

Docket No. TR-180466 - Vol. III

**Whatcom County v. Burlington Northern Sante Fe
Railway**

March 5, 2019



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WHATCOM COUNTY,)
)
 Petitioner,)
)
 -v-) Docket NO.
) TR-180466
 BNSF RAILWAY COMPANY,)
)
 Respondent.)

VOLUME III

PUBLIC COMMENT HEARING

Pages 133 - 151

DATE TAKEN: March 5, 2019

PLACE: 311 Grand Avenue
Bellingham, Washington

BEFORE: ADMINISTRATIVE LAW JUDGE RAYNE PEARSON
ADMINISTRATIVE LAW JUDGE LAURA CHARTOFF

REPORTED BY: Nancy M. Kottenstette, RPR, CCR 3377

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ALSO PRESENT: Stephen Semenick

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1 BELLINGHAM, WASHINGTON; March 5, 2019

2 6:02 p.m.

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4 JUDGE CHARTOFF: We are on the record.

5 Can everyone hear me okay? Okay. Good evening. This
6 is a public comment hearing regarding a petition
7 Whatcom County filed with the Washington Utilities and
8 Transportation Commission to modify a railroad
9 crossing.

10 Specifically, Whatcom County is seeking to
11 install median barriers at the highway rail grade
12 crossing on Cliffside Drive in Whatcom County as part
13 of a quiet zone improvement. For the record, today's
14 date is Tuesday, March 5, 2019. And the time is a
15 little after 6:00.

16 So I'll start with introductions. Then I'll
17 explain the purposes of the hearing and how we're
18 going to conduct the hearing. So my name is Laura
19 Chartoff. To my left is Rayne Pearson, and we are
20 administrative law judges with the Washington
21 Utilities and Transportation Commission. And we are
22 co-presiding in this case.

23 So earlier today we had an evidentiary hearing
24 on this case, and the parties to the proceeding are
25 seated at the tables in front of me. I'm going to now

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1 ask the parties to briefly introduce themselves
2 starting with Mr. Roberson.

3 MR. ROBERSON: My name is Jeff
4 Roberson. I'm an assistant attorney general that
5 represents the commission staff.

6 MR. QUINN: My name is Christopher
7 Quinn. I represent the people of Whatcom County and
8 the Whatcom County Prosecutor's Office on the civil
9 side.

10 MS. ENDRES: Good evening. Thanks for
11 coming tonight. I'm Kelsey Endres. I represent BNSF
12 Railway Company, and with me tonight is Steve
13 Semenick, the manager of public projects.

14 JUDGE CHARTOFF: Thank you. So our
15 hearing tonight is to collect your comments and let
16 us, as representatives of the commission, hear from
17 you about your concerns or any other views that are
18 relevant to the proposed modifications of the crossing
19 at Cliffside Drive.

20 So please be aware that the commission has no
21 jurisdiction over whether we can designate the
22 crossing as a quiet zone. The only issue before the
23 commission is whether the median barriers will be made
24 of concrete or out of composite rubber. So keep in
25 mind the commission's jurisdiction, and please limit

1 your comments to your opinions on the type of median
2 barriers that should be installed.

3 So I have in front of me a list that shows
4 there are approximately seven people who want to speak
5 tonight. There are some public hearing sign-in sheets
6 that Mr. Andrew Roberts has collected signatures on.
7 So he may have another sheet to bring later with
8 additional folks. If you're not on the list and later
9 change your mind and want to speak, you can identify
10 yourself later. Let me know.

11 So I'll just talk briefly about the hearing
12 procedure. Because this is a formal proceeding, your
13 testimony will be under oath. So for each of you that
14 indicated you will speak, I will have you stand in a
15 few moments to take an oath. And then I'll call the
16 speakers one at a time to speak at the podium.

17 As you can see, there's a court reporter who
18 will be taking down your comments as well, so please
19 speak slowly and clearly. Each of you will have a
20 maximum of five minutes to make your comments tonight,
21 and that way we can ensure everyone gets a chance to
22 speak.

23 And if there's a person who speaks and says
24 something you agree with, you don't need to repeat the
25 same testimony. You can simply indicate you agree

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1 with what Mr. Smith or Ms. Jones said previously. So
2 I encourage you if you're hearing the same comments in
3 support or opposition spoken, you know, please feel
4 free to just reference that speaker.

5 Finally, oh, about written comments, if you
6 brought written comments with you today that you're
7 reading, you can simply give us the highlights of
8 those comments and hand those to Mr. Roberts. Let me
9 have -- Mr. Roberts is in the back of the room. Can I
10 have him just wave and say hi. Thank you.

