



Chicago Title – North Carolina
www.northcarolina.ctic.com
www.pathlms.com/chicago-title

1

STAYING ON TRACK:

Legal Crossovers in Railroad Regulation and Land Use

2

Presenter



Robert B. Markworth
VP, Underwriting Counsel

Rob Markworth is a Vice President and State Underwriting Counsel for Chicago Title in the Durham and Raleigh offices. He received his undergraduate degree in 1990 from the University of North Carolina at Charlotte, his MA in Economics from Indiana University and his JD from the University of North Carolina at Chapel Hill. His prior experience in private practice includes a concentration in commercial real estate development and general corporate matters. He has been a member of the North Carolina State Bar since 1998.

3

**Brief History of Railroads
in the United States**

Use of a system of rails for transportation dates back centuries. These typically involved wooden tracks and animal power. Modern rail systems, characterized by the use of mechanical powered engines and metal tracks, originally developed in Great Britain and Europe beginning in the late 1700s and early 1800s. Such systems did not get their start in the United States until around 1830.

4

**Brief History of Railroads
in the United States**

Early rail systems were usually short lines with the express purpose of moving freight, be it coal in Pennsylvania, or agricultural crops in rural areas to nearby ports. As such, these lines operated independently and were not interconnected. Railroad networks began to develop in the Northeast and Midwest, connecting major population centers as well as providing access to agricultural suppliers. Development of rail systems continued in the period prior to the outbreak of the Civil War. This interconnected rail system proved beneficial during the Civil War for moving men and supplies more efficiently.

5

**Brief History of Railroads
in the United States**

Following the Civil War, railroads expanded at an ever-increasing pace. Rail lines in the Southern States were rebuilt and extended. Both passenger and freight traffic expanded to connect the industrial centers and agricultural centers to each other, and on to distant ports. This allowed most of the country to have ready access to shipping and transportation, the extent of which was not feasible when relying on stagecoaches or water transport, which only benefitted those near port cities and navigable waters. Access to railroads helped fuel the Industrial Revolution, westward expansion and many other developments that helped move the country into the 20th century.

6

History of Railroads in North Carolina

Development of railroads in North Carolina progressed in a similar fashion compared to the rest of the nation, beginning in the early 1830s. However, the pace of such development was considered slower, even when compared to neighboring states. Major development did not start until the passage of the North Carolina Railroad charter bill, and an initial pledge of \$2 million dollars of taxpayer funds towards development. Expansion of rail lines continued until the Civil War.

7

History of Railroads in North Carolina

Following the Civil War, the railroad system in North Carolina, like that across the Southern States, was in a terrible state. Funds to rebuild what had been destroyed required investment from the large financial centers, particularly those in the Northeast. The influx of money, along with standardization of rails on a national basis, led to a re-birth of rail development in the State. This allowed North Carolina to send its agricultural, and later manufacturing products out to national markets. Industries that benefitted greatly from railroad expansion were textiles, furniture and tobacco.

8

Power of the Railroads

Railroads in North Carolina, and across the United States were given tremendous power. There was a great need to connect major cities, settle new territory, and increase overall commerce by connecting manufacturing and agricultural production to national and global markets - feats which were not possible, or at least not economically feasible, prior to the development of the railroads. Railroads were the interstate highways and air transportation of their day. At a time when the county desperately needed expansion of the rail system, railroads were given unprecedented rights to acquire property, and tremendous freedom to determine where to establish their rail corridors.

9

The Rise of Power

At the same time as railroads were opening up the country for travel and commerce, railroads were also drivers of many other advances that continue to this day. These include changes in the way business entities are organized and financed, creation of new markets for goods and services, rise of cities, and technological advances.

