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1 BEFORE THE ARIZONA CORPORATION

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3 IN THE MATTER OF THE APPLICATION OF)
4 THE TOWN OF QUEEN CREEK, ARIZONA TO)
5 CONSTRUCT A GRADE SEPARATED)
6 CROSSING OF THE UNION PACIFIC)
7 RAILROAD AT ELLSWORTH LOOP ROAD IN)
8 MARICOPA COUNTY, ARIZONA, AAR/DOT)
9 NO. 924-248-P.)

DOCKET NO.
RR-03639A-07-0351

EVIDENTIARY
HEARING

8

9 At: Phoenix, Arizona

10 Date: August 7, 2007

11 Filed: AUG - 8 2007

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17 NO. DESCRIPTION IDENTIFIED ADMITTED

18 T-1 Union Pacific Railroad 28 33
19 Roadway Crossing Map dated
July 2007

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 100 of
4 said Commission, 1200 West Washington Street, Phoenix,
5 Arizona, commencing at 9:30 a.m., on the 7th day of
6 August, 2007.

7

8 BEFORE: MARC STERN, Administrative Law Judge

9

10 APPEARANCES:

11 For the Arizona Corporation Commission Staff:

12 Mr. Charles Hains
13 Staff Attorney, Legal Division
14 1200 West Washington Street
15 Phoenix, Arizona 85007

16 For the Town of Queen Creek:

17 MARISCAL, WEEKS, McINTYRE & FRIEDLANDER, P.A.
18 By Mr. Clifford L. Mattice
19 2901 North Central Avenue, Suite 200
20 Phoenix, Arizona 85012

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KATE E. BAUMGARTH, RPR
Certified Reporter
Certificate No. 50582

1 ALJ STERN: Okay. Let's go on the record.

2 This hearing is open in the matter of the
3 application of the Town of Queen Creek, Arizona to
4 construct a grade separated crossing of the Union Pacific
5 Railroad at Ellsworth Loop Road in Maricopa County,
6 Arizona, AAR/DOT No. 924-248-P in Docket No.
7 RR-03639A-07-0351.

8 My name is Marc Stern. I will preside over this
9 proceeding today and render a Recommended Opinion and
10 Order to the Commission for final disposition.

11 At this time we will take appearances. And on
12 behalf of the applicant here, the Town of Queen Creek?

13 MR. MATTICE: Thank you, Your Honor.
14 Clifford Mattice from Mariscal Weeks, 2901 North Central
15 Avenue, on behalf of the Town of Queen Creek.

16 ALJ STERN: And on behalf of the Commission's
17 safety division?

18 MR. HAINS: Thank you and good morning, Your
19 Honor. Charles Hains on behalf of the Commission Staff.

20 ALJ STERN: All right. And I will note for the
21 record -- Mr. Sims, you are here, not being an active
22 participant, I assume.

23 MR. SIMS: That's correct, Your Honor.

24 ALJ STERN: Okay. Before we proceed any further,
25 does the Town or any people here wish to make public

1 comment? That is not testimony under oath; it's just
2 commenting on the application and its merits or its
3 shortcomings or whatever. So does anyone wish to do that?

4 MR. MATTICE: Well, Judge, I would like to
5 acknowledge that we do have a council member from the
6 Town, and if -- you know, she would like to make a few
7 statements about the downtown core and some of the
8 arrangements with Ellsworth Road, if that is appropriate,
9 in a very brief fashion.

10 ALJ STERN: That's fine. She can just stand up
11 there and state her name and what her comments are.

12 MS. VALENZUELA: My name is Toni Valenzuela. I'm
13 on the Town Council. I have been on the council for 16
14 years and I am also a business owner.

15 ALJ STERN: And what comments did you want to
16 make about this improvement to the area, ma'am?

17 MS. VALENZUELA: Well, I'm just worried about
18 closing Ellsworth Road where my business is at -- I have
19 been there for 31 years -- and how the Town is trying to
20 fix the roads. But the close of the existing Ellsworth
21 Road, all that will probably fall through.

22 ALJ STERN: I believe, if I recall correctly from
23 reviewing the Staff's memorandum in this matter, and I
24 believe it's the position of the Town, that they both are
25 recommending against doing that. So I think the

1 Commission would probably follow those directions. And
2 Staff, I assume they will go along with the Town's wishes
3 on that.

4 MS. VALENZUELA: So do I.

5 ALJ STERN: Okay. You have been in business on
6 that road for 31 years?

7 MS. VALENZUELA: Yes.

8 ALJ STERN: What business is that?

9 MS. VALENZUELA: Rudy's Restaurant, the best
10 restaurant in Queen Creek.

11 ALJ STERN: Okay. Anything else that you wish to
12 add, ma'am?

13 MS. VALENZUELA: I hope they don't close it.
14 That's all.

15 ALJ STERN: Okay. Anything else you want to have
16 added, Mr. Mattice?

17 MR. MATTICE: No, thank you. That is it for
18 public comment. Thank you, Judge.

19 ALJ STERN: Mr. Hains, any opening comment at
20 all?

21 MR. HAINS: No. Thank you, Your Honor.

22 ALJ STERN: Do you want to call your witness?

23 MR. HAINS: Yes. Thank you, Your Honor. Staff
24 would like to call Mr. Chris Watson to the stand.

25 ALJ STERN: Mr. Watson, will you come forward and

1 be sworn in.

2

3

CHRIS WATSON,

4 called as a witness herein by Staff, having been first

5 duly sworn, was examined and testified as follows:

6

7

DIRECT EXAMINATION

8

9 BY MR. HAINS:

10 Q. Good morning, Mr. Watson.

11 A. Good morning.

12 Q. Could you please give your full name and place of
13 business for the record?

14 A. Chris Watson. I work for the Arizona Corporation
15 Commission Railroad Safety Section.

16 Q. And could you please give your position and
17 duties with the Commission?

18 A. I'm the grade crossing inspector for the State
19 and also the assistant supervisor for the Safety Division.

20 Q. And in the course of your duties were you
21 assigned to evaluate the current application?

22 A. I was.

23 Q. And do you have up there what has been marked as
24 Exhibit S-1?

25 A. Yes.

1 Q. And could you describe what that is for the
2 record?

3 A. S-1 is a Staff memorandum, Staff report that I
4 put together on this particular case.

5 Q. If you were called upon to discuss the material
6 inside the Staff memorandum, would your answers be the
7 same as what are found inside the Staff report?

