

12.



City of West Allis Matter Summary

7525 W. Greenfield Ave.
West Allis, WI 53214

File Number	Title	Status
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R-2008-0011 Resolution In Committee

Resolution Authorizing City Attorney to File a Complaint with the Office of Commissioner of Railroads against Union Pacific Railroad Company for removal of railroad tracks in West Electric Avenue and repair of railroad crossings located in South 60th Street, South 82nd Street and South 80th Street.

Introduced: 1/15/2008

Controlling Body: Public Works Committee

Sponsor(s): Public Works Committee

COMMITTEE RECOMMENDATION ADOPT

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>1-15-08</u>	<u>X</u>		Barczak				
			Czaplewski				
			Dobrowski	X			
			Kopplin	X			
			Lajsic				
			Narlock	X			
			Reinke				
		<u>X</u>	Sengstock	X			
			Vitale	X			
			Weigel				
			TOTAL	<u>5</u>			

SIGNATURE OF COMMITTEE MEMBER

[Signature] _____
Chair Vice-Chair Member

COMMON COUNCIL ACTION adopt

ACTION DATE:	MOVER	SECONDER		AYE	NO	PRESENT	EXCUSED
<u>1-15-08</u>			Barczak	X			
			Czaplewski	X			
		<u>X</u>	Dobrowski	X			
			Kopplin	X			
			Lajsic	X			
	<u>X</u>		Narlock	X			
			Reinke	X			
			Sengstock	X			
			Vitale	X			
			Weigel	X			
			TOTAL	<u>10</u>	<u>1</u>		

Scott Post
Mike Lewis

**STANDING COMMITTEES OF THE
CITY OF WEST ALLIS COMMON COUNCIL
2004**

ADMINISTRATION & FINANCE

Chair: Michael J. Czaplewski
Vice-Chair: Martin J. Weigel
Gary T. Barczak
Thomas G. Lajsic
Rosalie L. Reinke

PUBLIC WORKS

Chair: Richard F. Narlock
Vice-Chair: Linda A. Dobrowski
Kurt E. Kopplin
Vincent Vitale
James W. Sengstock

SAFETY & DEVELOPMENT

Chair: Thomas G. Lajsic
Vice-Chair: Vincent Vitale
Gary T. Barczak
Martin J. Weigel
Rosalie L. Reinke

LICENSE & HEALTH

Chair: Kurt E. Kopplin
Vice-Chair: James W. Sengstock
Linda A. Dobrowski
Richard F. Narlock
Michael J. Czaplewski

ADVISORY

Chair: Rosalie L. Reinke
Vice-Chair: Gary T. Barczak
Linda A. Dobrowski
Vincent Vitale
Martin J. Weigel



City of West Allis

7525 W. Greenfield Ave.
West Allis, WI 53214

Resolution

File Number: R-2008-0011

Final Action:

Sponsor(s): Public Works Committee

JAN 15 2008

Resolution Authorizing City Attorney to File a Complaint with the Office of Commissioner of Railroads against Union Pacific Railroad Company for removal of railroad tracks in West Electric Avenue and repair of railroad crossings located in South 60th Street, South 82nd Street and South 80th Street.

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

- S. 80 St., U.S. DOT Crossing No. 177247V at Milepost 87.20 of the Milwaukee Subdivision at West Allis, WI
- S. 60 St., U.S. DOT Crossing No. 177236H at Milepost 85.90 of the Milwaukee Subdivision at West Allis, WI
- S. 82 St., U.S. DOT Crossing No. 177248C at Milepost 87.34 of the Milwaukee Subdivision at West Allis, WI
- West Electric Avenue, U.S. DOT Crossing No. 177231Y at Milepost 85.4 of the Milwaukee Subdivision at West Allis, WI

Whereas, pursuant to reports made by the City Engineer and in accordance with Wis. Stat. §86.12(1), the Common Council of the City of West Allis passed Resolution Nos. R-2007-0042 and R-2007-0217 requiring the Union Pacific Railroad Company to repair the railroad crossings identified above located in the City of West Allis and Resolution No. R-2007-0270 requiring Union Pacific Railroad Company to remove the railroad spur crossing identified above at West Electric Avenue in the City of West Allis and further authorized the City Administrative Officer/Clerk/Treasurer to serve a copy of said resolutions upon Union Pacific Railroad Company and all other state and federal officials as required by Wisconsin State Statutes; and,

