



CITY OF BETHLEHEM

OFFICE OF THE CITY SOLICITOR

10 East Church Street, Bethlehem, Pennsylvania 18018-6025

Phone: 610-865-7011

Fax: 610-865-7205

TDD: 610-865-7015

www.bethlehem-pa.gov

Application of Norfolk Southern Railway Company }
For approval to abolish and replace with one lane }
Roadway on fill at a public above-grade crossing }
Where High Street crosses over the track of }
Norfolk Southern Railway Company in the City of }
Bethlehem, Northampton County, and the }
Allocation of costs incident thereto }

A-2008-2075123

Pre-hearing Conference Memorandum

PROCEDURAL HISTORY:

On November 14, 2008 Norfolk Southern Railway Company (hereinafter referred to as "Norfolk Southern") filed an application with the Pennsylvania Public Utility Commission (hereinafter referred to as "PUC" or "Commission") to abolish the public rail-highway crossing of High Street above its tracks in the City of Bethlehem (hereinafter referred to as "City" or "Bethlehem"). As part of their application Norfolk Southern stated that it agreed to remove the existing wooden bridge structure and replace it with fill that would support a roadway, at its sole cost and expense. The application further proposed that the scope of work would be a sixteen foot (16') wide roadway for a twelve foot (12') wide single traffic lane at a finished grade approximately twelve inches (12") below the current roadway. Thereafter, both the City and Norfolk Southern entered into conversations about the proposal set forth in the Application. However, no consensus was reached on the proposal and a field investigation took place on February 5, 2009 at which the following parties were present: PUC, Norfolk Southern, City of Bethlehem, Hellertown Borough, Pennsylvania Department of Transportation. Other parties were notified about the field investigation except for the Pennsylvania Department of Conservation and Natural Resources (DCNR).

On March 18, 2009, the PUC issued a Secretarial Letter. The letter determined that the line be abandoned, the single lane bridge be removed and replaced with a sixteen foot (16') single lane roadway at the sole expense of Norfolk Southern. The City filed a timely appeal.

The City's Petition alleged, *inter alia*, that the field investigation and the decision that flowed from it was deficient because the Commission and Norfolk Southern failed to notify the DCNR in accordance with 32 P.S. § 3620. DCNR should have been notified to permit the agency to evaluate how the removal order would impact the development, expansion and existing use of public recreational trails. The City in its appeal noted that removing the bridge and replacing it with an at grade crossing would have a devastating impact on an ongoing recreational trail project. Further, the City challenged the conclusion inasmuch as it permitted Norfolk Southern to construct a roadway that in no way met City standards or took into account the future reconstruction of the roadway and replacement of a County bridge eight hundred feet (800') west of the High Street Bridge, with a new two lane structure.

In an Opinion and Order dated May 14, 2009, the Commission granted the Petitions filed by the City of Bethlehem and by Norfolk Southern and assigned the matter to the Office of Administrative Law Judge.

Since that time, the DCNR was notified of the proceeding and entered its appearance as a party. Further, DCNR invoked the Structure Disposition Process as outlined in the publication titled "Rail-Trail Bridges in Pennsylvania, A Guidebook for the Structure Disposition Process" and specifically the Decision Tree outlined on pages 19-23. A Pre-Hearing Conference is scheduled for December 2, 2009.

FACTS:

The High Street Bridge (hereinafter "Bridge") is a single lane bridge crossing over a track of Norfolk Southern. The structure consists of three simple spans and is 67.8 feet in length. It has a wooden plank deck, timber springers, is supported by timber bents and stone masonry abutments. There are timber curbs and timber railings mounted on each side of the deck and the structure carries a single cartway of 14.7 feet. The bridge is currently posted for an eight (8) ton load limit.

The Commission issued two orders/decisions regarding the Bridge. On March 13, 1981, the Commission ordered the replacement of the timber on the Bridge. The 1981 Order further provided that: "Consolidated Rail Corporation, at its sole cost and expense, furnish all material and do all work necessary to maintain all of the substructure and superstructure of the bridge, at a fifteen ton level, except snow removal from the surface of the structure, in a safe and satisfactory condition". (Emphasis added). On May 26, 1999, the City was informed by Conrail that Norfolk Southern was responsible for the maintenance of the Bridge in accordance with the 1981 Order pursuant to a transaction between Consolidated Rail and Norfolk Southern.

Maintenance of the Bridge has been lacking for some time. In fact, the Bridge deteriorated to the point that in 1999 the PUC entered an order on August 26th revising the tonnage permitted to cross the Bridge from fifteen (15) tons to eight (8) tons. On August 17, 2008, the City notified the PUC of the significant structural deficiencies in the Bridge per a recent bridge inspection, including the need to rebuild voided and loose stonework of the abutments and replacing rotting timbers. The letter further called attention to Norfolk Southern's continual reluctance to meet its legal obligation to maintain the entire bridge. The bridge inspection also revealed severe abutment deterioration, including deep mortar voiding.

ISSUES:

Should the PUC prevent Norfolk Southern from removing a single lane bridge and replace it with an at grade crossing thereby destroying any potential for establishing a 12 mile long recreational, pedestrian and bicycling commuting corridor connecting five (5) municipalities and inconsistent with City Standards for Streets?

Suggested Answer: Yes.

Should Norfolk Southern bear the majority share of replacing the High Street bridge crossing due to its failure to meet its legal obligation to maintain solely at its expense the High Street bridge and because it will be relieved of its current obligation to maintain the crossing at the conclusion of this matter?

Suggested Answer: Yes

POSITION:

The City does not believe Norfolk Southern should be rewarded for shirking its legal responsibility to maintain the entire High Street Bridge by being permitted to fill in the crossing in the cheapest manner possible. Had Norfolk performed its legal responsibility of maintaining the structure, the parties may have additional options to explore regarding future maintenance of the crossing.

Further, permitting Norfolk Southern to complete its proposed removal will have disastrous impacts on a transformative recreational trail project that will travel twelve (12) miles and connect five (5) municipalities and several parks.

PROPOSED WITNESSES

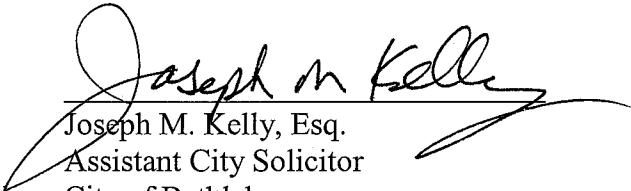
Darlene Heller, Director of Planning and Zoning
Michael Alkhal, Director of Public Works
Matthew Dorner, Chief, Bureau of Engineering

Representative from Hellertown Borough to discuss Rails project
Representative from Saucon Rail Trail Advisory Committee

* City reserves the right to add additional witnesses to the Hearing list at the conclusion of discovery.

PROPOSED PROCEDURAL SCHEDULE

The City agrees with DCNR that the parties need sufficient time to work through the Decision Tree Process. However, the City would also like to have the opportunity to undertake discovery should the Decision Tree Process turn out to be fruitless. Consequently, the City recommends that the Administrative Law Judge issue an Order requiring a status report on a regular basis to determine if settlement is realistic.


Joseph M. Kelly, Esq.
Assistant City Solicitor
City of Bethlehem