8 A. They would.

9 Q. Do you adopt the Staff report as your sworn
10 testimony here today?

11 A. Yes.

12 Q. Do you have any changes, modifications or
13 corrections you would like to make at this time?

14 A. No.

15 Q. Mr. Watson, could I ask you to describe the
16 crossing?

17 A. Well, it's actually -- there is not a crossing.
18 It's going to be a brand-new structure underpass. There
19 is an existing crossing, the Ellsworth's crossing about a
20 quarter mile away. That is the crossing that, I guess,
21 was in question of being closed. The Town wishes to keep
22 it open. We support that. It has lights and gates and a
23 concrete crossing surface on it. And our records and the
24 Federal Railroad Administration records show no accidents
25 at that particular crossing.

1 Q. And do you know what the purposes were for
2 seeking a grade separation at the location?

3 A. Traffic congestion, I believe, is the major
4 concern there. I believe the current Ellsworth Road has
5 about 20,000 vehicles on it per day, and the Town is
6 predicting to take about 90 percent of that traffic off of
7 that particular arterial road with the Ellsworth
8 underpass.

9 Q. Has the Town provided you any information
10 regarding access to schools or emergency services that
11 would be affected by the introduction of the underpass?

12 A. They have. It's in the Staff report.

13 There are several schools within that area; I
14 believe four elementary schools, a middle school as well
15 as a high school.

16 And the Town of Queen Creek's bus, I guess garage
17 is what you would call it, is right on the corner of
18 Ellsworth and where the Union Pacific railroad tracks come
19 together. We were out there last week visually looking at
20 it, and I can understand why they would want to keep it
21 open.

22 Also they provided us with statistics about --
23 with about 200 bus trips across that crossing per day with
24 and without students.

25 Q. Going to that point of the school buses and when

1 you said you could see why they would want to keep it
2 open, is it your understanding, that even with the
3 underpass that is going in, that the Town of Queen
4 Creek -- or rather the school district is going to
5 continue to rely on the existing at-grade crossing?

6 A. That's correct. Even with the underpass, the
7 busses would have to go considerably out of their way to
8 get -- pick up the kids, deliver them to school and to get
9 back to the location of their bus depot.

10 Q. So would it be correct to say that the decision
11 to shift to the grade separation at the one crossing -- or
12 at the grade separation that we are discussing was driven
13 by convenience, and other factors aside, not related to
14 safety?

15 A. Yep.

16 Q. For the grade separation, are you aware of how it
17 is being paid for?

18 A. It's my understanding it's been paid out of
19 bonds, paid back through several businesses that are
20 around the grade separation that is being built. And I
21 have it somewhere.

22 Vestar, Westcor, DeRito Partners, Mid-First Bank
23 as well the Town of Queen Creek are some of the partners
24 paying for the bonds.

25 Q. Do you have any idea of approximately how much

1 the project is supposed to cost?

2 A. \$54 million.

3 Q. Do you know if any State or Federal money was
4 used?

5 A. I don't believe it has been.

6 Q. Do you know if any railroad money has been used
7 to contribute to the project?

8 A. No, no railroad money. There were talks of the
9 railroad paying. The railroad wanted existing Ellsworth
10 Road closed in order for them to contribute. It's my
11 understanding the Town of Queen Creek is choosing not to
12 close that road; therefore, the railroad decided not to
13 contribute.

14 Q. Does Staff have any position on the
15 appropriateness of the allocation of the cost?

16 A. No.

17 Q. Okay. Would it be accurate to say that Staff's
18 position is based on the fact that the Town has already
19 committed to paying it the way that it is?

20 A. Yes.

21 Q. Do you believe that the application as presented
22 is consistent with the public interest in this grade
23 separation?

24 A. I do. I think that public safety is well looked
25 at in this particular application.

1 Q Okay. Do you have anything that you would like
2 to add at this time?

3 A No.

4 MR. HAINS: Okay. Thank you.

5 Your Honor, I would like to move now for the
6 admission of Exhibit S-1.

7 ALJ STERN: Okay. Any objections?

8 MR. MATTICE: No objections.

9 ALJ STERN: No objections. Exhibit S-1 is
10 admitted.

11 MR. HAINS: Okay. And Mr. Watson is now
12 available for questions.

13 ALJ STERN: Any questions of this witness,
14 Mr. Mattice?

15 MR. MATTICE: I have no questions.

16 ALJ STERN: All right. I have a couple questions
17 for you, Mr. Watson.

18

19

EXAMINATION

20

21 BY ALJ STERN:

22 Q In looking at the map that is sort of attached to
23 the application -- and I think you have attached a copy of
24 it also to your report -- if I understand this photo
25 survey correctly, the main center of old Queen Creek or

1 Queen Creek, I guess today, is where Ellsworth meets -- is
2 it Ocotillo Road? Is that sort of the center area of the
3 town or is it further north there up by where the tracks
4 are crossed on Ellsworth?

5 A. Probably the Town would be able to answer that
6 better.

7 It would be my understanding that the part that's
8 north of the tracks, I think, is the newer part. There
9 are some schools up there, and that is where the bus depot
10 is. A lot of the businesses, I think, are south of where
11 you are looking right there.

12 Q. South of Ocotillo --

13 A. Right.

14 Q. -- And Ellsworth. So going down further towards
15 Chandler Heights Boulevard, which is the south end of the
16 map?

