



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET
HARRISBURG, PENNSYLVANIA 17120

IN REPLY PLEASE
REFER TO OUR FILE

February 16, 2024

A-2023-3041540
Amended

TO ALL PARTIES OF RECORD

Application of Upper Nazareth Township for approval to alter the crossing (DOT 851 943 H) where Gun Club Road (T-506) crosses, at grade, the tracks of the Norfolk Southern Railway Company, located in Upper Nazareth Township, Northampton County.

To Whom It May Concern:

By application filed on June 14, 2023, Upper Nazareth Township is seeking Commission approval to alter the crossing (DOT 851 943 H) where Gun Club Road crosses, at grade, the two tracks of Norfolk Southern Railway Company (NS) in Upper Nazareth Township, Northampton County.

In the application, Upper Nazareth Township avers that the existing at-grade crossing needs to be widened to allow for the construction of a wider roadway shoulder, the replacement of the existing asphalt and rubber rail seal crossing surface with a concrete panel crossing surface and the relocation of the active warning devices (automatic flashing-lights). In the application, Upper Nazareth Township avers that the project will be funded by a private developer (NP Gun Club Building 1, LLC) and Norfolk Southern Railway Company. Further in the application, the applicant anticipates future construction of a regional trail system that would have a shared-use pathway connection over the subject crossing. Drainage facilities will be constructed as part of the larger project for warehouse construction in the general vicinity of the crossing.

Upon receipt of the application, a field investigation and conference was arranged by a Commission staff engineer and held on July 26, 2023 at the site of the crossing. Representatives of AECOM (NS), Norfolk Southern Railway Company, NP Gun Club Building 1, LLC (Northpoint), KCE Engineers (Upper Nazareth Township), Upper Nazareth Township, Schlouch Inc., UGI, JVI (Crossroads XOX, LLC) and Pennsylvania Department of Transportation were in attendance.

At the field conference, it was noted that Gun Club Road is a two-lane bituminous asphalt roadway which crosses, at grade, two tracks of Norfolk Southern Railway Company. The railroad track is aligned generally east to west, and the existing crossing surface is constructed of asphalt and rubber flangeway in good repair. The existing warning devices at the crossing consist of crossbuck assemblies (R15-1) and "2 TRACKS" (R15-2) signs with active incandescent flashing-lights and emergency notification signs on the crossbuck posts.

Several sets of warning lights are directed toward local driveways in the area of the crossing. The approach roadways have advance warning signs (W10-1), pavement markings and stop bars.

At the field conference, Upper Nazareth Township, through its consultant engineer, described the proposed project. NP Gun Club Building 1, LLC, having agreed to do so, at its sole cost and expense, proposes to alter the crossing by widening Gun Club Road's western roadway shoulder, relocating the active warning device on the west side of Gun Club Road, re-lamping the active warning devices with LED lenses and providing a shared-use pathway on the west side of Gun Club Road. The proposed roadway shoulder and shared-use pathway will require the extension of the crossing surface in the area of the crossing.

After the field conference, Upper Nazareth Township agreed to revise the scope of work as described in the application by requesting the crossing surface be constructed of asphalt and rubber flangeway with the condition that Norfolk Southern Railway Company be responsible for future maintenance of the crossing surface up to two feet to the outside of the outermost rails for the crossing surface and the proposed shared-use pathway.

NP Gun Club Building 1, LLC agrees to construct the project at its sole cost and expense. NP Gun Club Building 1, LLC agrees to reimburse Upper Nazareth Township or Norfolk Southern Railway Company for any costs incurred to construct the widened crossing surface with asphalt and rubber flangeway, re-lamp the active warning devices flashers, relocate the existing railroad active warning devices and crossbuck assemblies; and for providing engineering, watchman and flagman services in conjunction with the project.

