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

In the Matter of the Proposed Public Grade
Crossing Over the Track of the Wisconsin

FINDINGS OF FACT,

Central Limited Railway, Inc., Approximately
at Railroad Milepost 426.5 in May and Stillwater
Townships, Washington County, Minnesota.

**CONCLUSIONS,
RECOMMENDED ORDER
AND MEMORANDUM**

The above-entitled matter came on for hearing on February 5, 1997 before Administrative Law Judge Allan W. Klein at the Minnesota Department of Transportation (Mn/DOT) Central Office Building in Saint Paul.

Byron D. Olson, of the firm of Felhaber, Larson, Fenlon & Vogt, 4200 First Bank Place, 601 Second Avenue South, Minneapolis, MN 55402-4302 appeared on behalf of Classic Homes Design, Inc. (hereinafter "Applicant"). Thomas M. Scott, Esq., of Campbell, Knutson, Scott and Fuchs, Inc., 1380 Corporate Center Curve, Suite 317, Eagan, Minnesota 55121 appeared on behalf of the co-petitioner herein, Stillwater Township. David Snyder, Esq., of Eckberg, Lammers, Briggs, Wolff & Vierling, 1835 Northwestern Ave., Stillwater, MN 55082 appeared on behalf of the other co-petitioner herein, May Township. Respondent Wisconsin Central Limited Railway, Inc., ("Railroad" or "Railway") was represented by William M. Tuttle, Esq., Associate General Attorney, Wisconsin Central Ltd., Box 5062, Rosemount, Illinois 60017. Robert G. Swanson, Director - Railroad Administration Section, Minnesota Department of Transportation, Suite 925 Kelly Annex Transportation Building, Saint Paul, Minnesota 55155, appeared on behalf of the staff of the Minnesota Department of Transportation.

The hearing lasted half of a day, and the record in this matter closed with receipt of a final letter-brief on February 19, 1997.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. 14.61, and the Rules of the Department of Transportation, and the Rules of the Office of Administrative Hearings,

exceptions to this Report, if any, by any party adversely affected must be filed within ten days of the mailing date hereof with James N. Denn, Commissioner of Transportation, 4th Floor, Transportation Building, Saint Paul, Minnesota 55155. 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 days after the service of the exceptions to which a 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 filed with the Commissioner.

The Minnesota Department 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.

STATEMENT OF ISSUE

Whether a public grade crossing should be established across the track of the Wisconsin Central Limited Railway, Inc., at approximately railroad milepost 426.5 in May and Stillwater Townships, Washington County, Minnesota.

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

FINDINGS OF FACT

Procedural History

1. On September 26, 1996, Stillwater Township City Council passed the following resolution:

BE IT RESOLVED that Stillwater Township is willing to co-petition with May Township to establish a new public roadway across the Wisconsin Central Ltd. Railway right-of-way under the following conditions: (a) the resulting cul-de-sac street length is approved by Washington County; (b) the Township incurs no costs in connection with the installation of the crossing; and (c) if the railroad is not required to maintain the crossing, May Township assumes all on-going maintenance responsibility relating to the crossing. The Roadway, referred to as Quail Avenue, is located in the Hunter's Ridge Subdivision at approximately Railroad Milepost 426.5. The Wisconsin Central Ltd. will not agree to the establishment of such a crossing. The Board of Supervisors of Stillwater Township is willing to co-

petition with May Township to request that the Minnesota Commissioner of Transportation to convene an administrative hearing, pursuant to state law, to determine the need and issue an order establishing the public crossing.

2. On October 10, 1996, May Township City Council passed the following resolution:

BE IT RESOLVED that May Township is willing to co-petition with Stillwater Township to establish a new public roadway across the Wisconsin Central Ltd. Railway right-of-way under the following conditions: (a) the resulting cul-de-sac street length is approved by Washington county; (b) the Township incurs no costs in connection with the installation of the crossing; and (c) if the railroad is not required to maintain the crossing, Hunter's Ridge development assumes all on-going maintenance responsibility relating to the crossing. The roadway, referred to as Quail Avenue, is located in Hunter's Ridge Subdivision at approximately Railroad Milepost 426.5. The Wisconsin Central Ltd. will not agree to the establishment of such a crossing. The Board of Supervisors of Stillwater Township is willing to co-petition with May Township to request that the Minnesota Commissioner of Transportation to convene an administrative hearing, pursuant to state law, to determine the need and issue an order establishing the public crossing.

3. After attempting to work out the differences between the parties, the Commissioner did, on December 30, 1996, issue an Order for Hearing and Notice Thereof. This was served by mail on all interested parties.

