures as they pertained to an automobile crossing and that the Petitioner was only focused on allowing pedestrian access to the park.⁴

Melewski provided consultant services in the statewide Environmental Impact Study (EIS) for high-speed rail. He discussed the draft EIS and the final EIS as it pertained to maximum allowable speed (MAS), which he testified was 110 mph at the subject crossing.⁵ Petitioner cited three (3) examples of pedestrian grade crossings to serve as examples for the proposed crossing at Scott Avenue, including a portion of track from Chicago to St. Louis, a crossing in Ashland, Virginia, and the Randall's Island, New York crossing.⁶

D'Aquanni's testimony provided a brief description of the history of the subject crossing. D'Aquanni testified that the Petitioner has 1,400 residents in the Village.⁷ Prior to 1994 the subject crossing facilitated access to a marine sales business on the land where the park is proposed.⁸ The Petitioner entered into a Memorandum of Understanding ("1994 Agreement") with the Department to close the subject crossing at Scott Avenue to vehicular traffic.⁹ The agreement also included the Department's grant of \$267,000 to purchase the land that is now the proposed municipal park.¹⁰ The Department would then construct a tunnel for pedestrians to access the park.¹¹ D'Aquanni quoted sections of the 1994 Agreement stating that the closure of the at-grade crossing was

¹ Transcript of January 30, 2024 Hearing ("Tr"). at p. 26.

² Tr at pp. 26-27.

³ Tr. at p. 25.

⁴ Tr. at p. 25.

⁵ Tr at p. 32-33.

⁶ Tr. at pp. 33-36 and 45-46.

⁷ Tr. at p. 23.

⁸ Tr. at p. 28.

⁹ Id.

¹⁰ Id.

¹¹ Id.

to facilitate the implementation of high-speed rail.¹² D'Aquanni then turned to the 1994 recommendation of Administrative Law Judge (ALJ) Heller, which expressed concerns with the full closure of the crossing during construction of the municipal park and noted the following: (1) the temporary solution was to include a locked gate still allowing view of the river and, (2) construction of the tunnel was to be completed by 1995.¹³ D'Aquanni testified that a gap in the fence was left, so that people could access the area for fishing purposes, but the gap was closed in 2021 by Amtrak.¹⁴

Lastly, D'Aquanni testified that a 2009 Scoping Report from the Department identified three (3) alternatives to meet the stated goals of improving safety, providing ADA and maintenance access, and utilizing a grade-separated crossing at Scott Avenue.¹⁵ Ultimately, the tunnel as originally proposed was abandoned due to the costs and issues related to pumping out water, with the remaining alternative being a bridge.¹⁶ D'Aquanni testified that the Petitioner turned down the bridge due to the anticipated maintenance costs of elevators.¹⁷ The Petitioner and Department could not come to an agreement on the proposed bridge, and the Petitioner subsequently hired its own engineer in 2021 to design a bridge that was similar to the Department's design without the elevator but, rejected that design due to its footprint and impact on the viewshed.¹⁸ D'Aquanni testified that it hosted several public meetings on alternatives and the public did not want to traverse ramps to access the proposed parks, but wanted a safe crossing.¹⁹

Pursuant to testimony and submissions, it is clear that the proposal put forward by the Petitioner consists of concept renderings only and the Petitioner would rely on Amtrak and the Department to develop a comprehensive design plan.²⁰ Melewski offered several suggestions of equipment the Petitioner would like to see at the crossing including magnetically locking gates, audible bells, a longer warning (nearly triple the current warning time of 30 seconds), and the use of variable message signage (VMS) warning pedestrians of an oncoming train.²¹ The petitioner concluded its presentation stating that it had apparently rejected \$500,000 in grant funding because it could not produce a plan to access the proposed park.²² D'Aquanni testified that she believed a grade-separated structure as the only alternative was "antiquated thinking."²³ D'Aquanni acknowledged that there was a 2018 fatality at the subject crossing where a pedestrian was struck and killed by a train while trying to cross the tracks at Scott Avenue.²⁴

The Petitioner called one additional witness, Jeffrey Anzevino, who is the director of land use advocacy for Scenic Hudson.²⁵ Anzevino reiterated his support for an at-grade crossing and cited the Illinois crossing described by earlier testimony as an example of the use of grade crossings for pedestrians in other states.²⁶

Justin Meko testified on behalf of Amtrak. Mr. Meko has been employed by Amtrak since 2017 as Vice President of Operational Safety; his team investigates grade crossing accidents that involve Amtrak trains.²⁷ Meko testified concerning his career in the military working in a transportation battalion as well as his 15 years

¹² Tr. at 29.

