

In The Matter of:  
Public Utilities Commission - City of Tallmadge

Transcript of Proceedings

December 07, 2016

Hearing

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF A REQUEST  
BY THE CITY OF TALLMADGE  
FOR AN EXEMPTION FROM THE  
REQUIREMENT UNDER  
R.C. 4511.63 FOR SCHOOL CASE NO. 16-1946-RR-RCP  
BUSES AND HAZARDOUS  
MATERIALS VEHICLES TO STOP  
AT A GRADE CROSSING LOCATED  
AT MIDDLEBURY ROAD IN THE  
CITY OF TALLMADGE.

- - - -

HEARING HELD BEFORE  
HEARING EXAMINER DANIEL E. FULLIN,  
AT TALLMADGE CITY HALL,  
45 NORTH AVENUE, TALLMADGE, OHIO,  
ON WEDNESDAY, DECEMBER 7, 2016,  
COMMENCING AT 12:59 p.m.

- - - -

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1 APPEARANCES:

2 Daniel E. Fullin, Esq., Attorney Examiner  
3 Public Utilities Commission of Ohio  
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8 Megan E. Raber, Esq.  
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10 On behalf of the City of Tallmadge.

11 ALSO PRESENT:

12 Mayor David G. Kline, City of Tallmadge

13 Mr. Jim Soyars, Kent City Schools

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I N D E X

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1           EXAMINER FULLIN: I'll begin by  
2           giving the caption of the case. The  
3           Commission has assigned for hearing at this  
4           time and place Case Number 16-1946-RR-RCP,  
5           which involves the request by the City of  
6           Tallmadge for an exemption from the  
7           requirement of Revised Code 4511-63.

8           It would be an exemption that  
9           would enable school buses and hazardous  
10          material vehicles to no longer be required  
11          to stop under the exemption at a grade  
12          crossing that's located at the Middlebury  
13          Road crossing in the City of Tallmadge.

14          My name is Daniel E. Fullin. I'm  
15          the Attorney Examiner from the Commission  
16          that's been assigned to this case.

17          And let me have the appearance on  
18          behalf of the City of Tallmadge.

19          MS. RABER: Thank you. My name is  
20          Megan Raber. I'm the Law Director for the  
21          City of Tallmadge, and I'm here on behalf  
22          of the City of Tallmadge.

23          EXAMINER FULLIN: All right.  
24          Thank you.

25          I don't think we have anything

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1       else preliminarily. So if you just want to  
2       begin any way you want to in terms of  
3       presenting.

4               MS. RABER: Right. Thank you.

5               My first witness today is going to  
6       be Mayor Dave Kline.

7               EXAMINER FULLIN: Thank you. You  
8       can remain seated.

9       MAYOR DAVID G. KLINE, of lawful age, called by  
10      the Petitioner for the purpose of direct  
11      examination, as provided by the Rules of Civil  
12      Procedure, being first duly sworn, as hereinafter  
13      certified, testified and said as follows:

14      DIRECT EXAMINATION OF MAYOR DAVID G. KLINE

15      BY MS. RABER:

16   Q. Mayor Kline, I wanted to I guess just start by  
17      asking if you're familiar with the Middlebury  
18      crossing that's at issue today.

19   A. Yes, I am.

20   Q. I'm going to hand you some photographs. I'm  
21      going to mark the first as Exhibit A. If you can  
22      please describe what that is.

23   A. Exhibit A is the photo from Summit County GIS  
24      that shows the Middlebury Road, Northeast Avenue  
25      and the railroad crossing in question.

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1 Q. Okay. And if you can just outline for us, there  
2 are some jurisdictional borders with regard to  
3 that crossing. Can you kind of outline where,  
4 where the crossing is in relationship to the  
5 various borders there.

6 A. The railroad crossing is all in Tallmadge, but it  
7 -- right above the railroad crossing is the City  
8 of Stow to the upper portion of the page. And  
9 also to the right of the page is Portage County  
10 Kent. So Middlebury travels of all of those  
11 corners.

12 Q. And on the photo that you're looking at there is  
13 a big black line. What does that line indicate?

14 A. The black line is Portage County, Summit County,  
15 the divide there.

16 Q. Okay. And so this particular crossing falls in  
17 the City of Tallmadge and partially in the City  
18 -- or the County of Summit and partially in the  
19 County of Portage --

20 A. Portage.

21 Q. -- as well as the City of Kent. But the portion  
22 that we're discussing today is in the City of  
23 Tallmadge; is that correct?

24 A. That is correct.

25 Q. Okay. I'm going to hand you what's been marked

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1 as Exhibit B. In general are you familiar with  
2 what that picture shows?