Notable Achievements:

- Rise of a National Banking System to finance railroads
- Creation of fortunes for the likes of J. P. Morgan, Cornelius Vanderbilt, John D. Rockefeller, Andrew Carnegie and Jay Gould
- Industrywide standardization
- Accurate timekeeping

10

The Age of Government Regulation

Sherman Antitrust Act of 1890
Interstate Commerce Act of 1887
Hepburn Act of 1906, giving the ICC the ability to set maximum rates and review corporate financial records
Elkin Act of 1910, further extending the authority of the ICC over freight rates

By the 1890s the federal government began taking steps to reign in the corrupt practices of the railroads. These actions led to many of the laws that we still have in place today, which have been expanded over time to cover industries in addition to Railroads.

11

Downturn and Consolidation

The power railroads accumulated extended far beyond the mere acquisition of property. Questionable business practices and safety failures drew negative attention from competitors, the government and the general public. These pressures mounted until the government was forced to act. The need for standardization of freight rates, and safety measures brought about legislation to reign in the railroads. Over time these efforts led to consolidation in the railroad industry, and what was a system of many smaller regional railroads became a system dominated by fewer, larger and more powerful companies.

12

Downturn and Consolidation

Economic fluctuations, scandals, and further government regulation, helped to slow railroad growth. At the same time, the rise of motorized transportation and the establishment of roadways was becoming a viable and ever-growing alternative to railroads. Railroads became less profitable, and the regulatory environment cooled much of the excitement seen in the heyday of the railroads. Downturns in the fortunes of the railroads led to difficulties in obtaining financing, and many more railroads went out of business. This decline and additional rounds of consolidations has given us the system that we have today, with a small number of very large operators.

13

Why we care as Real Estate Practitioners

The history of railroads, while interesting to some, has an impact on us as real estate practitioners. The importance of the railroads in the development of the United States led to the railroads amassing great power and favor from both the federal government and state governments. In an effort to expedite expansion, railroads were granted great authority to acquire property and lay out their own rail corridors, generally one which was easiest, cheapest, and most profitable. Negotiations with individual landowners was not the norm. Railroads relied on specific grants from the State or the power of eminent domain to come in and take any property necessary for constructing their line. These practices have direct bearing on title issues involving railroad property.

14

Why we care as Real Estate Practitioners

Understanding the early formation of railroads can be helpful if the need to research title/ownership is beyond what is available in the registry. Acquisition of rights under a charter or the power of eminent domain usually means that there are no recorded instruments of title in the office of the Register of Deeds so source documents may not be available through a standard search of the registry. Other historical, legislative or corporate research may be needed to track down the origin of the authority of a given railroad. This can be further complicated by later mergers and consolidations within the industry that took over many of the smaller local and regional lines following their initial development.

15

What is the Width?

The age-old question that often comes up when dealing with rail corridors is the width of the corridor. There isn't always an easy answer to the question; and determining the true, legal width of a rail corridor can be more complicated than just looking at a current survey of the property, or recent plat purporting to show the width. The legal width of a rail corridor traces back to the original establishment of the corridor. As we will see, there is no one single way this was done, and finding original source documents isn't always easy.

16

Why 200 feet, and then down the rabbit hole

The issue of corridor width often comes up when dealing with properties on or along a corridor. Common instances when it arises

- Proposed Development and preparing site plans
- Existing encroachments
- Title Insurance

Two Hundred feet is the width given to a number of railroads, and as such, is considered the "safe" assumption unless contrary evidence is provided.

Not all railroads have a corridor as wide as 200 feet, but some evidence is required to rebut the presumption.

17

But I'm sure the corridor is only 65 feet along here

Evidence of corridor width:

1. Deed to/from the railroad referencing the width.
2. Map recorded by the railroad acknowledging the width.
3. Other record matters binding on the railroad where the width is acknowledged.
4. Tax maps, particularly older tax maps.
5. Aerial images. How does the corridor look on either side?

There are times when the 200-foot width is not the actual width of the corridor. The actual width can be substantiated by a number of means. Note that any evidence of an alternate width, particularly recorded evidence, should be binding on the railroad and not just mentioned by third parties.

