



CHICAGO BULL

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I've Been Working on the Railroad

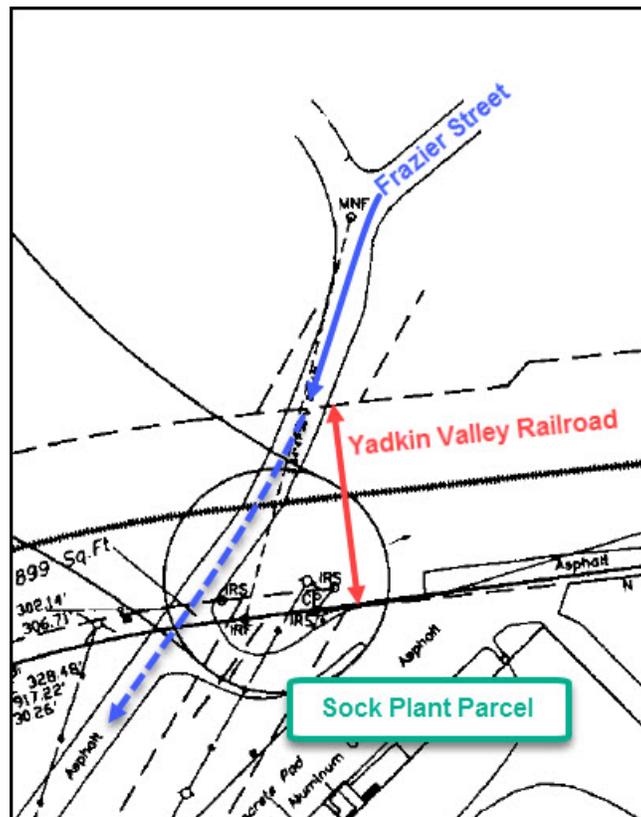
A MOSTLY TRUE STORY

This edition of the Chicago Title Bull is from the "Haven't Seen This Before" Department. Casey Jones is purchasing a former sock factory building in Mayberry, NC. He's retro-fitting the facility to accommodate a state-of-the-art fiber optics manufacturing plant. While the textile mill is no longer operating, the building, which was solidly constructed in 1959, has many years of useful life remaining. The site was originally served by an adjoining spur line of the Yadkin Valley Railroad. Since the building was constructed, vehicular access to the site has continuously been by way of Frazier Street in Mayberry ***across the railroad tracks of and property owned by Yadkin Valley Railroad.***

Upon the advice of his attorney and in response to the lender's requirement for title insurance coverage without exception to matters that would be disclosed by a current inspection and accurate survey of the land, Casey engaged the services of a local registered land surveyor. The survey fortunately revealed that the property had ***direct legal*** access to a public road known as Davis Street. However, the survey also revealed that flag portion of the lot being acquired that reached to Davis Street was, in fact, obstructed by areas of scrap metal and wood debris and did not provide an actual entrance to the property which was accessible to vehicles. There was legal access, but no physical access and Casey's lender was requiring the ALTA 17 Endorsement to its loan policy which requires that the land being insured abuts and has "both actual vehicular and pedestrian access" to and from a physically-open and publically-maintained street. Furthermore, it was not clear from the survey whether Davis Street had actually been constructed and was physically open, much less publically maintained.

Casey's seller quickly pointed out that access to the sock factory building had always been by way of Frazier Street and across the railroad tracks of the Yadkin Valley Railroad. The survey revealed that the public right of way of Frazier Street stopped at the northern line of the railroad's property and the northern boundary of the property being purchased only reached as far as the southern line of the railroad's property. In other words, the railroad "right of way" was a strip of land owned in fee by Yadkin Valley Railroad and was separating the factory's property and its driveway ("asphalt" per the survey) from the dead end of the public right-of-way, Frazier Street.

Here is that portion of the survey:



Again, no problem. No one had ever objected to the driveway access being across the property of a railroad. The seller maintained that access was not an issue and that there must be some type of long-standing (albeit, un-recorded) agreement in place. To confirm, Casey's attorney contacted the railroad, now part of Norfolk Southern Railway, and was informed there was no such agreement and an arrangement for the maintenance of and liability regarding the driveway road across the railroad tracks would be required.

Once again, still no problem. The Seller approached the town and obtained a letter from the Town Manager stating that the Town of Mayberry "maintains and provides public access along Frazier Street to its termination at the security gate providing access [to the sock plant facility]" and that the Town would erect signage "providing notice that public access and maintenance [of Frazier Street] terminate at that point." This would mean that the Town was claiming a right-of-way for Frazier Street **across** the railroad's property.

Not surprisingly, Norfolk Southern was neither convinced nor amused. The parties were informed that the railroad required a formal agreement addressing responsibility over and between the rails and under the roadway asphalt as it affects railroad ties, ballast, etc. The attorney was provided with a form of agreement that granted the proposed owner of the land being acquired a **license** to cross the railroad's property and its tracks and established the rights and responsibilities of the parties. A "license" by definition and by the terms of the proposed agreement is revocable at any time by either party and is not an insurable real estate interest. Without a recorded permanent (and likely exclusive) easement, Casey was not able to secure the title insurance coverage that he and his lender required.

Not all issues involving railroads will have this rather unfortunate result. Most underwriting decisions where railroad property or right-of-way is involved address the railroad's rights in areas of the property within a certain distance of railroad tracks bordering the property to be insured. Of concern to the title company are the extent or distance of the railroad's right of way from the tracks, whether the tracks are still in use or in place or, if not, whether they have been abandoned and how. For a comprehensive summary of railroad issues and a resource for researching the various types of railroad grants of easement, fee conveyances and provisions of the original railroad charters which often granted rights and rights of ways to railroad companies when they were formed, you may access an excellent Chicago Title article on this subject, here: [Railroads - Basics](#).

In addition, there are two particular state statutes that may be helpful in regard to the abandonment of railroad tracks. [N.C.G.S. 1-44.1](#) addresses the presumption of abandonment of a right-of-way (but not a fee interest) and [N.C.G.S. 1-44.2](#) determines the presumptive ownership of the underlying land once the railroad right-of-way is abandoned. (Click on the statute numbers for a link to these sections.)

Numerous discussions were had during the underwriting process of this order. Streets in North Carolina have priority over railroads. Railroads facilitate commerce, but the adjoining and crossing streets are also necessary to that commerce. In this situation, however, the public street never actually crossed the track. Also, a city cannot impede the railroad's ability to use its tracks, meaning the railroad must agree. [N.C.G.S. 160A-298](#). We also know that railroads have been shutting down or severely limiting crossings. This requires an agreement on the part of the railroad which was the issue in the first place.

No two railroad issues are alike. Once the survey of the property being insured is obtained (always recommended), special attention must be paid to the location of any railroad property or easements that are shown on or anywhere near the property. Unless it can be definitively established otherwise, a title insurance policy will take a broad exception to the railroad's rights which could be as much as 200 feet in width or 100 feet on each side of the existing tracks or former railroad path. For more information visit our website at [NorthCarolina.CTIC.com](#) or consult your nearby Chicago Title office.

PROGRAMMING NOTE: After this article was written, we were informed that the parties had reached an agreement to resolve the issue after closing. The transaction closed without insured access. As of most recently, the railroad was still agreeable only to a revocable license, though the Buyer was generally amenable to that with certain conditions. However, the decision of the buyer's lender was still unknown.

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