

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0624R

IN THE MATTER OF THE APPLICATION OF THE WEST MOUNTAIN METROPOLITAN DISTRICT AND THE TOWN OF FRASER FOR AUTHORITY TO CONSTRUCT A NEW HIGHWAY-RAIL GRADE SEPARATION AT THE PROPOSED CROSSING OF GRAND PARK DRIVE AND THE UNION PACIFIC RAILROAD COMPANY TRACKS IN FRASER, COLORADO AND ABOLISH THE AT-GRADE RAILROAD CROSSING AT KINGS CROSSING ROAD (DOT NO. 254-214U) IN WINTER PARK, COLORADO.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
ESTABLISHING DEADLINES AND
SCHEDULING HEARING**

Mailed Date: September 2, 2014

I. STATEMENT

1. Only those portions of the procedural history necessary to understand this Decision are included.

2. On June 5, 2014, the West Mountain Metropolitan District and the Town of Fraser (collectively, Applicants) filed the above-captioned Application.

3. On June 20, 2014, the Commission gave public notice of the Application.

4. On July 11, 2014, Union Pacific Railroad Company filed an “Entry of Appearance and Notice of Intervention,” which it amended by a filing made on July 14, 2014.

5. On July 15, 2014, the Town of Winter Park filed a “Motion to Intervene.”

6. On July 17, 2014, Cornerstone Winter Park Holdings, LLC (Cornerstone) and Grand Park Development LLC (Grand Park) filed a “Motion to Intervene.”

7. On July 30, 2014, the Commission deemed the Application complete.

8. On August 11, 2014, the Commission referred this matter for disposition to an administrative law judge (ALJ). Decision No. C14-0966-I.

9. On August 20, 2014, the ALJ scheduled the matter for a prehearing conference to take place on September 2, 2014. Decision No. R14-1014-I. For purposes of that Decision, the ALJ treated all entities who filed interventions as parties. *Id.*, at ¶ 9. All parties were ordered to appear at the prehearing conference. *Id.*, at ¶ 12.

10. For purposes of this Decision, all entities who filed interventions will be treated as parties.

11. At the date, time, and location designated, September 2, 2014, the ALJ convened the prehearing conference. Except for Cornerstone and Grand Park, all parties appeared.¹ The parties agreed to, and the ALJ approved a procedural schedule and hearing date.

12. Applicants indicated that they intend to amend the Application to eliminate their request to abolish the King's Crossing Road crossing. It is in the parties' interests for the amended Application to be filed as soon as possible. Applicants will be ordered to file its proposed amended Application by September 5, 2014. Applicants must also include a statement in this filing indicating their preferred location for the hearing. In addition, because the proposed amendments to the Application must be approved by the ALJ, the other parties to this proceeding have the right to object to the proposed amendments. Although not discussed during the prehearing conference, the ALJ will set a deadline for any party to make a filing objecting to the proposed amendments to the Application.

¹ Mr. Jack Bestall, a non-attorney, appeared at the prehearing conference and indicated that he is with Cornerstone and Grand Park. However, no filings made by Cornerstone and Grand Park identify Mr. Bestall as its representative or contact person. Instead, Mr. Bestall is listed as a representative for West Mountain Metropolitan District in its Application. The ALJ will address Cornerstone and Grand Park's failure to appear by a separate decision.

13. The ALJ will not require a public comment hearing at this time. The issue may be revisited after the proposed amendments to the Application is filed.

14. In anticipation of the hearing on the Application, the parties are ordered to make disclosures of the witnesses and evidence they intend to present at the hearing in support of their position.

15. The parties are advised that they must file and serve a witness list even if the party intends to call only one witness to testify on its behalf.

16. Likewise, if a party intends to introduce only one document in support of its case, the party still must file and serve an exhibit list and the exhibit.

17. As referenced in this proceeding, serving a party with any document (*e.g.*, witness and exhibit lists and exhibits) means that the party is required to give the document to the other parties to the proceeding. Service may be accomplished by United States Mail, or through the Commission's E-filing system, if the party being served is registered with the E-filing system.

18. As referenced by this proceeding, filing a document means the party must submit the document to the Commission; the proceeding number must be displayed on all filings.