¹³ Tr. at p. 30.

¹⁴ Id.

¹⁵ Tr. at p. 37.d

¹⁶ Tr. at p. 37.

¹⁷ Id.

¹⁸ Tr. at pp. 39-40.

¹⁹ Tr. at pp. 41-42.

²⁰ Tr. at p. 46.

²¹ Tr. at pp. 46-49.

²² Tr. at p. 49.

²³ Tr. at p. 50.

²⁴ Tr. at p. 51-52.

²⁵ Tr. at p. 54.

²⁶ Tr. at p. 54-55.

²⁷ Tr. at p. 68.

of experience working at Norfolk Southern prior to his time at Amtrak.²⁸ Meko's team investigates several hundred grade crossing accidents a year and has personally inspected over 1,000 crossings and responded to over 50 grade crossing accidents.²⁹ Meko expressed his concern that humans are prone to error and have an unacceptable tolerance for risk.³⁰ From his experience, individuals lack the knowledge and understanding of train speeds and so, the speed at which trains travel is often deceiving to those unfamiliar with them.³¹

Meko described the hierarchy of controls to protect humans from these foreseeable risks, beginning with elimination being the most "formidable."³² In fact, Meko quoted Chair Jennifer Homendy's (of the National Transportation Safety Board) testimony before the House of Representatives: "the safest crossing is no crossing," which occurred just days prior to this hearing on January 18th, 2024.³³ Furthermore, Meko testified that there was a spectrum of solutions including engineering, technology, and substitution that can be used to mitigate the potential for impact at a grade crossing.³⁴

According to Meko, approximately 27 trains pass through the subject crossing each day, each train averaging a quarter mile long including the locomotives and cars.³⁵ The MAS at the subject crossing is 110 mph, and if confronted with an emergency situation it would take approximately one (1) mile to stop a train traveling at 89 miles per hour in ideal conditions.³⁶ Meko made it clear Amtrak was opposed to reopening the crossing to avoid the increased probability of additional fatalities at the crossing.³⁷ Meko testified that 95% of railroad fatalities are pedestrian strikes at grade crossings, and 82% of railroad incidents occur at crossing gates (according to the Federal Railroad Administration).³⁸ Meko testified that his concern with a reopened crossing at Scott Avenue is justified given the most recent fatality at this location: whereby an individual with a high tolerance for risk was attempting to cross the tracks at Scott Avenue and ultimately lost his life due to his error in judgment.³⁹ Meko expressed concern with use of the adjacent park for a proposed playground, kayak launch, and potential concert venue given the attraction of a playground to children and the propensity of humans to protect property over their own physical wellbeing.⁴⁰

Meko inspected the subject crossing and found the sight distance to be impaired due to the significant curve in the track.⁴¹ Meko expressed further concern with the use of magnetic gates and described a scenario where the gates close and a person is still on the tracks.⁴² Meko stated that humans are trained and conditioned that when the gates come down, they do not open and in a panic situation the person may fail to move out of harm's way.⁴³ Meko testified that his preferred alternative for the subject crossing is a bridge over the tracks eliminating the interface between humans and trains.⁴⁴

²⁸ Tr. at p. 66-67.

²⁹ Tr at p. 68-69.

³⁰ Tr at p. 70.

³¹ Tr. at p. 73.

³² Tr. at p. 72.

³³ Tr. at p. 72, ALJ Exhibit #4 at p. 10.

³⁴ Tr. at p. 87.

³⁵ Id.