Whereas, on or about February 12th, 2007, September 10th, 2007 and November 12th, 2007, the City Administrative Officer, Clerk/Treasurer served a copy of the above-stated resolutions by certified mail on the Union Pacific Railroad Company; and,

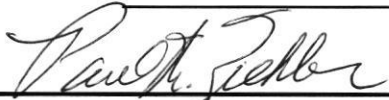
Whereas, more than thirty (30) days have elapsed since said notice and to date, the Union Pacific Railroad Company has failed to make any repairs whatsoever to said railroad crossings; and,

Whereas, the Common Council of the City of West Allis may file a complaint with the Office of the

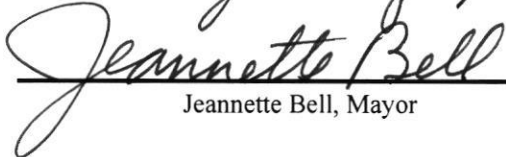
Commissioner of Railroads alleging the failure of Union Pacific Railroad Company to honor the terms of the resolution and request an investigation into this matter pursuant to Wis. Stat. §86.12(2).

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, removal of the railroad spur at West Electric Avenue and ultimate improvement of the railroad crossings in S. 60th, S. 80th and S. 82nd Streets as herein described.

ATTR-Addl Complaint Against UP Railroad Co

ADOPTED JAN 15 2008


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

APPROVED *January 17, 2008*


Jeannette Bell, Mayor

100

100

100



January 21, 2008

OFFICE OF THE CITY ATTORNEY

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-2008-0011, 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 conducts an investigation and determines 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.)

COMPLAINT FOR FAILURE TO REMOVE/REPAIR/MAINTAIN RAILROAD CROSSINGS

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

STATE OF WISCONSIN)
: ss
MILWAUKEE COUNTY)

Michael G. Lewis, being first duly sworn on oath, states the following:

1. That I am the City Engineer for the City of West Allis and have held said position since June of 2000.

2. That the following railroad crossings are located in the City of West Allis, Wisconsin:

S. 80 St., U.S. DOT Crossing No. 177247V at Milepost 87.20 of the Milwaukee Subdivision at West Allis, WI

S. 60 St., U.S. DOT Crossing No. 177236H at Milepost 85.90 of the Milwaukee Subdivision at West Allis, WI

S. 82 St., U.S. DOT Crossing No. 177248C at Milepost 87.34 of the Milwaukee Subdivision at West Allis, WI

West Electric Avenue, U.S. DOT Crossing No. 177231Y at Milepost 85.4 of the Milwaukee Subdivision at West Allis, WI

3. That said railroad crossings are the property of Union Pacific Railroad Company.

4. That said railroad crossings are in need of immediate repairs and replacements; that the current condition of the railroad crossings are hazardous and present a danger to the community at large, as well as vehicles traveling over and about said crossings; that photographs of the current condition of said railroad crossings taken by an employee of my department on October 25th, 2007, are attached hereto and incorporated herein by reference as Exhibit "A".

5. That the City's Engineering Department has made attempts to work with Union Pacific Railroad Company employees to repair said crossings referenced herein but to no avail; that the West

Electric Avenue railroad crossing referenced herein was under contract to be removed by Union Pacific Railroad Company pursuant to an agreement between the City and Union Pacific Railroad Company in 1998 but Union Pacific Railroad Company failed to remove said tracks despite the City's payment in full of its portion of the agreement.

6. That as a result of the hazardous conditions of the railroad crossings, on February 6th, 2007, September 4th, 2007 and November 6th, 2007, the Common Council of the City of West Allis, pursuant to Wis. Stat. Sec. 86.12(1) passed resolutions authorizing myself to require Union Pacific Railroad Company to remove the West Electric Avenue spur crossing pursuant to the 1998 Agreement and to repair the South 60th, South 80th and South 82nd Streets railroad crossing by installing new prefabricated concrete crossings thereon; that copies of resolution nos. R-2007-0042, R-2007-0217 and R-2007-0270, including the above-referenced 1998 Agreement, are attached hereto and incorporated herein by reference as Exhibit "B".

