

A Brief History of and Current Issues Involving Railroads in North Carolina (Part One)

By Michael Aiken, Esq.

Railroads in North Carolina have a long and interesting past. For the modern day real estate attorney, they can pose a troublesome future. This article, the first of a two-part series, is designed to provide a brief history of early railroads in North Carolina. The second article will address current issues associated with real estate upon which a railroad right of way was or is located.

The Early History

Prior to the development of rail lines, most commerce traveled via ship or across dirt or gravel roads. The direct precursor to the modern rail line was the development of old plank or corduroy roads on which wood was laid crosswise. The first rail systems were comprised of two wooden or iron rails laid parallel to each other. Advances in iron manufacturing by the 1820's allowed for the use of malleable iron rails beginning in Great Britain.¹ The first rail cars were pulled by horses or mules, and the first steam engines appeared around 1814 in Great Britain. The first rail line in the United States was built in 1809, in what is now Swathmore, Pennsylvania, at the Leiper quarries.

There was little interest in railroads in North Carolina until the mid-to-late 1820's. In 1827, John Motley Morehead, inspired by the "Carleton Letters,"² introduced a resolution requesting that the Governor tell the Secretary of War that the Legislature desired the Corps of U.S. Engineers to survey a railroad from New Bern to Tennessee through Raleigh. The resolution failed by a vote of 52 to 50.³ Two years after the introduction of the resolution, Mr. Morehead was appointed trustee for the University of North Carolina, his alma mater, where he would serve for the next 38 years. Throughout the summer of 1828, public support grew for a "central railroad," James Mebane was appointed chairman of a committee for the development of the "central railroad," and Governor James Iredell announced his support in November of that year. Committees were formed in many counties for the development of local rail systems. At the same time, Mr. Morehead was pushing for an increase in manufacturing, namely the construction of factories to turn cotton into yarn for export. In the end, commerce served as the driving force for the creation of rail lines.

It wasn't until the early 1830's that the first railroads were chartered in the state. In February 1830, an "experimental railroad" was incorporated to run from Union Square in Raleigh to a quarry one mile southeast. The line was completed in January of 1833.⁴ During the remainder of this decade the state would see the charter for more ambitious projects. In 1834, the "Raleigh and Gaston" was incorporated to connect the capital with the navigable Roanoke River to the northeast, and the "Wilmington and Weldon" was incorporated to link the state's largest port with the Roanoke at Weldon, downstream from Gaston.⁵ Both of these lines were completed in 1840. The legislation that created these two railroads also incorporated several other railroads including "The North

Carolina Central Seaport Railroad Company," "The Greenville and Roanoke," "The Roanoke and Yadkin," "The Campbellton and Fayetteville," and "The Cape Fear, Yadkin and Pee Dee."⁶ All of these railroads were to be private enterprises unsupported by the state. In contrast, future endeavors would include funding from both private citizens and the State.

The North Carolina Railroad

A bill was passed into law on January 26, 1849, organizing a joint stock company, the North Carolina Railroad.⁷ Of the \$2,000,000 capital to be raised, one-half was to come from the State and the other half from private citizens. The original stock subscription was to be for 10,000 shares costing \$100, five dollars payable immediately, the full 10,000 shares to be subscribed before the company could formally organize. By February 1850, all 10,000 shares were subscribed. At the first meeting of the board of directors, John M. Morehead was elected president, and the company set to the task of surveying the proposed route which would carry the line through Goldsboro, Raleigh, Hillsboro, Graham, Greensboro, Jamestown, Lexington, Salisbury, Concord and Charlotte.⁸ The estimated cost of construction was \$5,000 per mile from Beaufort Harbor to Raleigh and \$9,000 per mile for the Yadkin line. Next, Morehead began acquiring right of way, 100 feet on each side of the contemplated track.⁹ Almost all of the landowners cooperated and the compensation paid for the acquired right of way amounted to just over \$20,000.¹⁰ The surveying took approximately eight months.

In July, 1851, the formal ground breaking took place in Greensboro.¹¹ Two years later, a survey was prepared for the route from Goldsboro to Beaufort and from Salisbury to the Tennessee line. By December 1855, the eastern division of the North Carolina Railroad had reached Greensboro and the Western division was nearly complete. The line had been laid for some distance out of New Bern towards Goldsboro, and by January, 1856, the two lines met approximately halfway between Greensboro and Jamestown.¹² The 223-mile line was completed in 1856, at a total cost of \$4,000,000, not including equipment.¹³ Most of the actual construction was done by slave labor hired at a rate of \$125 to \$150 per year.

By 1865, due to Civil War and post-Civil War building efforts, North Carolina had a fairly extensive rail network which connected Morehead City to Charlotte via Raleigh, Halifax in the north to Wilmington in the south, Charlotte to Wilmington, and Salisbury to Murphy in the far west.¹⁴ The engines that ran on these lines have an interesting history in themselves. Many of the engines were given fanciful names and North Carolina borrowed from Greek mythology to provide names such as "Astron," "Ajax," "Cyclops," and "Midas."