³⁶ Tr. at p. 73.

³⁷ Tr. at p. 75.

³⁸ Tr. at p. 75-76 and 80-81; *see also* ALJ Exhibit #4 p. 9.

³⁹ Tr. at p. 76.

⁴⁰ Tr at p. 77-78.

⁴¹ Tr. at p. 79.

⁴² Tr. at p. 79-80.

⁴³ Tr. at p. 80.

⁴⁴ Tr at p. 94-95.

Meko addressed the Petitioner's example of the Illinois crossings on the route from Chicago to St. Louis.⁴⁵ Meko testified that even with the upgrades, two (2) fatal grade crossing incidents have occurred on that route.⁴⁶ Meko explained that Amtrak does not own that 284 mile corridor, but does operate on those tracks.⁴⁷ Meko described the comparison as one of apples to oranges, as the Illinois corridor involved the upgrade of existing crossings and elimination of 39 grade crossings on the 284 mile stretch. Moreover, Meko described the situation in Ashland, Virginia, as one fundamentally different than at the present crossing where the maximum train speed in Ashland is 35 mph.⁴⁸ Meko stated that reducing the train speed at the subject crossing would not be operationally feasible nor would it comport with Amtrak's federal mandate.⁴⁹ Meko stated that the federal government has funded Amtrak to reduce grade crossings on its network due to the number of accidents reported on its Northeast Corridor.⁵⁰ Finally, Meko testified that it is the policy of the United States, Federal Railroad Administration (FRA), and the American Association of Railroads to actively pursue the elimination of grade crossings.⁵¹

Franco Panetta is employed by the Department in the Highway-Rail Grade Crossing Safety Section and testified on the Department's behalf.⁵² Panetta confirmed that the subject crossing is not open to either pedestrian or vehicular traffic at the present time, but it does have active warning devices including flashing light signals and automatic gates.⁵³ Panetta testified that sight distance does not extend beyond 1,000 feet in either direction.⁵⁴ Panetta confirmed that the Department reimbursed the Petitioner for the purchase of the property with federal funds it intends to use as the proposed park with the understanding that the subject at-grade crossing would be eliminated.⁵⁵ Panetta confirmed that Amtrak took steps to ensure no pedestrians could use the subject crossing after the 2018 fatality.⁵⁶

The Department had agreed to design and build a grade separated structure at the crossing, and ultimately it was determined in agreement with the Petitioner that a pedestrian bridge was the preferred crossing type (ALJ Exhibit #6, Tab 3 and 6).⁵⁷ Panetta confirmed that the Department would pay for the construction of a bridge and there were no engineering impediments to the construction of a bridge at the subject crossing.⁵⁸ The Department created a design report for the pedestrian bridge with input from the Petitioner, and the Department was willing to advance with design and construction of a bridge at the subject crossing but it was ultimately abandoned because the Petitioner did not want to assume maintenance responsibility for the proposed bridge.⁵⁹ Panetta testified that the Department has not been presented with any designs for the subject crossing presently proposed.⁶⁰ Panetta largely confirmed the testimony of Meko in that the majority of train accidents are caused by human error and misjudgment.⁶¹ Panetta testified that the safest alternative to a closed crossing is a grade-separated crossing.⁶²

⁴⁵ Tr. at p. 76-77.

⁴⁶ Tr. at p. 77.

⁴⁷ Tr. at p. 81.

⁴⁸ Id.

⁴⁹ Tr at p. 84-85.

⁵⁰ Tr. at p. 86.

⁵¹ Tr at p. 87-88.

⁵² Tr. at p. 99.

⁵³ Tr. at p. 104.

⁵⁴ Id.

⁵⁵ Tr. p. 105.

⁵⁶ Tr. 108-09

⁵⁷ Tr. at p. 112.

⁵⁸ Id.

⁵⁹ Tr. at p. 113-15; ALJ Exhibit #6, Tab 14.

⁶⁰ Tr. p. 116.

⁶¹ Tr. at p. 117.

⁶² Tr. at p. 118.

