

BEFORE THE OFFICE OF THE COMMISSIONER OF RAILROADS

STATE OF WISCONSIN

In the matter of the:

Petition of the Union Pacific Railroad Co. for the Closure of the Public Crossing of its Tracks with 20<sup>th</sup> Avenue in the Town of Strongs Prairie, Adams County

9040-RX-1235

FINAL DECISION

By letter dated December 26, 2006, the Union Pacific Railroad Co. filed a petition with the Office of the Commissioner of Railroads (OCR) under §§195.28 and 195.29, Stats., for the closure of the public crossing of its tracks with 20<sup>th</sup> Avenue in the Town of Strongs Prairie, Adams County (crossing no. 179 265A). Commissioner Kreunen had directed the office to set the case for hearing in the matter.

Closing a crossing means that the roadway would be terminated at the tracks and would be permanently closed to public travel.

Jurisdiction: Secs. 195.28 and 195.29, Stats.

Pursuant to due notice, public hearing was held in this matter on April 17 and 18, 2007 in the Town of Strongs Prairie, Wisconsin with hearing examiner Tom Running presiding.

On May 17, 2007, the hearing examiner issued a proposed decision. The hearing examiner recommended that the crossing remain open and have automatic flashing lights and gates installed. The Town of Strongs Prairie, the Wisconsin Department of Transportation, the Adams County Fire District, the Adams-Columbia Electric Cooperative, Adams County Emergency Management, Northern Bay LLC, and Naterra Land each filed letters supporting the proposed decision and opposing the closure of the 20<sup>th</sup> Avenue crossing.

The Union Pacific Railroad Co. and the United Transportation Union filed comments opposing the proposed decision and supporting the closure of the 20<sup>th</sup> Avenue crossing.

The Commissioner attended part of the hearing, listened to the entire recording of the hearing, and reviewed the exhibits. **The Commissioner finds and concludes that the 20<sup>th</sup> Avenue crossing must be closed to protect public safety.** The Commissioner finds and concludes that any public inconvenience occasioned by the closure of the crossing is outweighed by the gain in public safety from closing the crossing.

The Commissioner agrees with the hearing examiner that the 20<sup>th</sup> Avenue crossing is hazardous. The Commissioner disagrees with the hearing examiner that automatic flashing lights and gates would remedy the safety problems at the crossing. The Commissioner relies heavily upon the testimony of Jeff McClinchy, the locomotive operator who testified at the hearing. McClinchy testified that he operates trains over the crossing as part of his job duties for the UP. He testified that he frequently observes fog at the crossing. McClinchy also testified that

20<sup>th</sup> Avenue is a 'bad crossing' and that he has had 'close calls' where a train-vehicle crash was narrowly avoided.

The Commissioner also finds and concludes that the 20<sup>th</sup> Avenue crossing is a redundant crossing. Existing and future traffic can be adequately served by Dakota Avenue and CTH 'Z' on the south and by 20<sup>th</sup> Avenue, Czech Avenue, and CTH 'Z' on the north. Emergency services can be adequately provided with minimal difference. The Commissioner also finds that the construction of the waterpark and residential development south of the 20<sup>th</sup> Avenue crossing is conjectural and may never occur.

The Commissioner has been the Wisconsin Railroad Commissioner for over 11 years and in that time has developed a considerable body of experience that he calls upon to make his judgments and does not do so lightly. Over time has developed an intuitive feel for the dangerous of crossings and he concludes that the 20<sup>th</sup> Avenue crossing is particularly dangerous.

The Commissioner issues this final decision ordering the closure of the at-grade crossing of 20<sup>th</sup> Avenue with the Union Pacific Railroad Co. tracks and authorizing the Town of Strongs Prairie to construct a vehicle turnaround on the north side at the expense of the Union Pacific Railroad Co., except that the Town shall pay the cost for any temporary and permanent barricades.

Appearances:

**Parties**

In Support:

Union Pacific Railroad Co  
by  
Mack Shumate  
Senior General Attorney  
101 N. Wacker Drive suite 1900  
Chicago, Illinois 60606

In Opposition:

Town of Strongs Prairie  
by  
John R. Miller, Attorney  
520 Oakridge Drive  
Portage WI 53901

Of the Office Staff:

Tom Clauder, Railroad Investigator

In addition to the parties, eight persons spoke at the hearing. Of these registrants, all opposed the closure.

## Findings of Fact

### THE COMMISSIONER FINDS:

The Union Pacific Railroad Co. (UP) petitioned the Office of the Commissioner of Railroads for the closure of the public crossing of the UP tracks with 20<sup>th</sup> Avenue in the Town of Strongs Prairie, Adams County. The **Commissioner orders that the 20<sup>th</sup> Avenue crossing be permanently closed.**

UP contracted with the engineering firm TKDA to prepare a report on the merits of a closure of the crossing, labeled "Alternative Access Study" (Exhibit 1).