17 A. Correct.

18 Q. When you mentioned the amount of \$54 million in
19 bonding that is going to pay the costs of this grade
20 separation, is that for the grade separation crossing
21 itself or the whole loop?

22 A. I believe that is just for the separation part of
23 the project.

24 The grade separation is part of a bigger project
25 that Queen Creek is doing right now, and I believe that

1 \$54 million is just designated for that underpass.

2 Q Well, we will ask Mr. Schaner when he is on the
3 stand.

4 But as far as that goes, in terms of whatever
5 amount is being paid for the grade separation, that is --
6 no funding is coming from the Federal government or from
7 the State of Arizona, the Corporation Commission, ADOT or
8 anything like that?

9 A That's correct.

10 Q And the primary movers behind this bonding, I
11 think it is your testimony based on the Staff report --
12 somewhere in here you mention -- what page is that on?

13 A I think it's on page 2, second paragraph.

14 Q Page 2, second paragraph.

15 Okay. Now, there has been a written -- the
16 Ellsworth Loop/Rittenhouse Road Improvement District has
17 been formed -- and somewhere in here -- by major property
18 owners including Westcor, DeRito Partners, Mid-First Bank
19 as well as the Town. And the bonds are going to be paid
20 against assessments against the property.

21 So primarily it's my understanding from reviewing
22 your Staff report, it's saying that large property owners
23 will be paying a large portion of this funding; is that
24 right?

25 A That is my understanding.

1 Q. And this Ellsworth Loop is going to run just to
2 the west? Approximately what is that, about half a mile
3 west of the existing Ellsworth Road area?

4 A. Yeah, it's about a quarter mile, I believe.

5 Q. A quarter mile?

6 A. It's not very far at all.

7 Q. And that will alleviate the bottleneck or
8 congestion on the main part of Ellsworth where it comes up
9 from Pinal County; is that correct?

10 A. That's correct.

11 Q. And the existing crossing, if I understand your
12 testimony correctly this morning, is effectively a safe
13 crossing; you haven't had any problems with it at all?

14 A. That's correct. Our database shows no accidents
15 or injuries as well as the FRA database.

16 Q. How long has that crossing been in existence; do
17 you know?

18 A. I think -- I don't know for sure. I believe it's
19 been there since -- early '70s would be my guess.

20 Q. Okay. And at present is a crossing surface that
21 has automatic gates and lights; is that correct?

22 A. That's correct.

23 Q. Flashing lights.

24 And how many lanes in each direction is at
25 Ellsworth Road?

1 A. It's two lanes right now, I believe.

2 Q. One lane each way?

3 A. Yes.

4 ALJ STERN: I don't have any other questions for
5 you at this point.

6 Any redirect?

7 MR. HAINS: No. Thank you, Your Honor.

8 ALJ STERN: Okay. Thanks, Mr. Watson.

9 And, Mr. Mattice, do you want to call your
10 witness?

11 MR. MATTICE: Yes, Judge. Thank you. The Town
12 would like to call Mr. Dick Schaner, please.

13

14

DICK SCHANER,

15 called as a witness herein by the Applicant, having been
16 first duly sworn, was examined and testified as follows:

17

18

DIRECT EXAMINATION

19

20 BY MR. MATTICE:

21 Q. Mr. Schaner, just starting out briefly, could you
22 tell us your title and your role with the Town and your
23 involvement with the project, please.

24 A. My title is transportation director as of about
25 two weeks ago. I have had maybe three different titles

1 over the course of the project: public works director to
2 special transportation projects manager to now
3 transportation director. And I am the project --
4 essentially the project manager for this project.

5 Q. And by "this project," what project are you
6 referring to?

7 A. We are talking about the Ellsworth/Rittenhouse
8 Loop Road project and Improvement District.

9 Q. And can you tell me the components of that
10 project, please.

11 A. The major components are about four miles of
12 six-lane roadway and the underpass for the railroad.

13 Q. Does that include, as you said, the underpass,
14 but the expense that was mentioned earlier by Mr. Watson,
15 is that expense spread out for the whole project?

16 A. The expense is an Improvement District, and I
17 brought this exhibit, which is essentially similar to the
18 one in the packet that you have.

19 But the Improvement District includes the
20 commercial area in here, all the way down to Ocotillo back
21 and the strip of property along the road down to the
22 south.

23 The major players in there are Vestar, which owns
24 all of this property in here.

25 Q. When you say "this," on the map, could you just

1 describe the cross streets?

2 A. This area here south of Rittenhouse Road and from
3 the Loop Road for approximately a quarter mile to the west
4 is Vestar Development.

5 There is -- about halfway between Ocotillo and
6 this structure is -- you basically split that south of
7 that line. We have another commercial developer on the
8 east side of Loop Road, which is DeRito Partners. The
9 Town owns about 18 acres. They are primarily going to be
10 a future library site. The Town also owns quite a bit of
11 land just north of Queen Creek Wash.

12 So as part of the Queen Creek District the Town
13 is assessing its own land as well as the development
14 project.

15 Q. So we have it in the record, that Improvement
16 District has been created?

17 A. Correct.

18 Q. And bonds have been issued?

19 A. Bonds have been issued.

20 Q. And the entities that you mentioned in the record
21 and that Mr. Watson referred to will be responsible for
22 making payments on those bonds?

23 A. That's correct.

24 Q. Including the Town?

25 A. Including the Town.

1 Q. Now, on this map that we have as a demonstrative
2 exhibit, could you point out the at-grade crossing?

3 A. The at-grade crossing, again, is approximately a
4 quarter mile west of the existing Ellsworth Road.

5 Q. And then could you point out the underpass -- the
6 proposed underpass?

7 A. I'm sorry. Let me retract my statements.

8 Q. Right.

9 A. The proposed underpass is about a quarter mile
10 west. The at-grade crossing is on the Ellsworth location
11 in this location, with the school bus facility being at
12 this location.

