

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF TRANSPORTATION

In the Matter of the Application of the City of Hugo for the Establishment of a New Public Grade Crossing on a New Access Roadway Between Highway 61 and Interstate 35E in Hugo, Minnesota, Pursuant to Minn. Stat. § 219.072 (2002).

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on December 9, 2003 at the Office of Administrative Hearings. The record closed at the end of the hearing.

David K. Snyder, Eckberg, Lammers, Briggs, Wolff & Vierling, PLLP, 1835 Northwestern Avenue, Stillwater, Minnesota 55082, appeared for the City of Hugo.

Marvin LaValle, 3282 Velvet Street, Hinckley, Minnesota 55037, appeared as a participant without counsel.

There was no appearance by or on behalf of the Burlington Northern Railroad Co. or the Minnesota Commercial Railway.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Transportation will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Carol Molnau, Commissioner of Transportation, 395 John Ireland Boulevard, St. Paul, Minnesota 55155, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUE

Should a public grade crossing be established across the track of the Burlington Northern Santa Fe Railroad at the location of the proposed alignment of County State Aid Highway (CSAH) 8/14 in the City of Hugo?

The Administrative Law Judge concludes that the City should be permitted to establish the grade crossing at the proposed location.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Burlington Northern Santa Fe (BNSF) Railroad owns right of way that runs just to the west of and parallel to Trunk Highway (TH) 61 in the City of Hugo, beginning at approximately 145th Street North and running south from there.^[1] Although BNSF is the fee owner, Minnesota Commercial Railway operates and maintains the right of way. Minnesota Commercial Railway is in the process of purchasing the property from BNSF.^[2]

2. North of 145th Street, the right of way is owned by the Washington County Regional Rail Authority and is currently operated as a regional bicycle trail. The track above 145th Street North has been removed, and the trail is paved.^[3]

3. South of 145th Street, the closest existing grade crossing, signed with crossbucks, is at 140th Street North. Train traffic between 140th Street and the termination of the track just south of 145th Street is minimal: Approximately once a week, a train pushes two cars of freight onto a spur serving premises known as the Interstate Lumber Company or the Stock Lumber Company. The train then returns a day or two later to pick up the empty cars.^[4] While moving along this section of track, the train speed is 10 mph or less.

4. In 1995, Interstate Lumber Company was sold to Stock Building Supply, which operated a lumber supply yard there until June 2002. From June 2002 through June 2003, the property was vacant. Since June 2003, a portion of the property has been leased to Schwieter's Building Supply for the purpose of unloading freight, which is then trucked to Schwieter's main business operation located south of 140th Street. Schwieter's is in the process of attempting to negotiate the construction of a rail spur closer to its main operation, at which point it will no longer need to lease the Stock Lumber site.^[5]

5. South of the Stock Lumber site to approximately 141st Street North is agricultural land owned by the Marvin LaValle family.^[6]

6. There is little likelihood that train traffic between 140th Street and the termination of the track just south of 145th Street will increase at any time in the future, and it is likely that if redevelopment proceeds as planned there will be no train traffic there at all. The entire area, which is immediately adjacent to downtown Hugo, is zoned as Central Business.^[7] The City's long-range plans call for commercial development of the area.^[8] The current owner of the Stock Lumber property, Hugo Investments LLC, purchased it with the intention of redeveloping it for retail/commercial use. The owner's intention is to remove the spur, for which there is no easement to BNSF or Minnesota Commercial Railway.^[9] The only tenant currently requiring rail service is Schwieters, and the one-year lease with Schwieter's expressly provides that it may be canceled at any time if the owner makes the decision to remove the track.^[10]

7. The rail corridor running south from 145th Street is known as the Rush Line rail corridor. It has been identified in the Metropolitan Plan as a future commuter corridor between Forest Lake and Minneapolis/St. Paul, although it is in the second tier of the plan. There is no funding for commuter rail on the corridor at this time; the City anticipates that any commuter rail service is at least 20 years in the future, as the area does not yet have bus service from the Metropolitan Transit Council (MTC). The MTC has informed the City that bus service will not operate in the area for at least ten years.^[11]

