

ARGUMENT

I. UDOT HAS EXCLUSIVE JURISDICTION OVER ANY PUBLIC RAILROAD CROSSING

UDOT has exclusive jurisdiction over public railroad crossings. Utah Code Ann. §54-4-15. This authority includes the power to determine and prescribe the manner, point of crossing, terms of installation, operation, maintenance, use and protection of each public crossing. However, if the Public Service Commission decides the crossing is private, UDOT does not have jurisdiction over the crossing and the Post-Hearing Brief is moot.

Pursuant to Utah Administrative Code R930-5-3(1), UDOT is obligated to provide for the safe, efficient operation of vehicles and pedestrians through highway/railway intersections. In addition, UDOT promotes the elimination of hazards by improving at-grade crossings.

II. THE 400 N. CROSSING IS UNSAFE

Eric Cheng is the Chief Railroad Engineer for UDOT and is responsible for the public road/railroad crossings. Mr. Cheng, who has a master's degree in transportation, has been working as a safety engineer for twenty-two years. Besides his education and experience, Mr. Cheng was appointed as a member of the national Track Safety Advisory Council. This council provides guidance for national railroad safety policies. (II Tr. 168) In addition, Eric Cheng has reviewed hundreds of railroad crossings and made seven to eight trips to the 400 North railroad crossing in Vineyard. (II Tr. 126, 130)

The 400 N railroad crossing has a number of safety problems. All railroad crossings are by their very nature dangerous. (II Tr. 149) Consequently, the Federal Railroad Administration

has set the goal to reduce 25% of the crossings nationwide. Some of the safety problems include short storage distance and the private property entrance with “No Trespassing” violates driver’s expectation to cross the tracks and continue through. (II Tr. 148)

The general movement operation of this railroad crossing is also a problem when two cars travel north bound on Vineyard Road and turn right to cross the railroad tracks because the gate prohibits the continuation of travel. When a train comes, this situation may cause the driver to panic and stop on the tracks. This situation has a high potential to cause a train and vehicle collision. (II Tr. 149-150).

In the situation with the gate open, vehicles travel across the tracks and then no road exists east of the tracks. The driver turns around in the private property and goes west across the tracks. However, if traffic is traveling north bound or south bound, the vehicle crossing the tracks would have to stop near or on the tracks (three tracks) to wait for the opportunity to turn onto Vineyard Road. (II Tr. 149-150) Consequently, opening the gate does not address the safety concerns because the open gate creates another opportunity for drivers to cross the tracks again. (II Tr. 151) The open gate invites drivers to drive into Anderson Entities’ private property because of drivers’ expectation that the road should continue. Consequently, the open gate causes two unnecessary trips across the tracks.

According to Mr. Cheng, the crossing at 400 North has geometric deficiencies which create safety problems.¹ (II Tr. 147) The UDOT access management standards require the

¹ Anderson Entities’ designated expert, Mr. Hendricks, agreed that the 400 North Crossing has a geometric problem and the intersection should not be so close to the crossing. (II Tr. 318) The overall alignment of the future road and storage length would need to be addressed. (II Tr. 327-328)

access road to be 250 feet away from the edge of the crossing. The access road (Vineyard Road) is currently only thirty to forty feet from the tracks. (II Tr. 153) In order to correct some of the geometric problems, the road should be at a right angle to the tracks. The current configuration of the crossing provides a poor sight distance for right turns from Vineyard Road to the crossing. In the future, Vineyard Road will be realigned in order to meet the safety standards.

Although UTA has constructed another rail line for TRAX, the unsafe condition still existed before the additional line was installed. The additional rail line only increased the likelihood. (II Tr. 154) The lack of any accidents does not indicate whether the crossing is safe. The safety concerns still continue to exist and this is the reason why there are safety standards. (II Tr. 154) Consequently, the crossing is unsafe and should be temporarily closed until Vineyard Town has sufficient detail or the approach road is constructed so UDOT can determine the necessary improvements for the crossing.

III. UDOT COMPLIED WITH ITS OWN RULE, UTAH ADMINISTRATIVE CODE R930-5-14

In order to carry out its mandated duties pursuant to Utah Code Ann. §54-5-15, UDOT adopted R930-5. UDOT oversees all at-grade public highway/railway crossings in the state and has the obligation to provide for the safe, efficient operation of vehicles and pedestrians through railway/railway intersections. As part of that oversight, UDOT determines the necessary improvements to at-grade crossings. Utah Admin. Code R930-5-3.

When statute grants discretion to an agency to interpret and apply the law, the agency interpretation and application is reviewed for reasonableness. *Bourgeois v. Department of*

Commerce, 2002 UT App 5, ¶7, 41 P.3d 461 (citation omitted). UDOT's interpretation of its own rule will be upheld if the interpretation is reasonable and rational. *ROA General v. UDOT*, 966 P.2d 840, 842 (Utah 1998). UDOT has specialized knowledge concerning the construction, maintenance and operation of public roads and railroad crossings.

According to R930-5-14, public notification is only required when UDOT is considering proposals to close public streets at crossings. UDOT interprets this rule that the closure of the public street would only apply to permanent closures, not temporary closures. Because the Vineyard Town does not have a road on the east side of the tracks, the width and approach of the road on the east side is an unknown factor. (II Tr. 157-158) UDOT cannot make any improvements to address the safety concerns because of the lack of information. Consequently, the railroad crossing was temporarily closed.