20<sup>th</sup> Avenue is a north-south roadway that connects STH 21 and CTH J. It is a two-lane roadway 22 feet wide with grassy shoulders. It has a posted speed limit of 45 mph north of the crossing. 20<sup>th</sup> Avenue crosses the UP tracks at about 80 degrees measured in the northwest quadrant. The roadway ascends to the crossing at a 6 percent grade from the south and a 7 percent grade from the north. Warning devices consist of two crossbucks, and stop signs mounted on the same posts. The tracks are level and tangent in the area of the crossing.

The UP operates seven through trains per day over the crossing, at a maximum timetable speed of 49 mph. There are no switching operations in the area. 20<sup>th</sup> Avenue changes its name to Dakota Avenue and turns to the east approximately 1400 feet south of the crossing. A recent traffic count showed an average daily traffic of 300 vehicles per day south of the crossing, and 260 to the north of the crossing.

Due to the proximity of the curve of Dakota Avenue south of the crossing, vehicles can be assumed to be traveling at a slower speed than what is posted. For a 30 mph vehicle, the safe stopping distance is 231 feet from the crossing. The crossing is visible from greater than this distance. From a point 231 feet from the crossing, a driver needs to see a 49 mph train when it is 510 feet from the crossing. The sight distance available in each quadrant is 75 feet in the northeast quadrant, 30 feet in the northwest quadrant, 50 feet in the southeast quadrant, and 90 feet in the southwest quadrant. Stop signs are located at the crossing. Corner sight distances are inadequate in all four quadrants.

Clearing sight distance is the distance down the track that a driver needs to see an approaching train to be able to safely clear the crossing from a full stop. Clearing sight distance is 1000 feet in the northeast quadrant, 800 feet in the northwest quadrant, 1000 feet in the southeast quadrant, and 800 feet in the southwest quadrant. Clearing sight distances are inadequate in all four quadrants.

There has been one accident at 20<sup>th</sup> Avenue since 1973. It occurred in 1975 involving a snowmobile and was a fatality.

Accidents that do occur here will likely be quite serious if a through train is involved due to their 49 mph speed. Train speed is strongly correlated with fatalities in train/vehicle accidents. More specifically, crossings with train speeds of 40 mph and over have a disproportionate number of fatalities. According to Federal Railroad Administration (FRA) statistics, nationally, in 1994 71% of fatalities occurred at crossings with train speeds of 40 mph+, even though only 26% of all crossings had train speeds of 40 mph+.

The TKDA report noted the potential for vehicles such as heavy equipment and lowboys to hang up on the crossing due to its steep approach grades. No one, including the Adams County Sheriff, indicated this has ever actually happened at this location. There were no marks on the crossing surface indicating a vehicle scraping the surface.

The report also noted the potential for speeding vehicles to speed through the crossbucks and stop signs at the crossing and become airborne. No one indicated this has ever actually happened at this crossing.

If 20<sup>th</sup> Avenue were closed, an alternate route using either Czech Avenue or Cypress Avenue and CTH Z was suggested. Emergency vehicles responding to the area of the crossing from the Strongs Prairie Sub-Fire Station would be 16 minutes using either route. Hospital routing from the hospital in Friendship is 13 minutes via the existing route, and 17 minutes via the alternate route if the crossing is closed. Concerns about the alternate route involved the inadequate widths of Czech Avenue and CTH Z, and congestion already existing on this route.

There is an electric substation immediately south of the crossing of 20<sup>th</sup> Avenue. The CEO of the electric cooperative stated that closure of the crossing would increase response time to emergencies in the event of a power outage.

20<sup>th</sup> Avenue provides access to extensive residential and commercial developments. 20<sup>th</sup> Avenue serves a major condominium development, a marina, an 18-hole PGA-style golf course, and a resort hotel. There is extensive residential and commercial construction in the area, either already complete or in development. North Bay Development is immediately north of the crossing. It has an 18-hole golf course, 244 residential units, 124 additional condos, a restaurant and clubhouse. A waterpark is also proposed for development at the northwest quadrant of the crossing. 'Timber Shores by Naterra', proposed for development south of the crossing, has 268 lots, and is closely tied to the North Bay attractions north of the crossing. These proposed developments can be adequately served by the remaining roadways and these travelers will thus not be subjected to this hazardous 20<sup>th</sup> Avenue crossing.

In summary, the closure of the crossing at-grade of the UP tracks with 20<sup>th</sup> Avenue will promote public safety.

### **End-of-Road Treatment**

The order requires the Town of Strongs Prairie to install Type III barricades with red and white reflective material on each approach to the crossing by October 1, 2007. These temporary barricades must be in place before the crossing is removed. These are temporary barricades that the Town is required to replace with permanent steel guardrail barricades or end-of-road markers when it constructs the vehicle turnaround. The order requires the Union Pacific

Railroad Co. to **remove the crossing surface and the roadway surface from within its right-of-way at 20<sup>th</sup> Avenue after October 1, 2007 and before October 10, 2007.**

The order **authorizes** the Town of Strongs Prairie to construct and maintain a vehicle turnaround area on the north side of the crossing **at the expense of the Union Pacific Railroad Co. (except that the Town shall pay the costs for end-of-road barricades and markers)**. The Town may construct a cul de sac with minimum outside radii of 30' or any non-cul de sac turnaround design consistent with the AASHTO's, *A Policy on Geometric Design of Highways and Streets*, 2001 edition, see pages 398-400 and Exhibit 5-8.).

