

**COPY**

BEFORE THE ILLINOIS COMMERCE COMMISSION

VILLAGE OF MT. ZION, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 CANADIAN NATIONAL RAILROAD, )  
 )  
 Respondent. )

No. T03-0100

**RECEIVED**  
APR 12 2004  
Illinois Commerce Commission  
RAIL SAFETY SECTION

**AMENDED PETITION FOR AN ORDER DIRECTING CONSTRUCTION  
OF A NEW PEDESTRIAN SIDEWALK AT GRADE  
ACROSS A RAILROAD RIGHT-OF-WAY**

Now comes the Petitioner, Village of Mt. Zion (hereinafter "Petitioner") with its principal offices at 400 Main Street, Mt. Zion, County of Macon, State of Illinois, and who respectfully petitions the Illinois Commerce Commission as follows:

1. Petitioner has a comprehensive bike, walking and jogging path plan in the Village of Mt. Zion (hereinafter referred to as "Bike Path"). Illinois Central Railroad Company, a subsidiary of the Canadian National Railroad (hereinafter "Respondent") operates and maintains a right-of-way with a main line railway track in an easterly and westerly direction that crosses County Highway 7 and the Bike Path.

2. Petitioner has requested approval from Respondent an easement to construct a Bike Path crossing at grade across Respondent's right-of-way said easement is described as:

The West 80 feet of the East 593.82 feet of Government Lot 2 of the NE¼ of said Section 5 lying within the Right of Way of the Canadian National Railroad and containing in all 4485 square feet or 0.103 acres more or less.

3. A completed bike path is necessary to accommodate the bicycle and pedestrian traffic resulting from the heavy usage of the Bike Path by all age groups of children to senior citizens. The Bike Path is available for usage seven days a week. The Bike Path is further necessary to eliminate pedestrian and bicycle traffic into the street at the railroad crossing causing a potential for serious personal injury and property damage. It is also necessary to complete an intricate section of the bike path.

**DOCKETED**

APR 12 2004

4. As a result of multiple negotiations, the Petitioner and Illinois Central Railroad Company, hereinafter Respondent, entered into a Bicycle Pathway Crossing Agreement that among other terms and conditions permits the construction of the bike path sought herein. A copy of said Agreement is attached hereto marked Exhibit "A".

5. Petitioner and Respondent agree to comply with the attached Agreement and all applicable rulings, rules and regulations of the Commission in the construction and operation of the bike path crossing.

WHEREFORE, Petitioner prays that this Commission enter an order approving the bike path crossing without the necessity of a hearing and that said order provides:

A. That Petitioner shall be authorized to construct a bike path crossing pursuant to the terms and conditions of the agreement attached hereto;

B. That the parties are ordered and directed to comply with all terms and conditions of the Bicycle Pathway Crossing Agreement and all rules and regulations of the Commission in the construction and operation of the bike path crossing; and

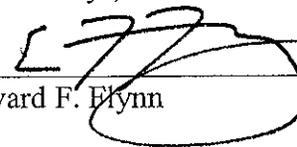
C. That the hearing previously scheduled herein on April 21, 2004 be vacated.

D. For such other relief as this Honorable Commission deems appropriate.

VILLAGE OF MT. ZION, Petitioner

By: WINTERS, FEATHERSTUN, GAUMER,  
POSTLEWAIT, STOCKS & FLYNN  
Its Attorneys,

By: \_\_\_\_\_

  
Edward F. Flynn

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flf

CERTIFICATE OF SERVICE

I certify that on the 7<sup>th</sup> day of April, 2004, at 5:00 o'clock p. m., I deposited a copy of the foregoing at the U. S. Post Office located in Mt. Zion, Illinois, enclosed in an envelope with proper postage prepaid, addressed to the following in the manner set forth:

Canadian National Railroad  
c/o Tom Zeinz  
Manager of Public Works  
17641 S. Ashland Avenue  
Homewood, IL 60430-1345

Victor Modeer  
IDOT  
Director of Highways  
2300 S. Dirkson Parkway, Room 300  
Springfield, IL 62764



Edward F. Flynn  
ARDC No.: 06192240  
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flf

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**BICYCLE PATHWAY CROSSING AGREEMENT**