Realignment of CSAH 8/14

8. For the past two years the City of Hugo, the City of Lino Lakes, Washington County, and Anoka County have been working cooperatively to develop, improve and realign CSAH 8/14 from Interstate Highway 35E through Lino Lakes and Hugo to TH 61. TKDA is the consulting engineering firm that has contracted with Washington County to manage the road project.^[12]

9. CSAH 8/14 is a two-lane arterial road designed to provide access to Highways 35E and 61. From the west it provides an entrance/exit to Highway 35E, runs east through the City of Lino Lakes in Anoka County, and enters the City of Hugo in Washington County at 145th Street North. The road ends at a T-intersection of 145th Street North and TH 61, approximately 60 feet north of where the rail tracks terminate, then resumes its south-westerly direction at 140th Street North.^[13]

10. At present, each lane of CSAH 8/14 has a 12-ft driving lane and a 10-ft shoulder or parking lane. There are 34 access points (either existing driveways or street intersections) in the 1/3-mile stretch of CSAH 8/14 just before it reaches TH 61. The pavement is in poor condition and requires rehabilitation or replacement.^[14]

11. Residential development in areas north and south of CSAH 8/14 has increased the average daily traffic (ADT) counts on the road to approximately 12,000 vehicles per day near the junction with Highway 35E and 8,000 vehicles per day near the junction with TH 61. Within the next 20 years, the City of Hugo expects the traffic counts to increase to 32,000 cars per day on CSAH 8/14.^[15]

12. The cities and counties involved in the road project determined that, for safety reasons and to accommodate the anticipated increase in traffic, CSAH 8/14 had to be widened and realigned to intersect TH 61 either north or south of 145th Street.

13. The City of Hugo evaluated several alternatives. The first was to do nothing, and this option was rejected because of the deterioration of the existing pavement. The second option was to realign the road to the south, where it would reach TH 61 in the area of 140th Street North. This option was rejected because of cost, environmental constraints, and travel patterns; it would require the road to traverse flood plain, wetlands, and a creek.^[16] In addition, as the road is currently aligned, approximately 60% of the traffic turning onto TH 61 turns north, and about 40% turns south. This option would not involve construction of a new grade crossing, but it would likely require modification of the existing grade crossing at 140th Street North.^[17]

14. The third option, which the City Council of Hugo ultimately selected, was to realign the road to the south through farmland owned by the Marvin LaValle family, where it would reach TH 61 at approximately 142nd Street. The City estimates that its share of the cost of this project would be \$2.9 million.^[18] This option would require construction of a new grade crossing at approximately 142nd Street, which is 1,600 ft. from the nearest crossing.^[19]

15. The fourth option was to keep the current alignment, which reaches TH 61 at approximately 145th Street. This option was rejected because of the high cost (the City's share of which is estimated at \$8.7 million) and the social impact of relocating 34 to 40 homes and businesses that are immediately adjacent to the road where it enters the developed portion of the City of Hugo.^[20] This option would not involve construction of a new grade crossing.

16. The fifth option considered was to realign the road to the north, where it would reach TH 61 at approximately 147th Street. The City Council rejected this option because of the need to relocate six to 18 homes and at least one business and because the road would traverse Lion's Park, the only open public space in downtown Hugo, and would encroach on a cemetery. The City's share of the cost of this option is estimated at \$3.7 million.^[21] This option would restrict access to a public street north of the proposed realignment, but it would not involve construction of a new grade crossing.

17. The City of Hugo held a number of public meetings and open houses to encourage public input into the decision-making process. The proposals were publicized in the city newsletter, on the Washington County website, and in local newspapers.^[22]

18. On May 5, 2003, the City Council of Hugo voted to build the project on an alignment that terminates at 142nd Street and TH 61. The Washington County Board also approved this realignment.^[23]

19. The government entities involved in the project submitted it to the Metropolitan Council for federal funding. In a competition with other arterial road

projects in the metropolitan area, this one was selected to receive federal aid in the amount of approximately \$4 million.^[24]

The Proposed Grade Crossing

20. On November 3, 2003, the City Council of Hugo authorized its staff to pursue the establishment of a railroad crossing at the junction of TH 61 and 142nd Street.^[25]

21. The track is level at the proposed crossing site. There are no existing structures located immediately adjacent to the track. The nearest roadway on the west side would be located a minimum of 580 ft from the crossing. The proposed crossing would be perpendicular to the track.^[26]

22. At the proposed grade crossing, the tracks must be lowered by four feet to comply with standards set by the American Association of State Highway and Transportation Officials (AASHTO) for maximum slopes.^[27] The City has agreed to maintain unobstructed moving and stopped vehicle sight triangles at the proposed crossing in accordance with AASHTO standards.^[28] No structure will be placed within any sight triangle area.