13 Q. Just north of the at-grade crossing?

14 A. Just north of the at-grade crossing.

15 Q. And what is the development that is to the
16 immediate east of the bus facility? That looks like a
17 housing development?

18 A. Queenland Manor, relatively a large subdivision
19 project, extends in this area and is mostly built out
20 already.

21 Q. And that Queenland Manor is about how many
22 residents?

23 A. I believe there are about 400, I believe, in
24 Queenland Manor.

25 Q. And they are immediately to the east of Ellsworth

1 and north of Rittenhouse; is that correct?

2 A. That's correct.

3 Q. Okay. On your exhibits that you have posted,
4 could you show us where -- approximately where the Rural
5 Metro station is?

6 A. The Rural Metro station is on Ellsworth Road
7 about a quarter mile south of Ocotillo on the east side of
8 the road.

9 Q. And what is the significance with the Rural Metro
10 location as to the at-grade crossing?

11 A. Right now -- and we feel even with the underpass
12 in place -- the shortest route to the north up to the,
13 say, the middle school up at Queen Creek Road and
14 Ellsworth and into the subdivision area east of Ellsworth
15 Road would be to utilize the existing at-grade crossing.

16 And talking to the fire chief they estimate
17 approximately one-minute savings in travel time using the
18 existing crossing.

19 Q. And I know this is technically hearsay, but when
20 you spoke to the chief, did they feel that that one-minute
21 savings of time was significant?

22 A. I did not discuss that.

23 Q. Okay. All right.

24 Now, the school that you mentioned, how many
25 schools do we have north and south of the at-grade

1 crossing?

2 A. We have a middle school here at Queen Creek Road
3 and Ellsworth. We have an elementary school located
4 approximately a half of a mile east of that just south of
5 Queen Creek Road.

6 So those are the only two schools north of the
7 tracks.

8 Q. And what about south of the at-grade crossing?

9 A. South of the tracks we have an elementary school
10 over here on Hawes Road, which is about a mile southwest
11 of the underpass crossing.

12 There is another school on Chandler Heights,
13 which is again, roadwise, about a mile and a half south of
14 the underpass crossing.

15 And those are the two closest ones. There is
16 another one within the Villages approximately -- maybe as
17 much as two miles in distance southeast of the crossing.

18 Q. And the bus facility that you mentioned that is
19 north of the at-grade crossing and Ellsworth serves all of
20 the schools you just indicated?

21 A. It does. In addition to a high school, which is
22 located on Ocotillo about here.

23 Q. And who is the gentleman that you gained that
24 knowledge from? Is that Mr. Hennerley?

25 A. Mr. Edd Hennerley is the transportation director

1 at the school.

2 Q. And what information did he pass on to you as to
3 the significance of the bus stop location or bus facility?

4 A. Well, in that it would be a real hardship for
5 them if the existing crossing were to close.

6 Q. And about how many trips do they make across that
7 at-grade crossing?

8 A. He estimated about 200 a day. That is empty ones
9 leaving as well as bring kids to and from school.

10 Q. Throughout the entire day?

11 A. Throughout the entire day.

12 Q. And was it the school district through
13 Mr. Hennerley's position that they would prefer to have
14 the at-grade crossing stay in existence?

15 A. Yes.

16 Q. And my understanding is there were some
17 improvements recently to the intersection at Rittenhouse
18 and Ellsworth Road at the at-grade crossing that exists.

19 A. Yes.

20 Q. Could you describe those?

21 A. Yes. We recently installed signals. It was a
22 four-way stop up until a couple of months ago. We have
23 installed signals, including what is called a preempted
24 signal on the north side of the tracks, which allows for
25 the area to clear of all traffic between the signal at the

1 intersection and the preempted signal on the north side to
2 make sure that traffic clears out of there before the
3 train gets there.

4 Q And is that something that is coordinated then
5 with the safety mechanisms that are at the at-grade
6 crossing?

7 A Yes.

8 Q What was -- do you know what the cost of that
9 project was approximately?

10 A The intersection signals themselves are part of
11 the Improvement District project. We did add the preempt
12 signal into that overall design.

13 Q So that -- some of that cost is part of the
14 \$54 million that we discussed?

15 A That's correct. To date with change orders and
16 final right-of-way costs the project is running
17 approximately \$60 million. About \$20 million of that is
18 the actual cost of the underpass itself. And that
19 includes utility relocation work within the railroad
20 right-of-way as well as, of course, all of the retaining
21 walls and bridge structure.

22 Q All right. And just to confirm Mr. Watson's
23 testimony, what is your understanding of the current
24 traffic crossing for the at-grade crossing?

25 A The current condition is about 18,000 cars a day,

1 which I believe using the ACC exposure index is about
2 108 exposures.

3 After we open the Loop Road we expect that number
4 to drop down to around 20, to 25,000 exposures a day.
5 It's primarily going to serve, as well as the bus
6 facility, local traffic in the area to assure that someone
7 from the south wanting to pass through town will be able
8 to do that and conveniently shop at the facilities in the
9 town center and get back on the Loop Road to continue
10 north.

11 Q. You testified earlier that you have experience
12 with the improvements along the right-of-way in the town
13 core; is that correct?

14 A. That's correct.

15 Q. And could you indicate on the map for the judge
16 where that town core area and those improvements have
17 occurred or are planned to be made?

18 A. Being a rapidly changing environment, as most of
19 the fast-growing communities are, the existing town core
20 primarily was an area just north of Ocotillo extending
21 south for about a quarter mile and around that
22 intersection.

23 Q. And both east and west of Ellsworth?

24 A. And both east and west, about the same distance,
25 about a quarter mile.

1 Now, the major new developments, with the Vestar
2 development that we previously mentioned west of the Loop
3 Road and south of Rittenhouse, as well as the Westcor
4 development with Wal-Mart and all their associated stores,
5 north of Ocotillo and south of Rittenhouse that exist
6 east -- about a quarter mile east of the existing
7 Ellsworth Road, there are some major new shopping centers.
8 There will be movie theaters, all of the typical things
9 you see nowadays, on a 60-acre or greater commercial site,
10 about 1.3 million square feet of new commercial
11 development.