Panetta testified that the Randall's Island crossing cited by the Petitioner, was an at-grade crossing on private property where the freight trains that use the crossing must stop before crossing, do not reach speeds above 10 mph, and is 900 ft away from the termination of the rail line itself.⁶³

Panetta testified that the Federal Rail Crossing Handbook discourages the creation of any new at-grade crossings.⁶⁴ Additionally, he testified that it is the policy of New York State to prohibit at-grade crossings when alternatives are feasible and there are programs targeted specifically for grade crossing elimination.⁶⁵

Raymond Hessinger is the Director of Freight and Passenger Rail Bureau with the Department and testified on the Department's behalf. Hessinger testified that the federal government has designated 11 high speed rail corridors across the country, one being the Empire Corridor, on which the subject crossing is located.⁶⁶ Hessinger advised that Congress defines high-speed rail as corridors where train speeds of 90 mph are readily achievable.⁶⁷ Hessinger testified that the Empire Corridor is the major trunk route for intercity and freight rail transportation across the state.⁶⁸ Hessinger testified that there are no plans to reduce any existing speeds on the Empire Corridor and the investments in the Empire Corridor are being made to reduce trip time and increase reliability.⁶⁹ Hessinger testified in Pennsylvania all public at-grade crossings were eliminated on their high-speed rail corridor.⁷⁰

Gregory Hart appeared on behalf of the Federal Railroad Administration and voiced its support for a grade-separated crossing at Scott Avenue.⁷¹

A substantial number of public comments were heard at the hearing and submitted subsequently in writing. Members of the public are largely in support of the Petitioner's proposal. Members of the public want access to the area opposite the crossing, so that they may use the public land for fishing and the proposed park. The public believes the proposed park will be instrumental in the revitalization of the Village's main street, and denying access is inconsistent with the New York State Department of State Coastal Management Plan. Members repeatedly cited the use of "state-of-the-art" crossing gates in other states in support of an at-grade crossing at Scott Avenue and cited the 1994 Agreement between the Department and the Petitioner as remaining unfulfilled. Several comments cited private access of a local boat club as an example of an allowed at-grade crossing where public access by way of an at-grade crossing is unfairly denied. Comments were not supportive of a pedestrian bridge as it is believed a bridge with an elevator or ramps would impede the view and place unnecessary maintenance costs on the taxpayers. Some members also expressed concern in using an elevator to get kayaks and canoes to the proposed dock would be cumbersome and ineffective. Several comments were received in opposition to the proposed crossing and cited safety as the primary concern as well as impact on train traffic statewide.

DISCUSSION AND FINDINGS:

The subject crossing at Scott Avenue is an at-grade crossing that is not currently in use and has a locked gate prohibiting both pedestrians and vehicles from crossing the tracks. The crossing was closed to public as part of the 1994 Agreement between the Petitioner and the Department to facilitate the construction of a grade-

⁶³ Tr. at p. 118.

⁶⁴ Tr. at p. 121; *see* ALJ Exhibit #6 at Tab 29.

⁶⁵ Tr. at p. 122.

⁶⁶ Tr. at p. 134-35.

⁶⁷ Tr. at p. 134.

⁶⁸ Tr. at p. 136.

⁶⁹ Tr. at p. 140 and 142.

⁷⁰ Tr. at p. 146.

⁷¹ Tr. at p. 182.

separated crossing, so that the Petitioner may build a park on the west side of the subject crossing adjacent to the Hudson River. The 1994 Agreement contemplated the construction of an “underpass”, but this was abandoned due to concerns with water intrusion and cost associated with the maintenance of a below-grade crossing adjacent to the Hudson River. An alternative grade separated structure was proposed and ultimately rejected by the Petitioner who expressed concerns with paying to maintain an elevator.

