

19.



# City of West Allis Matter Summary

7525 W. Greenfield Ave.  
West Allis, WI 53214

File Number	Title	Status
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R-2007-0076	Resolution	In Committee
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Resolution Authorizing City Attorney to File a Complaint with the Office of Commissioner of Railroads against Union Pacific Railroad Company for repair of railroad crossings located in S. 55 St. and S. 57 St.

Introduced: 3/6/2007

Controlling Body: Public Works Committee

Sponsor(s): Public Works Committee

## COMMITTEE RECOMMENDATION ADOPT

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>3-6-07</u>			Barczak				
			Czaplewski				
			Dobrowski	✓			
		✓	Kopplin	✓			
			Lajsic				
			Narlock	✓			
			Reinke				
	✓		Sengstock	✓			
			Vitale	✓			
			Weigel				
			TOTAL	<u>5</u>	<u>1</u>		

### SIGNATURE OF COMMITTEE MEMBER

*Paul Jankowski* \_\_\_\_\_  
 Chair Vice-Chair Member

## COMMON COUNCIL ACTION ADOPT

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>MAR 06 2007</u>		✓	Barczak	✓			
			Czaplewski	✓			
			Dobrowski	✓			
			Kopplin	✓			
			Lajsic	✓			
	✓		Narlock	✓			
			Reinke	✓			
			Sengstock	✓			
			Vitale	✓			
			Weigel	✓			
			TOTAL	<u>10</u>	<u>1</u>		



# City of West Allis

7525 W. Greenfield Ave.  
West Allis, WI 53214

## Resolution

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**File Number: R-2007-0076**

**Final Action: 3/6/2007**

**Sponsor(s):** Public Works Committee

Resolution Authorizing City Attorney to File a Complaint with the Office of Commissioner of Railroads against Union Pacific Railroad Company for repair of railroad crossings located in S. 55 St. and S. 57 St.

This resolution relates to the following railroad crossings located in the City of West Allis:

- S. 55 St., U.S. DOT Crossing No. 177234U at Milepost 85.58 of the Milwaukee Subdivision at West Allis, WI
- S. 57 St., U.S. DOT Crossing No. 177235B at Milepost 85.71 of the Milwaukee Subdivision at West Allis, WI

Whereas, pursuant to a report of the City Engineer and in accordance with Wis. Stat. §86.12(1), on August 1st, 2006, the Common Council of the City of West Allis passed a resolution (R-2006-0192) requiring the Union Pacific Railroad Company to repair the railroad crossings identified above located in the City of West Allis and further authorized the City Administrative Officer/Clerk/Treasurer to serve a copy of said resolution upon Union Pacific Railroad Company and all other state and federal officials as required by Wisconsin State Statutes; and,

Whereas, on or about August 29th, 2006, the City Administrative Officer, Clerk/Treasurer served a copy of the August 1st, 2006, resolution (R-2006-0192) by certified mail on the Union Pacific Railroad Company; and,

Whereas, more than thirty (30) days have elapsed since said notice and to date, the Union Pacific Railroad Company has failed to make any repairs whatsoever to said railroad crossings; and,

Whereas, the Common Council of the City of West Allis may file a complaint with the Office of the Commissioner of Railroads alleging the failure of Union Pacific Railroad Company to honor the terms of the resolution and request an investigation into this matter pursuant to Wis. Stat. §86.12(2).

Now, Therefore, Be It Resolved, by the Common Council of the City of West Allis that the Office of the City Attorney is hereby authorized to file a complaint and handle all legal matters associated with the same, on behalf of the Common Council, with the Office of the Commissioner of Railroads in accordance with Wis. Stat. §86.12(2) for the investigation and ultimate improvement of the railroad crossings in S. 55 and S. 57 Streets as herein described.

ATTR-Complaint Against UP Railroad Co

**ADOPTED** \_\_\_\_\_ 03/06/2007

*Monica Schultz*

Monica Schultz, Deputy City Clerk

**APPROVED** \_\_\_\_\_

*March 7, 2007*

*Jeannette Bell*

Jeannette Bell, Mayor



OFFICE OF THE CITY ATTORNEY

March 12, 2007

Scott E. Post  
City Attorney

Sheryl L. Kuhary  
Jeffrey J. Warchol  
Cheryl L. Wentland  
Assistant City Attorneys

Attorney Douglas S. Wood  
Office of the Commissioner of Railroads  
P.O. Box 8968  
Madison, WI 53708-8968

RE: Repair of Railroad Crossings Located in the City of West Allis

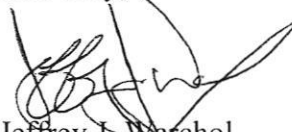
Dear Mr. Wood:

Please be advised that I am the Assistant City Attorney handling the above-referenced matter for the City of West Allis. Enclosed please find an original and one (1) copy of a Complaint for Failure to Repair/Maintain Railroad Crossings and accompanying documentation in support thereof in this case. Please file stamp the copy as being "received" by your office and return it to me in the enclosed, self-addressed, stamped envelope.

The City is filing this Complaint against Union Pacific Railroad Company pursuant to City of West Allis Resolution No. R-2007-0076, a copy of which is attached to the Complaint and Wisconsin Statute Sec. 86.12, which the City has fully complied with in this matter. The City kindly requests that your office conduct an investigation and determine the matter in controversy pursuant to Chapter 195 of the Wisconsin Statutes. The City is willing to cooperate in any manner you deem necessary to assist in the investigation of this case.