7. 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 resolutions (Exhibit "B"), by certified mail, upon the local agent of the Union Pacific Railroad Company; that a copy of said letters serving the resolutions, are attached hereto and incorporated herein by reference as Exhibit "C".

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

9. That I make this Complaint pursuant to Common Council Resolution No. R-2008-0011 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 remove the West Electric Avenue spur

crossing and install new prefabricated concrete crossings at South 60th, South 80th and South 82nd Streets as described herein; that a copy of Resolution No. R-2008-0011 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".

10. That the following railroad crossings are located in the City of West Allis, Wisconsin:

S. 55 St., U.S. DOT Crossing No. 177234U at Milepost 85.58 of the Milwaukee Subdivision at West Allis, Wisconsin

S. 57 St., U.S. DOT Crossing No. 177235B at Milepost 85.71 of the Milwaukee Subdivision at West Allis, Wisconsin

11. That said railroad crossings are the property of Union Pacific Railroad Company.

12. That on June 1st, 2007, the Commissioner of Railroads signed an Order requiring the Union Pacific Railroad Company to repair the crossings stated in Paragraph No. 10 herein by fully renewing said crossings with a concrete-paneled surface by October 1st, 2007. That a copy of the Final Decision and Order of the Commissioner of Railroads is attached hereto and incorporated herein by reference as Exhibit "E".


13. That to date, despite the Commissioner's Order, only temporary repairs have been made to said crossings; that photographs of the current condition of said railroad crossings taken by myself during the month of November, 2007, are attached hereto and incorporated herein by reference as Exhibit "F".

14. That a photograph taken by an employee of my department on January 1st, 2007, showing the proper method of repair that should be made to the S. 55th and S. 57th Street crossings in accordance with the Commissioner's Order is attached hereto and incorporated herein by reference as Exhibit "G".

15. That I make this Complaint pursuant to Common Council Resolution R-2007-0076, the Commissioner of Railroads Order dated June 1st, 2007, and Wis. Stat. Sec. 86.12(2) and request the

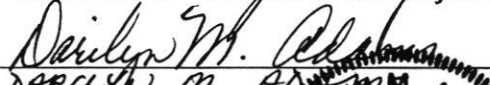
Office of Commissioner of Railroads to investigate this matter in controversy as provided in Chapter 195 of the Wisconsin Statutes and issue an Order to Union Pacific Railroad Company directing it to make the necessary repairs to the crossings at S. 55th and S. 57th Street described herein in accordance with the previous Order of the Commissioner of Railroads; that a copy of City of West Allis Resolution No. R-2007-0076 is attached hereto and incorporated herein by reference as Exhibit "H".

Dated at West Allis, Wisconsin, this 17th day of January, 2008.