Over the next decade, there was a tremendous amount of consolidation among railroads throughout the country. Less profitable railroads were merged, sold or went into bankruptcy. The North Carolina Railroad, facing pressure to increase profitability, leased its lines and equipment to the Richmond and Danville Railroad in 1871 for a term of 30 years; however, the decision to lease was not without a great deal of controversy. Four years later, the Western North Carolina Railroad was sold at auction and purchased by the State for \$850,000. In 1895, the North Carolina Railroad renewed its lease to the

Richmond and Danville Railroad, this time for a term of 99 years, and with as much controversy, if not more, than with the first lease. Rental payments amounted to \$266,000 per year for the first six years and \$286,000 per year thereafter.¹⁵ The lease was renegotiated in 1904 to provide an increase in the rental compensation paid.

Through a series of mergers over the next 90 years, the leases came to be held by Norfolk Southern Railroad. When the leases to Norfolk Southern came to term in 1994, a 40-year lease extension was negotiated. Then in 1995, a lease extension agreement was approved by Norfolk Southern and North Carolina Railroad that was subject to shareholder approval. Norfolk Southern continued to operate the lines and commenced paying the agreed compensation. A ratification meeting was held in December of 1995, during which a minority group of shareholders, led by Walter Rucker of Greensboro, a great great grandson of Governor John M. Morehead, boycotted ratification because, in their view, the negotiated compensation that the North Carolina Railroad was to receive was inadequate.

Walter Rucker sued the North Carolina Railroad to disallow the proxies of a fellow shareholder that had been wrongly counted. The U.S. District Court subsequently held the new lease invalid due to a lack of a quorum at the ratification meeting. Norfolk Southern continued to use the 317 miles of track but discontinued the lease payments. In 1996, North Carolina Railroad filed suit in Wake County Superior Court to force Norfolk Southern to resume payments. As a response, Norfolk Southern began a proceeding with the United States Surface Transportation Board to establish the level of permanent compensation. The STB proceeding was held in abeyance while the North Carolina Railroad attempted to acquire the remaining shares of stock held by private shareholders. In April 1998, the North Carolina Railroad successfully bought out the remaining private shareholders, and, for the first time in 149 years, the railroad fell under the ownership of one entity, the State of North Carolina. As of September 14, 1998, the STB proceeding is still in abeyance pending continued lease negotiations. The STB set the interim compensation at a level equivalent to out-of-pocket expenses incurred by the North Carolina Railroad for Norfolk Southern's continued operation of the line. The interim compensation level will remain in effect until the parties negotiate a final settlement or come to an impasse.

Conclusion

As of 1996, there were 26 railroads operating 3,284 miles of track in North Carolina. Both the State and the Federal government have procedures in place to preserve rail corridors for future use. North Carolina passed the "Rail Corridor Preservation Act" in 1988, which allows the North Carolina Department of Transportation to acquire inactive or abandoned rail lines for "future rail use and interim compatible use." The best known of the federal programs is the "Rails to Trails" program which allows abandoned or inactive corridors to be used as recreational trails until a need arises to reactivate them. The two most likely uses would be the reestablishment of lines for increased commerce or the development of a local or national high-speed rail system.

North Carolina railroads have a rich and interesting past shaped by many social and political forces and filled with controversy. This article provides a mere glimpse into the

development of railroads in North Carolina. It is designed to provide a general overview of the past history of railroads, and to serve as a foundation for the next article addressing current legal issues facing the practicing real estate attorney. For the reader who is interested in learning more about this part of the State's history, I would recommend the following two texts:

W. Trelease, *The North Carolina Railroad, 1849 – 1871, and the Modernization of North Carolina*, 1991, UNC Press, and
Burton Alva Konkle, *John Motley Morehead and the Development of North Carolina, 1796-1866*, 1922, Patterson & White Co.

¹ Konkle, B., *John Motley Morehead and the Development of North Carolina*, 1796-1866, pg 83 (1922).

² The "Carleton Letters" were a series of letters written to the public that began to appear in the *Raleigh Register* on September 7, 1827. This series of letters advocated the construction of a rail line from Beaufort Harbor across the central part of the whole state to the Tennessee line and were signed "Carleton," the name of the home of the Prince Regent of Great Britain, "Carleton House." The actual author turned out to be President Joseph Caldwell of the University of North Carolina. (Konkle, B., supra, at 96)

³ Id. at 96.

⁴ Id., at 111.

⁵ Trelease, A., *The North Carolina Railroad, 1849 – 1871, and the Modernization of North Carolina*, pg. 13, (1991).

⁶ Konkle, B., supra, at 131.

⁷ Trelease, A., supra, at 15.

⁸ Konkle, B., supra, at 311.

⁹ Trelease, A., supra, at 31.

¹⁰ Id.

¹¹ Konkle, B., supra, at 311.

¹² Ashe, S., *The History of North Carolina, Volume II 1783-1925*, 513 (1925).

¹³ Id.

¹⁴ Konkle, B., supra, map at 311.

¹⁵ Trelease, A., supra, at 325.