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10/28/22
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Shawn J. Thomas
(Signature)

STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION

SERVED

OCT 28 2022

At the Office of the Department
of Transportation in the City
of Albany on October 28, 2022

Admin Asst 1
(TITLE)

PRESENT:

CLIFFORD A. THOMAS, Director
Office of Modal Safety and Security

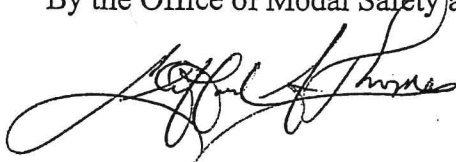
CASE 7007 - Petition of Long Island Rail Road Company (LIRR), pursuant to Section 91 of the Railroad Law, for the closure of an at-grade crossing of Long Rail Road, Port Jefferson Branch, at MP 42.00 (USDOT# 338326D) on Meadow Glen Road in Kings Park, Town of Smithtown, County of Suffolk.

* * *

Long Island Rail Road Company ("LIRR"), petitioned the New York State Department of Transportation by letter for the closure and discontinuance of a public, at-grade crossing located at MP 42.00 (USDOT# 338326D) on Meadow Glen Road in Kings Park, Town of Smithtown, County of Suffolk on or about February 16, 2022, and a public hearing having been held after due notice with respect thereto; and it having been determined that the closure of the above-described crossing is in the public interest, it is O R D E R E D:

1. The at-grade rail crossing of Long Island Rail Road, Port Jefferson Branch, at MP 42.00 (USDOT# 338326D) on Meadow Glen Road in the Town of Smithtown, County of Suffolk shall be closed.
2. The permanent closure of the crossing by LIRR at Meadow Glen Road must meet the following conditions:
 - a. Prior to removal of the crossing surface, flashing-light signals, gates and any other warning devices, LIRR to block access to the crossing by installing concrete barricades. The Town of Smithtown to remove existing grade crossing signage at roadway approaches and install new signage consistent with the MUTCD; and
 - b. Removal of the crossing surface, flashing-light signals, gates and any other warning devices by LIRR; and
 - c. That all design plans for the closure be submitted to the Department's Highway-Rail Grade Crossing Safety Section for review and approval; and
 - d. That the closure of the at-grade crossing be performed in accordance with all applicable laws and regulations, including obtaining any and all necessary permits.

By the Office of Modal Safety and Security



ADOPTED: OCTOBER 28, 2022

STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION

CASE 7007 - Petition of Long Island Rail Road Company (LIRR), pursuant to Section 91 of the Railroad Law, for the closure of an at-grade crossing of Long Island Rail Road, Port Jefferson Branch, at MP 42.00 (USDOT# 338326D) on Meadow Glen Road in Kings Park, Town of Smithtown, County of Suffolk.

PETITIONERS' REPRESENTATIVES AND ADDRESS:

Brian K. Saltz - Assistant Deputy Counsel
Long Island Rail Road Company
Jamaica Station
Jamaica, NY 11435-4380

INTERESTED PARTIES:

Thomas Parisi, Esq. (for New York State Department of Transportation)
Senior Attorney, New York State Department of Transportation
Division of Legal Affairs
50 Wolf Road, Albany, NY 12232.

Jennifer Juengst, Esq.
Assistant Town Attorney
Town of Smithtown
99 West Main Street, Smithtown, New York 11787

* * *

BACKGROUND:

Long Island Rail Road Company ("LIRR" or "Railroad") petitioned the New York State Department of Transportation ("Department") for the closure and discontinuance of a public at-grade crossing located at Meadow Glen Road in Kings Park, Town of Smithtown, Suffolk County, New York on or about February 16, 2022. A hearing was held on May 25, 2022 at approximately 10:10 a.m. at the Perry B. Duryea State Office Building, 250 Veterans Memorial Highway in Hauppauge, NY 11788.

FACTS:

Kurt Sobina is a Principle Engineer for Signal Investigations, Standards, and Special Projects and testified on behalf of the Railroad.¹ The subject crossing is located at the end of Meadow Glen Road, a dead end road, bordered by commercial/industrial property as indicated in photos provide by the Railroad.² Sobina agreed with the adjacent landowner that the subject crossing should be closed in the interest of safety and the lack of negative effects that would result from its closure.³ To maintain the subject crossing consistent with the Federal Railroad Administration (FRA) and DOT standards would require an investment of \$150,000.⁴ Those required upgrades are to remedy a number of issues including gate failures.⁵ Additionally, Sobina quantified

¹ Transcript ("TR") at p. 12.

² Tr. at pp. 15-16; see LIRR Exhibit's B-D; see also Department's Exhibits 1-5.

³ Tr. at pp. 13-14.

⁴ Tr. at p. 17.

