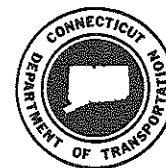


STATE OF CONNECTICUT  
DEPARTMENT OF TRANSPORTATION



2800 BERLIN TURNPIKE, P.O. BOX 317546  
NEWINGTON, CONNECTICUT 06131-7546

Phone:

(860) 594-2875

DOCKET NO. 0808-142-RR

RE: IN THE MATTER OF THE PETITION OF JOHN KUCK OF YSAB, LLC  
TO ESTABLISH ADDITIONAL CROSSING USAGE RIGHTS AT A  
PRIVATE AT-GRADE RAILROAD CROSSING ON THE BERKSHIRE  
LINE OF THE HOUSATONIC RAILROAD LOCATED ON RIVER  
ROAD IN NEW MILFORD, CONNECTICUT.

FINAL DECISION

January 28, 2011

## I. INTRODUCTION

### A. Application

By petition dated September 9, 2010 and filed with the Department of Transportation (hereinafter "department"), pursuant to Section 13b-292 of the Connecticut General Statutes, as amended, YSAB, LLC, through John Kuck (hereinafter "petitioner") seeks authorization to establish additional usage rights over a private at-grade railroad crossing previously established on the Berkshire Line of the Housatonic Railroad located on River Road in New Milford, Connecticut.

### B. Hearing

Pursuant to Connecticut General Statutes, Section 13b-292 and 4-177 et seq., a public hearing on this application was held on December 2 and December 14, 2010.

Notice of the application and of the hearing to be held thereon was given to the applicant and to such other parties as required pursuant to General Statutes section 4-177, as amended. Notice to the public was given by publication on the department website at [www.ct.gov/dot](http://www.ct.gov/dot).

The Commissioner of Transportation designated a hearing officer to conduct the hearing on this matter, pursuant to Connecticut General Statutes Section 13b-17.

### C. Appearances

John W. Kuck and Ryan Peburn appeared on behalf of YSAB, LLC, whose mailing address is 35 McNulty Drive, New Milford, Connecticut.

Gilbert Smart, supervising rail officer with the Rail Regulatory Unit of the department, appeared on its behalf. Smart's mailing address is Union Station, 50 Union Avenue, New Haven, Connecticut.

Christine Hartzell and Scott Hartzell, 372 River Road, P.O. Box 143, New Milford (Gaylordsville), Connecticut appeared at the hearing and were granted party status.

Tabitha Arneson and Kirk Arneson, 374 River Road, P.O. Box 371, New Milford (Gaylordsville), Connecticut appeared at the hearing and were granted party status.

## II. FINDINGS OF FACT

1. On February 25, 1986 the Department of Transportation authorized the construction of a 40-foot wide crossing over the state-owned abandoned railroad right-of-way across the

Housatonic Railroad in New Milford to Paul Stewart for the sole purpose of accessing a single residence.

2. On April 28, 1987 the Department of Transportation amended the 1986 order to authorize the use of the crossing by occupants of another single family dwelling.

3. The 1986 and 1987 orders required the petitioning party to install and maintain the crossing, including the erection of a private crossing sign on the River Road approach to the crossing.

4. The Department of Transportation's property unit, through title search, confirmed that the abutters to the subject crossing have deeded crossing rights.

5. Sometime after the 1987 order, the Housatonic Railroad reinstated rail operations over the subject crossing southerly to New Milford.

6. The Housatonic Railroad Company currently operates four (4) trains a day at 25 miles per hour under its normal delivery schedule, although the railroad may, at any time, increase or decrease the number of trains, depending on customer product needs.

7. YSAB, LLC owns a parcel of land which is landlocked and which borders on the railroad's right-of-way.

8. The Department of Transportation's property unit, through title search, confirmed that YSAB, LLC does not have deeded rights.

9. Although the petitioner testified that it would build no more than three dwellings on its property, no evidence of any building restriction on YSAB, LLC's property was offered into the record.

10. The petitioner's property and the two single family dwellings do not have other access and egress (besides the private crossing.)

11. The approach to the subject crossing from River Road is up hill and the site line to the crossing in both directions is somewhat limited by a curve and bushes.

12. The crossing is unprotected by gates and lights.

13. The crossing surface has deteriorated over the years and should be replaced to the condition required by the department's order on February 25, 1986.