Norfolk Southern Railway Company, at the sole cost and expense of Upper Nazareth Township, agrees to construct the widened crossing surface with asphalt and rubber flangeway, re-lamp the active warning devices flashers, relocate the existing railroad active warning devices and crossbuck assemblies and for providing engineering, watchman and flagman services in conjunction with the project.

At the time of the field conference, Upper Nazareth Township, Norfolk Southern Railway Company and NP Gun Club Building 1, LLC were undecided if it will be necessary for the Commission to appropriate railroad property for construction of the project but will submit right-of-way plans and metes and bounds descriptions at a later date if it is deemed necessary.

After the field conference, it was determined that the new pathway include crosshatch paint markings that contrast with the bituminous portion of both pathway approaches and detectable warning surface treatment on both pathway approaches.

Upper Nazareth Township agrees to prepare and submit final detailed construction plans for the proposed project to the Commission for approval and the parties of record for consideration in this proceeding. Accordingly, it will be necessary for Upper Nazareth Township to do so prior to the start of construction.

Upon completion of the project, Norfolk Southern Railway Company agrees to maintain the railroad facilities at the widened crossing to include the crossbuck assemblies with flashing-lights re-lamped with LED lenses and the entire width of the crossing surface through the proposed shared-use pathway, at its sole cost and expense.

Upon completion of the project, Upper Nazareth Township agrees to maintain the share-use pathway (roadway shoulder) up to two-feet to the outside of the outermost rails, detectable warning surface treatment, pathway paint markings in the crossing area, the approach roadways, advance warning signs and roadway pavement markings, as required.

Upon completion of the project, Upper Nazareth Township agrees to maintain the approach roadways of Gun Club Road to the crossing surface, as well as the advance warning signs, stop lines and pavement markings on the roadway approaches, at its sole cost and expense.

It does not appear the facilities of non-carrier public utilities will be affected by the project. However, several non-carrier public utility companies were not present at the field conference to determine the extent of their project involvement. So that the parties are afforded the opportunity to fully participate, we will direct the non-carrier public utility companies to perform their project work, if any, at their initial cost. The parties will then determine at a later date whether they have been adequately compensated for their project work and whether a hearing is needed to resolve any remaining issues.

The Commission hereby establishes its jurisdiction limits at the subject crossing as the area within the confines of the railroad right-of-way and the highway right-of-way.

The project is estimated to cost between \$265,836 and be 100% privately funded.

The Commission has exclusive jurisdiction in crossing alterations and is the final arbiter of any fees associated with a crossing application. Any conditions, including fees associated with a crossing application, must be approved by the Commission.

Upon full consideration of the matters involved and inasmuch as no objection has been filed with the Commission, we find that a Secretarial Letter can be issued approving the application without a formal hearing.

The Commission issues this Secretarial Letter in accordance with Section 2702 of the Public Utility Code and finds that the alteration of the subject crossing is necessary and proper for the service, accommodation, convenience, or safety of the public.

The application of Upper Nazareth Township is approved as herein directed:

1. The caption of the subject proceeding is hereby revised as shown herein.
2. The application of Upper Nazareth Township for approval to alter the public crossing (DOT 851 943 H) by widening the highway shoulder for accommodation of a shared-use pathway where Gun Club Road (T-506) crosses, at grade, the two (2) tracks of Norfolk Southern Railway Company located in Upper Nazareth Township, Northampton County be and is hereby approved to the extent provided herein.

3. NP Gun Club Building 1, LLC, having agreed to do so, at its sole cost and expense, furnish all material and perform all work necessary to construct the alteration project generally in accordance with this Secretarial Letter, the approved plans and Upper Nazareth Township roadway specifications.

4. Norfolk Southern Railway Company, at the sole cost and expense of Upper Nazareth Township and prior to the start of construction, prepare and submit a situation plan for the subject crossing to all parties for review and to the Commission for approval.

