

June 17, 2020 BC Commissioner Meeting: transcript of audio record

1. mm Mike Magner, BC Hwy, Superintendent
2. db Dianna Biddle, BC Commissioner
3. vs Veronica Schilb, Attorney with B&T. Standing in for BC County Counsel Lauren Box.
4. rh Rick Hoke
5. ls Laura Shuck
6. jp Jerry Pittman, President BC Commissioners.

Hwy. Superintendant Magner reporting up until [0:29:54] on other hwy issues.

[0:29:55]

[mm] , ... and I know there have been some calls about a project that's been in the works for a long time which we talked about a little bit at the last meeting. I don't have a lot of details other than that the Indiana Railroad is working on the closure for Indian Hill ... uhh ... which was a thing that they petitioned the county and with the state for approval and there's also a big push that just came out last week or so from the Feds in Washington to do some major reworking of what they classify as unsafe railroad crossings on county roads and they are going to close a bunch more of them.

[0:30:33]

So, it won't affect us ... should not affect us on any other crossings in the county, but at ones with sight distance issues or clearance problems - uhh - this one had both vertical and horizontal sight distance problems, plus being very low volume - uhh - from what I've heard there are alot of people complaining now, but they're not people that actually live on the road,

[0:30:57]

so we're trying to work with those people. We're also working with [a] Tecumseh Trail people to install a pedestrian crossing, which is allowed much more so than a vehicular crossing, and ... uhh ... I don't have any more details on that at this point but we'll be working towards that. I can update you at the next meeting. So, other than that, unless questioners have a question ...

[0:31:17]

[db] Do you have a question? Veronica you're on ... Veronica you're on...

[male voice] [dial in] interrupts: I have a question. I have a question. Hello. I have a question. Hello.

[female voice] [dial in] I have a question.

[db] Veronica, you're on the line, correct? I know Lauren was handling the railroad closure.

[0:31:37]

[male voice] [dial in] I have a question, also.

[female voice] [dial in] I have a question too.

[db] Yes. Thank you. You'll be recognized at the appropriate time.
[0:31:55]

[male voice] [dial in] Thank you.

[female voice] [dial in] Thank you.

[0:32:00]

[db] So, Veronica, do you have anything from Lauren [Attorney Lauren Box] on that crossing document?

[vs] So, like you said, Lauren was handling this. I apologize she couldn't be here for this meeting. Umm, I can just generally describe ... Sorry, was the question ... the question about .umm.. speak specifically to the notice issue?

[db] Yes, I think that's the issue that ... umm ... that we're dealing with is the notice issue.

[vs] Yeah, okay, we did speak briefly before the meeting so I can describe this kind of on a high level, and then if anyone ... umm ... you know, needs a more detailed explanation then I'd be happy to follow up with that, or ...
[0:32:44]

[db] If anyone needs more detail then we would ask that you put that in writing and send to it the Commissioner's email at Commissioners@browncounty-in.us.

[vs] Yeah, ... umm .. so the way that this was handled ... my understanding is that because the county and the railroad came to an agreement, umm, about the crossing, no public hearing was required. Umm, so, the ... the agreement was executed and then also discussed at a Commissioners meeting ... ummm ... I also believe there was no legal requirement to give notice ... but that notice that not required. That's my understanding.
[0:33:40]

[db] And I guess that was my, I guess that's what I read ... I read the actual ...umm... statute, and the statute that governs this road closure is not a County road statute. Ummm, and the Commissioners were not the ones who initiated the closure, it was Indiana Railroad who initiated the closure. Ummm ... so ...umm ... because they initiated the closure over a year ago, which I
[0:34:15]

[db] I didn't get a copy ... I didn't get a letter that they indicated ... Mike ... May of 2019?

[mm] (indistinct in background)

[db] That was when they first brought it up, but ... but they did not come through the Commissioners. You didn't get anything.

[mm] ... we had phone conversations, but they did not officially petition until this year.