14. Active warning equipment should be installed for added safety if the usage rights to the crossing are expanded.

### III. DISCUSSION

The Commissioner of Transportation has jurisdiction over railroad construction and location. Connecticut General Statutes section 13b-292 provides in pertinent part "...[p]rivate crossing means any private way, private drive or any facility other than a public highway for the use of pedestrians, motor vehicles or other types of conveyances, which crosses at grade any railroad track. No private crossing shall be established, except that the Commissioner of Transportation may authorize the establishment of a private crossing if it is deemed necessary for the economic welfare of the community but only after imposing specific requirements for the protection of persons using the crossing. The cost of meeting such protection requirements shall be borne by the party requesting such private crossing..." Connecticut General Statutes section 13b-292(a).

The present matter regards a petition requesting that a private crossing be established on the Berkshire line of the Housatonic Railroad Company at station point 674+20 in New Milford, Connecticut. The petitioner requests authority to use said crossing to access its parcel of land that is landlocked and borders the Housatonic Railroad right of way.

The evidence shows that rights to the abutters over the subject crossing were established when railroad activity was non-existent in 1986 and 1987. The crossing is minimally maintained by the abutters and currently, there is a private crossing sign erected on the River Road approach to this crossing, as required by the department in its 1987 order. The Housatonic Railroad Company commenced operation over the crossing after 1987.

The evidence shows that the petitioner may subdivide its land into three parcels. The petitioner's testimony indicated that no more than three single family dwellings would ever be built on its property. However, no evidence was introduced into the record showing that there is any such building restriction in place for the property. Regardless of the petitioner's current intent, the possibility remains that the subject crossing could be used for more traffic than three additional single family dwellings. More importantly, the Housatonic Railroad Company currently operates four trains a day, at 25 miles per hour, over the subject crossing. The Railroad can increase the train traffic at will.

Insofar as the evidence reveals that the subject crossing will be used by more people if this petition is granted, active safety devices must be installed for the protection of the public. Connecticut General Statutes section 13b-292 requires that the cost of meeting protection requirements "shall be borne by the party requesting such private crossing." Therefore, approval of this petition will be predicated the installation of active warning devices which shall be the responsibility of the petitioner.

Upon the installation of the active warning devices, the costs of maintenance of the crossing will be the responsibility of all abutters to said crossing, in equal apportionment. The current landowners who benefit from the crossing and who were required to maintain the crossing, in accordance with the orders of the Department of Transportation on February 25, 1986 and April 28, 1987, cannot be alleviated of the maintenance responsibility. However, they should not bear more of their share of the burden.

IV. CONCLUSIONS OF LAW

Based on the foregoing, there is substantial evidence on the record supporting the conclusion that expanded use of the private crossing will benefit the economic welfare of the community in accordance with Connecticut General Statutes section 13b-292.

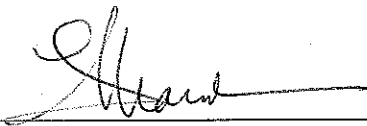
V. ORDER

The petition of YSAB, LLC is hereby granted and a private railroad crossing is hereby established on the following conditions for the safety of the persons using such crossing:

1. YSAB, LLC shall arrange with the Housatonic Railroad Company for the installation of additional safety measures/active warning equipment at the subject crossing as identified and approved by the Department of Transportation, Office of Rail.
2. YSAB, LLC shall bear the cost of the installation of additional safety measures/active warning equipment;
3. The added safety measures must be installed in accordance with the "Manual on Uniform Traffic Control Devices";
4. The added safety measures must be inspected by the Department of Transportation Rail Regulatory Unit for final approval prior to the commencement of the expanded use;
5. Upon completion of the installation of the added safety measures and upon final inspection by the Rail Regulatory Unit, the maintenance of the subject private crossing shall be the responsibility of the abutting property owners who use the crossing and the Housatonic Railroad Company, to share equally.

Dated at Newington, Connecticut, this 28<sup>th</sup> day of January, 2011.

CONNECTICUT DEPARTMENT OF TRANSPORTATION

  
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Laila A. Mandour  
Staff Attorney III  
Administrative Law Unit  
Bureau of Finance and Administration