18

Back to the Source

Tracing railroad rights back to the source is usually not a simple process. Many early railroads were created by charters issued by the State of North Carolina, or special legislative actions of the North Carolina Legislature. These grants gave broad powers to the railroads as to where they could locate their lines, and how they acquired property interests. There was no standard corridor width. Some grants were for the full width, or for so much of the land as may be occupied by the railroad. Many of the early charters for the larger operations granted the railroads the right to claim "up to 200 feet" for the establishment of their rail corridor.

19

Charter or Legislative Action

In order to find these original charters, it may be necessary to review legislative action from the 1800s, or search in the State Archives. These days much of the information can be located through online searches. The end of this presentation contains some helpful links, including a reference to a website that has compiled Legislative Acts related to railroads from 1831 through 2000. The website also includes a listing of most railroads that operated within the State of North Carolina, including dates of organization, and in some instances, information on the founding.

20

More Direct Options

The North Carolina Department of Transportation is another resource. There is a Division that deals with railroads and oversees railroad operations within the State. Contacting the rail operator directly may prove helpful. If you get to the right person, they can be very helpful. This is true for major carriers like the North Carolina Railroad Company, Norfolk Southern and CSX. The railroads themselves have extensive records. They may not always be the most cooperative or responsive, but if you get to the right person, they can be an invaluable resource.

21

Direct Acquisition from Landowners

Not all railroads were able to use such sweeping powers to acquire their rights. Many smaller, local railroads acquired property directly from the owners, either through fee purchase, conveyance without consideration (as the establishment of the railroad was a benefit to the landowner), easement or right-of-way. These documents, be it a Deed, Easement, Right-of-Way Agreement or Indenture, should be available in the registry. Most of these documents are old, many well over 100 years old, and if legible, should state both the nature and extent of the interest granted.

22

Eminent Domain

There are still other methods by which railroads acquired their interests, and these may be the most difficult to locate. Condemnation was one method of corridor acquisition. Most larger railroads chartered in North Carolina were granted the specific power of eminent domain. The charter may contain information on the extent of the power. Some specified the ability to acquire title in fee simple, and others merely to acquire an easement limited to railroad purposes. In addition to any provisions in the charter, any condemnation would be subject to the general statutes controlling at that time.

23

The Power of Eminent Domain

The power of eminent domain for a railroad is currently codified in:
N.C.G.S. §40A-3(4); and
N.C.G.S. §136-190(2) (formerly N.C.G.S. §62-220).

*Note that for older actions, different statutes may have applied.

The North Carolina Supreme Court has held that the acquisition under eminent domain, being an involuntary process, results in the acquisition of an easement for railroad purposes only and not a fee simple interest. *North Carolina State Hwy. Comm'n v. Farm Equip. Co.*, 281 N.C.459, 189 S.E. 2d 272 (1972). *Beach v. Wilmington & Weldon Railroad*, 120 N.C. 498, 263 S.E. 703 (1897). Locating documents for older condemnation actions, particularly those over a century old, can be all but impossible.

24

Nature of the Railroad Interest

Once the source document(s) are obtained, there is still the dilemma of determining what interest the railroad may have in the underlying property. It is important to read the language. Was title acquired in fee, or merely an easement? Sometimes the language is clear, and other times it is not. Sometimes the grant is for a right-of-way. What interest does a right-of-way confer?

- **Fee Simple** – the interest was acquired via a Deed from the landowner, or the source document is clear that title was taken in Fee.
- **Easement** – the interest acquired is clearly in the form of an easement, usually limited to use for railroad purposes only. Landowner retains fee title.
- **Right-of-Way** – the interest conveyed is dependent on the specific language.

25

What is a Right-of-Way (and what does it convey?)

- Once the source document(s) are obtained, there is still the dilemma of determining what interest the railroad has in the underlying property. It is important to read the language. Was title acquired in fee, or merely an easement? Sometimes the language is clear, and other times it is not. A third option is a grant for a right-of-way. What interest does a right-of-way confer?
- Right-of-way is a term that is commonly used to describe a rail corridor. In that capacity, it has a practical meaning that most people understand. What does the acquisition of a right-of-way mean in legal terms? There is no clear answer, as the term has been used for both fee simple interests and easements limited to use for railroad purposes. *McCotter v. Barnes*, 247 N.C. 480; 101 S.E.2d 330 (1958). As with most things railroad related, we are left to study the original documents to see if a particular meaning and interest can be determined.

