

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 12A-1216R

IN THE MATTER OF THE APPLICATION FOR THE MODIFICATION OF AN EXISTING
AT-GRADE CROSSING KING'S ROAD CROSSING IN THE TOWN OF WINTER PARK,
COLORADO.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
DENYING MOTION TO CONSOLIDATE
PROCEEDINGS AND VACATE HEARING**

Mailed Date: June 16, 2014

I. STATEMENT

1. On November 20, 2012, the Town of Winter Park (Town or Applicant) filed an Application in which the Town seeks authority to modify the existing at-grade crossing located at King's Crossing Road in the Town. That filing commenced this proceeding.

2. On December 3, 2012, the Public Utilities Commission (Commission or PUC) gave notice of the Application; and established an intervention period until January 2, 2013.

3. By Decision No. C13-0057-1, issued January 11, 2013, the Commission deemed the Application complete within the meaning of § 40-6-109.5, C.R.S., and referred this matter to an Administrative Law Judge (ALJ).

4. On December 19, 2012, Union Pacific Railroad Company (UPRR) intervened of right in this proceeding. The crossing at issue crosses UPRR's track. UPRR neither opposes nor contests the Application but stated that it will participate in any hearing. UPRR is represented by legal counsel in this matter.

5. On January 3, 2013, one day after the intervention period ended, Cornerstone Winter Park Holdings, LLC and Grand Park Development, LLC (collectively, Cornerstone), filed their Joint Motion to Intervene. In that filing, Cornerstone asserted that they own property adjacent to the crossing at issue in this proceeding. They also asserted that the grade separation is contractually required at the crossing and an engineering firm has been contracted to complete the design with approval expected in 2013. Further, Cornerstone contended that information contained within the Town's Application is incorrect in light of the future Cornerstone development in the area of the subject crossing and an Annexation Agreement and the First Amendment to the Annexation Agreement between Cornerstone and the Town.

6. On January 11, 2013, the Town filed their objection to Cornerstone's Motion to Intervene. As grounds the Town argued that the intervention was late and good cause had not been shown to allow the late intervention.

7. Also on January 11, 2013, Cornerstone filed their Revised Motion to Intervene. In this motion, Cornerstone claimed that the late filing of the intervention was ~~dueto~~ due to their receipt of the Notice on December 4, 2012, therefore they believed that the intervention period ended on January 3, 2013. In the alternative, Cornerstone argued that since the intervention was only one day late there was no prejudice to the Application or any party and failure to allow the intervention would prejudice Cornerstone's interest as well as the public's interest.

8. On January 18, 2013, Applicant filed their Objection to Revised Motion to Intervene. Applicant argued that the intervention should be denied due to a lack of good cause to allow the intervention, and in addition Cornerstone did not meet the requirements of an intervenor by right.

9. By Interim Decision No. R13-0133-I, issued January 30, 2013, the interventions of UPRR and Cornerstone were granted and a prehearing conference was scheduled for February 7, 2013.

10. At the scheduled prehearing conference all parties were represented. Applicant moved to stay the proceeding in order to pursue a settlement with the Intervenors and also to seek a judicial determination as to whether the Annexation Agreement between Cornerstone and the Town is valid. Applicant agreed to waive the requirement that a Commission Decision be issued within 210 days and to provide a status report every 90 days.

11. By Interim Decision No. R13-0187-I, issued on February 7, 2013, the proceeding was stayed and Applicant's waiver of the requirement that a Commission Decision issue within 210 days was acknowledged.

12. On January 29, 2014, Applicant filed its Motion to Lift Stay and Set for Prehearing Conference.

13. On February 12, 2014, Intervenor Cornerstone filed its Response to the Motion. Cornerstone stated it did not object to the relief requested but still intended to contest the Application.

14. By Interim Decision No. R13-0171-I, issued on February 13, 2014, the Motion to Lift Stay and Set for Prehearing Conference was granted and a prehearing conference was scheduled for March 13, 2014.

15. Pursuant to Interim Decision No. R14-0469-I issued May 5, 2014, a prehearing conference was held on May 15, 2014. At the prehearing conference the ALJ *sua sponte* continued the scheduled evidentiary hearing until June 18, 2014 to allow additional time for the parties to file exhibits.

16. On May 19, 2014, the Town filed a Motion *In Limine* Regarding the Testimony of Sue Grabler.

17. By Interim Decision No. R14-0611-I, issued on June 5, 2014, the Motion *In Limine* Regarding the Testimony of Sue Grabler was denied.

18. On June 6, 2014, Cornerstone filed its Motion to Consolidate Proceedings, Vacate Hearing, and for Accelerated Response (Motion). In its Motion, Cornerstone states that on June 5, 2014, the West Mountain Metropolitan District and the Town of Fraser collectively applied to the PUC for authority to construct a new highway-rail grade separation and abolish the at-grade railroad crossing at King's Crossing Road. Cornerstone requests that the above captioned proceeding be consolidated with this new application pursuant to Rule 1402 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations*, 723-1.

19. On June 11, 2014, the Town filed its Response to Motion to Consolidate Proceedings, Vacate Hearing, and for Accelerated Response (Response). In its Response the Town argues that the request to consolidate is "premature" and that the Town has not been served with the "Underpass Application".

II. DISCUSSION

20. Section 40-6-109.5, C.R.S., requires that an application be deemed complete by the Commission before being referred to an ALJ for hearing.

21. The intervention period for an application shall be 30 days after the mailing date of the notice. *Rule 1206(d), 4 CCR 723-1*.

22. The new application that Cornerstone is requesting be consolidated with the above captioned proceeding was filed on June 5, 2014. *Motion to Consolidate Proceedings, Vacate Hearing, and for Accelerated Response, Exhibit 1*.

23. The new application that Cornerstone is requesting be consolidated with the above captioned proceeding has not yet been deemed complete within the meaning of § 40-6-109.5, C.R.S. It is unknown when or if the new application shall ever be deemed complete.

24. The intervention period for the new application that Cornerstone is requesting be consolidated with the above captioned proceeding has not yet expired.¹ It is unknown who the parties will be in the new application proceeding or any objections they may have to consolidation.

25. The new application that Cornerstone is requesting be consolidated with the above captioned proceeding is not ripe for the relief requested by Cornerstone, therefore the Motion to Consolidate Proceedings shall be denied.

26. The application in the above captioned proceeding was filed in November 2012. Any further delay of this proceeding is unnecessary and would be costly to all parties.

27. No good cause has been shown to vacate the scheduled hearing. The Motion to Vacate Hearing shall also be denied.

III. ORDER

A. It Is Ordered That:

1. The Motion to Consolidate Proceedings, filed by Cornerstone Winter Park Holdings, LLC and Grand Park Development, LLC on June 6, 2014 is denied.

2. The Motion to Vacate Hearing, filed by Cornerstone Winter Park Holdings, LLC and Grand Park Development, LLC on June 6, 2014 is denied.

¹ The Commission has not even noticed the application as of the date of this Decision.

3. The Motion for Accelerated Response, filed by Cornerstone Winter Park Holdings, LLC and Grand Park Development, LLC on June 6, 2014 is deemed moot.

4. The evidentiary hearing in this proceeding remains scheduled for:

DATE: June 18, 2014

TIME: 8:00 a.m.

PLACE: Winter Park Town Hall
50 Vasquez Road
Winter Park, Colorado.

5. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director