Eric Cheng does not want to spend public money on improvements when the improvements will not be the solution once the city road is constructed on the east side of the tracks. (II Tr. 189) UDOT is waiting for Vineyard Town to provide the necessary information concerning the future city road, which continue east across the railroad tracks. Currently, no city road, including any other road, exists on the east side of railroad tracks. (II Tr. 224) Mr. Cheng cannot make any recommendation to improvements because UDOT does not know Vineyard Town's plans for the future and the plans could change.² In addition, a substantial portion of the

² Hendricks agreed that it would be difficult to design any modifications without the necessary information. (II Tr. 328)

Anderson Entities' property is undeveloped and traffic could increase dramatically increase.³ (II Tr. 145)

However, a surveillance review was performed to determine the appropriate treatments for the temporary closure. (II Tr. 158) The purpose of the surveillance review team is to make recommendations to UDOT for changes needed at the railroad crossings. (II Tr. 223) Vineyard Town's engineer, Don Overson, was present for the surveillance review for the recommended closure treatments. (II Tr. 224) Don Overson never made any objection to the temporary closure of the railroad crossing. (II Tr. 225) The timing of the reopening of the crossing is dependent upon Vineyard Town providing the necessary information. Eric Cheng ordered the crossing to remain closed until the east and west approach roadways are improved to the level outlined in Vineyard Town's master road plan and open to the public. (Joint Exhibit 128-129) The crossing will be opened once Vineyard Town has provided the necessary information.

Eric Cheng has the authority to temporarily close public streets that cross railroad tracks that are unsafe. (II Tr. 227) Interpreting the rule as requiring public notice before any closing of a public street on the crossing would lead to a deleterious result that UDOT could not close the public street for immediate safety reasons unless the public notice is given. Such an interpretation would allow the traveling public to encounter dangerous crossings until the public notice could be given and the expiration of the protest period, which would be fifteen days from

³ The current master plan for the Anderson Entities' property envisions over 27,000 residents, together with over 1 million square feet of commercial uses, over 1 million square feet of office uses and over 1 million square feet of industrial/light industrial uses. (Anderson Entities' Exhibit 26) This master plan is dramatically different than the current condition of the property, which is mostly vacant and undeveloped.

the last date of the publication. A reasonable and correct interpretation would require public notice for permanent closures so the residents and local jurisdictions could provide input as to the impacts concerning the loss of a crossing.⁴

CONCLUSION

For the reasons stated by Eric Cheng, UDOT's Chief Railroad Engineer, the current crossing is unsafe and poses an unnecessary risk to vehicles and trains. The necessary improvements cannot be determined at this time due to the lack of information. Once the Anderson Entities receive site plan approval for their property and the public roadway infrastructure is designed, then the Anderson Entities, Vineyard, UPRR and UTA will have sufficient information to understand the design requirements for the crossing at 400 North in order to meet the design standards for the interface of the roadways and crossings as outlined in the MUTCD, AREMA, UDOT Standard Drawings and Highway Authority standards.

However, without a clear definition of the future approach roadway cross sections or alignment, it is impossible to establish a permanent design solution for the 400 North crossing at this time, especially with no definitive time frame for the planned use of the Anderson Entities' property.

⁴ Assuming for the purposes of argument only that notice was required, public notice was given during the UTA Front Runner that the 400 N crossing would be closed but the notice stated the crossing was private. (II Tr. 140, Joint Exhibits 119 – 121, Anderson Entities Exhibits 10-11) Vineyard Town and Anderson Entities responded to the public notice. Don Overson, Vineyard Town's engineer, provided comments about the public notice about the crossing but did not object to the closing and the designation of the crossing as private. (Joint Exhibit 131) The Anderson Entities and Vineyard Town objected the scheduled closing of the crossing at 400 N. (Anderson Entities Exhibits 12-13)

Public notice is not required for temporary closures of public roads that cross railroad tracks because of safety concerns. The timing of the opening of the crossing depends upon Vineyard Town and the development of the Anderson Entities' property.

Therefore, if the Public Service Commission determines that the crossing is public, UDOT requests that the crossing be temporarily closed until the design requirements can be ascertained by the future use of the neighboring property and the construction of the city's approach road. If the Public Service Commission rules that the crossing is private, then UDOT will not have any jurisdiction over the crossing.

Dated this 15th day of September, 2010

UTAH ATTORNEY GENERAL'S OFFICE

Renee Spooner
Assistant Attorney General

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing **UDOT's Post-Hearing Statement**, postage prepaid, this _____ day of September, 2010, to the following:

Dennis M. Astill
Dennis M. Astill, PC
9533 South 700 East, Suite 103
Sandy, Utah 84070

David L. Church
Blaisdell and Church
5995 South Redwood Road
Salt Lake City, Utah 84123

Reha K. Deal
Union Pacific Railroad
280 South 400 West, Suite 250
Salt Lake City, Utah 84101

Bruce Jones
UTA
3600 South 700 West
Salt Lake City, Utah 84119-4122