26

What is a Right-of-Way?

Fee Simple

Depending on the language, a right-of-way may convey fee simple title. A Deed with language "sell and convey" to the railroad a described parcel, with a habendum clause that included "to have and to hold the same for railroad purposes in fee simple forever" was determined to create a fee simple interest and not an easement. *Craig v. Southern Ry. Co.*, 262 N.C. 538; 138 S.E.2d 35 (1964).

Easement

Alternatively, a right-of-way may convey merely an easement, or conditional use easement. The North Carolina Court of Appeals held that language in the conveyance of a "right and privilege" to construct a railway conveyed only an easement interest. *International Paper Co. v. Hufham*, 81 N.C. App. 606; 345 S.E.2d 231 (1986).

27

Legal Challenges

To further complicate matters, railroads have always been the subject of active litigation. Land claims and the character of the railroad's interest have been challenged in court numerous times. Width and location of rail corridors have been litigated, as have provisions of original charter documents. So, even if you are able to locate original documents, it is possible that along the way the Courts have stepped in to clarify or outright modify the original terms.

28

Spur Tracks

Up to now we have been discussing main rail corridors. Another subset of rail traffic is the spur track. Unlike a main rail corridor, a spur track is usually very limited in its length compared to the main corridor, and also privately owned. Spur tracks allow various parties along a main rail corridor to have on-site access to the rail network. Spur tracks connect a manufacturing or warehouse facility to the main rail corridor, which allows for the convenience of loading freight cars right at a facility's loading dock, after which the cars can be moved to the tracks on the main corridor and goods transported throughout the network.

29

Spur Tracks (cont.)

Parties wishing to construct a spur track would need to get the approval of the operator of the railroad to tie-in to the existing track. The railroad would need to acquire rights in the property over which the spur track would run. Acquisition of these rights could be via Deed, Easement, Lease or Right-of-Way. Many spur tracks came into existence after the initial chartering of a railroad and are usually easier to find during a standard title search.

30

Abandonment

Railroads may not have the same status that they did in the early 20th century, but railroads are still vital to interstate commerce and national defense. Railroads need to follow a federal process to abandon a rail line. Abandonment of a rail line has been under the control of the U.S. Surface Transportation Board since 1996. Requirements for the procedure are spelled out in 49 U.S.C. §10903-10906.

31

Abandonment

There is also an exempt procedure for abandonment set forth in 49 C.F.R. §1152-50(b), (c). The exempt procedure is available for lines that have seen no local traffic for at least 2 years, among other requirements.

Once satisfied in either instance, a railroad may abandon its line. Following abandonment, the railroad would dispose of its interest based upon the nature of its interest in the underlying land.

32

Abandonment

Fee Ownership:

If ownership is in fee simple, the railroad would be free to sell, lease, or otherwise encumber the property.

Easement Interest:

If the interest is an easement interest, property would revert to the adjoining landowners pursuant to the provisions of N.C.G.S. §1-44.2. The drawback here is that the Order of Abandonment issued by the U.S. Surface Transportation Board is not a document recorded in the local registry, so you would need to obtain a copy directly from the U.S. Surface Transportation Board to confirm abandonment.

33

Abandonment

For older rail corridors abandoned before the process was taken over by the Surface Transportation Board, abandonment is a simpler process. Under NCGS §1-44.1 a line is presumed to be abandoned if the tracks are removed and not replaced in whole or in part, for a period of seven (7) years after such removal, and the property is not otherwise used for railroad use. This would apply to a rail corridor formerly operating under an easement and not fee simple ownership. In the case of fee simple ownership, the railroad would continue to own the land within the rail corridor.