THIS AGREEMENT, made and entered into as of the 23rd day of January, 2004, by and between the ILLINOIS CENTRAL RAILROAD COMPANY (hereinafter referred to as "Railroad") whose mailing address is 17641 S. Ashland Avenue, Homewood, Illinois 60430-1345 and the VILLAGE OF MT. ZION, Illinois (hereinafter referred to as "Village") whose mailing address is 400 Main Street, Mt. Zion, IL 62549;

**WITNESSETH:**

IN CONSIDERATION of the mutual covenants and agreements herein set forth, Railroad, insofar as it lawfully may, does hereby grant unto Village license and permission to construct, maintain, operate and use a paved bicycle pathway approximately 10 feet in width, upon, over and across the property or right-of-way of Railroad (including the track located thereon) adjacent to and on the east side of County Highway No. 7 (Baltimore Avenue) at/near Railroad's Peoria Subdivision Milepost B 84 plus 754' (±) as shown on the print attached hereto and made a part hereof,

**UPON AND SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:****1. DEFINITIONS.**

(a) Railroad's Property. "Railroad's Property" shall mean the property shown on the attached print, to the extent owned by Railroad, whether owned in full ownership or as a servitude, easement, or right-of-way, including Railroad's track, the land on which the track is situated, and any adjacent land of Railroad on either side of the track.

(b) Roadway. "Roadway" shall mean the bicycle pathway approaches on either side of the Crossing Proper beyond the ends of the track crossties including that portion between tracks if/where multiple tracks exist.

(c) Crossing Proper. "Crossing Proper" shall mean that portion of the license area encompassing an area from end-of-tie to end-of-tie.

(d) Village's Property. "Village's Property" shall mean the bicycle pathway right-of-way beyond the Railroad's Property.

(e) Cost. "Cost" shall mean the actual cost of labor, equipment and materials plus Railroad's then current customary additives for overhead and other indirect costs.

## 2. USE.

(a) The Village shall only affect and burden the Railroad's Property within the confines of a certain permanent easement granted (by separate instrument) to the County of Macon for right-of-way for County Highway No. 7 (Baltimore Avenue), and the Roadway and Crossing Proper shall be constructed, located, and maintained entirely within the said permanent easement area. Village shall have no right to use or cross any other portion of Railroad's Property with said bicycle pathway or to use the Roadway and Crossing Proper for any purposes other than as expressly permitted herein. Unless otherwise provided in this Agreement, Village shall comply with all terms and conditions of the said grant of permanent easement to Macon County.

(b) Village shall not do or permit to be done any act which will in any manner interfere with, limit, restrict, obstruct, damage, interrupt, or endanger Railroad's operations or facilities.

(c) Village shall post signage to advise all persons using the Roadway and Crossing Proper to come to a complete stop, look carefully for approaching trains before fouling or crossing Railroad's tracks, and yield to any approaching train.

(d) The Roadway shall not be used by vehicles of a size, configuration or weight that would damage the tracks, equipment, installations, or facilities of Railroad or any equipment, installations, or facilities located on Railroad's Property but belonging to third persons.

## 3. TERM.

(a) This License shall become effective as of the date first written above and shall continue in effect thereafter until terminated in one of the manners set forth below:

(i) Railroad shall have the right to terminate this Agreement immediately upon written notice to Village if Village at any time breaches or fails to perform any of the terms and conditions hereof;

(ii) This Agreement shall terminate through non-use or in any other manner provided by law; or

(iii) This Agreement may be terminated by mutual consent of the parties hereto.

(b) Unless the parties mutually agree in writing to leave the Roadway and Crossing Proper in place after termination, the termination of this Agreement shall not be effective until all removal and restoration is complete. Termination of this Agreement shall not release Village from any liability or responsibility and duty which accrued prior to such termination, removal and restoration.

4. CONSTRUCTION. The construction of the Roadway, including the necessary grading, culverts and drainage on each side of the Railroad's track, shall be performed by Village at its own risk and expense, and to the satisfaction of the Railroad's authorized representative. Railroad will install the Crossing Proper over its track(s), from end-of-tie to end-of-tie, and make all adjustments required in Railroad facilities, if any, at Village's sole expense. For performance of its work, Village shall pay Railroad the sum of SEVEN THOUSAND SIX HUNDRED AND NINETY DOLLARS (\$7,690.00) upon presentation of a bill following the completion of Railroad's portion of the work.