Michael G. Lewis
City Engineer

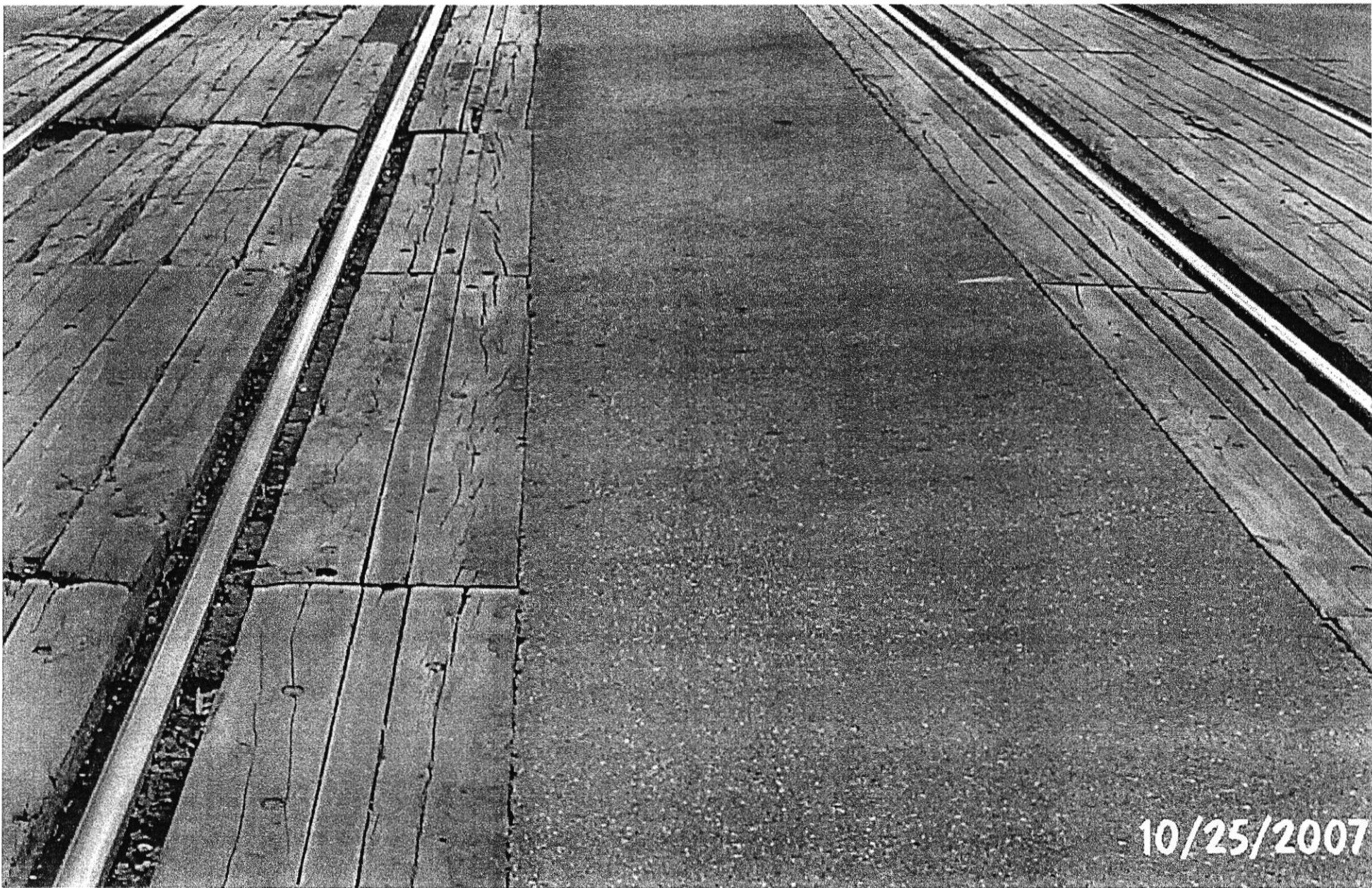
Subscribed and sworn to before me
this 17th day of January, 2008.