12 *Q.* In the town core area?

13 *A.* In the town core area and currently under
14 construction.

15 *Q.* And can you tell us where restaurants such as
16 Rudy's Restaurant would be located on the map?

17 *A.* Rudy's Restaurant is located maybe 300 feet north
18 of Ocotillo on the west side of the existing Ellsworth
19 Road.

20 *Q.* Okay. And other businesses in the town core,
21 what is the significance as to their functioning in
22 relation to keeping the at-grade crossing open?

23 *A.* It's convenience. Basically if you make it
24 difficult for people to get to an area, they will shop
25 somewhere else.

1 So we felt it was highly important for general
2 circulation, and with all of this area being in essence
3 commercial and office, when it ultimately builds out, that
4 having the ability to circulate within the area was key.

5 And particularly north of the tracks. This area
6 up here, if the crossing were to close, this basically
7 would be a dead-end designation-type use only. It would
8 not be used as economically viable for commercial
9 development.

10 Q. And the part that you just mentioned at the end
11 of your statement, you circled the area just north of the
12 bus facility along Ellsworth?

13 A. Yes. There is another facility in here at the
14 moment which is primarily agriculture. They are a packing
15 and shipping corporation and vacant land that exists up in
16 this area yet. Those are short-term uses.

17 Q. And currently because of the Ellsworth location
18 in relation to the development south of the town, could
19 you tell us the current use of Ellsworth by those
20 commuters? How does that work day to day that you have
21 seen and experienced?

22 A. At rush hour it moves very slowly. We only have
23 a two-lane road, of course, coming up Ellsworth currently
24 through town. There is a signal at Ocotillo. There is a
25 signal here just north of the wash into this roughly

1 1700-home development over here.

2 And it's -- it -- traffic backs up particularly
3 when a train goes through. We have had several occasions
4 where a train has stopped -- stopped for 20 minutes or
5 longer on Ellsworth Road. And when that happens at rush
6 hour it just -- it backs traffic up all the way through
7 town as well as north all the way past the middle school.
8 And Town Council realized back in 2004 that we were going
9 to have a huge problem in the future when traffic volumes
10 move from where they were then, maybe around 12- to 15,000
11 ADT to maybe 65,000 ADT in the future.

12 A six-lane at-grade crossing was not going to
13 solve anybody's problem, and the Council took the
14 initiative to look at alternative locations and proceeded
15 with a grade-separated facility.

16 Q. And so that led us to the why, which we haven't
17 covered yet, as to why is the Town pursuing the underpass.
18 And I assume it's to relieve, in part, that traffic
19 congestion?

20 A. Yes. The calculations that we have done, even
21 with a six-lane facility, in the future traffic would back
22 up over a half a mile in each direction and take 30
23 minutes to clear, even once the train passed. And that
24 would back traffic up through all of the other
25 intersections in town and just make it an unlivable

1 condition.

2 Q I think you created an exhibit that has a display
3 of where the different at-grade crossings are both in the
4 town or near the town.

5 Do we know where they are?

6 A Yes, they are listed in the Staff report, but I
7 have brought three copies, if you would like to submit one
8 as an exhibit.

9 MR. MATTICE: Does the Judge have --

10 ALJ STERN: Sure. I don't think --

11 MR. MATTICE: May I approach then?

12 ALJ STERN: Okay. I have been handed something,
13 and you will have to give one to the court reporter. We
14 will mark it Exhibit T-1.

15 MR. MATTICE: And the witness needs one.

16 Do you have another?

17 THE WITNESS: That's all right. I know where the
18 crossings are.

19 Q BY MR. MATTICE: Okay. Why don't you just walk
20 the Judge through on this exhibit on explaining what those
21 different dots mean.

22 A What we currently have when you look left to
23 right from Power Road to Meridian Road is there are four
24 existing crossings with the oval that is shown just west
25 of Ellsworth being the location of the new underpass.

1 From a technical standpoint only, two of those
2 crossings are technically in the town's jurisdiction, the
3 one on Ellsworth Road and the one just east of it on
4 Ocotillo Road. The other crossings are technically still
5 in Maricopa County, although right at the border of the
6 town.

7 And as you -- the only north/south crossing --
8 Power Road will eventually be a six-lane at-grade
9 crossing, is what the Town of Gilbert has designed for the
10 Power/Pecos crossing there.

11 Three miles -- Sossaman Road is a north/south
12 two-lane crossing. Germann jogs in the area. So you
13 really -- as you are heading, say, west on Germann, you
14 take a left to cross the tracks and then another right to
15 continue on Germann. That is a future crossing that the
16 Town is going to have to address working with the County
17 as a partner.

18 The other one, Meridian Road at the very far east
19 end, is another east/west crossing. So to get to another
20 north/south crossing, you would have to go another mile
21 yet to the east, which is on Ironwood. And that is the
22 one, I believe, that was before you, Judge, last week.

23 ALJ STERN: Yes.

24 THE WITNESS: So the north/south crossings of the
25 railroad track within the Queen Creek area are really

1 spaced out. You have Power Road. You move three miles to
2 Ellsworth Road. Sossaman Road is a crossing, but it moves
3 through the airport, Williams Gateway Airport. A lot of
4 curves at about 35 miles posted speed, and therefore is
5 not a desirable commuter route.

6 The bulk of the traffic today comes up Ellsworth
7 Road or comes up Meridian from the south, which Pinal
8 calls Gary Road, until it hits Rittenhouse Road and then
9 it takes a left and heads northwest into the center of
10 Queen Creek on Rittenhouse Road.

11 Q. BY MR. MATTICE: So based on that exhibit and the
12 facts that you are aware of, the closest and most direct
13 route to the town core is over the at-grade crossing?