In that regard, please direct all inquiries, etc. regarding this matter to my attention at the address below. Thank you for your anticipated cooperation in this matter.

Sincerely,



Jeffrey J. Warchol  
Assistant City Attorney

JJW:da

Enclosures

L/Jeff/Itr-Atty Wood-Compl RR Crossings

cc: Michael G. Lewis (encl.)  
Brian Block (w/o encl.)  
Scott E. Post (w/o encl.)  
Ann Neff (encl.)



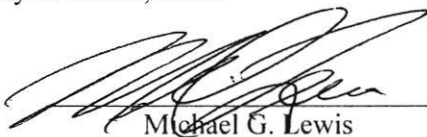
7. That as a result of the hazardous condition of the railroad crossings, on August 1<sup>st</sup>, 2006, the Common Council of the City of West Allis, pursuant to Wis. Stat. §86.12(1) passed a resolution authorizing myself to require the Union Pacific Railroad Company to install new prefabricated concrete crossings; that a copy of Resolution No. R-2006-0192 is attached hereto and incorporated herein by reference as Exhibit "B".

8. That in accordance with Wis. Stat. §86.12(1) the City Administrative Officer/Clerk/Treasurer for the City of West Allis served a copy of the above stated resolution (Exhibit "A"), by certified mail, upon the local agent of the Union Pacific Railroad Company; that a copy of said letter dated August 29<sup>th</sup>, 2006, serving the resolution, is attached hereto and incorporated herein by reference as Exhibit "C".

9. That more than thirty (30) days have elapsed since the service of said resolution on the Union Pacific Railroad Company; that to date, despite said resolution, no action whatsoever has been taken by the Union Pacific Railroad Company to fix and/or repair said railroad crossings.

10. That I make this Complaint pursuant to Common Council Resolution No. R-2007-0076 and Wis. Stat. §86.12(2) and request the Office of the Commissioner of Railroads to formally investigate this matter in controversy as provided in Chapter 195 of the Wisconsin Statutes and issue an Order to Union Pacific Railroad Company directing it to install new prefabricated concrete crossings at the locations described herein; that a copy of Resolution No. R-2007-0076 authorizing the City Attorney to handle this matter on behalf of the Common Council is attached hereto and incorporated herein by reference as Exhibit "D".

Dated at West Allis, Wisconsin, this 12<sup>th</sup> day of March, 2007.

  
\_\_\_\_\_  
Michael G. Lewis  
City Engineer

Subscribed and sworn to before me  
this 12<sup>th</sup> day of March, 2007.

Darlyn M. Adams  
( DARLYN M. ADAMS )  
Notary Public, State of Wisconsin  
My Commission Expires: 10/24/10