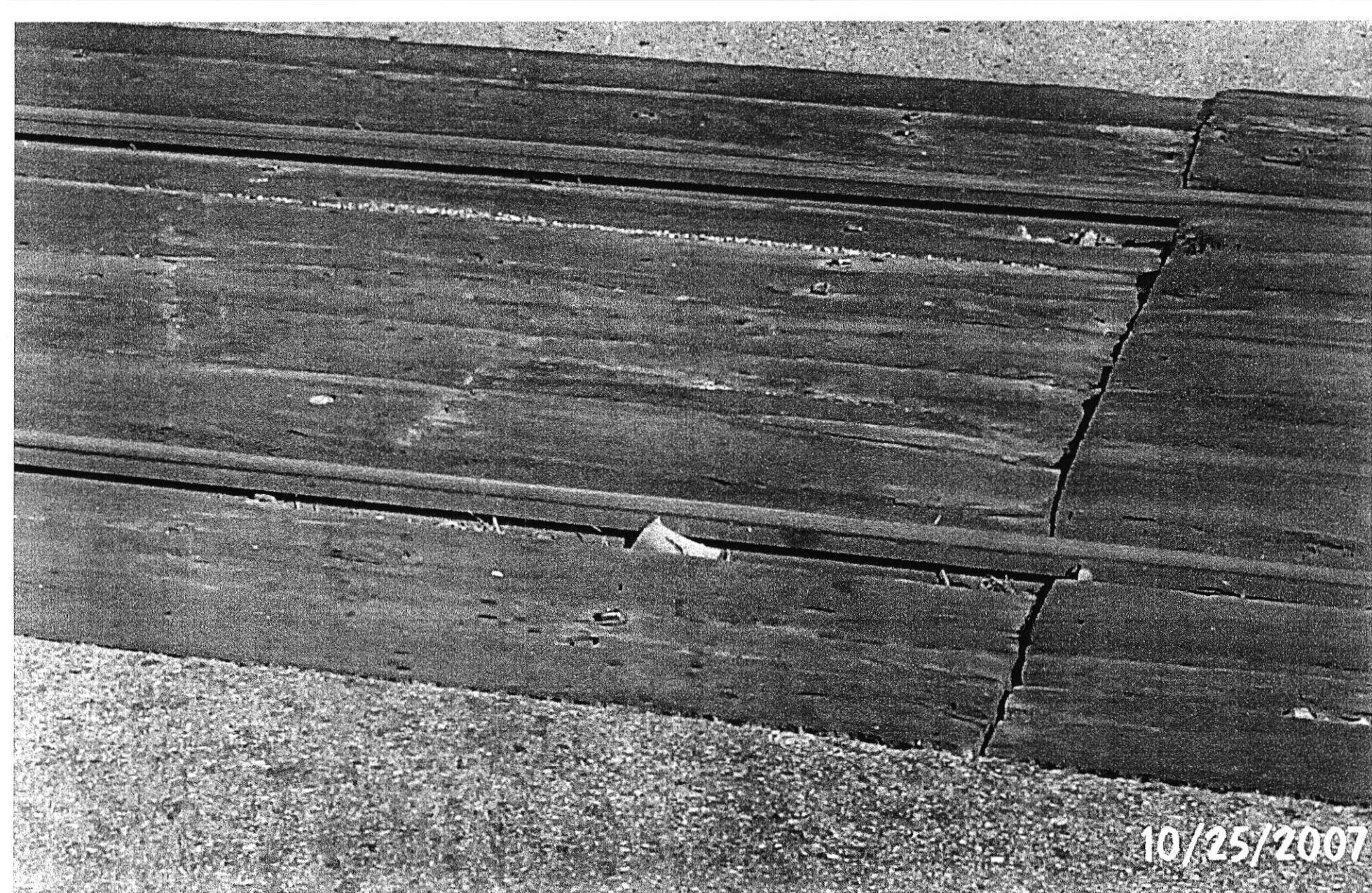
(DARLYN M. ADAMS)
Notary Public, State of Wisconsin
My Commission Expires: 10/24/10

