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Court rules CN doesn't have to help fund Barrington crossing

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The U.S. Court of Appeals' ruling Tuesday upholding Canadian National Railway Co.'s 2008 purchase of the Elgin, Eastern & Joliet Railroad was both lauded and criticized by Barrington leaders.

The court ruled that CN is not required to provide additional funds for mitigation for issues caused by increased freight train traffic in the Barrington area. The village was hoping the court order CN contribute funds for a proposed \$69 million grade separation project at Northwest Highway and the EJ&E that now remains largely unfunded.

"Unfortunately, we believe the court decision sidestepped an opportunity to address the arbitrary and capricious analysis flaws used by the (U.S. Surface Transportation Board) in formulating its mitigation mandates and we are prepared to take the steps necessary to right that wrong," said Barrington Village President Karen Darch, co-chair of The Regional Answer to Canadian National (TRAC) coalition.

Darch believes when the Surface Transportation Board reviewed and approved CN's proposal to purchase the EJ&E in 2008, the board did not do its due diligence in assessing the environmental impact of increased freight traffic on communities along the EJ&E line, specifically Barrington area communities. Darch believes had a more extensive environmental impact study been executed, the federal board would have required CN to pay for more mitigation projects such as the grade separation at Northwest Highway.

However, Barrington and other members of TRAC were pleased that the court upheld the federal board's requirement that Canadian National fund 67 percent of a grade separation project at Ogden Avenue in Aurora and 78.5 percent of a grade separation project at Lincoln Highway in Lynwood.

"Absent TRAC's three-year battle to stand up for the rights of the region and the court's affirmation that CN must invest significantly in mitigation, this deal would have gone through without any recompense for harmed communities," Darch said.

Canadian National had filed its own appeal of the board's 2008 decision with the U.S. Court of Appeals, but for different reasons. CN argued that the federal board did not have the authority to require the company to make such substantial investments toward the grade

separations in Aurora and Lynwood.

"While we are disappointed by today's court decision, we will not appeal it further, and will continue working with Illinois officials to implement the grade separations in accordance with the STB's requirements," said Claude Mongeau, CN president and chief executive officer.

According to lawmakers, the court decision ultimately affirmed the federal board's right to impose mitigation mandates on railroad mergers, such as grade separations.

"The court's ruling today can only strengthen the (STB's) power to make decisions based on the environmental impact of increased rail traffic," U.S. Sen. Richard Durbin, D-Ill., was quoted as saying in a press release Tuesday.

Meanwhile, Barrington will now have to find a way to fund its grade separation project at Northwest Highway and the EJ&E without any contribution from CN and with a Congress that is determined to reduce federal spending.

Barrington is slated to receive a \$2.8 million federal TIGER II grant for the planning and engineering of the grade separation project. However, that grant was cut when the Republican-controlled House passed its budget earlier this year. The village has contended it needs a grade separation at the crossing because increased freight train traffic cuts off vital access for emergency vehicles to Advocate Good Shepherd Hospital.

CN is expected to increase the number of freight trains on the EJ&E to 20 per day by the end of the year. There are no grade separations at the nine Barrington area roads that intersect with the EJ&E tracks.

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