5. Norfolk Southern Railway Company, at the sole cost and expense of Upper Nazareth Township and prior to the start of construction, prepare and submit a circuitry plan for the subject crossing to all parties for review and to the Commission for approval, if appropriate.

6. Upper Nazareth Township, at the sole cost and expense of NP Gun Club Building 1, LLC, and prior to the start of construction, prepare and submit to this Commission for approval and to all parties of record for examination, complete detailed construction plans, right-of-way plans and the appropriate property descriptions, if any, that is needed for the proposed crossing alteration project.

7. NP Gun Club Building 1, LLC, having agreed to do so, at its sole cost and expense, furnish all material and perform all work necessary to establish and maintain all traffic controls that may be required to properly accommodate highway and pedestrian traffic during the time the crossing project is being constructed.

8. Upper Nazareth Township, at the sole cost and expense of the NP Gun Club Building 1, LLC, furnish all material and perform all work necessary to furnish watchmen, flagmen, inspectors, and/or engineering services that may be deemed necessary to protect the railroad's operations or facilities during the time the facilities are being constructed.

9. Norfolk Southern Railway Company, at the sole cost and expense of Upper Nazareth Township, furnish all material and perform all work necessary to alter the subject crossing by: 1) relocating the existing crossbucks with active warning flashing-lights on both approach roadways; 2) constructing a new or extended asphalt and rubber flangeway crossing surface for the full width of Gun Club Road and the asphalt portion of the new roadway shoulder and shared-use pathway; 3) re-lamping the existing and relocated active flashing-lights warning devices with LED lenses with associate circuitry.

10. Any relocation of, changes in and/or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company, municipality or municipal authority located within the limits of the Commission's jurisdiction, which may be required as incidental to the execution of the proposed project, be made by said public utility, municipality or municipal authority, at its initial cost and expense and in such manner as will not interfere with construction of the project.

11. Any relocation of, changes in and/or removal of any adjacent structures, equipment or other facilities of any non-carrier public utility company, municipality or municipal authority located in private right-of-way within the limits of the Commission's jurisdiction, which may be required as incidental to the execution of the crossing project, be made by said public utility, municipality or municipal authority and in such manner as will not interfere with the project.

12. NP Gun Club Building 1, LLC, having agreed to do so, at its sole cost and expense, furnish all material and perform all work necessary to complete the remainder of the crossing project, including installation of all attendant storm drainage facilities and any other ancillary features of the project, generally in accordance with this Secretarial Letter.

13. Upper Nazareth Township, at least ten (10) days prior to the start of work, notify all parties in interest of the actual date on which work will begin.

14. All parties involved herein cooperate fully with each other so that during the time the work is being performed, vehicular, pedestrian and railroad traffic will not be endangered or unnecessarily inconvenienced and so that the requirements of each of the parties will be provided for and accommodated insofar as possible.

15. The alteration of the crossing be completed on or before June 30, 2025, and that on or before said date, Upper Nazareth Township report to this Commission in writing the actual date of completion of the work.

16. NP Gun Club Building 1, LLC, having agreed to do so, at its sole cost and expense, pay all compensation for damages due to the owners of any property taken, injured or destroyed by reason of the alteration of the subject crossing in accordance with this Secretarial Letter.

17. Upon completion of the alteration of the subject crossing, Norfolk Southern Railway Company, at its sole cost and expense, furnish all material and perform all work necessary thereafter to maintain its railroad facilities at the crossing, including the crossbucks with active warning flashing-light signals; and maintain at all times in a smooth and satisfactory condition the crossing surface located between the rails and for a distance of twenty-four (24) inches beyond the outermost rails for the full width of Gun Club Road, shoulders and the shared-use pathway, all in accordance with Part 8 of the Manual on Uniform Traffic Control Devices and this Secretarial Letter, and provide Upper Nazareth Township ten (10) business days advance notice when performing any work as directed by this paragraph.