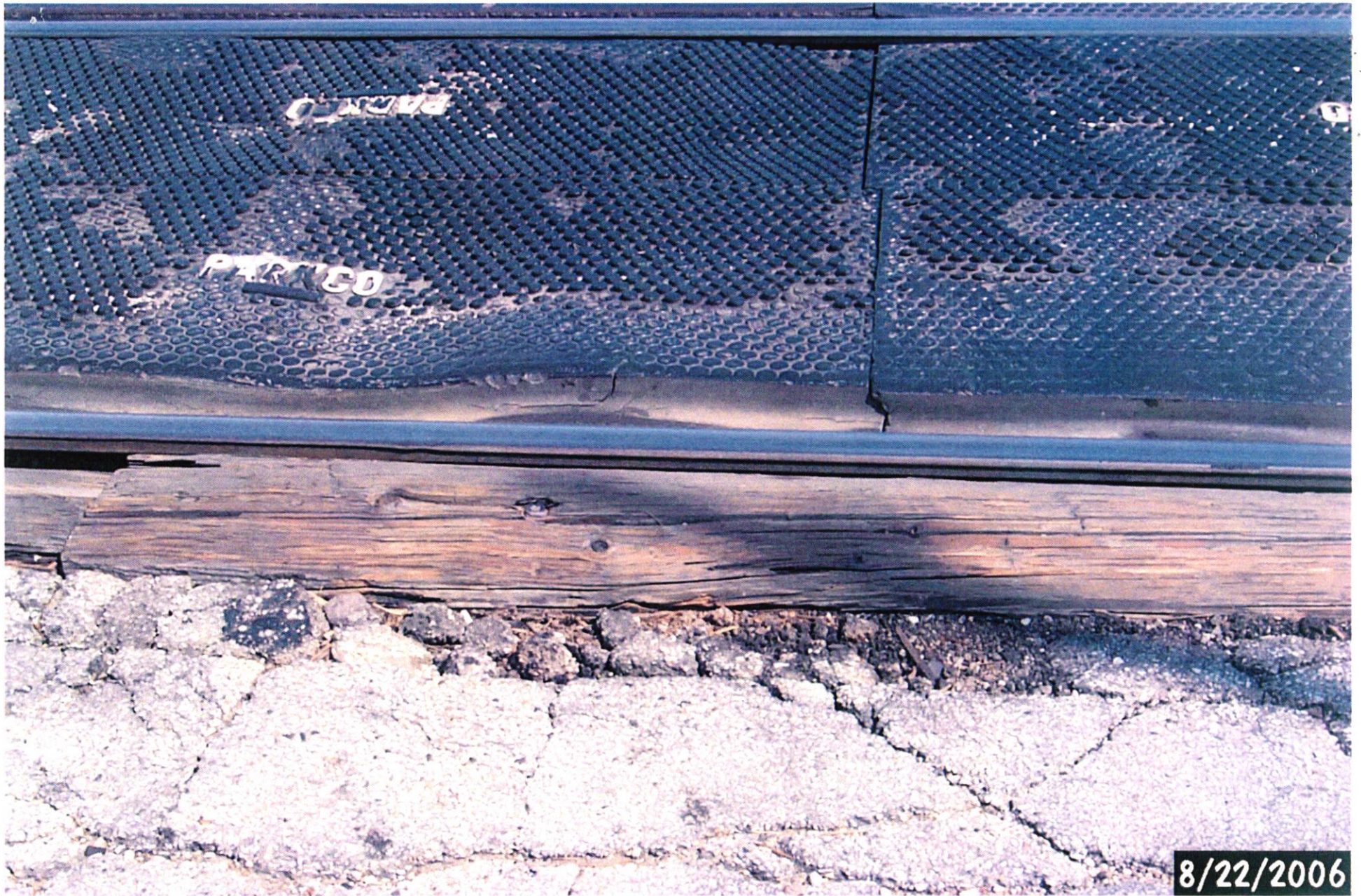


EXHIBIT "A"

Picture taken by Brian Block on 08-22-06 of the Union Pacific at grade crossing in S 55 St-South tracks



Picture taken by Brian Block on 08-22-06 of the Union Pacific at grade crossing in S 55 St-South tracks

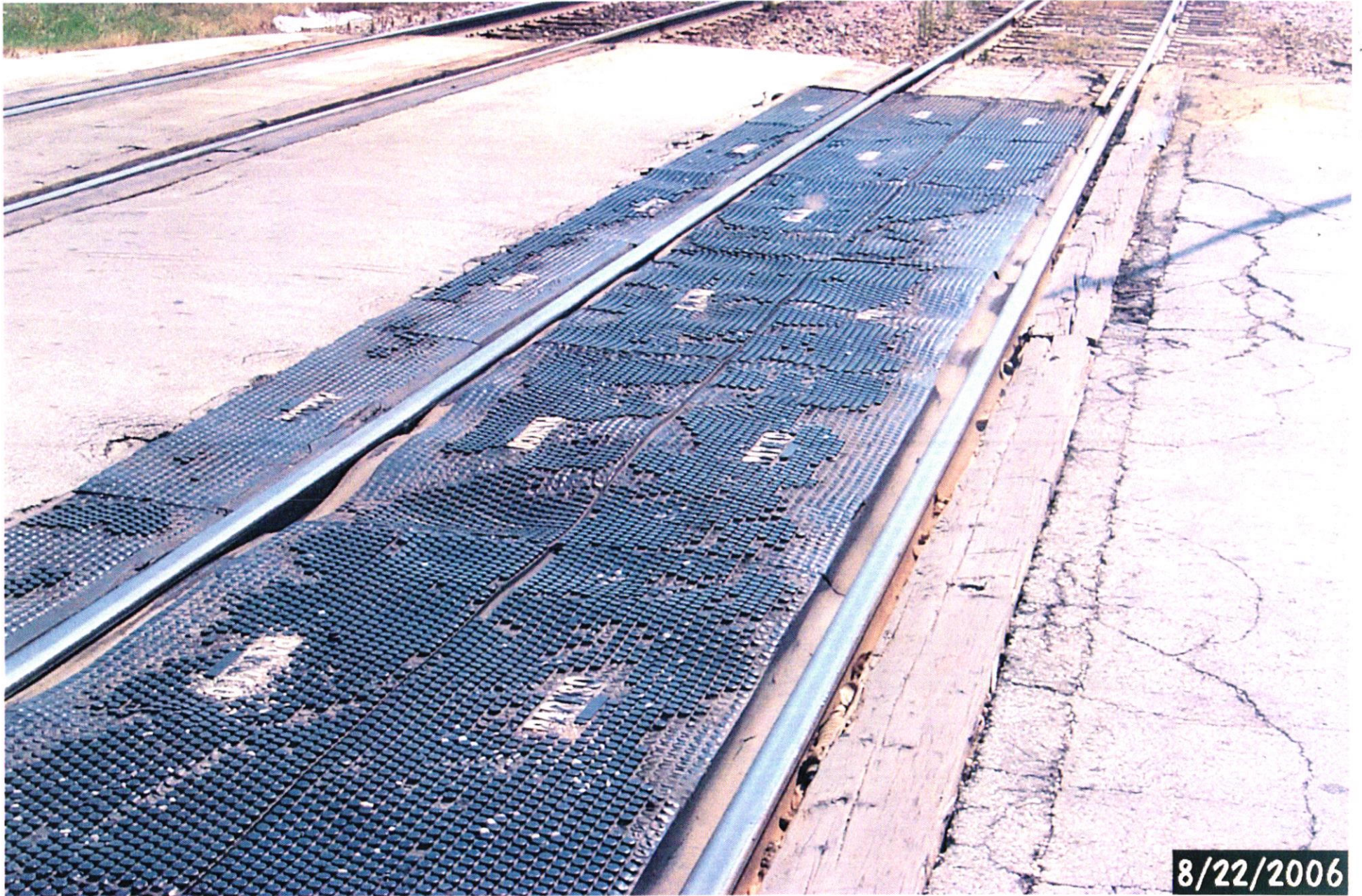




Picture taken by Brian Block on 08-22-06 of the Union Pacific at grade crossing in S 55 St-South tracks