[db] Right, so, all we had was a phone conversation and then they petitioned this year.
[0:34:40]

[db] Umm, in I guess late March early April. So, umm, that was what precipitated the closure. The closure umm .. like uh Veronica said ... the closure was based more on the fact that that crossing does not meet any guidelines in terms of sight distance for the railroad track.

So, umm, Lauren was looking into ... umm ... she was looking into something with the actual railroad company. But this actually came to us, not to the Commissioners directly, but umm ... Indiana Railroad reached out to our Attorneys, and the Attorneys – they brought us the information.

So, Mr. Hoke, you have a question?
[0:35:40]

[rh] Yes. I'm pretty disappointed in how this has all went down. I understand the goals and all that. I just ...my big thing is I would have liked to at least been asked about it. But, my question is I understand there's some monies that are coming out of this from the Indiana Railroad. And, how are those monies to be used on Indian Hill? If so?

[db] So there was a settlement, and on the settlement agreement Indiana Railroad paid the County \$3,700. And that, I believe, is specifically for ... umm ... specifically for signage,umm ... barricades, and expenses that we incur in order to close or re-sign the portions of the County's road that are not under the railroad's easement. Is that correct, Mike?

[mm] Yes. We can also use it for regular maintenance, too.

[db] So you use it for regular maintenance, but the entirety of that total \$3,700 will be spent on Indian Hill Road.
[0:36:58]

[rh] Okay, like for signage that makes sense ... that makes sense.

[db] I would imagine there will be a few concrete barriers placed at SR-45, ummm, so that people are not driving down there with no place to turn around. We are already having some trespassing issues. I was alerted late last night and early this morning by a property owner that people were trespassing on their property to get back to the railroad crossing. So, it is not okay to park on the road and walk back there.

The County will determine in the future if we are actually going to vacate that section of road. If we would do that, we would reserve an easement for the Tecumseh Trail so they could continue to use that as a trail to go back there. And I believe that ...

[0:38:01]

[rh] (interrupts) There's also ..

[db] Rick?

[rh] There's also a piece of property right there, by the ... on the other side of the bridge there. I don't know how that you would get to that property. I don't know if there is another easement to it or not.

[dB] Is that the Sycamore Land Trust?

[rh] On the railroad track side.

[db] On the railroad track side? Is that the Sycamore Land Trust Property?

[rh] No, I ... it may be, I don't know, but on the railroad track side of the bridge there's a ... there's some property over there that runs along that side of the river and touches the railroad track. I don't know if they farm that or what they do back in there but there's property there.

[db] I think there is. Mike's looking into that to make sure that that person had another farm ... I think there's a farm field entrance over there, ... ummm ... so Mike ...

[rh] Yeah, some entrance.

[db] Okay. Alright, Mr Hoke, if you have anything else if you wouldn't mind emailing that to the Commissioners that would be great and we'll respond. Okay?

[rh] Okay. Thank you very much.

[db] Thank you. Mrs. Shuck?

[ls] Shuck. Thank you. I've lived on Indian Hill for a little more than 35 years, and you may not have had a legal obligation to notify the residents, but since we are your constituents it doesn't seem fair that we learned about it in the newspaper. I just happened to randomly find this out. So, that's just a comment. I wonder how Jennifer Ruff, who lives at the bottom of the hill, is expected to get out in the winter time, and whether any of you on the Board – I'm sure Mr. Magner has – have gone up and down the hill in the winter time?

[db] First of all, yes I have. Umm, my daughter's used to ... oh gosh it's been a while ... We used to go back ... we had a babysitter that lived back there, so yes I am familiar with that road.

[ls] On a snowy day?
[0:40:22]

[db] Yeah, in snow. Usually when it's ice or snow we go around the long way.

[ls] Ummm. Well, you're braver than I am, because I've live there 35 years and we had problems with that and I would not put my family in danger of going up that in snow.

[db] So, I'm sure that Mike will be reaching out to her. Certainly if DNR is successful in getting a pedestrian crossing across that railroad track then there might be ... she could work something out on the other side of the track. I don't know. We'll see what we can do to accomodate her if the weather is poor.