18. Upon completion of the alteration of the subject crossing, Upper Nazareth Township, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the highway and shared-use pathway approaches to the subject crossing to points twenty-four (24) inches beyond each outside rail and in addition, maintain the grade crossing advance warning signs, stop lines, and all roadway pavement markings, if required, all in accordance with Part 8 of the Manual on Uniform Traffic Control Devices and this Secretarial Letter, and provide Norfolk Southern Railway Company ten (10) business days advance notice when performing any work as directed by this paragraph.

19. Upon completion of construction of the project, Upper Nazareth Township, at its sole cost and expense, furnish all material and do all work necessary thereafter to maintain the new shared-use pathway pavement markings and detectable warning surface treatment to points twenty-four (24) inches beyond each outside rail in the area of the shared-use pathway, all in accordance with the Manual on Uniform Traffic Control Devices and this Secretarial Letter.

20. Upon completion of the construction of the proposed project, Upper Nazareth Township, at its sole cost and expense, furnish all material and perform all work necessary for the removal of snow, ice and debris to points twenty-four (24) inches beyond each outside rail in the area of the shared-use pathway.

21. This Secretarial Letter is without prejudice to the right of any party to recover all or part of any costs incurred by said party in compliance with the provisions of this Secretarial Letter, in accordance with any lawful agreement between it and any other party.

22. The terms of any agreement established in accordance with Paragraph No. 21 of this Secretarial Letter shall not preclude the Pennsylvania Public Utility Commission from taking any action necessary to protect the public interest, including but not limited to the reassignment or enforcement of any costs or responsibilities assigned or transferred as a result of this Secretarial Letter.

23. Upon completion of the work herein directed, and upon written request from any party of record, this proceeding be scheduled for a hearing at a time and place to be determined by the Commission, for the purpose of taking testimony upon the final allocation of any costs incurred by the non-carrier utility companies and other matters relevant to this proceeding.

The Parties are reminded that failure to comply with this or any Order or Secretarial Letter in this proceeding may result in an enforcement action seeking civil penalties and/or other sanctions pursuant to 66 Pa. C.S. § 3301.

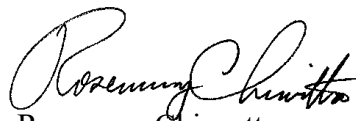
All formal documents must be filed with the Secretary of the Commission. Documents must be eFiled, mailed or hand delivered. All filings should be addressed to the Secretary, PA Public Utility Commission, 400 North Street, Harrisburg, PA 17120. The Commission will not accept documents delivered by fax or by e-mail. Parties are encouraged to file formal documents by eFiling with the Secretary of the Commission by opening an Efiling account through the Commission's website (the account is free of charge) and accepting eservice at <https://www.puc.pa.gov/filing-resources/efiling/>.

If your filing contains confidential material, you are required to file by overnight delivery to ensure the timely filing of your submission. There are certain filings that cannot be eFiled, such as filings containing confidential or proprietary material. These must be submitted to the Secretary by overnight delivery, priority, or certified mail to allow tracking of your filing.

If you are dissatisfied with the resolution of this matter, you may, as set forth in 52 Pa. Code §§ 1.31 and 5.44, file a Petition for Reconsideration from Staff Action (Petition) with the Commission within twenty (20) days of the date of this letter. The Petition shall be eFiled with the Secretary of the Commission or sent to: Secretary, PA Public Utility Commission, 400 North Street, Harrisburg, PA 17120, and must be filed within twenty (20) days, or if no timely request is made, the action will be deemed to be a final action of the Commission.

The Petition MUST include: (1) a written statement (divided into numbered paragraphs) outlining the reasons for the request; (2) the case docket number (it is provided for you at the top right hand corner of this letter); (3) the party on whose behalf the petition is made; (4) a Certificate of Service on the other parties of record; and (5) a Verification with original signature in accordance with 52 Pa. Code § 1.36.

Very truly yours,



Rosemary Chiavetta
Secretary