5. NOTIFICATION TO RAILROAD. At least ten (10) days prior to entering upon the Railroad's Property for the purpose of performing any construction or maintenance work hereunder, Village shall notify Railroad's Engineering Superintendent in writing of the type of work to be performed and the date such work will commence. The notice shall be sent to the following address:

Engineering Superintendent  
Illinois Central Railroad Company  
17550 S. Ashland Avenue  
Homewood, IL 60430

6. RAISING WIRE LINES. If it should be necessary to raise any wires on Railroad's property not belonging to Railroad to provide safe clearance for Roadway users, Village shall make all arrangements therefor at its own sole risk and expense.

7. MAINTENANCE. Village shall, at its own risk and expense, maintain said Roadway in good and safe condition commensurate with its intended use. The Railroad shall, at the sole risk and expense of Village, maintain the Crossing Proper, however, Railroad shall have the right, but not the duty, to perform at Village's sole risk and expense, any repair or maintenance on the Roadway that Railroad considers reasonably necessary and Village shall pay the cost thereof upon receipt of a bill whether made at Village's request or otherwise. Except for emergency repairs, Railroad shall endeavor to notify the Village at least seven (7) days in advance of its intent to perform any such repairs or maintenance.

8. CROSSING TO BE KEPT FREE OF DEBRIS. Village shall at all times during the term of this Agreement, keep the Railroad's track free of dirt, rocks or other debris or obstructions of any kind, and will not permit any condition which might interfere with the safe and efficient operation of trains over the Crossing Proper, or which might damage equipment or facilities belonging to Railroad or others, or which might constitute a safety hazard of any kind. If at any time Village shall fail to do so, Railroad may, at its option, remove any dirt, rocks, debris or obstructions, and Village will pay Railroad the cost thereof promptly upon receipt of bill therefor.

9. SIGNS, SIGNALS AND WARNING DEVICES. Village acknowledges that Railroad has no obligation or duty to reduce the speed of its trains, nor alter its operations in any manner, owing to the presence or existence of the roadway and crossing proper or other use or exercise of the license or permission granted herein. Village assumes, at its own risk and expense, sole responsibility for determining, in conjunction with any governing state regulatory agency, if any signs, signals or other warning devices are necessary or appropriate for the safety of persons using the bicycle pathway in the vicinity of Railroad's track(s) and specifically acknowledges that Railroad has no obligation or duty whatever to make any such determination. If the installation of any signs, signals or warning devices on either side of the Crossing Proper is presently or hereafter required by law or by competent public authority, or is otherwise requested by Village, same shall conform to any then currently applicable practices of the Railroad for such devices as to design, material and workmanship and all costs incurred by the Railroad related to the installation, operation, maintenance, renewal, alteration and upgrading thereof shall be solely borne by Village.

10. INDEMNITY. The Village agrees, to the extent it lawfully may, to indemnify the Railroad against and save it harmless from loss and damage to any property, and injury to or death of any persons, and from court costs and attorney's fees, and expenses incident thereto, arising out of any work to be performed hereunder by or on behalf of Village and caused by the negligence of Village, or any contractor for Village, or their respective officers, agents or employees.

11. REMOVAL OF ROADWAY AND CROSSING PROPER. Prior to termination of this Agreement, Village shall remove the Roadway from Railroad's Property (except for the Crossing Proper located between the ends of ties) and restore the Railroad's Property, as near as may be to its former condition, insofar as such restoration may in the opinion of Railroad's duly authorized representative be practical, all at Village's sole risk and expense. If Village fails to so remove and restore, Railroad shall have the right, but not the obligation, to do so at Village's sole risk and expense. Upon termination, Railroad shall have the right, but not the duty, to remove the Roadway and Crossing Proper and to restore the Railroad's Property, all at Village's sole risk and expense. Village shall pay the cost of any work performed by Railroad upon presentation of a bill.

12. BILLS. All bills submitted by the Railroad to Village pursuant to the terms of this Agreement shall be paid by Village within forty-five (45) days of receipt thereof.

13. ENFORCEABILITY. In the event that any parts, sections or other portions of this Agreement are found unenforceable under the applicable law of any courts having jurisdiction over this Agreement, the remaining parts, sections or other portions thereof and the enforcement of same shall not be affected and shall otherwise remain in full effect and enforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the date first above written.

ILLINOIS CENTRAL RAILROAD COMPANY

By Paul E. Ladue  
Paul E. Ladue  
Region Manager Contracts and Administration

VILLAGE OF MT. ZION

By Dan Sullivan  
Title: PRESIDENT