⁵ *Id.*

the long-term maintenance costs associated with the crossing at \$15,000 a year.⁶ Sobina clarified on cross examination that the Railroad would cover the costs associated with closing the crossing.⁷ Sobina testified that upon approval of closure the Railroad would remove the crossing gates, automatic warning lights, the pads, and the road base and erect a barrier to ensure the crossing is no longer active.⁸ The property south of the crossing was commercial land, however, trains moving through the crossing must blow their horns when traveling up to and through the subject crossing which can be heard by nearby residences.⁹ Sobina confirmed that the trains would no longer be required to blow their horns if the subject crossing is eliminated.¹⁰

Toby Carlson is the property owner south of the subject crossing and testified on behalf of the Railroad. Carlson testified that he had contacted Glen Greenberg of LIRR and advised that as the landowner south of the crossing he had no further use for the subject crossing because he had access to the entirety of his property from Northport Road.¹¹ Carlson testified that he believed closure of the subject crossing would be beneficial to the public.¹² Carlson confirmed that the use of the property south of the crossing is industrial and that he employed engineering consultants to do studies of the benefits, including cost analysis of the closing of the subject crossing for LIRR.¹³

The Department called Joseph Maresca, Regional Rail Coordinator for the New York State Department of Transportation ("NYSDOT" or "Department").¹⁴ Maresca visited the site of the crossing and confirmed the subject crossing is on a concrete pad and a two-way road that dead-ends south of the crossing.¹⁵ Maresca intimated that at-grade crossings present the risk of trains colliding with vehicles and pedestrians.¹⁶ Maresca testified that Carlson Corp was the sole property owner south of the tracks.¹⁷ Maresca testified that train traffic at the crossing consists of 41 trains per day, 23 during the day and 18 at night.¹⁸ The maximum speed for train traffic at the crossing was 65 mph, whereas vehicles travel over the crossing at 30mph.¹⁹ There is no pedestrian crossing and Maresca confirmed that there would be no need for additional crossings at this location because closure of the crossing would have no impact on traffic in the surrounding roadways nor would there be a need for traffic alternatives.²⁰ Maresca confirmed the Department supported closure of the subject crossing.²¹

No members of the public appeared at the hearing or submitted comments prior to the hearing.

After the hearing, the Town of Smithtown submitted a formal request to receive a copy of the final report by letters dated May 25, 2022, and July 1, 2022, by town attorney Jennifer Juengst.²² Additionally, Lou Frangella of the Federal Railroad Administration (FRA) provided a statement via email dated June 7, 2022, that the FRA supported the closure of the subject crossing.²³ Furthermore, this office received an affidavit of

⁶ *Id.*

⁷ Tr. at pp. 18-19.

⁸ *Id.*

⁹ Tr. at pp. 25-26.

¹⁰ *Id.*

¹¹ Tr. at pp. 22-23.

¹² Tr. at p. 23.

¹³ Tr. at p. 24.

¹⁴ Tr. at p. 28.

¹⁵ Tr. at pp. 32-33.

¹⁶ Tr. at p. 29.

¹⁷ *Id.*

¹⁸ Tr. at pp. 33-34; *see also* LIRR Exhibit A.

¹⁹ *Id.*

²⁰ Tr. at pp. 35-36.

²¹ *Id.*

²² Collectively marked as ALJ Exhibit 4.

²³ Email from Lou Frangella dated June 7, 2022.

publication for the Notice of Hearing indicating the Notice of Hearing was published on Friday, May 13, 2022, and is incorporated into the record.

DISCUSSION AND FINDINGS:

Pursuant to Railroad Law Section 91, upon a petition for closure of an at-grade crossing, the Commissioner, or his designee, shall determine whether such closure serves the public interest. As is apparent from the record, closure of the subject crossing would eliminate a little-used crossing on a dead-end road that may create an unnecessary risk to vehicles traveling over the crossing in addition to improving the quality of life for those residents near the crossing. Moreover, the Town, LIRR, Department, and the FRA all support the closure of the subject crossing.

Upon review of the record, Meadow Glen Road crosses the tracks over the subject crossing onto Toby Carlson's property where it dead-ends in an apparent parking area. Use of the crossing is nominal and Carlson has indicated access to his property is facilitated by Northport Road thus eliminating any need for the crossing. Maresca's testimony that at-grade crossings always present the possibility of a collision between trains and motor vehicles or pedestrians is compelling as the risks associated with such a collision far outweigh the benefit to the public. Additionally, the Railroad's costs to facilitate the crossing are substantial, in excess of \$100,000 to maintain compliance with current standards, and an annual expenditure of \$15,000 in long-term maintenance, for a road that appears not heavily traveled and provides little benefit to the public at large. Finally, closure of the subject crossing would no longer require train horns when trains travel through the area thus reducing noise experienced by the surrounding residents. Based on the testimony heard, and the apparent agreement of the parties, the crossing presents an unnecessary risk to the traveling public and nuisance to the surrounding residences, both of which outweigh the benefit to the public at large.

Therefore, in consideration of the above it is hereby recommended that the subject at-grade crossing at Meadow Glen Road be closed in the interest of public safety.

RECOMMENDATIONS:

Based upon the record of the proceeding and the above findings, I hereby recommend that the Department adopt an Order containing the following provisions:

1. The at-grade rail crossing of Long Island Rail Road, Port Jefferson Branch, at MP 42.00 (USDOT# 338326D) on Meadow Glen Road in the Town of Smithtown, County of Suffolk shall be closed.
2. The permanent closure of the crossing by LIRR at Meadow Glen Road must meet the following conditions:
 - A. Prior to removal of the crossing surface, flashing-light signals, gates and any other warning devices, LIRR to block access to the crossing by installing concrete barricades. The Town of Smithtown to remove existing grade crossing signage at roadway approaches and install new signage consistent with the MUTCD; and
 - B. Removal of the crossing surface, flashing-light signals, gates and any other warning devices by LIRR; and
 - C. That all design plans for the closure be submitted to the Department's Highway-Rail Grade Crossing Safety Section for review and approval; and

D. That the closure of the at-grade crossing be performed in accordance with all applicable laws and regulations, including obtaining any and all necessary permits.



October 25, 2022

DUSTIN B. HOWARD
Administrative Law Judge
Office of Proceedings