[ls] Well, I am concerned because I feel that she has lost like probably at least 50% of the value of her property because in this move, and she wasn't even told about it until she saw it in the newspaper.

[db] Right.

[ls] So do you guys not notify people unless it's legally required?

[db] We do if we are the ones taking the action. But we were not ... the Commissioners were not the ones taking the action ...

[ls] But you did sign off on it, didn't you?

[db] Weeee.... The action ,,,

[ls] And it's been in conversation for like more than a year!

[db] Oh, it's been in conversation for 10 or 20 years. Ummm, it's been talked about over the years because the crossing does not meet any requirements. Umm ...

[ls] Have there been any accidents there?

[db] But the, ummm ... the person who initiated was Indiana Railroad, and generally the person who initiates is the person who provides notice. Correct, Veronica? The person that initiates action is the ...

[ls] Okay, so you're saying that unless you're legally required you do not notify anybody? Just out of courtesy?

[db] Honestly Laura, I was under the mistaken assumption that the railroad had done the notification. So, ummm, I think we all were. So, umm, we did not find out until later, as you did, that some people were not notified. So we are working ... (interrupted)

[ls] All people have not been notified, and Mr. Magner there are two people that live on the road that are at present in this meeting now. And since it's the afternoon alot of people are at work. So, everybody on the road is concerned about this, whether they are at this meeting or not. I just want to make that clear.

[db] Sure. Thank you.

[ls] Thank you.

[db] And, umm, Laura, if you've got other concerns you can likewise address those to the Commissioners email and we'll respond to those.

[ls] Thank you.

[db] Okay. Ummm ...

[jp] In reference to this matter, when it cam before us ... last meeting ... meeting before last ... ummm, I likewise assumed that the railroad had made notification and there was no one here to object or discuss or have any questions about it. And, so that why I voted in favor of moving forward with it. I had no idea that there was a possibility that people had not been notified.

[0:43:50]

[db] And the other issue with that Jerry, is while the railroad did notify us and did ask us to ...umm... sign off on it, they were not required to do so. They could have closed this crossing without our consent – and they would have closed this crossing without our consent. So, umm, because that was the ...umm... issue that was brought to us, we really didn't have ...umm... we really didn't have much of a choice in the matter.

[jp] I certainly don't agree with that, whether it was required legally or not. They should have notified all the affected parties in that area and I certainly would not have acted on it had I had any idea that they had not been notified, uhh, and I think that every entity, whether it be governmental or private, has a responsibility to notify people when they are taking actions that affect those persons and their property. Whether it is legally required of not is a moot point – it's ... only common sense would tell you that you wouldn't do this without giving people an opportunity to redress the situation, so, I'm upset as much as anybody how this turned out. And, my apologies for any lack on our part. But, that's the assumptions I acted on, and so here we are.

[0:45:30]

[rf] Were any ... this is Ron Fleetwood ... was the Post Office notified? I've already heard from people who said the couldn't get over the bridge so they couldn't get their mail 'cause they didn't know it. How about emergency services? Have they been notified?

[db] Emergency services has been notified, and just my understanding in terms of emergency services, Ron, is that emergency vehicles would not go across that crossing anyway because of the rise and fall of the approaches. Fire trucks would actually probably get hung up on that railroad crossing, and ambulances too. So, it was not a practice for them to use that crossing anyway.

[rf] Well, they may have a little trouble getting up and down that hill and have to go the long way around an other time of year when it is bad weather.

[db] Right, and that's their normal approach anyway. I talked to someone who drives one of the ambulances, and he said that as a rule they would not go across that crossing. Because they could get hung up ... and then that turn-around after the slab ... So, that was not something that they would ... that was not their preference to go that direction.

[rf] Well, I also have a couple of other questions ... if you would like to wait for later ... for Mr. Magner ... until you get through this ... particular issue.

[db] Okay.

[female voice] I have a question.

[db] Okay. I'm not sure who that was

[IHR landowner] I'm sorry – I have my video turned off for better bandwidth. I am a land owner on Indian Hill Road. We too are upset that we were not notified. It just seems ... ummm ... I guess careless on both parties account that nobody checked into that. However, that's gone and it sounds like a settlement has been reached. However, has anybody looked into repairing that road, or what it would take to bring that crossing up to code. Ummm, I mean ...