23. At least until an alternate road is constructed, emergency vehicles, school buses, vehicles carrying hazardous materials, and trucks will have to traverse the grade crossing to reach the west side of Hugo.^[29] At present, train traffic at the crossing is approximately two slowly moving trains per week, and train traffic is likely to diminish in the future if redevelopment proceeds as planned. No party has suggested that there are significant safety issues concerning use of the crossing by emergency vehicles, school buses, vehicles carrying hazardous materials, or trucks.

24. The proposed realignment would require the widening of TH 61 to provide an adequate turning radius onto CSAH 8/14, and new traffic signals would be erected at the intersection. The traffic signals would be coordinated with the warning devices at the crossing. If the proposed crossing is built, the road authority will assume the cost of installing the crossing and warning systems and constructing the adjacent roadway.

25. If the proposed crossing is built, the road authority has agreed to guard the crossing with advance warning signs, active warning devices, a divided median, and any other improvements recommended or required by the Department of Transportation.

26. The travel time from the proposed grade crossing at 142nd Street to the nearest grade crossing at 140th Street is approximately 40 seconds. The travel time to the nearest grade crossing onto a road that provides access to Hwy 35E, however, is eight to 10 minutes south through White Bear Lake.^[30]

27. Notice of the hearing was published in the Department's Rail and Motor Carrier Proceedings Notice and Hearing Bulletin on October 31, 2003.

28. As noted above, neither the BNSF nor the Minnesota Commercial Railway appeared at the hearing to object to the proposed grade crossing. In correspondence notifying the Administrative Law Judge that he did not intend to appear, a BNSF representative stated that the railroad objected to the proposed crossing as being redundant.^[31] In other correspondence before the hearing, Minnesota Commercial Railway noted that it had no objection to the proposed grade crossing.^[32]

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Transportation and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. §§ 14.50 and 219.072.

2. The Department of Transportation gave proper and timely notice of the hearing in this matter and has complied with all substantive and procedural requirements of law and rule.

3. The Commissioner must approve the establishment of all new grade crossings.^[33] New grade crossings must meet the design standards of the AASHTO design manual and comply with the Minnesota Manual on Uniform Traffic Control Devices for Streets and Highways (MMUTCD).^[34]

4. A proposed new grade crossing must meet at least one of the criteria in items A to E:

- A. It will provide access to two or more private properties or to public lands, that have no alternate access route.
- B. It will provide access where an alternate grade crossing or grade separation is not available within one-quarter mile (0.4 kilometer) in an urban area or one mile (1.6 kilometers) in a rural area and will have an ADT of:
 - (1) 750 vehicles or more, if located in an urban area; or
 - (2) 150 vehicles or more, in a rural area.
- C. It will consolidate two or more existing grade crossings.
- D. It is required by the construction of a new rail line.
- E. It will increase public safety by eliminating another safety problem area such as an accident-prone roadway intersection.^[35]

5. The proposed grade crossing satisfies Minn. R. 8830.2710, subp. 1B(1), because it would provide access where an alternate grade crossing is not available within one-quarter mile in an urban area and would have an ADT of 750 vehicles or more.

6. Although there is no specific evidence in the record as to traffic accidents on CSAH 8/14, there is evidence that the road is too narrow to accommodate projected traffic volumes and that there are too many access points within the developed portion of the City of Hugo for the amount of traffic that uses the road. In this respect, the proposed crossing will increase public safety by eliminating a safety problem area, as provided by Minn. R. 8830.2710, subp. 1E.