Description of Proposed Crossing

4. The proposed railroad crossing is located in Washington County, on the border between two townships at approximately Railroad Milepost 426.5. The nearest roads to the proposed crossing are State Highway 95 to the east and County Road 51 ("Partridge Road") to the west. The topography in this area consists of low rolling hills and open space with partially wooded enclaves. Land in the area is predominantly used for agricultural purposes, but is beginning to be developed for suburban housing.

5. Two adjoining parcels of property are in the process of being acquired and developed by a real estate developer, Steven May, doing business as Classic Homes Designs, Inc. ("Applicant"). A plat for the southern parcel has been submitted and approved by Stillwater Township, the purchase has closed, and sales and construction have commenced. For the northern parcel, plat approval by May Township is pending. Applicant's purchase is conditioned upon obtaining satisfactory access to the property. The development, Hunter's Ridge, includes both parcels. It lies both north and south of the main line track of the Wisconsin Central Ltd. Railroad. The track cuts through the development along a horizontal path, leaving approximately 91.73 acres

north of the track in May Township, and 100.01 acres south of the track in Stillwater Township.

6. The Hunter's Ridge development is divided by the Wisconsin Central Ltd. track in a land use sense as well. South of the track, the approved plat is designated for "R-1" (low density) zoning, consisting of ten acre single family lots. The area north of the track is designated for "R-1" (low density) zoning, consisting of three acre lots. This north portion of Hunter's Ridge is proposed to be laid out in a "cluster" development pattern, whereby 48.92 acres are dedicated to permanent open space for public use and the remaining 51.09 acres of this north portion are dedicated to residential land use. The cluster development concept is desired by the Washington County Planning Board to preserve Washington County open space resources.

7. At present, Quail Avenue has been constructed in the Stillwater portion of the platted development, commencing at State Highway 95 and terminating at a point near the track. This roadway is approximately 36 feet wide from curb to curb, will allow a top speed of 30 m.p.h., and is configured as a two lane bituminous surface within a 60-foot right-of-way. Quail Avenue, if the crossing is ordered, will extend to the area north of the track, thereby providing a southern access way to the north parcel from State Highway 95. The planned roadway in the north parcel will use the same design parameters as the existing roadway in the south parcel.

8. The track of the Wisconsin Central Ltd. Railroad runs on a straight line in a roughly east to west direction, between State Highway 95 and Partridge Road. The proposed crossing would be located at an existing active at-grade farm crossing, at approximately railroad milepost 426.5. Both the two existing railroad track crossings in the area, one at State Highway 95 and the other at Partridge Road, are grade-separated crossings. The existing farm crossing is at-grade. The proposed crossing would also be at-grade.

9. The track is level at the existing farm crossing and lies above adjacent terrain. Natural storm water drainage flows east and west away from the crossing. There are no existing structures located near the track. The proposed crossing will be perpendicular (90 degrees) to the track, and will provide ten feet of level roadway surface either side of the track. Planned Quail Avenue north of the proposed crossing will rise by 1 percent for a distance of 100 lineal feet. Existing Quail Avenue south of the proposed crossing slopes at approximately 27 percent. If the proposed crossing is approved, the Applicant has agreed to increase the length of the Quail Avenue level approach to the crossing. Natural storm water drainage patterns will be maintained. Unobstructed sight triangles will be provided at the proposed crossing in accordance with A.A.S.H.T.O. (American Association of State Highway and Traffic Officials) standards. No structure will be placed within any sight triangle area. Existing trees within each sight triangle area will be removed to maintain visibility at the proposed crossing.

10. The Wisconsin Central Limited Railroad regularly runs 6 trains each week over the pertinent track. On average, two trains run seven days a week, two trains run five days a week (Monday to Friday, or Tuesday to Saturday), and two more trains run infrequently. No trains stop between State Highway 95 and Partridge Road unless emergency service is required. No side tracks, passing sidings or industry tracks exist between State Highway 95 and Partridge Road. The railroad is presently negotiating the sale of future traffic rights, which would result in increased train traffic. The average train at this locale has 60 to 100 cars, which makes the largest average train length over one mile.