14 A. The at-grade crossing will serve -- today that's
15 correct. It's about the only access, the north/south
16 access.

17 But in the future that crossing is really meant
18 to serve as a substantial local circulation element. It's
19 not -- we really don't see through traffic movements or
20 the bulk of our rush hour movement utilizing Ellsworth
21 Road in the future.

22 Q. And could you just describe for the Judge where
23 the Town is in the actual construction project as it leads
24 up to the proposed underpass?

25 A. We are in construction to the point that there is

1 a bridge over the wash that has been built, curved gutter
2 and base course has been laid in this area. Base asphalt
3 pavement is in on almost all of the roadways.

4 100 percent -- the contractor is scheduled for
5 completing all four miles of the six-lane arterial roadway
6 construction in October of this year.

7 The shoofly necessary to construct the railroad
8 bridge is in place. The current scheduled date to switch
9 the train over is August 27th.

10 So because of the delays in working through the
11 railroad process, we have had informal claims from our
12 contractor approaching about three-quarters of a million
13 dollars to this date. They are claiming damages for
14 delays of about \$30,000 a week.

15 Q And is that related to pursuing construction on
16 the actual underpass?

17 A It is. Contractor has been able to work day one,
18 which was approximately November of '06, on the project,
19 on the roadway portions, but the only thing he has been
20 able to do on the railroad to date is construct the
21 shoofly.

22 Q And has the Town made the arrangements necessary
23 to have the approvals from the railroad to pursue the
24 underpass under construction?

25 A Yes. We have all necessary railroad approvals to

1 actually start work on the structure. The only thing we
2 need is Corporation Commission approval.

3 Q All right. And based on all the testimony you
4 have provided today, do you have any opinion about what is
5 beneficial to the community as to both the underpass and
6 the at-grade crossing?

7 A They are both very beneficial. The underpass or
8 grade-separated crossing is essential. Being the center
9 or central north/south corridor within about a seven-mile
10 area, Ellsworth Road is just crucial, and there is really
11 life -- life would be very miserable without an at-grade
12 crossing on Ellsworth Road.

13 So that is essential for through traffic and for
14 emergency traffic if a train were to be there when you had
15 a crisis occur on the opposite side of the tracks. So it
16 is essential.

17 The existing crossing is, the Town feels,
18 essential for continued local circulation to service
19 residents in the area and shoppers getting around the
20 town.

21 MR. MATTICE: One moment, please.

22 ALJ STERN: Sure.

23 MR. MATTICE: Judge, we would like to move in
24 some of these exhibits, if we may. And we haven't marked
25 them or given them a number, but the one I just handed

1 you, I guess we could call Applicant's Exhibit No. 1. We
2 would like to move that into evidence, please.

3 ALJ STERN: I said earlier we will call it T-1
4 for the Town of Queen Creek.

5 MR. MATTICE: Great.

6 ALJ STERN: T-1, any objections?

7 MR. HAINS: No, but I want to make sure that we
8 do get a copy at one point that we can keep.

9 ALJ STERN: I am sure we will give you a copy.

10 All right. With no objections, Exhibit T-1 is
11 admitted into evidence.

12 Q. BY MR. MATTICE: And then, Mr. Schaner, you had
13 given me copies of two other documents that we might
14 attach as exhibits, but my question is: Are they already
15 attached to the --

16 A. Yes, those are two exhibits that are already in
17 the Staff report that Mr. Watson referred to.

18 MR. MATTICE: So those have been admitted.

19 ALJ STERN: Yes, and they are also attached to
20 the application, so we can take notice of those.

21 MR. MATTICE: I don't have any other questions
22 right now, Judge.

23 ALJ STERN: Okay. Mr. Hains, do you have any
24 questions for the witness?

25 MR. HAINS: A few. Thank you, Your Honor.

1

CROSS-EXAMINATION

2

3 BY MR. HAINS:

4 Q First, how are you doing today, Mr. Schaner?

5 A Just fine. Thank you.

6 Q Good. You mentioned a while back that there was
7 an issue with a blocked crossing at one point, that there
8 was issues of crossings being blocked for approximately
9 20 minutes or so?

10 A There are stories and actual eyewitness accounts,
11 but there have been several occasions. We seem to hit two
12 or three a year for some reason or another that the train
13 stops before clearing Ellsworth Road, and it can be there
14 for -- it has been there for more than 20 minutes.

15 Q You would characterize this as a continuing
16 situation?

17 A It's continuing in the sense that we have had
18 probably three or four of these incidents a year over the
19 last, you know, several years. I have been with the Town
20 for 12 years.

21 Q Have you communicated with the railroad to see
22 about improving the situation?

23 A The railroad gets a call every time. And, you
24 know, there has been historical evidence going way back
25 where the train actually stopped and the engineers went to

1 a restaurant for a sandwich, but that is way back.

2 Q There's one restaurant.

3 Okay. Going from there, you would say that it
4 would be an assistance to the public interest here to have
5 a grade-separated crossing?

6 A It's essential to the public interest we feel.

7 Q Okay. Both by alleviating congestion and the
8 safety potential there of allowing emergency services to
9 travel back and forth?

10 A That's correct.

11 Q You also identified that there is a convenience
12 issue associated with retaining the existing crossing; is
13 that right?

14 A That's correct.

15 Q All right. You had said -- would you agree that
16 it's two things -- the two things driving that is, one is
17 the convenience of serving the access to the school buses
18 and that the other would be to serve the development
19 there?

20 A That's correct. Just convenience, the large
21 subdivision to the east, Queenland Manor only has one
22 access point on Ellsworth Road and one access point over a
23 mile to the east on Crismon. So a major portion of the
24 traffic in and out of that subdivision accesses Ellsworth
25 Road.

1 And the shortest route into the commercial area
2 for them would be across the existing crossing, as well as
3 into the municipal center area and post office and other
4 facilities.

5 Q. Okay. Thank you.

6 In terms of how much the project was ultimately
7 going to cost, you identified that approximate \$20 million
8 was actually specifically just for the underpass; is that
9 correct?