3 A. Yes. Exhibit B is showing the distance from the  
4 center of the railroad crossing going up  
5 Middlebury Road into the City of Kent, which is  
6 approximately 159 feet before a sharp curve  
7 starts.

8 Q. And then I'm going to be handing you what's  
9 marked Exhibit C. Can you describe what that is?

10 A. Yes. Exhibit C is again the same railroad  
11 crossing in question. It's going from the  
12 Middlebury crossing to Northeast Avenue with a  
13 length of approximately 74 feet.

14 Q. From where the -- from where you turn off of the  
15 Northeast Avenue roadway onto Middlebury; is that  
16 correct?

17 A. That is correct.

18 Q. Okay. Mayor Kline, I wanted to, I'm going to go  
19 ahead and hand these to --

20 EXAMINER FULLIN: Do I take them  
21 with me or did you need them?

22 - - - -

23 (Off the record.)

24 - - - -

25 BY MS. RABER:



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1 Q. I'm going to next ask you how you became aware of  
2 the issue and hand you what's been marked as  
3 Exhibit D.

4 A. I did receive information from the, the school  
5 districts about the crossing requesting that the,  
6 the -- since this crossing is no longer an active  
7 track and the school buses needing to stop there  
8 and so requested from Metro Parks, who -- Metro  
9 busing, who owns the track, that if we wanted to  
10 make this crossing exempt, we'd have to go  
11 through this process.

12 Q. So you received an email communication, is that  
13 what Exhibit D is, and originally from Roger  
14 Bacon of Metro RTA --

15 A. Yes.

16 Q. -- who indicated that PUCO and Metro RTA had  
17 fielded complaints from school bus drivers  
18 regarding the school bus crossing?

19 A. Yes.

20 Q. And if you turn, I believe it would be on the  
21 second page of that where that portion of the  
22 communication is?

23 A. That is correct. And this email was dated  
24 August 25th, 2016 from Roger Bacon talking about  
25 the grade crossing.

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1 Q. And then in response did you take any steps or  
2 action?

3 A. I did a followup at the request. And I had to  
4 produce a letter to the State requesting -- or  
5 the Public Utility Commission requesting the  
6 grade crossing be exempt. And that letter was  
7 dated September 8th, 2016.

8 Q. Did you take any photographs of the crossing at  
9 the time?

10 A. Yes. I also attached with that email to --

11 Q. With the letter?

12 A. With the letter with the -- about the crossing  
13 indicating that there is no longer action on that  
14 track.

15 And there is three photos that were attached  
16 showing it to the east and also to the, to the  
17 west. And it's showing the slope of the road as  
18 that crosses the railroad track.

19 Q. And so the -- to your knowledge to the west the  
20 rail is broken and removed for the trail. There  
21 is a Freedom -- a trail known as the Freedom  
22 Trail there?

23 A. The Freedom Trail connects going down in further  
24 on down the track. The tracks are actually  
25 disconnected down a little bit further.

1 Q. And then --

2 A. And to the east there is a big pile of debris,  
3 stone that was put over the track to prevent  
4 anybody from bringing anything down that track.

5 There is a, a yard for sand and gravel that's to  
6 the east of this that they do bring in railcars  
7 from a different direction.

8 Q. Okay. And so all that was sent in with your  
9 letter; is that correct?

10 A. That is correct.

11 Q. Put the letter on top.

12 I'm going to mark another photograph, which  
13 is Exhibit F. You can kind of describe what is  
14 in Exhibit F for us.

15 A. Exhibit F is showing the distance from the  
16 railroad crossing to Northeast Avenue that there  
17 is three cars that are staged there queued up to  
18 turn onto Northeast Avenue and also showing the  
19 new Metro Parks parking lot entrance to that.

20 Q. Okay. I'm going to hand you what's been marked  
21 as Exhibit G.

22 A. Exhibit G is showing the crossing with the pile  
23 of stones that are on the track preventing any  
24 railcar coming down that direction.

25 Q. I'm going to hand you what's been marked as

1 Exhibit H.

2 A. Exhibit H is showing the S curve of that road.

3 So if a bus were to stop heading towards

4 Northeast Avenue, cars coming around the corner,

5 sight distance is very limited. And it could

6 have potential of rear end collisions at that

7 location.

8 Q. And lastly, Exhibit I?

9 A. Exhibit I is showing the actual, the slope of the

10 roadway to the crossing and the distance from

11 Northeast Avenue into the track itself.

12 Q. While obviously you're not a bus driver, to the

13 best of my knowledge?