[db] It has been looked at in the past. To bring that crossing and the entire grade up to code would require the intervention of IDEM, the floodway maps (because it involves a creek), ...

[IHR landowner] Yeah, I mean those projects happen all the time across the state. People get permits to work in the floodway and the right-of-way; it's just a matter of working through those processes and getting that engineered the correct way, and getting the proper permits. But those things can be done – that's not just a stop-order and then we're done. So, has anybody ... has an engineer looked at this and decided, you know, these are A, B, and C options of what can happen? I mean, look at the town of Columbus. Hell, they are building an overpass over their railroad for a safety conflict ...

[0:48:56]

[db] The municipality of Columbus, and the municipality of Bartholomew County, is not paying for that. The State is paying for that. This is on a County road so the County would have to pay for that kind of constuction.

[IHR landowner] Sure. Understood. That's understood. I guess I'm not asking for that kind of elaborate construction project, but would like to know that there's been some discussion on what the other possibilities are – not just saying no!, we're not going to open that can of worms – we're just going to close that end of the road.

[db] Because it involves a railroad, I know Indiana RR has looked at it. We have not spent engineering dollars to look at it just due to the financials, but if you can give me a week or two I can get you an engineering

answer.

[IHR landowner] Okay. That'd be great.

[db] Just send us an email and I'll respond to that.

[IHR landowner] Okay. Thank you.

[0:50:03]

[db] Thank you.

[jp] Actually, Dianna, that's kind of a joint project there in Columbus. States paying for a large part of it, but Cummins Engine Company chipped in on it. The Count chipped some in. The City and the railroad all chipped some in on it. But the State's paying the lions share of it as part of the Next Level Program.

[db] Yeah, \$35 million. Write myself a note ... We are still discussing the railroad crossing. So, are we ready to discuss some other things we need to get to?

[jp] Are there any further questions about the railroad crossing issue?

[ls] Can I make one more point?

[db] Yes.

[ls] That road – I mean, you may have taken in the snow. I can remember years ago getting hung up on that ... that ... you couldn't get a tow vehicle to get to it. It's ... so my concern here, beyond whether it is convenient or anything, is for Jennifer Ruff and her family which includes two small children. They will not ... if we have a snowy winter they will be trapped down there, and so I feel that because we didn't get notice that ... ugh ... we didn't have any opportunity to talk to the railroad and she may have been able to extract some sort of concessions from them at that point. Since it is already torn out I don't know if that is a choice. I disagree with you that that is passable in the winter time. So, that is all I wanted to say. Thank you.

[0:52:08]

[db] Thank you.

[jp] Just to keep everything in perspective, and not to minimize – in any way, shape, or form – the harm or inconvenience this situation causes, but we do live in Brown County, and if you live more than a short distance from the state highway you probably have some kind of hill to go up or down to get in or out. And they're all dangerous.

[IHR landowner] This one is exceptionally so.

[**unknown voice**] It is. You can be going up to the top of the hill and if your motor's not good enough you're going to be backing your way down the hill.

[**IHR landowner**] It has two twists.

[**db**] I have actually seen that happening. It was doable in an old Suburban that I had.

[**rh**] I guess the thing that bothers me – yah, I just got one comment – it just bothers me that the railroad can basically close down a County road. I just don't understand that, but, I guess it is what it is.

[**db**] And Mr, Hoke, I don't understand it either but it is a “thing”, and as we're finding out they don't necessarily have to ask anyone's permission.

[**rh**] Thank you all very much for at least listening to us. We sure do appreciate it.

[**db**] Absolutely. Absolutely. If you have any further questions I think the best response at this point would be to send your questions to us and we try to get you any answers that we can. Okay?

[**rh**] Thank you so very much. With that I'll leave.

[**jp**] Thank you all, yes thank you for being civil. I appreciate that very much.

[**0:54:14**]

End of RR crossing discussion.