10 A. That's correct.

11 Q. Okay. But the sources of the money are, as
12 Mr. Watson identified them, is that correct, from the
13 developers and the City?

14 A. Right. The initial source of funding is through
15 an improvement district and a contribution of
16 approximately --- in the way of an assessment --
17 \$10 million from the Vestar development towards the
18 development of the underpass. It is being repaid through
19 assessments against the commercial development and Town
20 property.

21 In total approximately 28 million is assessed
22 against Town property and the balance assessed against
23 other properties.

24 Q. I see.

25 Did the Town identify any means to obtain State

1 or Federal funding for this project?

2 A. Initially we did look, but it not being -- the
3 road is not a State highway. It was a Town road, not a
4 County road, and we were not successful in identifying any
5 sources of funding.

6 Q. Okay. Did you attempt to seek additional funding
7 from the railroad?

8 A. We did not seek funding from the railroad. We
9 did check into it.

10 The railroad did say that they could contribute.
11 The program, I believe, was 5 percent, but that was
12 conditioned on getting rid of the existing crossing.

13 Q. Now, when you say 5 percent, that is 5 percent of
14 the cost of the whole project or just the grade
15 separation?

16 A. Actually, if I remember Mr. Smith's conversation
17 correctly -- or it was done during a design meeting that
18 we -- one of our routine design meetings where Mr. Smith
19 was present from the railroad -- and he said if we were to
20 close the existing crossing, the railroad could
21 contribute -- I can't remember if it was 5 or 10 percent
22 of the value of the existing two-lane at-grade crossing.
23 It had nothing to do with the value of the new underpass.

24 Q. I see.

25 And I take it that the Town decided to forego

1 that?

2 A. That would have been peanuts. Yes.

3 MR. HAINS: All right. I believe that was all of
4 my questions. Thank you.

5 ALJ STERN: Okay. I have a couple questions.

6

7

EXAMINATION

8

9 BY ALJ STERN:

10 Q. The 54 -- if I understand you correctly, the
11 total cost of the project now has gone up to about
12 \$60 million. Is that where you are at?

13 A. Correct, Judge. That is four miles of six-lane
14 roadway, a double bridge across Queen Creek Wash as well
15 as the underpass. It's all your incidental costs, your
16 design costs, your right-of-way costs, the total cost.

17 Q. Okay. But the actual cross of the -- the actual
18 cost of the underpass that we have been discussing is
19 really only approximately \$20 million?

20 A. Approximately 20 million. Judge, I don't know if
21 I would use the word "only."

22 Q. Give or take.

23 And as far as that goes, the District is being
24 operated -- who is actually operating the District? Is it
25 the Town that is managing it?

1 A. The Town of Queen Creek formed the Improvement
2 District, and at the time we formed it, it was the largest
3 improvement district ever formed in the state of Arizona.

4 Q. So it's in the Town's best interest to go ahead
5 with this Loop roadway that we have been talking about
6 here today with that underpass. And also, if I understand
7 you correctly, to keep that main Ellsworth stretch of the
8 roadway where it crosses the railroad tracks presently
9 open in order to facilitate the internal growth of the
10 town and commercial development as it exists; is that
11 correct?

12 A. Correct, Judge.

13 Q. Now, your Exhibit T-1, this little map, you said
14 that the existing Ellsworth Road and the existing Ocotillo
15 Road are the only north/south crossings within the city --
16 within the town limits; is that correct?

17 A. Ellsworth Road and Ocotillo -- Ellsworth being
18 north/south and Ocotillo being an east/west crossing.

19 Q. Okay. What about the crossing at Meridian? Is
20 that north/south or east/west?

21 A. That is an east/west.

22 Q. And is that within the town limits also or no?

23 A. Technically, no. It's right at the edge of town.

24 Q. And the crossing at Germann and Sossaman, that is
25 an east/west crossing; is that correct?

1 A. That one is a north/south crossing.

2 Q. I am really doing great.

3 So it's a north/south crossing.

4 Is that within the town limits?

5 A. Again, that is right at the edge.

6 Q. So it's not within the town?

7 A. It's not technically in the town.

8 Q. Maybe one of these days it would end up in Queen
9 Creek or something -- not Queen Creek -- what would it be
10 in?

11 A. It's a County road crossing currently. Germann
12 Road and the town limits go up to the southern boundary of
13 the Union Pacific Railroad on Sossaman. So the crossing
14 itself is technically still a County road.

15 Q. Okay. And the crossing at Pecos and Power, is
16 that east/west or north/south?

17 A. That will be a dual crossing. It's currently a
18 north/south crossing. Gilbert has it designed as a dual
19 crossing with the tracks diagonally through the
20 intersection.

21 Q. And that is in Gilbert?

22 A. That is in Gilbert.

23 Q. Okay. You testified, I think, that the Loop
24 roadway is pretty well constructed and by the end of
25 October of this year it is supposed to be completed; is

1 that correct?

2 A. Yeah. All roadway work will be completed by the
3 end of October. We have not yet started on the railroad
4 bridge.

5 Q. The underpass?

6 A. The underpass itself. The retaining walls, all
7 the stuff you see in the photo going down to it are there.
8 All the utilities have been moved out of the way.

9 Q. How long do you anticipate construction of the
10 actual underpass will take?

11 A. Approximately six months.

12 Q. Okay. And the shoofly is already constructed,
13 the route for the railroad trains, around that area?

14 A. Just about complete. They are looking to switch
15 the trains over, I believe the date I heard was
16 August 27th.

17 Q. So if the Commission were to approve your plan
18 here to go with the underpass and keep the existing
19 crossing open in September, I assume your crossing would
20 be more or less complete somewhere around March of next
21 year, the underpass?

22 A. Judge, because of the two-step process -- the
23 bridge, you are correct, would be completed about March,
24 but then we have to move the train back over the bridge,
25 remove the shoofly and complete the little piece of

1 roadway where the shoofly fits.

