

Time-line of key events in the closure - and reopening - of the Indian Hill Road RR crossing 2019 – 2024

2019

1. **May 20, 2019:** Indiana Railroad Company [INRD] forwards **2019 INRD Petition-to-close crossing DOT# 292 193F** to Brown County Commissioners. Although **Indiana statute 8-6-7.7-3.2(a)** REQUIRED that BC hold a public hearing within 60 days of receiving this petition, the **Commissioners concealed the existence of the Petition-to-close for 11 months** – until re-approached by INRD in April 2020.

- Petition language reflects sequence of decisions [expected by BC] characteristic IC 8-6-7.7-3.3(a)-(d). NOTABLY, there is no mention of skipping (a)-(e) and proceeding directly to an agreement per IC 8-6-7.7-3.2(e).
- Recitals section in CC&SA [April 2020 – see item 2] states that (1) INRD petitioned BC in 2019, and (2) no hearings have been held between May 20, 2019 and April 9, 2020, with no mention of an option [per IC 8-6-7.7-3.2(e)] to omit hearings and conclude an agreement.

Conclusion: INRD clearly expected BC would hold hearings prior to any decision re crossing, and at no time expected, or attempted, to conclude an agreement via IC 8-6-7.7-3.2(e). Ever!

2020

2. **April 9, 2020:** INRD [Peter Ray, VP Engineering] signs, then forwards, **Indian Hill Road Crossing Closure and Settlement Agreement [CC&SA]**. **Stated therein:**

(a) Recitals item 1: On May 20, 2019, INRD petition the Board to close ... crossing ... DOT #292 193F ... pursuant to IN code §8-6-7-7-3.2.

(b) Recitals item 2: The Board has not held a public hearing to vote to grant or deny the petition.

With these statements the Parties acknowledge events and expectations following the 2019 Petition-to-close.

(a) Following Recitals it is stated that “NOW, THEREFORE, in consideration of the costs to be borne, including the expense of holding a public hearing and litigation, in addition to the potential availability of public funds, the Parties seek to amicably agree to close the crossing and to settle this matter and all related claims ...”

(b) Section 1.02: States “... All parties have engaged in the drafting of this agreement.”

This last statement, that the Parties are prepared to skip hearings and proceed directly to an agreement to close the crossing, indicates a revised interpretation of IC 8-6-7.7-3.2(a)-(e) in which (a)-(d) are optional rather than being necessary steps in performance

of due diligence on behalf of BC citizens. The Reader should note that in 2024 Indiana Legislative Session, statutes governing RR crossing closures were amended [see item 16] to preclude such ill-advised interpretation of the letter and spirit of Indiana law.

3. **April 21, 2020:** BC Commissioners [Dave Anderson, Diana Biddle, Jerry Pittman] sign **Indian Hill Road Crossing Closure and Settlement Agreement [CC&SA]**, thereby:
 - (a) Attesting to existence of 2019 Petition-to-close crossing which had thus far been concealed from BC citizens.
 - (b) Violating open meeting statutes because no public meeting/vote occurred prior to signing.
4. **May 6, 2020:** BC Commissioners vote to adopt **Resolution No. 2020-5-6-000**, to "... fulfill the intent of the **CC&SA ...**" to close crossing DOT# 292 193F. **No public hearing - existence of 2019 Petition-to-close still concealed – BC voters disenfranchised.**
5. **June 17, 2020:** BC Commissioners Diana Biddle, Jerry Pittman, and Dave Anderson, and Highway Superintendent Mike Magner, **state on public record that BC petition was first received in 2020, continuing to conceal existence of active Petition-to-close crossing filed with BC on May 20, 2019.**

In addition, "Barnes and Thornburg attorney Veronica Schilb, who represents the county, said last June that because the county and the railroad company came to an agreement on the closing, no public hearing was required before it was closed," excerpted from "**Indian Hill Road residents question railroad closing**", by Suzannah Couch – July 16, 2020, in *The Brown County Democrat*.

6. **September 21, 2020:** BC submits **request to Rail Programs Office for RRGCF funds pursuant to a crossing closure.**

2021

7. **April 12, 2021:** BC Commissioner Jerry Pittman signs **RRGCF Crossing Closure Grant Agreement, EDS# A249-21-G210003, Grant # 21-GCF-LPA-02.** The amount of grant is \$10,000.

2022

8. **June 15, 2022 to July 15, 2022** Commissioners in Starke County, Indiana, received a petition to close a RR crossing, notified stakeholders, discussed the petition during three public meetings, and **voted to deny the petition – all within 34 days of receiving the petition!**

2023

9. **April 19, 2023:** Scott Rudd presentation to BC Commissioners asking that BC petition INDOT to open crossing DOT# 292 193F on Indian Hill Road.

At this meeting, the Barnes & Thornburg [B&T] attorney for the County Commissioners reaffirms ill-advised B&T interpretation of Indiana crossing closure statutes, that 8-6-7.7-3.2(e) can be acted upon to the exclusion of 8-6-7.7-3.2(a)-(d), effectively rendering 8-6-7.7-3.2(a)-(d) nonessential. This interpretation mirrors that provided during the BC Commissioners meeting of June 17, 2020, by B&T Attorney Veronica Schilb [see item 5, this time-line], and that interpretation **underlying signing**

and formal adoption of the CC&SA and implicit in the “...as to form” attestation of B&T attorney Lauren Box in the CC&SA in April 2020.

10. **June 1, 2023:** BC submits DOT-RR-2494 Petition w Exhibits A-D to open crossing DOT# 292 193F along Indian Hill Road at highway grade.
11. **June 20, 2023:** INRD submits Verified Objection to Petition [INRD-VOP] to Open Highway Crossing at Grade in Nashville, Brown County, IN.
12. **June 28, 2023:** INDOT hosts onsite meeting re INDOT Docket No.: DOT-RR-2494 [assigned June 14, 2023].
13. **July 5, 2023:** INDOT announces [per Brown County and INRD request] a 30-day extension/delay in INDOT Order Process re Docket No.: DOT-RR-2494.
14. **July 28, 2023:** Deadline for rebutting INRD-VOP.
15. **September 29, 2023:** INDOT issues DOT-RR-2494, Order Indian Hill Road and INRD located in Brown County [DOT 2920193F], for reopening of crossing DOT# 292 193F in Brown County, Indiana. INDOT finds that ” ... **that there are compelling reasons raised for opening of this crossing.**”

2024

16. **January 23, 2024:** In response to disenfranchisement of Brown County residents from, the Indiana Legislature amended statute IC 8-6-7.7-3.2(e) pertaining to RR crossing closures, and added a new section, IC 8-6-7.7-3.5, mandating the ways in which the public is to be notified prior to a public hearing re crossing closure:

IC 8-6-7.7-3.2(e) A unit and a railroad may agree to close a crossing within the jurisdiction of the unit. The unit must conduct a public hearing before agreeing to the closure of the crossing. Notice of the public hearing must be provided under section 3.5 of this chapter.

IC 8-6-7.7-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1,2024]: **Sec.3.5.** The unit (as defined in IC 36-1-2-23) under whose jurisdiction a public railroad crossing lies must provide notice of the public hearing regarding the proposed closure as follows:

- (1) By publication in two(2) newspapers of general circulation in the unit, published not less than thirty(30) days prior to the public hearing.
- (2) By certified mail to those property owners who would be considered interested parties under the unit’s rules for providing notice under IC36-7-4, postmarked not less than thirty (30) days prior to the public hearing.