L/Jeff/Complaint-UP Railroad Company-Sec

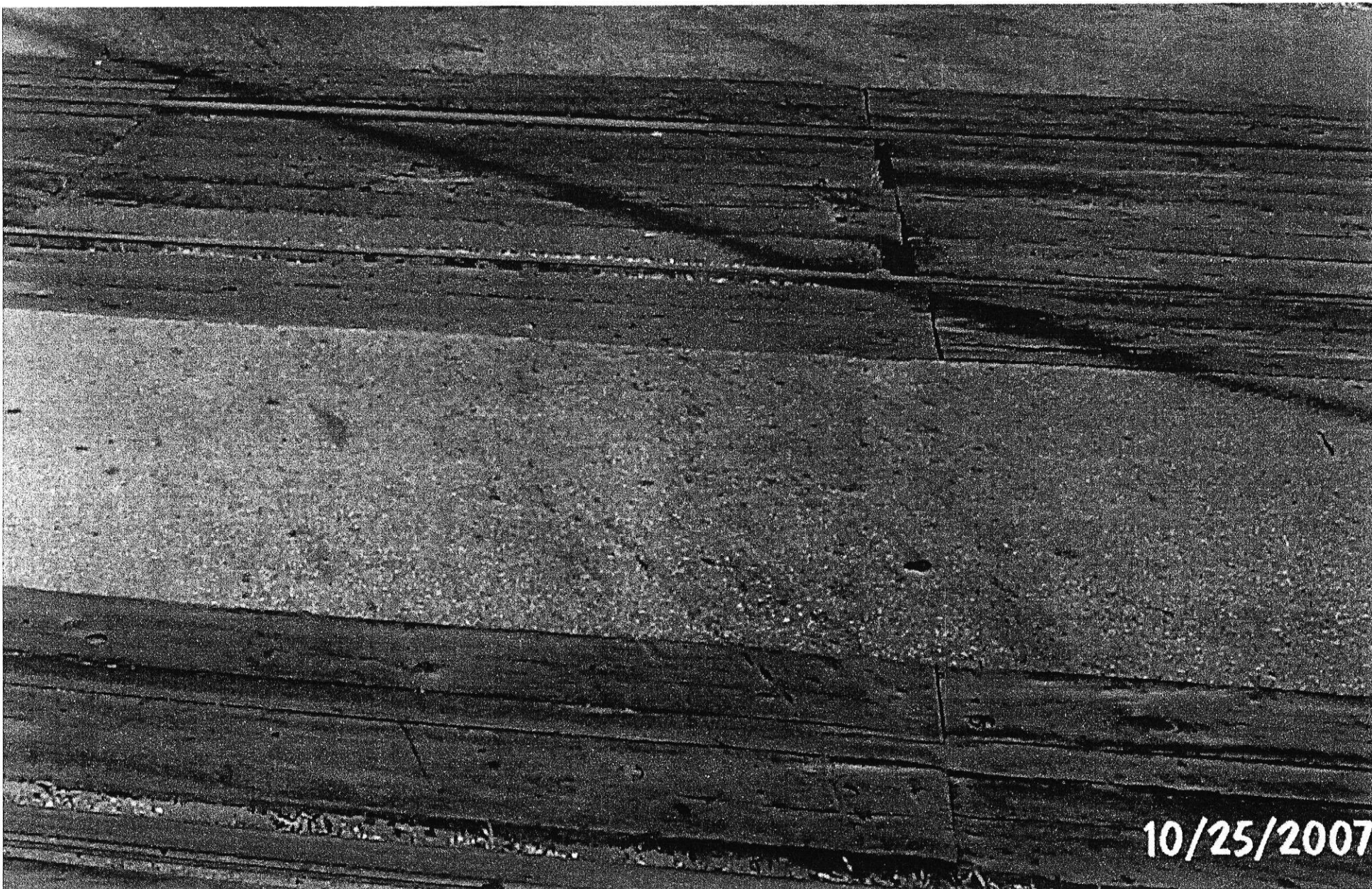




Block on 10-25-07 of the UPRR At-Grade crossing at S. 60 St. U.S DOT crossing No. the tracks looking southeast.



Block on 10-25-07 of the UPRR At-Grade crossing at S. 60 St. U.S DOT crossing No. 10/25/2007
North of tracks looking north.



Block on 10-25-07 of the UPRR At-Grade crossing at S. 60 St. U.S DOT crossing No. 10th of tracks looking north.



Block on 10-25-07 of the UPRR At-Grade crossing at S. 60 St. U.S DOT crossing No. 1000. 10th of tracks looking north.