2 So the actual completion date is estimated now
3 about mid May.

4 Q Okay. And with respect to the roadway, when I
5 look at it, it's not like a parkway where you have limited
6 access. There is a crossing at Rittenhouse. There is a
7 crossing at Ocotillo.

8 Are those going to be traffic light controlled?

9 A There are ten traffic signals on the project.
10 All of the main intersections are signalized, including
11 the major ones in and out of the commercial developments.

12 Q Okay. And that road essentially is going to be
13 starting then up on the northern end? Is that Rittenhouse
14 up on the northern end?

15 A It ties in up on Queen Creek Road up on the
16 north.

17 Q Okay. Queen Creek Road on the north and Chandler
18 Heights on the south?

19 A That's correct, Judge.

20 Q When do the property owners who are going to be
21 assessed for this construction project, when do they have
22 to start paying on those bonds?

23 A They estimated December of '08 would be their
24 first payment due.

25 Q And as far as the ultimate development of those

1 properties that you outlined earlier when you were
2 referring to that large map up there to your right, is
3 development already underway in those parcels? Is it
4 going forward now or is it --

5 A. It's --

6 Q. -- projected?

7 A. Judge, it's currently underway. This is a Super
8 Target, which is under construction. This string of
9 buildings for various shops is under construction, as is
10 this string of shops over here. This is a Wal-Mart
11 facility under construction. There is a Walgreens,
12 Danny's Car Wash.

13 I would say approximately 65 percent or more of
14 the structures shown are already under construction.

15 Q. And those areas primarily, if that Ellsworth Road
16 section was -- if that existing crossing was closed off,
17 all of the people north of that crossing would have to go
18 far east or west to get into that area?

19 A. That's correct. They would have to exit to the
20 east on Crismon Road down to Ocotillo to come back. Or if
21 they come back onto Ellsworth, they would have to go north
22 at the signal, make a left back and then either shop here
23 or another left to get over to this area.

24 Q. Okay. All right. And there is about how many
25 vehicles a day going through that existing crossing right

1 now?

2 A. Approximately 18,000 a day.

3 Q. About 18,000 a day now. What will the number
4 drop to after the Loop roadway is constructed, do you
5 think?

6 A. We are estimating 3- to 5,000 a day after the
7 Loop Road.

8 Q. So that should lower the possibilities of any
9 problems; right?

10 A. Yes, dramatically.

11 Q. And you said the buses, I think, cross about 200
12 times a day?

13 A. That's correct.

14 ALJ STERN: Any redirect for your witness?

15 MR. MATTICE: No. Thank you, Judge.

16 ALJ STERN: Thank you, sir.

17 Okay. Any more witnesses?

18 MR. HAINS: No.

19 MR. MATTICE: No.

20 ALJ STERN: Any brief closings statements from
21 Staff at all?

22 MR. HAINS: Only that Staff believes that the
23 application is in the interest of the public and we
24 recommend its approval.

25 ALJ STERN: Okay. How about the Town?

1 MR. MATTICE: No.

2 ALJ STERN: Thank you. That will conclude
3 today's hearing. I will try to get a Recommended Opinion
4 and Order out for Commission approval in the very near
5 future.

6 The August open meeting deadline was, I think --
7 is today. I cannot have it today, but we have a chance, I
8 think, making the September open meeting. I don't recall
9 the date, but I think September is going to be around the
10 21st, the 22nd, somewhere in there.

11 MR. MATTICE: Judge, because of significant
12 impact -- financial impact of the Town, if there is any
13 way to get on for the August 23rd agenda, that would be
14 great.

15 ALJ STERN: Well, the August agenda, I can't say
16 it can get on there. The problem being that if there is
17 anything in the recommended -- you will have to write a
18 letter in and waive your right to file exceptions, which,
19 you know, under the circumstances, as I said, Staff has
20 made the same recommendations as what the Town is
21 requesting. So I think under those circumstances there
22 shouldn't be many variations from what you're requesting.

23 The only thing is, like I said, the Town would
24 have to file a letter. Today already is August 7th. It's
25 Tuesday. I'm going to be out of the office pretty much

1 all day Thursday and Friday, which puts us at an
2 approximate --

3 I don't know. I can't guarantee anything. I
4 will see what we can do, but it's going to be tough to get
5 it out before the open meeting.

6 If we can and we can get it on the agenda, I will
7 see what I can do.

8 MR. MATTICE: We appreciate anything you can do.

9 ALJ STERN: But get a letter into the docket with
10 the right number of copies, 13, I think, and say that you
11 waive your right to file exceptions, and we will see if we
12 can get it out for you.

13 Like I said, this is a little more complicated
14 than most of these railroad cases.

15 MR. SCHANER: We understand, Judge. It's just
16 that another month is about another \$120,000 in costs to
17 the Town.

18 ALJ STERN: Okay. We will see what we can do.

19 Thank you. That concludes the hearing.

20 (Whereupon, the hearing concluded at 10:32 a.m.)

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1 STATE OF ARIZONA.)
) ss.
 2 COUNTY OF MARICOPA)

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I, KATE E. BAUMGARTH, RPR, Certified Reporter
 No. 50582, for the State of Arizona, do hereby certify
 that the foregoing printed pages constitute a full, and
 accurate transcript of the proceedings had in the
 foregoing matter, all done to the best of my skill and
 ability.

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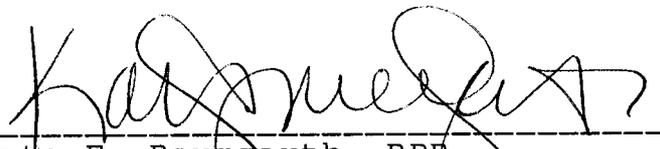
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WITNESS my hand this 8th day of
August, 2007.



 Kate E. Baumgarth, RPR
 Certified Reporter, No. 50582