14 A. No.

15 Q. What in your -- do you believe just from a

16 layperson's perspective that this poses a safety

17 risk?

18 A. I am the Safety Director for the City of

19 Tallmadge also. And at that crossing with the

20 cars coming from Kent to this crossing coming

21 around that corner, I think it is a safety issue.

22 If the trains were active on that track, so

23 be it, it would be active. But they are not at

24 this time. And so I think it's a hindrance to

25 the bus or could be dangerous to the bus if

1 they're stopping at that area with a car  
2 traveling around the corner. So I do believe  
3 that would be a safety hazard.

4 Also, coming off of Northeast Avenue to the  
5 track, the queue behind that cars coming on, I  
6 think the bus is going forward and it has to stop  
7 and these cars are making the turn. And you  
8 could have a potential of an accident at that  
9 location from, from Northeast Avenue cars  
10 traveling both directions.

11 Q. Okay. I'm going to hand you what's been marked  
12 as Exhibit J. Are you familiar with what I'm  
13 handing you?

14 A. Yes. Exhibit J is from the Metro Transit  
15 Authority. And that's dated November 18th, 2016,  
16 reference of this case. And they are in no  
17 objections and support the exemption for school  
18 bus crossing.

19 Apparently they were unable to make it here  
20 today so this is their letter.

21 Q. And they're the owner of that --

22 A. They're the owner of the track.

23 MS. RABER: I have no further  
24 questions.

25 EXAMINER FULLIN: All right. I

1 don't believe I have any either. And I  
2 would like to go ahead and admit all of the  
3 exhibits. I don't think, unless there  
4 is --

5 MS. RABER: I have one other  
6 witness to call, if I may.

7 EXAMINER FULLIN: Okay. All  
8 right.

9 MS. RABER: I would like to call  
10 Jim Soyars from the Kent City Schools.

11 - - - -

12 JIM SOYARS, of lawful age, called by the  
13 Petitioner for the purpose of direct examination,  
14 as provided by the Rules of Civil Procedure,  
15 being first duly sworn, as hereinafter certified,  
16 testified and said as follows:

17 DIRECT EXAMINATION OF JIM SOYARS

18 BY MS. RABER:

19 Q. Jim, can you state what your title and position  
20 is.

21 A. Yes. I'm the Director of Business Services for  
22 Kent City Schools. So transportation is under,  
23 in my wheelhouse. I'm also a substitute bus  
24 driver. So that when all of our staff is driving  
25 and we need one more person to get students

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1 between home and school, I also drive a bus as  
2 needed.

3 Q. Okay. Thank you. I'm going to hand you what's  
4 been marked as Exhibit K. Are you familiar with  
5 what that is?

6 A. Yes. It's an email that I received back from my  
7 transportation supervisor where I asked how many  
8 times a day do our school buses cross the track  
9 that we're discussing and in what direction are  
10 they going.

11 Q. And what is the answer to those questions?

12 A. The answer to that is we cross there ten times a  
13 day. We're going over there nine times in the  
14 southern direction and one time in the northern  
15 direction.

16 Q. And based on your experience do you believe that  
17 this having to, the school buses having to stop  
18 at this particular railroad crossing poses any  
19 safety concerns?

20 A. Yes. We definitely have safety concerns. And I  
21 will concur with the Mayor of his estimation that  
22 especially because of that curve as you're  
23 heading southbound toward the railroad tracks  
24 from the Kent area where most of our buses are  
25 traveling.

1       And school buses seem to collect cars behind  
2       them. So a lot of times there is cars behind the  
3       bus. So if we have the bus stopping there and  
4       possibly a car or two behind it, if someone would  
5       come around that curve at a rate of speed that  
6       they should -- you know, they could potentially  
7       then be involved in a rear-end collision with  
8       either the bus or a car behind the bus.

9       And then also heading northbound I also see a  
10      concern. Obviously, you know, if the track was  
11      active, we would deal with that. But, you know,  
12      I'm a proponent of if we can exempt buses on  
13      tracks that are inactive not only for the time  
14      factor, but we have about 180 school days in our  
15      year and we have to apply the service brake every  
16      time we stop.

17      So we're stopping there about 1,800 times at  
18      that crossing area. And we just feel that it  
19      would be safer for everyone if we would be able  
20      to continue through.

21               MS. RABER: All right. Thank you.

22               THE WITNESS: You're welcome.

23               MS. RABER: I have no further  
24      questions.

25               EXAMINER FULLIN: All right.



1 Thank you. I was wondering about, you're  
2 with the Kent Schools?

3 THE WITNESS: Yes.

4 EXAMINER FULLIN: Is there other  
5 -- if you happen to know. I know your  
6 testimony is clear about your school  
7 district's use of buses through that  
8 intersection. Are there other school  
9 districts nearby that also travel through  
10 there?

