

Testimony before Utah House Transportation Committee – January 31, 2022

Hello, my name is Paul Lindhardt, I am the Public Works Director for the City of Logan. I want to thank the committee members for allowing me to share a small portion of our recent experience with Union Pacific.

Logan City currently has 12 crossings with railroads on improved City streets. We have a long history of working with the railroad on these crossings for both maintenance and improvement projects, but they are now holding us hostage on several projects involving millions of dollars on funding. These are key arterial roads used by many citizens of Cache County.

The impasse began with the 1400 North 600 West intersection (which is directly adjacent to the railroad crossing). It has been warranted for a traffic signal since 2003. Since 2016, Logan City has been budgeting for this project and working with Union Pacific through their process which includes several agreements, on-site visits, collaboration, meetings and lots of discussion with UP and UDOT.

For nearly 3 years we worked together until UP gave final approval of the design in February 2019. During this more than 30-month process, no mention or documentation of maintenance fees were ever made.

Seven months after the final design approval from UP, Logan City received a nearly \$600,000 construction cost estimate for the actual construction of the railroad crossing. Cities are held solely responsible for the cost and reimbursement of all work performed within the railroad right of way, even if the work is performed by UP. We agreed to pay all improvement costs, which will make this intersection much safer for everyone, including UP. This cost estimate did not make any mention of maintenance fees.

With a Union Pacific approved set of plans, all necessary Union Pacific utility crossing permits and a Union Pacific cost estimate in hand, the City felt comfortable putting the project out to bid while we waited for the At-Grade Construction Agreement from UP. We have received and executed these agreements previously so we felt that we were familiar with their requirements. They have never before required an annual payment of maintenance fees in perpetuity. Once received, it was discovered the agreement included a new paragraph requiring Logan City to pay an annual maintenance fee of \$11,475 in perpetuity. It also stipulated that the fee would be increased annually upon UP's review and at their sole discretion.

Logan city requested that the paragraph be removed from the agreement prior to execution, UP refused.

On suggestion from Union Pacific we spent the next 7 months (the entire construction season) negotiating in good faith to come up with an arrangement that would allow work to be performed on the railroad crossing without an annual fee in perpetuity. Several offers were made including large upfront payments to UP, delaying the agreement of an annual fee until a resolution could be reached, reimbursement of actual maintenance costs, and so on. Union Pacific refused any offer that removed the annual fee in perpetuity.

Today we have a fully built-out street intersection that unfortunately bottle-necks back down to a very narrow two-lane crossing over the railroad. No improvements have been made to the railroad crossing. We have finally resorted to litigation, as part of the legal discovery process we learned that UP is unable to provide documentation of any maintenance expenses at that intersection over the past 12 years – and suddenly they want to charge over \$11,000 per year per intersection, with no cap on increases.

We are currently bidding out work at another intersection, which also crosses railroad tracks. We are in a similar situation with all the approved designs, permits and cost estimate in hand. We have requested the construction agreement comply with R930-5 by omitting annual maintenance fees and UP has refused. We have offered to propose changes to the agreement and UP has refused to send even a draft until we agree to pay an annual maintenance fee in perpetuity.

We have other projects that are underway and millions of dollars in funding that are in peril of being lost if UP continues to insist on maintenance fees that are in direct conflict with current State Rules and Code.



We appreciate this Committees time and consideration on these matters and I will be happy to answer any questions.

Thank You

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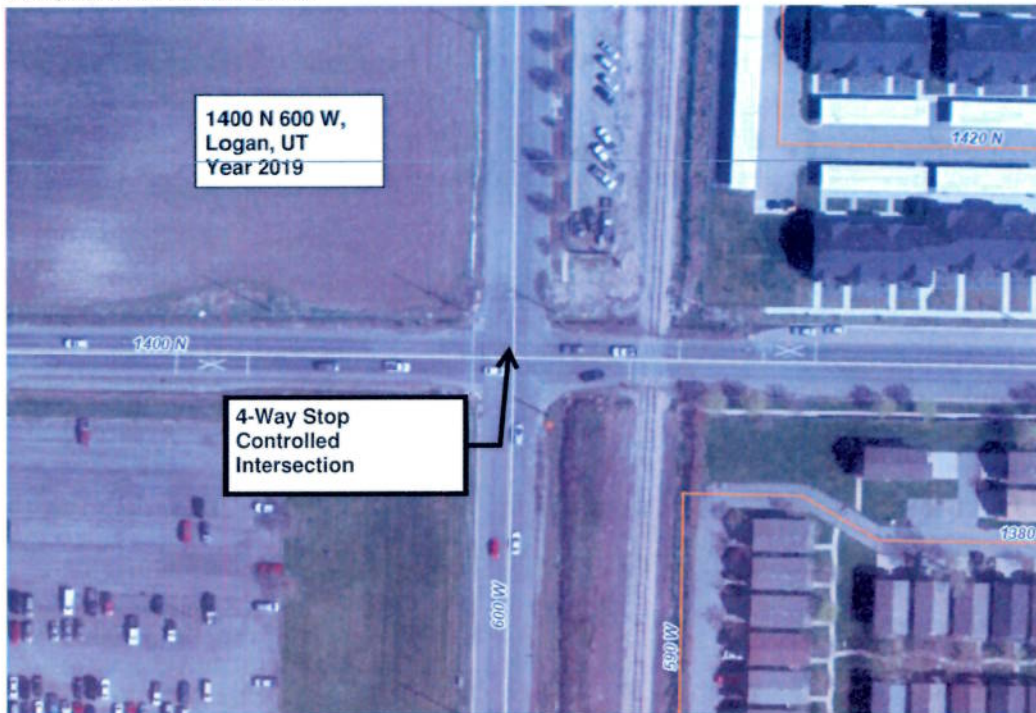
Questions to be asked:

-Why did negotiations continue for so long and why do you think they failed?

-Have you had other problems not related to this intersection?

-What are you going to do on future projects if this continues and why are you bidding a project without the construction agreement in place?

BEFORE IMPROVEMENTS



AFTER IMPROVEMENTS