11 So your written comments will be part of the
12 record. And if any of you after hearing testimony
13 tonight would like to submit written comments either
14 for the first time or additional comments, we will
15 accept those so long as they're filed by Friday,
16 March 8.

17 Finally, this is a chance for you to provide
18 us with your comments. This isn't a chance for
19 dialogue. So you may be able to stay after and ask
20 questions of the rail staff or any of the parties, but
21 Judge Pearson and I can't answer questions about the
22 project as part of this public comment session.

23 So does anyone have any questions about how
24 the proceeding will go?

25 Yes.

1 AUDIENCE MEMBER: Could you go over
2 again what is the question we're trying to answer
3 here? I'm a little confused. The type of median, you
4 said?

5 JUDGE CHARTOFF: Sure. Whatcom County
6 has proposed a modification to the railroad crossing.
7 They're proposing a certain type of median to be
8 installed, and BNSF is proposing a different kind of
9 median. They're proposing one made out of concrete.
10 So that's the issue. I overly simplified it, but
11 that's the issue that's before us, the type of
12 improvement that will happen.

13 AUDIENCE MEMBER: I'm not sure if this
14 is a correct question or not. But there's a quiet
15 zone installed at Yacht Club Road, which is on the
16 south end of Bellingham. Do you know what type of
17 median they have, and could you explain that to some
18 of us that aren't totally aware?

19 JUDGE PEARSON: So we heard today
20 earlier at the hearing they're concrete medians
21 installed at Yacht Club Road, and if you have more
22 questions about that, Mr. Semenick is available from
23 BNSF. And you can talk to him after the public
24 comment hearing.

25 JUDGE CHARTOFF: So at this time I'm

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1 going to read the names of the -- okay. The people
2 who have signed up to speak so far. Okay. I have
3 Bill Miers, Thomas Flattery, Margaret Manning, Susan
4 Babbitt, Murray Bennett, Teresa Anderson, Bert Webber,
5 and Ray Poorman. Did I leave anyone out?

6 Okay. So I'm going to swear you all in now so
7 we can begin the public comment session. So if I said
8 your name or you're intending to speak, will you
9 please stand up and raise your right hand.

10 Do you swear or affirm that the testimony you
11 give today is the truth, the whole truth, and nothing
12 but the truth?

13 (Speakers sworn in.)

14 JUDGE CHARTOFF: For the record,
15 everyone gave an affirmative response. Thank you.

16 So I'm going to call Bill Miers to please
17 stand at, I think, that podium. I'll ask him to come
18 up to the podium. And I'm going to ask all witnesses
19 to state and spell both your first and last name, give
20 us your address, tell us how long you've lived at that
21 address or in this community. And if you're
22 representing someone other than yourself, please tell
23 us that as well.

24 MR. MIERS: So my name is Bill Miers or
25 William, to be exact. And the last name is spelled

1 M-I-E-R-S. I live at 3903 Cliffside Drive, and I've
2 lived there for about two and a half years now.
3 Anything else that you needed to know?

4 JUDGE CHARTOFF: Are you representing
5 yourself?

6 MR. MIERS: I'm just representing
7 myself.

8 JUDGE CHARTOFF: Okay.

9 MR. MIERS: And maybe even my wife. So
10 the hearing today is a little different than what I
11 think most of us had expected. We were led to believe
12 this was more of a: Are we in favor of the quiet zone
13 or not?

14 So the type of barrier, we weren't really
15 privy to the type of barrier that was being proposed.
16 But our understanding is that Whatcom County will be
17 paying for a certain type of barrier and that perhaps
18 there are ultimate types of barriers that might cost
19 more money. So I am in favor of the type of barrier
20 that will not cost more money to the residents of
21 Cliffside Drive.

22 I would like to see the barrier go in that is
23 the one that the county is proposing to install that
24 won't cost more money than the one perhaps that
25 Burlington Northern is installing -- proposing to

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1 install. So that's my main comment. I am in favor of
2 the quiet zone, although I guess that's not really
3 part of the question here; is that correct?

4 JUDGE PEARSON: Correct.

5 MR. MIERS: I think that any type of
6 barrier along there, whether it is a concrete barrier
7 or whether it is a rubber barrier that's painted
8 yellow, is going to do the job in terms of keeping
9 most normal traffic from being able to cross into the
10 opposite lane. You know, perhaps if you have a big
11 four-wheel-drive truck or something, you know, it will
12 make a difference, but for the normal, you know,
13 Subaru or Prius, it's probably going to be just fine.
14 So that's my comments. Thank you.