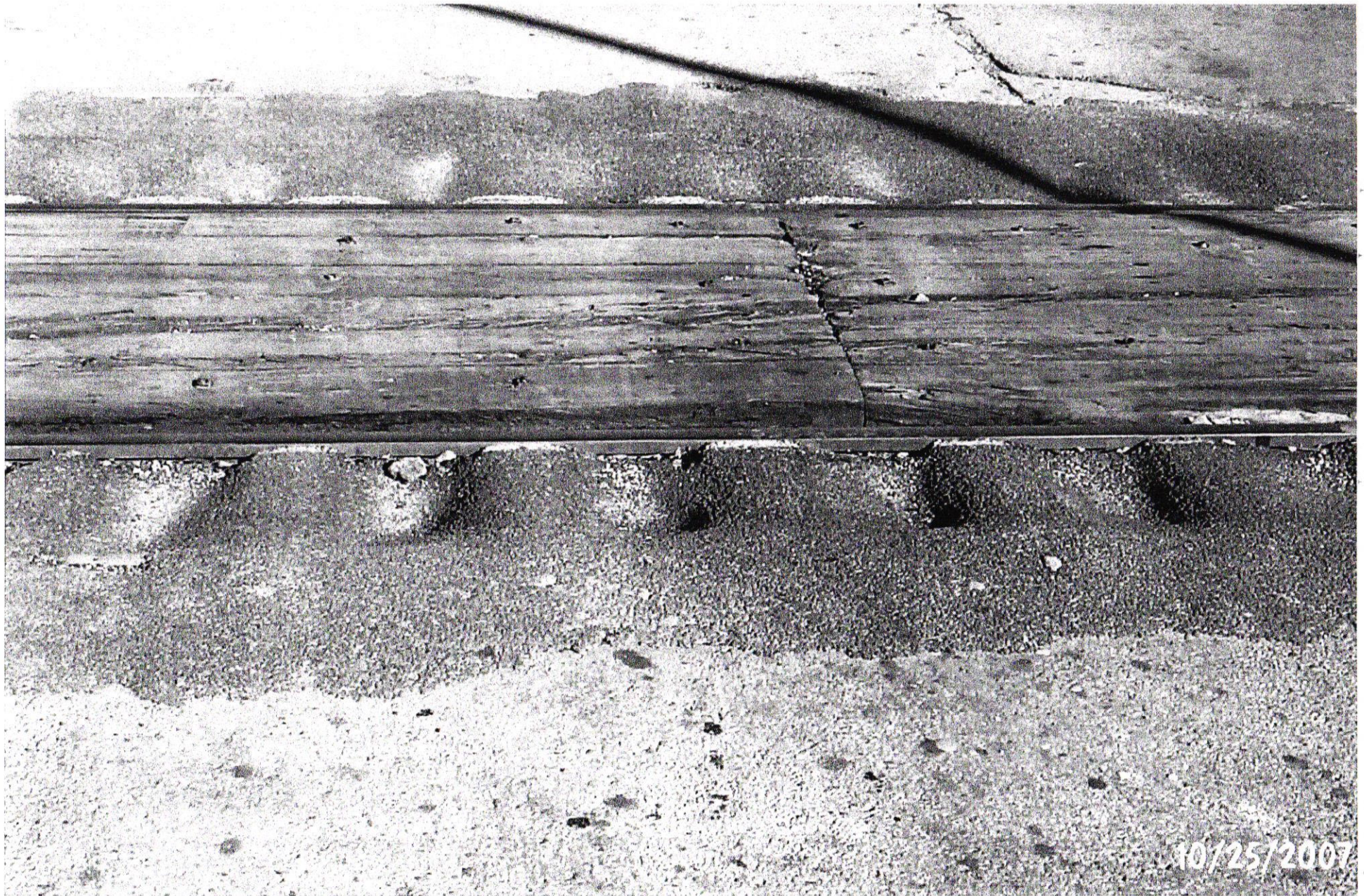
Picture taken by Brian Block on 10-25-07 of the UPRR At-Grade crossing at S 80 St. U.S DOT crossing No. 177247V. Standing at the tracks looking east.



Picture taken by Brian Block on 10-25-07 of the UPRR At-Grade crossing at S 80 St. U.S DOT crossing No. 177247V. Standing south of tracks looking north