7. A road authority that proposes a new grade crossing must perform an analysis of alternatives to the proposed new grade crossing.^[36]

8. The City of Hugo has performed an analysis of alternatives as required by Minn. R. 8830.2710, subp. 2.

9. The commissioner shall consider the following factors in determining whether a grade crossing may be established or relocated:

- A. Use of the grade crossing by emergency vehicles;
- B. Use of the grade crossing by vehicles carrying hazardous materials, vehicles carrying passengers for hire, and school buses;
- C. Conformity of sight distances with the AASHTO design manual;
- D. Alignments of the roadway and the railroad track, and the angle of intersection of those alignments;
- E. Profile of the intersection of the roadway and the railroad track, and of the approaches to the intersection;
- F. Distance and travel time to an alternate crossing;
- G. Distance from the grade crossing to adjacent intersections or driveways;
- H. Volume of vehicular traffic and operating speed;
- I. Volume of train traffic and operating speed;
- J. Use of the grade crossing by pedestrians, bicyclists, and recreational users;
- K. Type of warning devices proposed;
- L. Other factors that might adversely affect the safety of roadway users, pedestrians, bicyclists, and recreational users;

M. Costs and benefits of constructing the grade crossing, and the cost participation that would be required of each of the parties involved, as well as the availability of funds; and

N. Public opinion regarding the establishment or relocation of the grade crossing.^[37]

10. The cost of constructing a new grade crossing is the responsibility of the road authority, unless the construction is the result of an action initiated by the rail carrier.^[38]

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner GRANT the petition of the City of Hugo to establish a new grade crossing, subject to the Department's recommendations concerning warning devices or other improvements necessary to safeguard the public.

Dated this 30th day of December, 2003.

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Taped (three tapes)

MEMORANDUM

The true controversy in this case is between the City of Hugo and Marvin LaValle concerning the proposed alignment of the road through Mr. LaValle's family property. There is no genuine dispute between the City and any party concerning the grade crossing issues. As indicated in the findings above, there does not appear to be any public safety reason why the grade crossing should not be established in the manner proposed by the City, subject to the Department's recommendations with regard to warning devices or other necessary improvements.

K.D.S.

^[1] Ex. 9 (attached hereto).

^[2] Testimony of Tim Chalupnik.

- [\[3\]](#) Testimony of Don Theisen.
- [\[4\]](#) Testimony of Peter Sampair.
- [\[5\]](#) Testimony of Peter Sampair.
- [\[6\]](#) Ex. 3.
- [\[7\]](#) Ex. 4.
- [\[8\]](#) Testimony of Don Theisen, John Rask.
- [\[9\]](#) Ex. 8; Testimony of Peter Sampair.
- [\[10\]](#) Testimony of Peter Sampair.
- [\[11\]](#) Testimony of Don Theisen.
- [\[12\]](#) Testimony of Tim Chalupnik.
- [\[13\]](#) *Id.*; see also Ex. 3.
- [\[14\]](#) Ex. 2.
- [\[15\]](#) Testimony of Don Theisen, Tim Chalupnik.
- [\[16\]](#) See Ex. 3.
- [\[17\]](#) Ex. 5.
- [\[18\]](#) *Id.*
- [\[19\]](#) Ex. 9.
- [\[20\]](#) Ex. 5.
- [\[21\]](#) *Id.*
- [\[22\]](#) *Id.*
- [\[23\]](#) Testimony of Don Theisen.
- [\[24\]](#) Testimony of Don Theisen.
- [\[25\]](#) Ex. 6.
- [\[26\]](#) Ex. 9; Testimony of Tim Chalupnik.
- [\[27\]](#) Ex. 11.
- [\[28\]](#) Ex. 12.
- [\[29\]](#) Ex. 10.
- [\[30\]](#) Testimony of Tim Chalupnik.
- [\[31\]](#) Fax message from Spencer D. Arndt, December 9, 2003.
- [\[32\]](#) Letter dated November 10, 2003 from John W. Gohmann.
- [\[33\]](#) Minn. Stat. § 219.072; Minn. R. 8830.2700, subp. 1.
- [\[34\]](#) Minn. R. 8830.2700, subp. 2.
- [\[35\]](#) Minn. R. 8830.2710, subp. 1.
- [\[36\]](#) Minn. R. 8830.2710, subp. 2.
- [\[37\]](#) Minn. R. 8830.2710, subp. 3.
- [\[38\]](#) Minn. R. 8830.2710, subp. 4.