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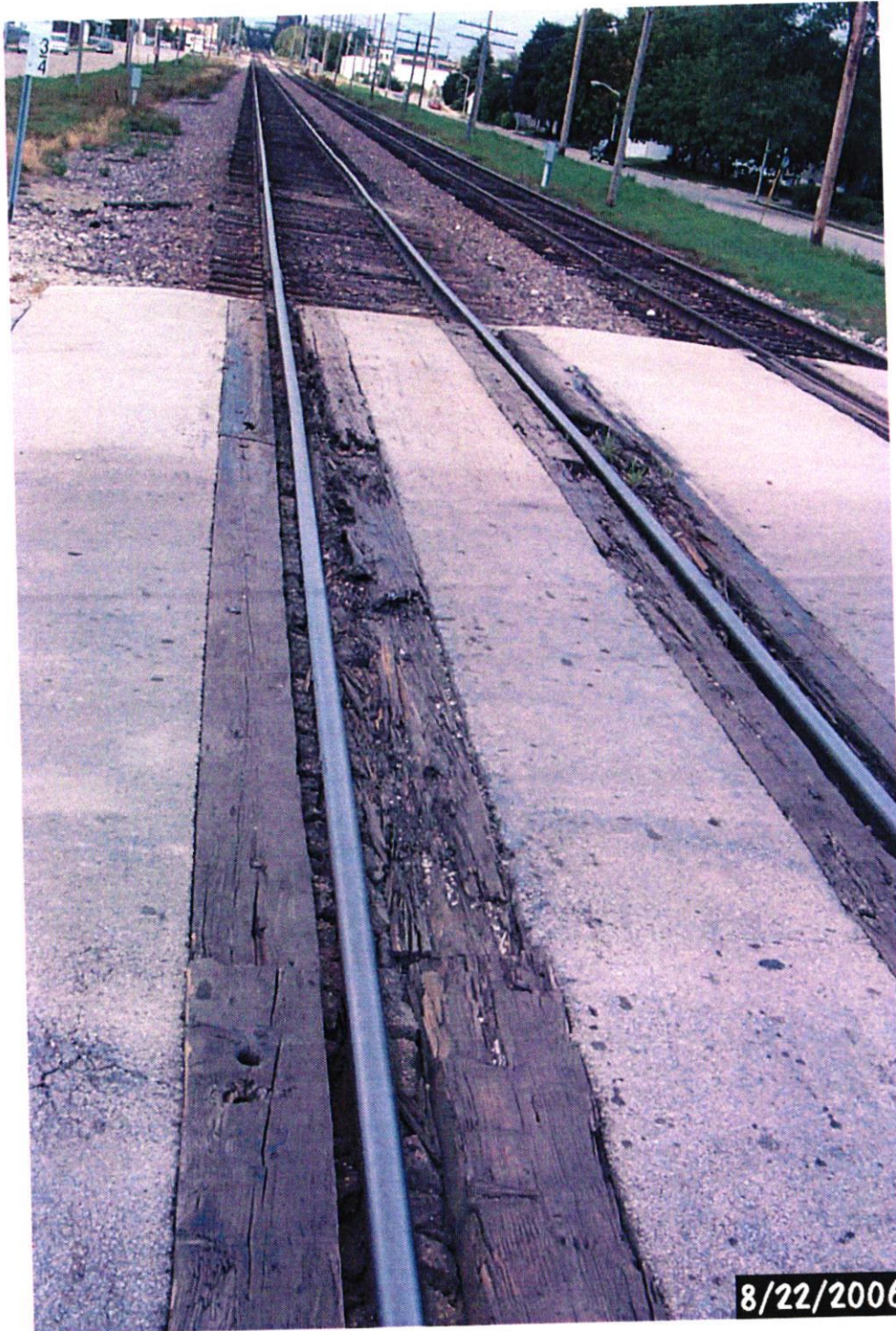
Picture taken by Brian Block on 08-22-06 of the Union Pacific at grade crossing in S 55 St-north tracks, rotted wood that rocks upward when traffic drives over.



Picture taken by Brian Block on 08-22-06 of the Union Pacific at grade crossing in S 55 St-north tracks, rotted wood that rocks upward when traffic drives over.