34

Conveyances from a Railroad

Land within a rail corridor is not the full extent of a railroad's property holdings. Railroads also own other parcels of land, normally adjacent to the rail corridor. These properties have been used for all types of related and ancillary services, like stations, storage, sidings, repair facilities and the like. Railroads occasionally sell or lease excess property that is no longer necessary for its operations.

- Title Search issues are still the same.
- Conveyances of a Fee Interest from a railroad is typically via a Quitclaim Deed.
- Be cautious of the potential for environmental issues when acquiring property formerly used for rail operations.

35

Additional Powers

Complete control on property held in fee simple.

Fee Owner may have some limited ability to utilize property within an easement, but such use must not interfere with the full and proper use of the easement by the railroad.

Parties can not adversely possess the interests of a railroad under N.C.G.S. §1-44.

When all else fails, railroads can always claim safety as a reason to exercise its rights.

Railroads are given a large amount of discretion in operating property under their control. Given that their operations are important to the flow of commerce, they can prohibit any activities that hinder their function. A separate, but equal concern is safety.

36

Kotis Associates, LLC, et al. v. The United States,
United States Court of Federal Claims
No. 20-932, Filed: April 23, 2025

Plaintiffs

- Kotis Associates, LLC
- Kotis Holdings, LLC
- Westover Terrace II, LLC

Each entity is controlled by
William Kotis

Defendant

- The United States

Other related parties:

- Norfolk Southern Railway
Company, former ROW Owner
- City of Greensboro, Sponsor

37

Kotis - Background

The Kotis case is a federal damages case arising in the United States Court of Federal Claims. The dispute involves the application of the Rails to Trails provisions of the National Trails System Act Amendments of 1983 (“Trails Act”). The case discusses in detail the procedures involved in converting an existing railroad right of way to trail use, and the subsequent rights of the parties involved.

38

Kotis - Background

The Plaintiffs in the case are three entities under the control of William Kotis, being Kotis Associates, LLC, Kotis Holdings, LLC and Westover Terrace II, LLC. Plaintiffs own property in the City of Greensboro that abutted an existing Norfolk Southern rail corridor. The City of Greensboro, under separate arrangements, had already acquired greenway easements for the Atlantic & Yadkin Greenway, 7.4 miles in length, and the Battleground Rail Trail, 1 mile in length. As this line was previously abandoned, the City was able to negotiate with the fee owners to obtain easements for the greenways. Because these greenway easements were free from any restrictions related to the railbanking provisions, the City was free to work with the adjoining landowners to develop the project in such a way as to benefit the economic interests of the adjoining landowners and make design changes to enhance the use of the adjoining properties.

39

Kotis - Background

Norfolk Southern operated a section of track 3.1 miles in length that directly abuts the Battleground Rail Trail to the south. This section was in place to serve a single customer. That customer ceased operations at their facility, leaving Norfolk Southern with no replacement customers. The City sought to acquire this section of corridor to add to its existing greenway. The City and the Plaintiffs anticipated that Norfolk Southern would abandon the corridor and the City would acquire a greenway easement from the property owners as had been done previously. This method of acquisition would give the City control of the greenway easement, including the ability to make design adjustments to facilitate development along the greenway easement. Mr. Kotis, through his entities, owned multiple properties along the proposed greenway easement, and believing in the economic benefits of the project, helped to organize support among other property owners along the proposed greenway easement, and invested his own funds in certain improvements.

40

Kotis – Greenway Acquisition

Post-Abandonment

- Simpler process.
- Railroad and STB are no longer involved. Corridor removed from the system.
- City would negotiate easement rights with each individual landowner to acquire easement rights.
- City would have operational flexibility.

Pre-Abandonment

- More complicated process.
- Railroad and the STB remain involved in the process.
- Easement rights negotiated with railroad but limited to the land within the corridor.
- Loss of operational flexibility.

41

Pre-Abandonment Process

- Only available when the interest of the railroad is a dominant easement. Not fee ownership.
- Process begins with the filing of a Notice of Exemption.
- Sponsor may step in (20 days) and file a petition for interim trail use.
- If the Railroad agrees to negotiate with the sponsor, the STB issues a Notice of Interim Trail Use ("NITU").
- Terms for a final interim trail use and railbanking easement ("ITUR") are searched and easement executed.