The Commissioner concludes that vehicle turnaround is not needed on the south side or approach to the 20<sup>th</sup> Avenue crossing. The existing roadway loop will provide an adequate vehicle turnaround. The Town may also construct a vehicle turnaround on the south approach to the crossing, if it so desires, but at its own cost.

### **Costs**

Consistent with prior OCR practice, the order requires the Union Pacific Railroad Co. to pay the costs to remove the crossing and roadway approaches within its right-of-way, and the construction of vehicle turnaround. The Town of Strongs Prairie shall bear the cost to install and maintain the temporary barricades, the permanent barricades or end-of-road markers, and to maintain the vehicle turnaround.

The Union Pacific Railroad Co. previously discussed possible cash payments in lieu of paying the cost for vehicle turnarounds. The Town may accept such an arrangement if it chooses to do so, but this option is solely at the Town's discretion.

### Ultimate Conclusions on the Issues

#### THE COMMISSIONER CONCLUDES:

1. That the closure of the crossing at-grade of the Union Pacific Railroad Co. tracks with 20<sup>th</sup> Avenue in the Town of Strongs Prairie, Adams County will promote public safety and convenience.

2. That it is reasonable for the Union Pacific Railroad Co. pay the cost to close the 20<sup>th</sup> Avenue crossing, including the construction of a vehicle turnaround, and removal of the crossing and the roadway approaches within its right-of-way, except that the Town shall pay the costs for end-of-road barricades and markers.

## Conclusion of Law

### THE COMMISSIONER CONCLUDES:

That the jurisdiction of the Office of the Commissioner of Railroads under §§195.28 and 195.29, Stats., extends to this matter. Accordingly, the Office enters an order consistent with the findings of fact.

## Order

### THE COMMISSIONER ORDERS:

1. That the petition of the **Union Pacific Railroad Co.** to close the **20<sup>th</sup> Avenue** crossing is hereby **granted**.

2. That the **Union Pacific Railroad Co.** shall **remove the crossing surfaces and obliterate the roadway approaches within its right-of-way** for the crossing at-grade of **20<sup>th</sup> Avenue** with their tracks in the Town of Strongs Prairie, Adams County **after October 1, 2007 and before October 10, 2007** (crossing nos. 179 265A). The **Union Pacific Railroad Co.** shall not remove the crossing surface or approaches until the barricades (see paragraph 3) are in place.

3. That the **Town of Strongs Prairie** shall install and maintain **temporary** Type III barricades with red and white stripes at or near the terminus of each approach to the crossing at-grade of **20<sup>th</sup> Avenue** with the Union Pacific Railroad Co. tracks in the Town of Strongs Prairie, Adams County **no later than October 1, 2007** [see Sections 3F.01 and 6F.63 and Figure 6F-7, (Sheet 2 of 2) in the Manual on Uniform Traffic Control Devices (MUTCD)].

4. That the **Town of Strongs Prairie** is **authorized** to construct and maintain a vehicle turnaround area on the **north side** of the crossing. The **Town of Strongs Prairie** may construct a cul de sac with minimum outside radii of 30' or any non-cul de sac turnaround design consistent with the AASHTO's, *A Policy on Geometric Design of Highways and Streets*, 2001 edition, see pages 398-400 and Exhibit 5-8.) in the Town of Strongs Prairie, Adams County **no later than June 30, 2007**.

5. That the **Town of Strongs Prairie** shall install and maintain a **permanent** steel guard rail barricade with reflective red and white stripes **or** End-of-Roadway markers (See Section 3C.04 and Figure 3C-1, Object Markers and End-of-Roadway Markers, Signs OM4-1 or OM4-3 in the MUTCD) at or near the terminus of the each approach to the crossing at-grade of **20<sup>th</sup> Avenue** with the Union Pacific Railroad Co. tracks in the Town of Strongs Prairie, Adams County **no later than June 30, 2007**. If End-of-Roadway markers are used, then a minimum of three markers shall be placed at each terminus.

## Costs

6. That the **Union Pacific Railroad Co.** shall pay the cost to remove the crossing and roadway approaches within its right-of-way, and to construct a vehicle turnaround (on the north approach) at the **20<sup>th</sup> Avenue** crossing. The **Union Pacific Railroad Co.** shall also bear any cost assessed to the railroad pursuant to §195.60, Stats., for the investigation of this matter by the Office. The railroad shall not pass on those assessment costs either directly or indirectly.

7. That the **Town of Strong's Prairie** shall bear the costs to install and maintain the temporary barricades, the permanent barricades or end-of-road markers, and to maintain the vehicle turnarounds at the 20th Avenue crossing.

8. That jurisdiction is retained.

Dated at Madison, Wisconsin, (July 20, 2007).

By the Office of the Commissioner of Railroads.

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Rodney W. Kreunen  
Commissioner of Railroads

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