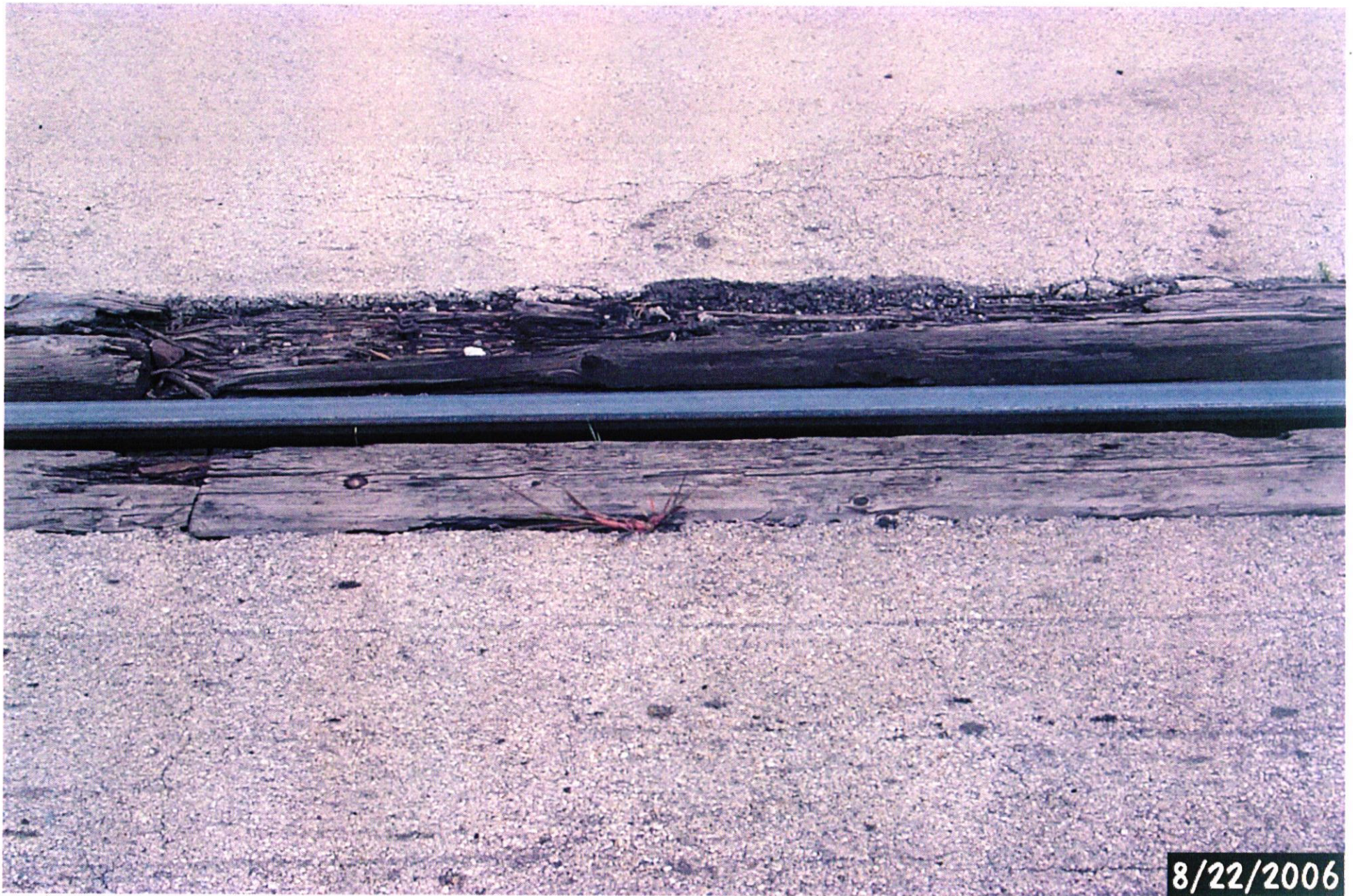
Picture taken by Brian Block on 08-22-06 of the Union Pacific at grade crossing in S 55 St-north tracks, rotted wood that rocks upward when traffic drives over.



Picture taken by Brian Block on 08-22-06 of the Union Pacific at grade crossing in S 57 St-south tracks