The process is instituted by the railroad as an abandonment. If a sponsor steps up, the abandonment is stayed and the easement negotiation process takes place. The railroad only has an easement for rail use, so conversion of the easement to interim trail use is in effect a condemnation under control of the STB.

42

Kotis – Damages to Plaintiffs

As mentioned, Plaintiffs owned many tracts along the rail corridor. Most had existing improvements located on them, and there were plans for future development to obtain the highest and best use of the tracts. Following the ITUR, Plaintiffs contacted the City about some existing encroachments and plans for future development. The City, as sponsor under the ITUR, was unwilling to give assurances to Plaintiffs that their existing encroachments would not be disturbed in the future, and that future development within the corridor would not be allowed. This impacted a number of proposed developments, but one in particular, a Publix supermarket.

43

Kotis – Back to STB

The terms of the ITUR had been set and were tied to the initial maps/plans filed by the City as part of its initial petition for interim trail use. It was stated that the width of the corridor varied from 50 feet to 200 feet along its width. It isn't clear if the measurements were accurate for the entire length; but regardless, the boundaries of the corridor set forth in the ITUR clearly impacted potential development of the Plaintiffs' properties. Mr. Kotis, on behalf of the Plaintiffs, sought relief, but lacked standing to pursue a revision to the ITUR. It fell upon the City to pursue the revision of the ITUR to facilitate the proposed development, particularly the Publix site. The City petitioned the STB to alter the terms of the ITUR in that location. The request was denied, as it was determined by the STB that the portion of the corridor at issue could be needed for future railroad use.

44

Kotis – Final Decision

The case came down to the issue of damages sustained by the Plaintiff for the diminution of value for his property based on the taking. The Court reasoned that the proper differential was the value of the property unencumbered by the ITUR, as would have existed if the corridor had been abandoned, and that of the property encumbered by the ITUR. The Court reasoned that Norfolk Southern would have abandoned the corridor for economic reasons but for the application of the Rails to Trails process. In that instance the City would have acquired rights in the greenway from the individual landowners and would have worked with the Plaintiffs in a manner that maximized the economic value of the affected property. The Court awarded Plaintiffs the sum of \$42,641,740.00, with interest.

45

Kotis – Additional Issues

For those that may be interested outside of the real estate issues raised in Kotis, there were a few other procedural issues that were decided.

- Expert Testimony on valuation
- Prohibiting certain witnesses, primarily the Real Estate person from Norfolk Southern

46

RAILS TO TRAILS

Considerations:

- Interest of represented party
 - Fee Owner
 - Sponsor
 - Adjoining Landowner
 - Railroad
- Existing, or proposed trail
- Existing encroachments
- Planned Development Issues

As seen in Kotis, it is important to understand the process by which the trail was acquired or will be acquired. This has implications for those of you who may encounter issues with property along a rail corridor, and the varied interests of the parties you represent.

47

Closing Thoughts

- What is the purpose of your search? (ie. Corridor Width, fee ownership, nature of railroad's interest)
- Who is the current operator? Original Operator, if different?
- Does a search of the registry bring up any source documents, or other document binding on the railroad?
- If the search requires information outside the registry, is it available?
- Once source documents are in hand, what do they say regarding the interest or estate?
- Have there been any legal proceedings that alter the original source documents?

48

Helpful Links

1. North Carolina Department of Transportation – Rail Division
NCDOT: Rail Division
2. Norfolk Southern Railway
NS | Norfolk Southern
3. CSX
CSX rail, intermodal and rail-to-truck transload services - CSX.com
4. North Carolina Railroad Company
Homepage - North Carolina Railroad Company
5. Carolana.com
North Carolina - Railroads

49

THANK YOU!

If you have any question, please feel free to contact me directly:

Rob Markworth
(919) 907-7009
rob.markworth@ctt.com

50
