

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

Petition of the Village of Fox Point for the Repair of the Public Crossing of the Union Pacific Railroad Co. Tracks with Five Roadways in the Village of Fox Point, Milwaukee County

9040-RX-1236

FINAL DECISION

On January 11, 2007, the Village of Fox Point filed a complaint with the Office of the Commissioner of Railroads (OCR) under §86.12, Stats., that the Union Pacific Railroad Co. (UP) has failed to maintain in good condition for public travel five public crossings of its tracks in the Village of Fox Point, Milwaukee County. The crossings are:

Street	crossing no.
Green Tree Road	180 103U
Bell Road	180 104B
Calumet Road	180 105H
Bradley Road	180 106P
Dean Road	180 107W

The resolution requiring the repairs was adopted by the Village Board and served on the railroad. The Village of Fox Point states that more than 30 days have passed and the crossings have not been repaired.

Pursuant to due notice, public hearing was held in this matter on March 14, 2007 in Fox Point, Wisconsin with hearing examiner Douglas S. Wood presiding.

The Union Pacific Railroad Co. did not appear at the hearing. The matter was uncontested and therefore a proposed decision is not required.

Appearances:

Parties

Village of Fox Point, Complainant
by
Stan Riffle, Village Attorney
Arenz, Molter, Macy & Riffle SC
PO Box 1348
Waukesha, WI 53187

No Appearance by Union Pacific Railroad Co.

Findings of Fact

THE COMMISSIONER FINDS:

The Union Pacific Railroad Co. tracks cross the five roadways listed above at-grade in the Village of Fox Point.

The roadways all consist of two-lanes and cross the tracks at an angle of about 90°. The crossing surfaces are all timber-plank and asphalt, except for Calumet Road, which is a mud-rail or three-rail type crossing.

While the severity of the deficiencies varies among the crossings, all of them require a complete renewal. Each of the crossings has sunk below the plane of the adjacent roadway, which causes a very rough ride. In addition, some of the crossings also have broken timbers and crumbling asphalt in the track zone.

According to an email dated January 5, 2007 from Mike Meyers of the UP, the railroad apparently plans to renew the tracks through the Village, including the crossings, in June 2007. The UP never communicated this information to the OCR despite two inquiries and also failed to appear at the hearing.

Under §86.12 Stats., the railroad bears an obligation to keep all highway/rail crossings in good and safe condition for public travel. The railroad has failed to do so at these crossings. The crossings are at the end of their useful life and require complete renewal.

Ultimate Conclusions on the Issues

THE COMMISSIONER CONCLUDES:

That the Union Pacific Railroad Co. has failed to maintain the crossings at-grade of Green Tree Road, Bell Road, Calumet Road, Bradley Road, and Dean Road with its tracks in good condition and repair for public travel in the Village of Fox Point, Milwaukee County.

Conclusion of Law

THE COMMISSIONER CONCLUDES:

That the jurisdiction of the Office of the Commissioner of Railroads under §86.12, Wis. Stats., extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

Order

THE COMMISSIONER ORDERS:

1. That the **Union Pacific Railroad Co.** shall repair the crossings at-grade of

Green Tree Road	180 103U
Bell Road	180 104B
Calumet Road	180 105H
Bradley Road	180 106P
Dean Road	180 107W

with its tracks by fully renewing the crossings in the Village of Fox Point, Milwaukee County by **June 30, 2007**.

2. That jurisdiction is retained.

Dated at Madison, Wisconsin, (April 12, 2007).

By the Office of the Commissioner of Railroads.

Rodney W. Kreunen
Commissioner of Railroads

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