8/22/2006

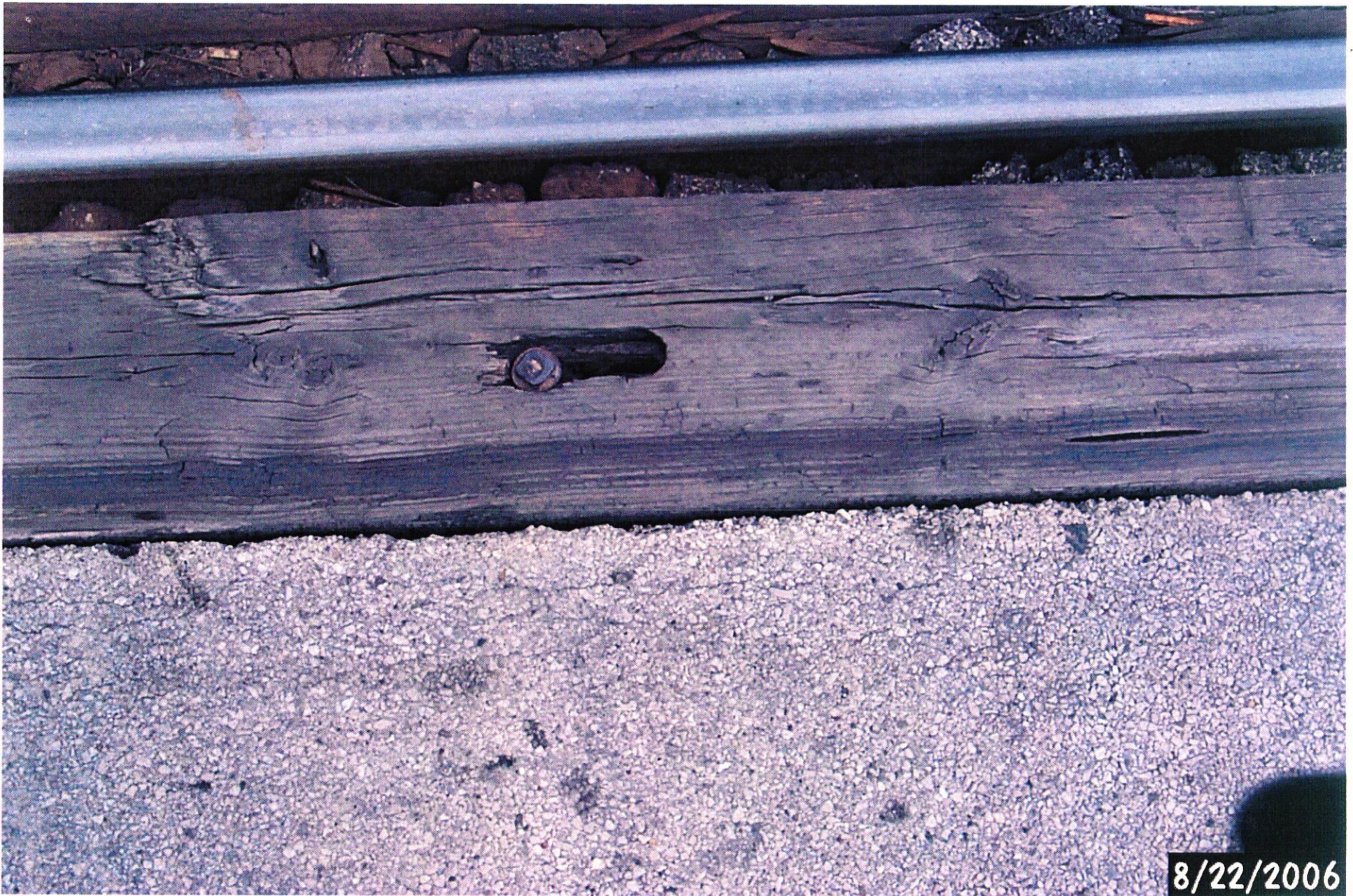




Picture taken by Brian Block on 08-22-06 of the Union Pacific at grade crossing in S 57 St-south tracks.



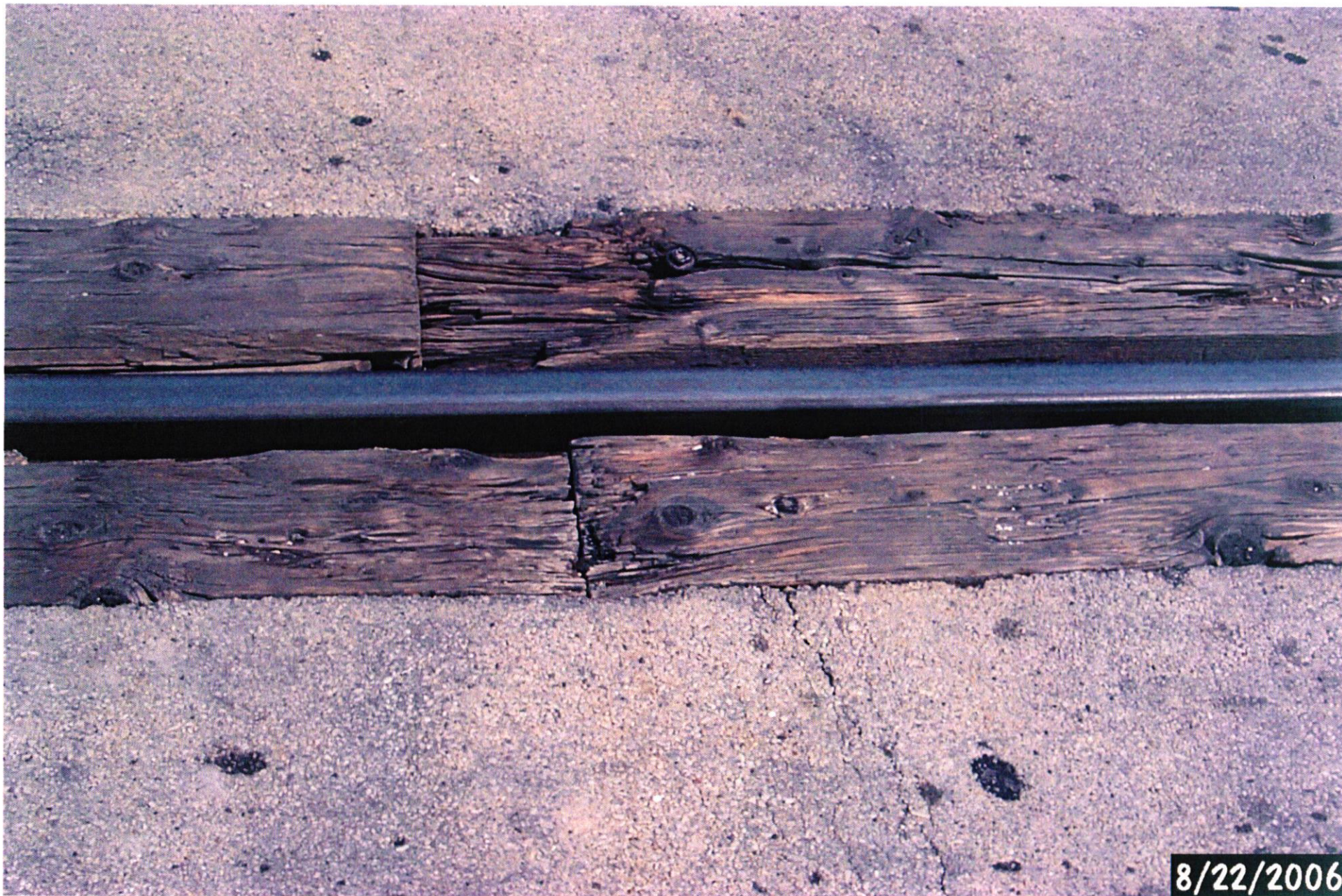
Picture taken by Brian Block on 08-22-06 of the Union Pacific at grade crossing in S 57 St-south tracks. Fasteners not holding wood rocks with vehicles traveling over it.