11 THE WITNESS: I am aware that  
12 Stow-Munroe Schools, which borders us,  
13 we're at the edge of Portage County,  
14 they're right next to us on Summit County,  
15 I am aware that they have at least one bus  
16 that comes through there from Bio-Med back  
17 to their school district, but I don't know  
18 how many others.

19 EXAMINER FULLIN: All right.  
20 That's helpful. And you said that you have  
21 ten per day. Is that like ten different  
22 buses or is it some buses going through  
23 more than once or --

24 THE WITNESS: Well, it's buses  
25 going through more than once. We have four

1 elementary schools. And we have one just a  
2 little bit northeast of this intersection,  
3 Longcoy Elementary, 1069 Elna. We have  
4 five buses that service that school.

5 So in the morning after we drop  
6 off at around 8:30, then our buses have to  
7 get back to the bus garage on the south end  
8 of town and this is how they get back.

9 EXAMINER FULLIN: Okay.

10 All right. Thank you. That's  
11 very helpful. I don't think I have any  
12 other questions.

13 Any followup?

14 MS. RABER: (Shakes head.)

15 EXAMINER FULLIN: If not, thank  
16 you for your testimony.

17 And I will go ahead and admit all  
18 of the exhibits including A through K --

19 MS. RABER: Thank you.

20 EXAMINER FULLIN: -- at this time.

21 And did you have anything further  
22 that you were going to present?

23 MS. RABER: No, I have no, nothing  
24 further.

25 EXAMINER FULLIN: Okay. The other

1 thing I was going to do I guess on the  
2 record is take administrative notice of the  
3 Staff Report that was filed in this case.  
4 I believe it was filed on December 1st.

5 Have you ever had a chance to see  
6 that?

7 MS. RABER: I have not had a  
8 chance to see that.

9 EXAMINER FULLIN: Okay. I'm  
10 planning on, since I've -- it's been filed  
11 in the case and I've taken administrative  
12 notice here to make reference to it in the  
13 Order.

14 And I guess the -- in the future  
15 if, after you have had a chance to review  
16 it, if you have anything that you need  
17 clarified or would like to bring to the  
18 Commission's attention with anything that's  
19 in there, just between -- you know, when  
20 you can, you can provide that to the  
21 Commission.

22 Otherwise I plan on, you know,  
23 citing to it almost the same as if we had a  
24 Commission witness here that was providing  
25 the Staff Report.

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1           So knowing that ahead of time, if  
2           you have anything that you need to bring to  
3           my attention, just let me know before the  
4           Order goes out and I'll try to work with  
5           you on that.

6           But other than that, I would take  
7           an administrative notice of that. I also  
8           take administrative notice of the fact that  
9           we did have a publication in the local  
10          newspaper for the, you know, a public -- a  
11          legal notice of giving notice of the time  
12          and date of this hearing. So I'll be  
13          making reference to that in the Order as  
14          well.

15          With that then, I think that's  
16          sufficient to bring this case to a close.  
17          And I'll try to get the Commission's  
18          decision out as soon as possible based on  
19          the evidence that's been presented here  
20          today.

21          MS. RABER: Great. Thank you very  
22          much.

23          MAYOR KLINE: Thank you.

24          (Hearing concluded at 1:15 p.m.)

25          - - - -

C E R T I F I C A T E

I, Dawn L. Wiebrecht, a Notary Public  
within and for the State of Ohio, do hereby  
certify that I attended the foregoing hearing in  
its entirety, that I wrote the same in stenotypy,  
and that this is a true and correct transcript of  
my stenotype notes.

IN WITNESS WHEREOF, I have hereunto set my  
hand and seal of office, at Cleveland, Ohio, this  
15th day of December, 2016.

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Dawn L. Wiebrecht, Notary Public, State of Ohio  
1750 Midland Building, Cleveland, Ohio 44115  
My commission expires April 30, 2017.

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**Commission of Ohio Docketing Information System on**

**12/28/2016 9:25:44 AM**

**in**

**Case No(s). 16-1946-RR-RCP**

Summary: Transcript Request by the City of Tallmadge for an Exemption from the Requirement Under R.C. 4511.63 for School Buses and Hazardous Materials Vehicles to Stop at a Grade Crossing Located at Middlebury Road in the City of Tallmadge. electronically filed by Ms. Barbara Marinelli on behalf of Mehler & Hagestrom