15 JUDGE PEARSON: Thank you.

16 JUDGE CHARTOFF: Thank you. So Thomas
17 Flattery.

18 MR. FLATTERY: Right. Thomas Flattery,
19 last name F-L-A-T-T-E-R-Y, 3946 Cliffside Drive. I'm
20 here on behalf of myself and my amazing wife as well
21 as all my neighbors in the Cliffside community.

22 So I'm just going to read something that was
23 provided at a recent board meeting which I think maybe
24 might pinpoint some of our concerns or questions about
25 what's going on and where the process stands, but it

1 says: As you may recall, the design for the crossing
2 improvements includes the --

3 THE REPORTER: Can you please read
4 slower.

5 MR. FLATTERY: Slower?

6 THE REPORTER: Yes, please.

7 MR. FLATTERY: The design for the
8 crossing improvements includes the installation of
9 center curbs. The Federal Railroad Administration
10 allows a specific type of mountable curb to be used.
11 These types of curbs allow for emergency vehicles to
12 drive over them while limiting other cars from doing
13 so.

14 Because this is a modification to a railroad
15 crossing, the Washington State Utilities and
16 Transportation Commission must approve the
17 application. During that process, Burlington Northern
18 Santa Fe Railroad objected to the use of mountable
19 curbs, although mountable curbs at your specific
20 crossing -- by the way, this is from Ronald Middleton
21 to Jeff Dennison who is the president of the board --
22 would allow specific crossing at Cliffside would
23 clearly address these concerns. BNSF has a company
24 policy that objects to their views.

25 So where I want to be clear on here is if

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1 we're just talking about the type of barrier that's
2 going to be installed at this location and we're past
3 the point of whether or not a barrier is going to be
4 installed and a quiet zone is going to be established,
5 then that's great news. So am I understanding that
6 correctly?

7 JUDGE PEARSON: Yes.

8 MR. FLATTERY: Okay. Great. Progress.
9 I guess the other thing is regardless of the type of
10 barrier, as Bill I think just pointed out, if the goal
11 is to prevent normal, you know, residential vehicular
12 traffic from being able to cross over that divide and
13 not restrict emergency vehicles from doing so, then
14 whether it's concrete or rubber it seems like the goal
15 is still going to be served.

16 So thanks for clarifying what type of barrier
17 was installed at Yacht Club Road. It sounds like it
18 was concrete and not rubber, and I would be curious to
19 understand why BNSF has its policy and what the
20 difference between those two and why they prefer
21 concrete over rubber.

22 I think those are my comments just hoping that
23 I'm understanding clearly that this application is
24 headed, in my opinion, in the right direction and is
25 going to be approved. It's just an issue on the type

1 of barrier. So thank you.

2 JUDGE PEARSON: Thank you. For
3 everyone's benefit, I just want to let you know that
4 you can go to the commission's website, which is
5 utc.wa.gov. You can search this docket number, which
6 is 180466, and you can see everything that's been
7 filed. You can read all of the testimony filed by
8 Whatcom County, by BNSF, so you can understand their
9 arguments for the particular type of median barriers.

10 And within 30 days, the transcript from
11 today's evidentiary hearing will also be available on
12 our website. So you can read through that and see
13 what they talked about today, so that might be helpful
14 for you-all to determine where they're at in the
15 process.

16 MR. FLATTERY: Thanks for that
17 reference, and I know this is a little off topic. But
18 it would be fantastic if BNSF could do something about
19 the screeching wheels, because those are really loud
20 too.

21 JUDGE CHARTOFF: Thank you.

22 Margaret Manning.

23 MS. MANNING: Margaret Manning. Do you
24 want first and last name spelled or just last name?

25 JUDGE CHARTOFF: Last name.

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1 MS. MANNING: M-A-N-N-I-N-G,
2 3908 Cliffside Drive, and I'm speaking on behalf of
3 myself and my husband, David Shell.

4 We definitely are concerned about the type of
5 barrier that goes up. It is the only access in and
6 out of the neighborhood, and so it would be critical
7 that emergency vehicles can easily access the
8 neighborhood. We have many elderly neighbors, and so
9 it seems to me that the more flexible the material,
10 the better in case multiple vehicles are having to
11 come in and out in the event of an emergency because
12 it is the only entrance and exit into the
13 neighborhood. Thank you.

