

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF TRANSPORTATION**

In The Matter of the Application
of: City of Minneapolis for a
Vertical Clearance Variance
Pursuant to Minn. Stat. 219.47.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Terrence A. Merritt, Administrative Law Judge, on September 17, 1996, at 9:30 a.m. in Courtroom 3, at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, 100 Washington Avenue South, Minneapolis, Minnesota. James T. Stoutland, P.E., appeared on behalf of the City of Minneapolis(City). Ronald F. Mattson, Assistant Director, appeared on behalf of Minnesota Department of Transportation, Railroad Administration Section(RR), to assist the Administrative Law Judge in developing the record. There were no other appearances. The record in this matter was closed at the end of the hearing.

This Report is a recommendation, not a final decision. The Commissioner of Transportation will make the final decision after a review of the record and may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations contained herein. Pursuant to Minn. Stat. Section 14.61 and the applicable rules of practice, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with James N. Denn, Commissioner of Transportation, Transportation Building, 395 John Ireland Boulevard, St. Paul, MN 55155-1899. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten(10) days after the service of the exceptions to which reply is made. Oral argument before the Commissioner may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply.

The Commissioner of Transportation will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Commissioner may, at his own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Commissioner as his final order.

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STATEMENT OF ISSUE

The issue presented is whether a variance should be granted under Minn. Stat. Sect. 219.47 from the Vertical Clearance Requirement of Minn. Stat. Sect. 219.46 Subdivision 1(d)(3)

and Minnesota Rule 8820.9956 to the City of Minneapolis for all of the bridges along the Twenty-Ninth Street Railroad Corridor(Corridor).

Based on the record herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. By letter petition, dated July 17, 1996, to the Minnesota Department of Transportation(MnDot) the City requested a variance from the "highway over railroad" statutory clearance requirements contained in State-Aid Rules 8820.9956 for reconstruction of bridges over the Hennepin County Regional Railroad Authority(HCRRRA) and the CP Rail System(CP) along the Corridor. The variance request was from the minimum vertical under clearance of 6.7 meters (22'-0"), to a vertical under clearance of 6.1 meters (20'-0").

2. The Corridor in Minneapolis extends from Hennepin Avenue in the west to Cedar Avenue at the east end. There are Thirty-four (34) bridges in the Corridor. Fremont Avenue South is the western most bridge, followed easterly by: Emerson Ave. S., Dupont Ave. S., Colfax Ave. S., Bryant Ave. S., Aldrich Ave. S., Lyndale Ave. S., Garfield Ave S., Harriet Ave. S., Grand Ave. S., Pleasant Ave. S., Pillsbury Ave. S., Blaisdell Ave. S., Nicollet Ave. S., 1st Ave. S., Stevens Ave. S., 4th Ave. S., Portland Ave. S., Oakland Ave. S., Park Ave. S., Columbus Ave. S., Chicago Ave. S., Elliot Ave. S., 10th Ave. S., 11th Ave. S., 12th Ave. S., 13th Ave. S., 14th Ave. S., 15th Ave. S., Bloomington Ave. S., 16th Ave. S., 17th Ave. S., 18th Ave. S., and Cedar Ave. S.(Exhibit A)

3. The bridges on Emerson Ave. S. Dupont Ave. S., Lyndale Ave. S. and Garfield Ave. S. have been reconstructed with a variance for a vertical under clearance of 20'-0". The variances for the Dupont Ave. S. and Emerson Ave. S. bridges were granted in 1982. The variance for the Lyndale Ave. S. bridge was granted in 1987. The variance for the Garfield Ave. S. bridge was granted in 1989. The bridge on Blaisdell Ave. S. was reconstructed in 1982 with a vertical under clearance of 22'-0".(Ex. A)

4. On August 8, 1996 a Notice of Hearing was served on CP, HCRRRA, MnDot, Brotherhood of Maintenance of Way Employees, T.C.I.U., the City, and United Transportation Union. No representative of the unions, CP, HCRRRA or MnDot requested an opportunity to participate as a party in the proceeding.

5. At the Hearing on September 17, 1996 the City moved to amend its petition to include a variance from M.S. 219.46 Subd. 1(d)(3) and M.S. 219.47 and to include in its request all City bridges along the Corridor. There was no opposition to the motion and the amendments were granted.