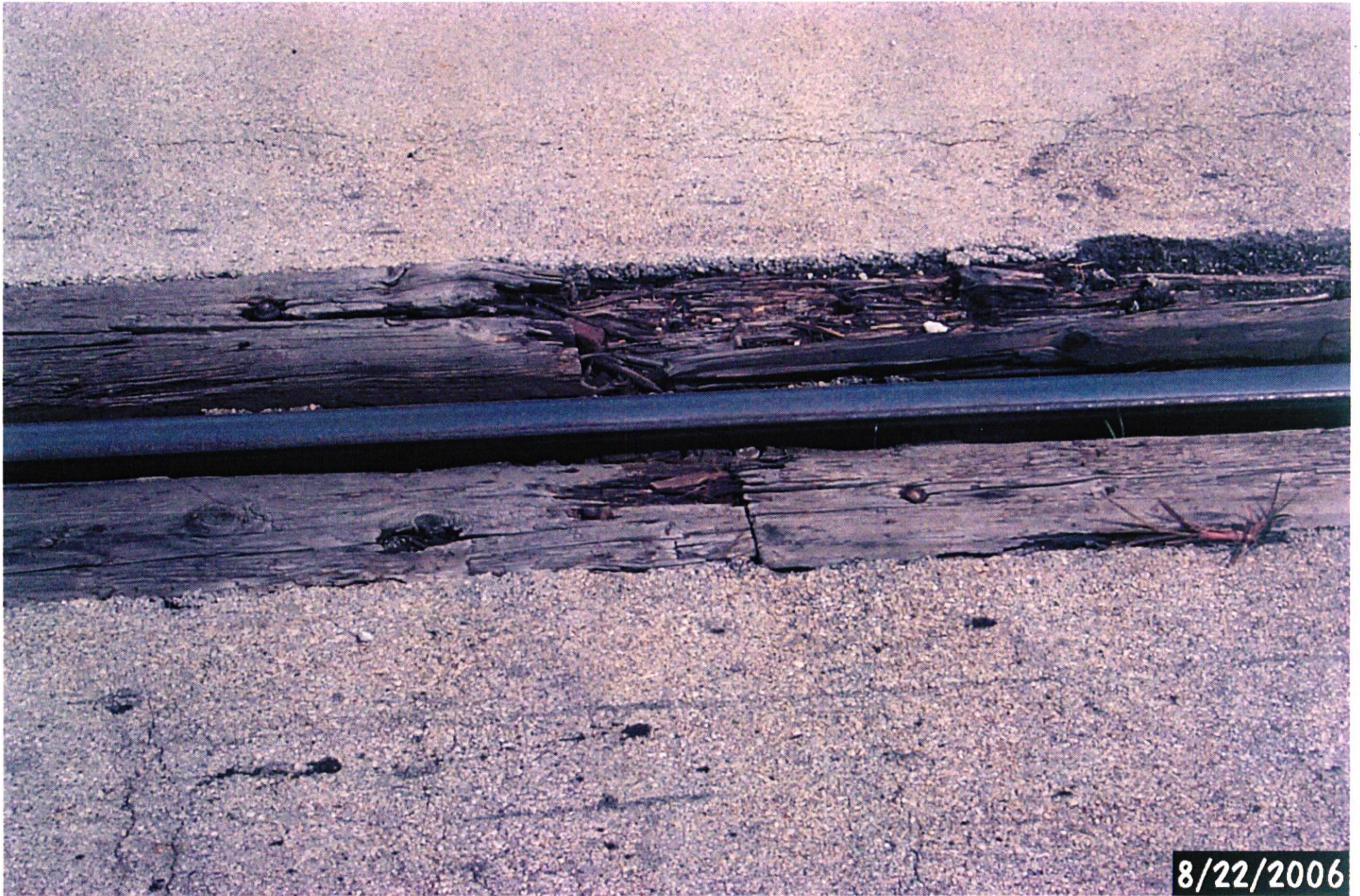
Picture taken by Brian Block on 08-22-06 of the Union Pacific at grade crossing in S 57 St-south tracks. Fasteners not holding wood rocks with vehicles traveling over it.



Picture taken by Brian Block on 08-22-06 of the Union Pacific at grade crossing in S 57 St-north tracks.



Picture taken by Brian Block on 08-22-06 of the Union Pacific at grade crossing in S 57 St-north tracks.



Picture taken by Brian Block on 08-22-06 of the Union Pacific at grade crossing in S 57 St-north tracks.



Picture taken by Brian Block on 08-22-06 of the Union Pacific at grade crossing in S 57 St-north tracks.



# City of West Allis

7525 W. Greenfield Ave  
West Allis, WI 53214

## Resolution

File Number: R-2006-0192

Final Action:

AUG 01 2006

Resolution authorizing and directing the City Engineer to require the Union Pacific Railroad Company to install new prefabricated concrete crossings.

S. 55 Street, U.S. DOT Crossing No. 177234U at milepost 85.58 of the Milwaukee subdivision at West Allis, Wisconsin, and

S. 57 Street, U.S. DOT Crossing No. 177235B at milepost 85.71 of the Milwaukee subdivision at West Allis, Wisconsin.

WHEREAS, The City Engineer's Office has complained to Union Pacific Railroad for approximately two years about the poor condition of the crossings and obtained a commitment from the railroad to make repairs in 2005; and

WHEREAS, The City Engineer's Office has been informed by Union Pacific Railroad that repairs will be delayed, possible until 2007; and

WHEREAS, The Common Council of the City of West Allis believes that the above captioned railroad crossings in S. 55 Street and S. 57 Street are in need of immediate repairs and should be replaced; and


WHEREAS, The Union Pacific Railroad Company is obligated by State Statute 86.10(1) to keep the surface of the crossing between the tracks and rails and extending 4 feet on either side of the outside rails, in good condition and repair for highway travel; and

WHEREAS, the Common Council of the City of West Allis may require Union Pacific Railroad Company to repair and improve the crossing by the authority of State Statutes 86.12(1).