14 JUDGE CHARTOFF: Thank you.

15 JUDGE PEARSON: Thank you.

16 JUDGE CHARTOFF: Okay. Susan Babbitt.

17 MS. BABBITT: I'll say I agree with
18 Margaret. I was going to come and say the same
19 things.

20 JUDGE CHARTOFF: Okay. Thank you.

21 MS. BABBITT: I'll pass.

22 JUDGE CHARTOFF: Thank you.

23 Murray Bennett.

24 MR. BENNETT: I misunderstood what the
25 hearing was about, so I'd like to pass too if I could.

1 I support what's already been said.

2 JUDGE CHARTOFF: Teresa Anderson.

3 MS. ANDERSON: Hi. So it's Teresa,
4 T-E-R-E-S-A, Anderson with an S-O-N. And I'm
5 representing myself and my husband David Anderson and
6 our community of 39 homes. I live at 3947 Cliffside
7 Drive.

8 And like everyone in our community, we
9 misunderstood the purpose of this, so I agree with
10 what's been stated before and that we're in support of
11 what median the county is asking for. And the little
12 bit I read regarding discussion of barriers for the
13 Yacht Club Road, at that time it seemed like it was
14 important to the county to have a barrier that could
15 be removed if needed for paving. That's what they --
16 so thank you.

17 JUDGE CHARTOFF: Thank you.

18 Bert Webber.

19 MR. WEBER: My name is Bert Webber,
20 W-E-B-B-E-R, 3935 Cliffside Drive. Some years ago,
21 three or four years ago in wintertime, a Whatcom
22 County plow and sanding truck came over the railroad
23 tracks and slid off the side of the road. What I'm
24 trying to say there is both sides of the road there is
25 a dropoff that can cause vehicles to go down.

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1 It's been mentioned that large vehicles go in
2 and out of our community, big, big trucks, sanitary
3 trucks, trucks that belong to utility, fire trucks,
4 you name it. The biggest trucks that you can think of
5 come down that road. And I worry -- because I don't
6 have full understanding of what the concrete barrier
7 would be like, I'm worried about those times when a
8 truck needs to move a little bit to the center of the
9 road because the road is not all that wide.

10 And so anything that has flexibility that
11 allows vehicles to cross over in times of emergency is
12 something that is important to me and I think would be
13 to the rest of the community. Otherwise, I agree with
14 mostly everything that's been said already. Thank
15 you.

16 JUDGE CHARTOFF: Thank you.

17 Ray Poorman.

18 MR. POORMAN: Ray Poorman,
19 3905 Cliffside Drive, P-O-O-R-M-A-N. I agree with all
20 the neighborhood here. I've been here about four and
21 a half, five months, and I think whatever is the least
22 expensive that's going to make everybody happy,
23 whether it be composite or it be concrete, I'm totally
24 fine with I kind of figured because of the whole sound
25 neighborhood thing. Thanks.

1 JUDGE CHARTOFF: Thank you.

2 Is there anyone else who would like to speak
3 tonight?

4 Please step forward.

5 Did you take the oath earlier?

6 MR. ANDERSON: I didn't, but I will
7 now.

8 JUDGE CHARTOFF: Okay. Thank you.

9 Please raise your right hand. Do you swear or
10 affirm that the testimony you give today is the truth,
11 the whole truth, and nothing but the truth?

12 MR. ANDERSON: Yes, I do.

13 JUDGE CHARTOFF: Thank you.

14 Please state your name and spelling your last
15 name.

16 MR. ANDERSON: My name is David
17 Anderson, A-N-D-E-R-S-O-N, the same way my wife spells
18 it. We're at 3947 Cliffside Drive, have been there
19 for a little over 20 years now.

20 And, again, I was a little bit surprised, too,
21 by the format for what the topic of the conversation
22 is tonight, but one thing that came to my mind was
23 just after this recent snow, we had close to
24 12 inches, maybe more down there. I think it's
25 important whatever barrier system is in place that

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1 it's identifiable in heavy snow, that people don't end
2 up driving into the middle of that barrier and somehow
3 that is identified and safe for travel up and down.

4 Thank you.

5 JUDGE CHARTOFF: Thank you.

6 Is there anyone else who would like to speak?

7 All right. Thank you all for coming here
8 tonight. That's it. Thank you for your
9 participation. We are off the record.

10 (The proceedings concluded at
11 6:26 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF KING

I, Nancy M. Kottenstette, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the proceedings on March 5, 2019, is true and accurate to the best of my knowledge, skill, and ability.

I do further certify that I am a disinterested person in this cause of action; that I am not a relative of the attorneys for any of the parties.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 15th day of March, 2019.


Nancy M. Kottenstette, RPR, CCR 3377



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