Pursuant to Railroad Law Section 91, upon a petition for the alteration of an at-grade crossing, the Commissioner, or his/her designee, shall determine whether such alteration serves the public interest. Whether something is in the public interest requires weighing many factors that are present in this record, including the public need, desire, safety, practicability, risk, affordability, and impact on the community. All of these factors are not weighed evenly, and it is the policy of both the federal government and State of New York, as codified in 49 U.S.C. § 22909(b) (2023) and 23 U.S.C. § 130 (2023) and New York Transportation Law Article 10, that the value of human life be placed above all of these factors when dealing with grade crossings. While it is clear from the outpouring of public input that the local population desires this crossing and believes it would positively impact this community, the inherent risk to human life an at-grade crossing at this specific location poses is not in the public interest of the people of the State of New York.

The Petitioner relies heavily on the notion that grade crossing safety has improved to such an extent that by installing “state-of-the-art” pedestrian gates incidents at the subject crossing will be prevented or significantly reduced. Petitioner puts forward no objective safety data in support of this contention, and instead, relies on three (3) separate examples of grade crossings it believes serves as “safe” grade crossings. These three examples include a grade-crossing at Randall’s Island in New York, grade crossings in Ashland, Virginia, and grade crossings from Chicago to St. Louis as referenced in the Petition and the testimony given at the hearing. I find none of these cases to be persuasive as each instance presents a factually unique scenario as described above that is not objectively comparable to the subject crossing. Panetta testified that at Randall’s Island the trains do not exceed 10 mph and require the train to come to a complete stop before the crossing gate is activated. In Ashland, Virginia the maximum train speed is 35 mph and Amtrak does not own the tracks. Moreover, the route from Chicago to St. Louis is not owned by Amtrak and was part of a larger elimination project that not only saw the upgrade of existing crossings, but the elimination of 39 at-grade crossings with no new crossings added to the corridor.

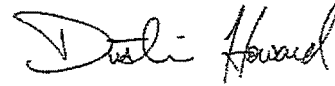
Amtrak’s presentation and testimony was particularly compelling as their witness is tasked with responding to crossing incidents at a national level and on a daily basis. Meko visited the subject crossing and expressed concern with train speed and sightline obstructions, which would make observation of an oncoming train difficult. These were also expressed by Panetta in his evaluation. Meko testified that 82% of rail incidents involving a pedestrian occurs at crossing gates and that 95% of railroad fatalities involve pedestrians at crossing gates. The most recent incident in 2018 creates a tragic example of a pedestrian succumbing to the dangers of high-speed rail and bolsters Meko’s testimony that humans are prone to error and have an unacceptably high tolerance for risk. Encouraging residents, children, and other outdoor enthusiasts to cross these tracks is a recipe for more tragedy. I cannot in good conscience approve the reopening of this crossing while understanding the probability of a life-threatening incident occurring, even with the most technologically advanced crossing gates.

Amtrak is actively eliminating at-grade crossings on its tracks at the direction of the federal government, Federal Railroad Administration (FRA), and the American Association of Railroads. Panetta and Hessinger also confirmed that both federal and state governments are actively eliminating at-grade crossings in the interest of safety. The consensus by both authorities is at-grade crossings pose a significant safety risk to the public and should be eliminated wherever possible. By way of example, the route from Chicago to St. Louis eliminated 39 crossings and upgraded the remainder and has still experienced two (2) fatalities.

The Petitioner posits that it is being denied access to its land in contravention of the 1994 Agreement, which I do not find to be the case. The 1994 Agreement provided for a grade-separated crossing at Scott Avenue, which the record shows the Department was prepared to provide, but the Village did not want. All parties agree that a tunnel is not feasible given the flooding risks. However, the evidence in the record clearly indicates that a grade-separated pedestrian bridge remains a feasible alternative. I can appreciate that the cost to maintain ADA compliant access over the bridge may seem unduly burdensome and costly to the Village. However, when weighed against the risk posed to human life, it is without question worth the cost to provide the safe and effective access that the citizens clearly want.

The record does not provide a reasonable basis to support the conclusion that the reopening of the subject crossing is in the public interest. Therefore, in consideration of the above, it is hereby recommended that the Petitioner's proposal be denied and the subject at-grade crossing remain closed in the interest of public safety.

February 28, 2024



DUSTIN B. HOWARD
Administrative Law Judge
Office of Proceedings