11. The maximum speed of trains moving east or west through the crossing is 40 m.p.h.. Two speed restricted areas affect the speed of trains passing through the crossing. The St. Croix River bridge allows a maximum speed of 25 m.p.h., and is located approximately 2 miles east of the crossing. Withrow Junction allows a maximum speed of 20 m.p.h., and is located approximately 5.5 miles west of the crossing. East bound or west bound trains are anticipated to be moving no faster than 30 to 35 m.p.h. (even though the posted speed limit is 40 miles per hour) at the crossing because (1) restricted speed applies to the last car of an entire train, (2) the average train length is 60 to 100 cars which reduces the distance available to gain speed and (3) it is difficult to accelerate a loaded train (most of the east bound trains will be freight loaded). West bound trains occasionally run lighter than east bound trains, which could result in elevated west bound speeds that approach 35 m.p.h.

Alternatives to the Proposed Crossing

12. The north parcel is land-locked. Other than Quail Avenue, there are no roads into or even abutting the north parcel at this time. If the track crossing is not built, the only access to the area north of the track would be across adjacent active farm lands to reach State Highway 95 to the east, or Partridge Road to the west. Both roadways are approximately 3,500 feet from the proposed crossing. There are four potential alternative access routes: (1) through the Gruber property on the west, connecting to Partridge Road; (2) through the Reuter property on the north and west, also connecting to Partridge Road; (3) through the Smith property on the east, connecting to State Highway 95; and finally (4) through the Reuter property on the north or the Smith property on the north and east, connecting to the Ridgewood housing subdivision, thereby reaching State Highway 95. The Applicant has approached each of the four adjacent land owners to negotiate access to the north parcel. At present, none are interested in selling their land, allowing an access roadway through their land, or providing an easement across their land. Access to State Highway 95 through the Ridgewood Subdivision would require condemnation of several existing residences to establish a right-of-way into the subdivision. May Township has indicated that this would be unacceptable.

13. Any access from adjacent property located south of the track would require a new crossing, and therefore, is no more desirable than the proposed crossing.

14. The north parcel will be comprised of 13 single family homes. The generally accepted number of vehicle trips generated each day by a single family land use pattern is 10 vehicle trips per day. Therefore, the proposed development north of the track will generate 130 vehicle trips per day. "Vehicles" include private automobiles, delivery trucks, and school buses. The advantage of a high volume crossing is that vehicles often que-up behind other vehicles while trains pass, which provides an additional safety measure to motorists at the crossing. The Wisconsin Central Ltd. Railroad characterizes track crossings in Minnesota with 500 to 700 vehicles as low volume. The Railroad seeks to close crossings in Minnesota with a traffic volume of 200 to 300 vehicles by looking for redundant crossings in the rail system or alternative access routes that use an existing crossing, whenever possible. Alternative routes that use existing crossings at State Highway 95 or Partridge Road are preferred by the Railroad because motorists would gain the benefit of an increased queuing effect at either crossing.

15. Emergency service vehicles are dispatched from Stillwater Township and travel to the development from the south. Alternative routes that use the existing grade separated crossings at State Highway 95 or Partridge Road to reach the north parcel would require a longer travel distance than that which is required via Quail Avenue and the proposed crossing. Emergency vehicle response time, however, would not significantly differ between these alternative routes and the proposed Quail Avenue crossing because a trade-off occurs between travel speed and distance. On one hand, these alternative routes allow higher speeds but require a longer travel distance, while on the other hand, the proposed Quail Avenue crossing route would offer a slower speed but a shorter distance. Finally, a potential for emergency vehicle blockage will exist at the proposed Quail Avenue crossing because it is an at-grade crossing, and there is always the possibility of a train causing a blockage. However, for the reasons noted at Finding 10, this is very unlikely.

16. Wisconsin Central Ltd. Railroad opposes the proposed crossing because it fears liability for train-auto collisions. It argues that public safety would not be enhanced, a low number of persons would be served, and that it opposes virtually all new grade crossings for general policy reasons. The United States and the State of Minnesota have express policies that favor a reduction in the number of at-grade crossings. The federal government has stated a goal of reducing the number of at-grade crossings by 25 percent. The State of Minnesota has adopted a similar policy, instructing the Commissioner of Transportation to "consider that the number of grade crossings in this state be reduced and that public safety will be enhanced by reducing the number of grade crossings." Minn. Stat. § 219.073 (1996). Despite these policies, the railroad has found that it is very difficult to close an existing crossing due to local political issues that frequently arise.

Costs

17. If the crossing is ordered, Classic Homes Design has agreed to assume financial responsibility for the installation of the crossing and construction of the adjacent roadway.

18. Applicant has also agreed that responsibility for on-going maintenance of the grade crossing surface should be "allocated in the usual and customary manner for crossings of this type." There is no evidence in the record, however, as to what the "usual and customary manner" might be.