19. All parties are advised that this proceeding is governed by the Rules of Practice and Procedure found at 4 *Code of Colorado Regulations* (CCR) 723-1, the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, found at 4 CCR 723-7, and applicable statutory authority and case law. The ALJ expects the parties to comply with the Rules of Practice and Procedure. Both sets of rules are available on the Commission's website at www.dora.state.co.us/puc and in hard copy from the Commission.

20. In addition, this proceeding is also governed by the Colorado Rules of Evidence, a free copy of which can be found at the following link, under the tab marked “Colorado Court Rules”: <http://www.lexisnexis.com/hottopics/colorado/>.

21. All parties are advised that failure to make disclosures as required by this Decision may result in a decision dismissing the Application without prejudice, or a decision preventing the party who violates this Decision from presenting witnesses and evidence at the evidentiary hearing.

II. ORDER

A. **It Is Ordered That:**

1. A hearing on the merits of the above-captioned Application filed by West Mountain Metropolitan District and the Town of Fraser (collectively, Applicants) is scheduled as follows:

DATE: October 29, 2014

TIME: 9:00 a.m.

PLACE: Commission Hearing Room
1560 Broadway, Second Floor
Denver, Colorado

2. At the above date, time, and place you will be given the opportunity to be heard if you so desire.

3. Applicants shall file and serve their proposed amendments to the Application by 5:00 p.m. on September 5, 2014. In this filing, Applicants shall state the location they seek the hearing to be held.

4. Any party objecting to the proposed amendments to the Application must file and serve their objection on or by 5:00 p.m. on September 11, 2014. Failure to make a filing

objecting to the proposed amendments to the Application by this deadline will amount to a waiver of any objections to the proposed amendments to the Application.

5. All parties shall submit a legal brief on or by 5:00 p.m. on September 15, 2014 addressing whether the Town of Winter Park (Winter Park) may be allocated any costs of construction for the grade separation in the Town of Fraser in light of Rule 7207 of the Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings, 4 *Code of Colorado Regulations* 723-7 and § 40-4-106, C.R.S. The legal briefs should also address the applicability of the December 30, 2013 declaratory judgment by the Grand County District Court in Case No. 13CV30045 to this proceeding, including the scope of Winter Park's potential obligation, (if any), in this proceeding.

6. Unless otherwise ordered, no party may file a response to the legal briefs required by Ordering Paragraph 5 above.

7. Applicants shall file and serve exhibit and witness lists and exhibits on or by 5:00 p.m. MST on September 22, 2014.

8. Union Pacific Railroad Company, Winter Park, Cornerstone Winter Park Holdings, LLC, and Grand Park Development LLC shall file and serve exhibit and witness lists and exhibits on or by 5:00 p.m. MST on October 6, 2014.

9. Witness lists shall include a description of the witnesses' anticipated testimony, the witnesses' name and title, (if any), and the witnesses' last known address and telephone number.

10. All exhibits shall be identified by sequential numbers (*e.g.*, Exhibit 1, Exhibit 2, Exhibit 3). The parties shall work together to coordinate sequential numbering of exhibits (*e.g.*, Applicants may have exhibit numbers 1-50, while Winter Park has exhibit numbers 51-100, etc.).

11. Exhibits shall include the following information: exhibit number, proceeding number, name of the witness who will testify to the exhibit's foundation, and the date of the hearing. The parties must have all their exhibits properly identified prior to the time the hearing is scheduled to begin.

12. At the evidentiary hearing, unless otherwise ordered, the parties shall bring enough copies of their exhibits to ensure that: all parties have a copy of each exhibit; the witness has a copy of each exhibit; there is a copy to be treated as the original of each exhibit; and the Administrative Law Judge has a copy of each exhibit.

13. At the evidentiary hearing, the parties shall also bring with them a completed exhibit list in the format set forth in Appendix A to this Decision.

14. If any exhibit is longer than two pages, the party offering the exhibit shall sequentially number each page of the exhibit.

15. No witness will be permitted to testify, except in rebuttal, unless that witness is identified on a list of witnesses filed and served as required herein.

16. No exhibit will be received in evidence, except in rebuttal or for impeachment, unless filed and served as required herein.

17. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director