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BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF UTAH

In the matter of Union Pacific Railroad's
Petition for Relief against the Utah
Department of Transportation.

Prehearing Brief of Vineyard Town
Docket No. 09-888-01

Vineyard Town, by and through its above named attorney of record, hereby submits the Town's Prehearing Brief of its position and issues in this matter. The Town also adopts and incorporates by reference the position taken in the Prehearing Brief submitted by the "Anderson Entities" including all exhibits and arguments.

ISSUES AND TOWN'S POSITION.

The Town believes that the only substantive legal issue is whether or not a public rail crossing over 400 North in Vineyard Utah was lost to the public under the facts in this case. The Town's position is that since there has been no formal abandonment or vacation of the public road crossing the rails, the public crossing continues to exist.

This position is supported by the public records that continued to show this particular crossing was classified as a public crossing until recent times including the National Highway Rail Cross Inventory-FRA.

UNDISPUTED FACTS

The following facts appear to be undisputed and are relevant to the Town's position in this matter.

1. Prior to 1942 a Utah County road existed at 400 North in the present day Vineyard which crossed rail lines at the location of the contested crossing.
2. The rail crossing was a public crossing in 1942.
3. A tract of land was acquired for a steel plant (referred herein as Geneva) which included a portion of the existing public road way east of the rail line.
4. Utah County abandoned and vacated the portion of 400 North that was on the Geneva property, east of the crossing, by resolution and order dated August 3, 1942.
5. The legal description in the Resolution and Order did not include the portion of the public road that included the crossing as it was located in 1942.
6. The current location of the crossing is slightly different than the location of the crossing in 1942 but is in the general location.
7. The 400 North road has been master planned by the Town to be a future primary road in the Town.

APPLICABLE LAW

Utah Code 72-5-105(1) provides that “[a]ll public highways, streets, or roads once established shall continue to be highways, streets or roads, until abandoned or vacated by order of a highway authority having jurisdiction or by other competent authority.” There is no evidence that the County, or its successor as the highway authority Vineyard Town, ever vacated the public road way crossing the rail lines into the Geneva property.

Under Utah case law, the public road crossing the rail lines into the Geneva property is not considered abandoned by non-use or by the lack of maintenance because real property designated as public use can only cease to be such by formal vacation. See *Fries v. Martin*, 2006 UT App 514, 154 P.3d 184 (Utah App. 2006); *Henderson v. Osguthorpe*, 657 P.2d 1268, 1269-70 (Utah 1982); *Ercanbrack v. Judd*, 524 P.2d 595, 596-97 (Utah 1974); *Clark v. Erekson*, 9 Utah 2d 212, 341 P.2d 424, 426 (1959) ("[A] public highway can only be abandoned by an order of the county commissioners or other competent authority."). "Section 72-5-105 plainly provides that a public highway remains a highway until the proper authorities order it 'abandoned or vacated.'" *Culbertson v. Board of County Comm'rs*, 2001 UT 108, ¶ 42, 44 P.3d 642. Section 72-5-105 "make[s] no allowance for any other type of abandonment or vacation." *State v. Harvey Real Estate*, 2002 UT 107, ¶ 17, 57 P.3d 1088; see also *Wasatch County v. Okelberry*, 2006 UT App 473, ¶ 26, 153 P.3d 756 ("The Utah Supreme Court has interpreted the language of [section 72-5-105] to require strict compliance with statutory procedures to effect an abandonment or vacation of a public road by the government.").

The fact that the present location of the crossing has changed over the years is not relevant to this issue. The public highway crossing the tracks exists until formally vacated. Formal vacation requires following statutory procedures in existence at the time of vacation. It is undisputed that this has never occurred.

EVIDENCE TO BE OFFERED

The Town will submit the Resolution and Order of Utah County and testimony that the legal description of the vacated roadway did not include any portion of the roadway crossing the rail lines. In addition the Town will present testimony that it has never taken any formal action to vacate any portion of the public road known as 400 North.

DATED this ___30th___ day of June, 2010.

BLAISDELL & CHURCH, P.C.

By: /s/David L. Church
David L. Church
Attorneys for Vineyard Town

Certificate of Service

I hereby certify that on the 30th day of June, 2010, a true and correct copy of Vineyard Town's Pre-hearing Position Brief was provided in electronic format to the Public Service Commission with hard copies served to the persons and in the manner below:

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/s/David L. Church