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6. CP, by letter, dated April 22, 1996, to the City indicated that it had no objections to the variance request of 20'-0" from the original requirement of 22'-0". (Exhibit G, Attachment G.)

7. On March, 26, 1996, HCRRRA through the Hennepin County Board of Commissioners voted in favor of the Variance Request in Resolution Number 12-HCRRRA-96.(Ex. G, Att. F.)

8. On July 3, 1996, the City approved the Variance Request in Resolution 96R-168.(Ex. G. Att. E.)

9. CP rail traffic along the Corridor presently averages four trains per day. CP has operational rights granted to it through the year 2008 by the owner, HCRRA.

10. Presently there are negotiations among MnDot, HCRRA, CP and the City to find an alternate route for rail traffic, because the existing trackage at Hiawatha Avenue, located east of Cedar Ave. S., is proposed to be cut off by July 1, 1997 as part of the final phase of construction on Hiawatha Avenue. When an alternate route is found, all rail traffic on the Corridor will be eliminated except for occasional service to a grain storage facility located between 10th Ave. S. and 11th Ave. S. which is operated by CEPRO. The rail traffic heads west to east, from Hennepin Ave. S. to CEPRO.

11. All of the bridges in the Corridor that have not been replaced were built between 1913 and 1916, and they are in various stages of deterioration.

12. There is a structural sufficiency scale from 0(low)-100(high). A ranking of 50 and below means the bridge is structurally deficient. Ten of the bridges in the Corridor have a sufficiency rating below 50.

13. The structurally deficient bridges are being scheduled for replacement beginning with the 4th Ave. S. bridge in 1997. Subsequent bridges will be replaced in the years thereafter.

14. The current minimum vertical under clearance of the bridges in the Corridor that need to be replaced varies from a low of 17.9 feet to a high of 19.5 feet with the average vertical under clearance of 18.6 feet.

15. HCRRA is proposing to use the Corridor as part of its future Light Rail Transit(LRT) plans.

16. Presently no statutory vertical under clearance requirement exists for LRT. HCRRA is proposing to construct its LRT with a vertical under clearance of 16.5 feet, which will require less vertical under clearance than the proposed 20 feet vertical under clearance variance that is sought by the City.

17. The existing bridges along the Corridor that have not been replaced have a typical design of three span concrete T-beam superstructures supported by concrete piers and abutments built on spread footings.

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18. The replacement bridge on Garfield Ave. S., which is typical of the proposed replacement bridges, is a three-span concrete slab superstructure with a 21 foot structure depth, supported by concrete piers and stub abutments on spread footings carrying a 32 foot roadway with 8 foot sidewalks on each side of the bridge.

19. The cost savings on the Garfield Ave. S. bridge with a 20 foot vertical under clearance was approximately 17% or \$100,000.00 over the construction costs of a bridge with a 22 foot vertical under clearance. The estimated average construction cost increase for a bridge in the Corridor with a 22 foot vertical under clearance instead of a 20 foot vertical under clearance is \$79,000.00.(Ex. G, Att. J)

20. A 22 foot vertical under clearance would require additional length of approach roadways, additional right-of-way acquisition for permanent slope easements, temporary construction easements, and modifications to adjacent buildings and properties resulting in increased costs of construction for a bridge with a 22 foot vertical under clearance instead of a 20 foot vertical under clearance.

21. The Corridor passes through an area of dense commercial and residential development. Requiring all bridges in the Corridor to be replaced with bridges with a 22 foot vertical under clearance would affect over 160 buildings adjacent to the Corridor.(Ex. C)

22. The reduced grades on the bridge due to the 20 foot vertical under clearance increase the stopping sight distance for vehicles traveling over the bridge. This creates safer driving conditions.

23. A lower vertical under clearance will result in minimal changes in approach roadway grades which would reduce adverse impacts on sidewalks, driveways and properties.

24. The average daily traffic counts on the Corridor bridges range from a low of 300 vehicles at Oakland Ave. S. to a high of 18, 300 vehicles per day at Cedar Ave. S. The typical Corridor bridge carries an average of 1,200 vehicles per day. (Ex. G.)