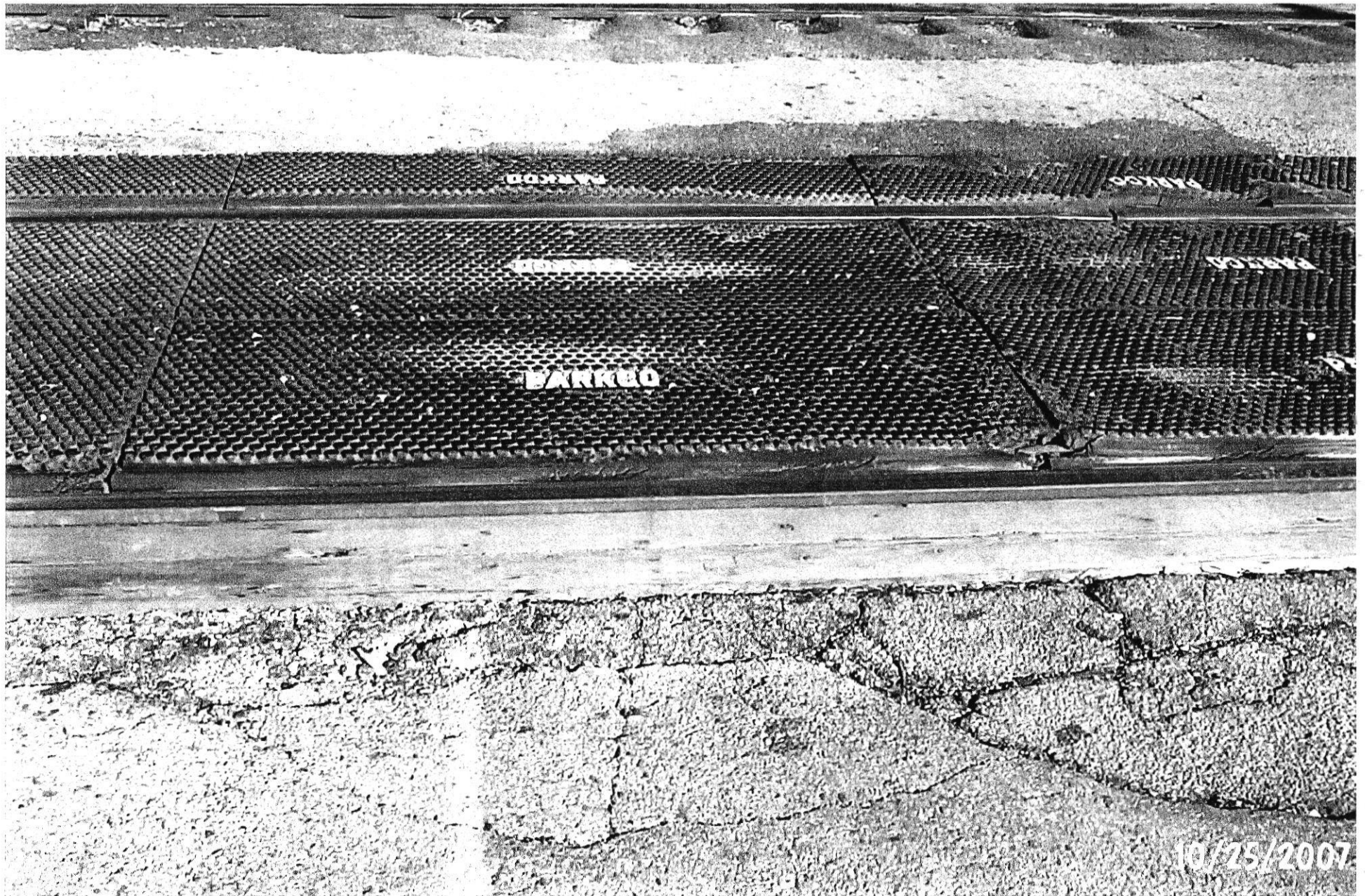
Picture taken by Brian Block on 10-25-07 of the UPRR At-Grade crossing at S 80 St. U.S DOT crossing No. 177247V. Standing south of tracks looking north



Picture taken by Brian Block on 10-25-07 of the UPRR At-Grade crossing at S 80 St. U.S DOT crossing No. 177247V. Standing south of tracks looking north



Picture taken by Brian Block on 10-25-07 of the UPRR At-Grade crossing at S 80 St. U.S DOT crossing No. 177247V. Standing south of tracks looking north



Picture taken by Brian Block on 10-25-07 of the UPRR At-Grade crossing at S 80 St. U.S DOT crossing No. 177247V. Standing south of tracks looking north



Picture taken by Brian Block on 10-25-07 of the UPRR At-Grade crossing at S 80 St. U.S DOT crossing No. 177247V. Standing south of tracks looking north



Picture taken by Brian Block on 10-25-07 of the UPRR At-Grade crossing at S 80 St. U.S DOT crossing No. 177247V. Standing south of tracks looking north



Picture taken by Brian Block on 10-25-07 of the UPRR At-Grade crossing at S 80 St. U.S DOT crossing No. 177247V. Standing south of tracks looking north



Picture taken by Brian Block on 10-25-07 of the UPRR At-Grade crossing at S 80 St. U.S DOT crossing No. 177247V. Standing south of tracks looking north



Picture taken by Brian Block on 10-25-07 of the UPRR At-Grade crossing at S 80 St. U.S DOT crossing No. 177247V. Standing south of tracks looking north