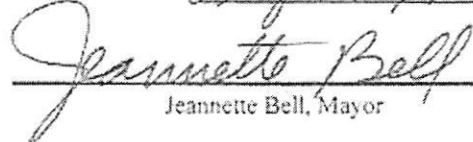
NOW, THEREFORE, BE IT RESOLVED By the Common Council of the City of West Allis that Union Pacific Railroad is hereby required to repair said railroad crossings and that the City Administrative Officer/Clerk/Treasurer be and is hereby authorized and directed to serve a copy of this resolution upon Union Pacific Railroad Company and all other appropriate State and Federal officials as required by State Statutes 86.12(1) for the improvement of the railroad crossings in S. 55 Street and S. 57 Street, as therein described.



ADOPTED AUG 01 2006

  
Paul M. Ziebler, City Admin. Officer, Clerk/Treas.

APPROVED August 4, 2006

  
Jeannette Bell, Mayor



RECEIVED  
 AUG 29 2006  
 CITY OF WEST ALLIS  
 ENGINEERING DEPT

CITY CLERK/TREASURER OFFICE

Paul M. Ziehler  
 City Administrative Officer  
 Clerk/Treasurer

Rosemary West  
 Treasurer's Office Supervisor  
 Senior Accountant

Monica Schultz  
 Assistant City Clerk

414/302-8200  
 414/302-8207 (Fax)

City Hall  
 7525 West Greenfield Avenue  
 West Allis, Wisconsin 53214

www.ci.west-allis.wi.us

August 29, 2006

Gary Wilwerding  
 Union Pacific Railroad  
 301 W. Lake St., Rm. 103  
 Northlake, IL 60164

VIA CERTIFIED MAIL

RE: Repair of Public Grade Crossing of S. 55<sup>th</sup> Street  
 U.S. DOT Crossing No. 177234U, Milepost 85.58  
 and Repair of Public Grade Crossing of S. 57 Street  
 U.S. DOT Crossing No. 177235B, Milepost 85.71  
 West Allis, Wisconsin

Dear Mr. Wilwerding:

Enclosed please find Resolution No. R-2006-0192, adopted on August 1, 2006, directing Union Pacific Railroad to make repairs to the subject railroad crossings. We have been complaining to Union Pacific for two years about the poor condition of the crossings. The Engineering Department finally received a commitment from the railroad to make repairs in 2005. The Engineering Department has been informed by Union Pacific Railroad that repairs will be delayed, possible until 2007, which is unacceptable. Therefore the enclosed resolution was unanimously adopted on August 1, 2006.

The Engineering Department has reported that the crossing at S. 80<sup>th</sup> Street, No. 177236H, is still in poor condition. This was previously mentioned in a letter on August 19, 2004.

Please contact either Michael Lewis, City Engineer at (414) 302-8372 or Brian Block, Engineering Technician at (414) 302-8367 with a schedule when repairs will be made.

Sincerely,



Paul M. Ziehler  
City Administrative Officer  
Clerk/Treasurer

/am  
enclosure

cc: Michael Lewis  
Brian Block  
Tom Hazeltine, Union Pacific Railroad (Via Certified Mail)  
Richard L. Ellison, Union Pacific Railroad  
Jim Fisher, Union Pacific Railroad

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

Gary Wilwerding  
 Union Pacific Railroad  
 301 W. Lake St., Rm. 103  
 Northlake, IL 60164

Article Number

(Transfer from service label) 7000 1670 0005 9321 9826

S Form 3811, August 2001

Domestic Return Receipt

102595-01-M-25

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *Gary Wilwerding*  Agent  
 Addressee

B. Received by (Printed Name)

*Petrus*

C. Date of Delivery

*8-31*D. Is delivery address different from item 1?  YesIf YES, enter delivery address below:  No

3. Service Type

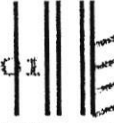
Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes

UNITED STATES POSTAL SERVICE

CAROL STREAM IL 601

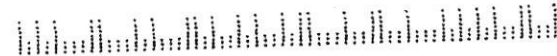


First-Class Mail  
 Postage & Fees P  
 USPS  
 Permit No. G-10

31 AUG 2006 PM 5 T

- Sender: Please print your name, address, and ZIP+4 in this box •

City of West Allis  
 Clerk/Treasurer  
 7525 W. Greenfield Ave.  
 West Allis, WI 53214



**Post Office Service**  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

Postage	\$ -39	Postmark Here <i>8-29-06</i>
Certified Fee	4.25	
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 4.64	

Sent To  
 Gary Wilwerding (Union Pacific Railroad)  
 Street, Apt. No., or PO Box No.  
 301 W. Lake St., Rm. 103  
 City, State, ZIP+4  
 Northlake, WI 53061-4

See Reverse for Instructions

**City of West Allis****Resolution****File Number: R-2007-0076****Final Action: 3/6/2007****Sponsor(s):** Public Works Committee

Resolution Authorizing City Attorney to File a Complaint with the Office of Commissioner of Railroads against Union Pacific Railroad Company for repair of railroad crossings located in S. 55 St. and S. 57 St.

This resolution relates to the following railroad crossings located in the City of West Allis:

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ATTR-Complaint Against UP Railroad Co

ADOPTED 03/06/2007

Monica Schultz

Monica Schultz, Deputy City Clerk

APPROVED

March 7, 2007

Jeannette Bell

Jeannette Bell, Mayor