25. Pedestrian traffic over all of the Corridor bridges is high due to the close proximity of the Lake Street Business District, which is one block south of and parallel to the Corridor. The lower vertical under clearance will minimize approach grades, improving pedestrian safety, especially in winter conditions.

26. By including the reconstructed bridge on Blaisdell Ave. S. in the variance request, the City seeks to increase its flexibility to replace or repair that bridge in the future.

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27. By receiving a variance request for the entire Corridor, the City will reduce the costs of seeking individual variances. Additionally, the granting of the variance would allow the City the flexibility to address bridges as traffic patterns and needs dictate.

28. The Standard Horizontal "No Clearance" Sign informs the railroad employees that the bridge does not meet minimum standard. If the variance to vertical under clearance is granted, a "No Clearance" sign posted on each facia of the reconstructed bridge would provide sufficient warning to rail traffic using the railroad. There was no testimony to indicate that the safety of the railroad employees would be increased by requiring the "No Clearance" sign on each facia of the reconstructed bridge to be lighted.

29. The City has not received any objections from adjacent residents to the proposed vertical under clearance variance.

30. Since some of the bridges have received a variance for a vertical under clearance of 20 feet, if other bridges were required to be replaced at the 22 foot vertical under

clearance, 29th Street would be rolling between the various bridges of different heights to allow it to reach the proper grade of the approaches to the various bridges.

CONCLUSIONS

1. The Commissioner of Transportation and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. Sections 219.47 and 14.50. The Notice of Hearing was proper and all applicable procedural requirements have been fulfilled.

2. There are approximately 34 bridges along the Corridor, 29 of which are in need of reconstruction.

3. In 1982, 1987 and 1989 the City was granted variances from the vertical under clearance requirement of Minn. Stat. Sect. 219.46 Subdivision 1 (d) (3), allowing the City to reconstruct four bridges with a vertical under clearance of 20 feet.

4. Reconstruction of the bridges in the Corridor from their present vertical under clearance to a vertical under clearance of 20 feet, will increase the vertical under clearance for each of the existing bridges that are in need of reconstruction.

5. The 20 foot vertical under clearance variance would allow for a savings of construction costs for each bridge that is to be reconstructed and provide for increased visibility around the bridge, resulting in increased safety.

6. Granting the 20 foot vertical under clearance variance would cause less disruption to the adjacent commercial and residential properties, than reconstructing the bridges to the statutory vertical under clearance.

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7. The ultimate intended use of the Corridor will be for LRT with a proposed vertical under clearance of 16.5 feet, which is less than the variance request.

8. Granting the 20 foot vertical under clearance variance will allow the City to construct its bridges in the Corridor in a similar manner to those bridges which have been constructed with a similar vertical under clearance variance.

9. Compliance with the statutory clearance would be unreasonable and unnecessary as the proposed bridge reconstruction would save construction costs, increase safety and minimize neighborhood disruption.

10. Given the present limited use of the railway, the placement of "No Clearance" signs on the fascia of any bridge constructed with a 20 foot vertical under clearance variance, while the railway is still used for train traffic, will avoid the creation of a condition unduly hazardous to any person or to the employees of the railroad.

11. Any of the above Findings of Fact termed more properly as Conclusions of Law are hereby adopted as such.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE COMMISSIONER OF TRANSPORTATION WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Petition, as amended, of the City of Minneapolis for a variance to the vertical under clearance requirement contained in Minn. Stat. 219.46 Subdivision 1 (d) (3) and Minn. Rule 8820.9956 for all of the bridges in the 29th Street Corridor in Minneapolis be granted on the condition that the City of Minneapolis post proper "No Clearance" signage on each fascia of any bridge constructed with a vertical under clearance of 20 feet while the railway is used for rail traffic.

That the City of Minneapolis notify the Commissioner of Transportation of its compliance with this condition so that the Department of Transportation can make inspections.

Dated this 15th day of October, 1996

TERRENCE A. MERRITT
Administrative Law Judge

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Reported: Tape recorded

NOTICE

Pursuant to Minn. Stat. Sect. 14.62 Subdivision 1, the Commissioner of Transportation is requested to serve his final decision upon each party and the Administrative Law Judge by first class mail.