19. Applicant also intends to incorporate a homeowner's association to manage and pay expenses for the common property in the northern parcel. Applicant will cause the homeowner's association to be responsible for the on-going maintenance of signs and street lights.

20. Stillwater Township is unwilling to incur installation or on-going maintenance expenses for the track crossing. Because the Stillwater portion of the plat is already served by existing Quail Avenue, the proposed crossing is not required to access the Stillwater portion of the development. Therefore, Stillwater Township does not want to pay for any related expenses. May Township has made clear that it does not want to be obligated to install or pay for on-going maintenance expenses for the proposed crossing. The Applicant, however, would like to hold open the option that the residents might petition May Township for participation in maintenance responsibility at some later date.

21. Wisconsin Central Ltd. Railroad is unwilling to incur installation or on-going maintenance costs for the proposed crossing. The Railroad believes that it does not benefit at all from the establishment of this new crossing. Moreover, regardless of who pays for on-going maintenance costs, the Railroad will incur additional liabilities and expenses associated with all crossings, such as snow removal and a general deterioration of rails by repeated vehicle crossings.

Warning Devices

22. The parties agree that, if the proposed crossing is ever built, it should be guarded by advance warning signs, cross-bucks, and stop signs to comply with Minnesota D.O.T. standards. If required, the Applicant agrees to provide street lighting at the proposed crossing.

23. If the proposed crossing is ordered, construction can begin in the spring or summer of 1997.

CONCLUSIONS

1. The Commissioner of Transportation has jurisdiction over the subject matter of the hearing.

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.

3. Under Minn. Stat. § 219.072 (1996) and Minn. Rule Pt. 8830.2700, the co-petitioners Stillwater Township and May Township have the burden of proving, by a preponderance of the evidence, that an at-grade crossing should be constructed over the Wisconsin Central Limited track at approximately milepost 426.5. The Townships have met this burden.

4. If it is determined that a grade crossing should be constructed at the location mentioned above in the conclusion, the crossing should be constructed with advance warnings, cross-bucks and stop signs.

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 all of the files and proceedings herein, the Administrative Law Judge makes the following:

RECOMMENDATION

The Petition of Stillwater Township and May Township for construction of an at-grade public crossing over the Wisconsin Central Limited Railroad track at approximately mile post 426.5 in Stillwater Township and May Township, Minnesota where Quail Avenue, when constructed, crosses the track be GRANTED.

Dated this ____ day of March, 1997.

ALLAN W. KLEIN
Administrative Law Judge

NOTICE

Pursuant to 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.

Recorded: Tape Recorded (Two Tapes)

MEMORANDUM

Minn. Stat. § 219.072 (1996), reads:

Establishment of all new grade crossings must be approved by the commissioner. When establishment of a new grade crossing is desired, either by the public officials having the necessary authority or by the railroad company, and the public officials and the railroad company cannot agree as to need, location or type of warning devices required, either party may file a petition with the commissioner setting forth the facts and submitting the matter for determination. The commissioner, after notice as the commissioner deems reasonable, shall conduct a hearing and issue an order determining the matters submitted.

The Administrative Law Judge recommends granting the petition because he is persuaded of the need and location for such a crossing. First, the Hunter's Ridge north parcel is isolated. The only reasonably available access to the north parcel is via the proposed Quail Avenue crossing. At present, no alternative approach to the north parcel exists. None of the adjacent land owners are willing to sell their property, develop an access roadway through their property, or for that matter, grant an easement across their property to the Applicant for access to the north parcel. Access is essential for the delivery of emergency and municipal services. Indeed, Applicant's purchase of the north parcel is conditioned upon obtaining suitable access. Second, the proposed crossing makes use of an existing farm crossing. The proposed crossing, therefore, is not entirely new. The location of the proposed crossing is consistent with the land use pattern which already exists. Moreover, the proposed north parcel land use plan is consistent with Washington County land use objectives. The evidence shows that the proposed public crossing is the most practical alternative. The need for, and location of, the proposed crossing has been demonstrated.

The Railroad's position that this low volume crossing should not be allowed is not practicable in light of the facts. The existing crossings at State Highway 95 and Partridge Road are both grade separated crossings. Undoubtedly, grade separated crossings are safer than any proposed at-grade crossing because the interaction of motorists with trains is completely removed. Testimony shows, however, that no there is no way to develop a roadway that would link the north parcel to either of the existing crossings. Adjacent land owners are not interested in selling or disturbing their active farm land.

Finally, the Judge concludes that the crossing, if built, should be guarded by advance warnings, cross-bucks, stop signs, with attendant street lighting at the crossing.

AWK