

Inside :

SRTS Q&A, p.3

Clearinghouse, p. 3

New on board, p. 2

Rail-trails victory in state Court of Appeals

In August the N.C. Court of Appeals unanimously affirmed a Rutherford County Superior Court's decision which in the future could be legal leverage to build more rail-trails in abandoned rail corridors.

The Appeals Court ruled that the landowners adjacent to the Thermal Belt Rail-Trail in western North Carolina cannot claim the sub-surface or aerial rights to the rail corridor, collect fees for utilities in the rail corridor, or collect revenues for possible fiber optic lines laid in the rail corridor.

The Aug. 1 ruling was not appealed due to the unanimous decision of the three-judge panel. The Thermal Belt Rail-Trail is west of Forest City and runs from Spindale eight miles north to Gilkey.

Mike Domonkos, a North Carolina Rail-Trails (NCRT) board member, predicted that the decision is a significant precedent, which could be a key to establishing rail-trails on rail corridors long thought to be abandoned or lost to

public use. The key, he said, is to "take another look at those old deeds and transfers to the railroads."

Domonkos and fellow NCRT board member David S. Coats handled the case pro bono for the Raleigh firm of Bailey and Dixon, LLP. Domonkos appeared as "of counsel" during the legal proceedings.

At the original trial, the adjacent landowners, or plaintiffs, challenged whether the trail had been properly rail-banked under the

Victory (Continued on page 2)

Safe Routes to School

In September North Carolina kicked off its Safe Routes to School (SRTS) initiative that over the next five years will use \$15 million in federal money to encourage school children to walk

or bicycle safely to school with the goals of improving air quality and reducing childhood obesity and traffic congestion.

From 70 to 90 percent of the money can be spent on walking and biking trails that benefit high schools and the general public as long as they also serve schools from grades K-8.

North Carolina's allocation is part of the \$612 million SRTS component of the transportation bill Congress passed in August. Workshops are now underway across the state to familiarize school systems, planning departments and communities about SRTS and the application process. (See Safe Routes Q&A, page 3)

"This is a great opportunity to safely connect communities and schools," said Carolyn Townsend, chair of North Carolina Rail-Trails Inc. (NCRT).

"This funding source greatly enhances opportunities to build sidewalks and transportation routes for safe bicycling and walking on former railroad corridors. NCRT has expertise in working with state



and local governments and communities to develop these assets."

SRTS advocates offer these figures:

·In 2001 less than 16 percent of the students between the ages of five and 15 walked or biked to or from school compared to 42 percent in 1969, according to the National Household Travel Survey.

·Up to 20 to 30 percent of morning traffic is generated by parents driving their children to school with these health implications: Over the last 25 years, air pollution has

Safe Routes (Continued on page 2)

Food Lion aids rail-trails

Part of your grocery bill at Food Lion can now go toward completion of the American Tobacco Trail by linking your Food Lion MVP card to Triangle Rails to Trails Conservancy (TRTC) through the Food Lion Website.

Here's how:

Pull up the Food Lion Web site

www.foodlion.com with your Internet Explorer browser. Netscape, Mozilla or other browsers won't work.

On the Web site, click the Shop and Share link on the left side of the page. Then click on Register Your MVP Card or Re-link your MVP Card.

Under Select Organization, find NC, Durham, then Triangle Rails to Trails. That brings up TRTC. Follow the instructions. Be sure to include all 12 digits of your MVP card. Confused? Call Food Lion at (704)-633-8250, Ext. 3810.

<http://www.NCRail-Trails.org>

Victory

(Continued from page 1)

federal program designed to protect abandoned rail corridors for possible future rail use.

On June 28, 2005, Rutherford County Superior Court Judge Laura J. Bridges held that the owners prior to the defendant, Bechtler Corporation, obtained the rail corridor outright through federal railbanking.

The original 1855 title provides that the railroad owned the property "so long as" it was used for purposes of the railroad. State statutes in 1973 voided the "so long as" limitation in deeds over 30 years old unless the adjoining landowners filed notice by Oct. 1, 1976, to preserve such limitations.

The plaintiff landowners did not file by October 1976 thus making the rail corridor available for any use by the railroad or its successors. The plaintiffs disagreed with the June 2005 Superior Court decision and appealed to the N.C. Court of Appeals where they lost in August.

In looking at old railroad deeds to find leverage for future rail trails, Domonkos warned that many deeds can be construed only as granting an easement. Further, he cautioned, some rail corridors abandoned before 1973 will have reverted to the adjoining owner before the 1973 statute began snuffing out old restrictions and reversions.

Domonkos said the importance of the Appeals Court ruling is that it is similar to rulings in many other states. Those rulings hold that a limitation in a deed to "railroad purposes" or "so long as it is used for railroad use" and similar language does not create a mere easement but constitutes nearly full ownership by the railroad which ripens into full ownership after the statutory period. The

Veteran advocate joins board



Shellie Pfohl

court also affirmed that use of the term "right of way" in a deed is a neutral term and could mean either full ownership or an easement.

Domonkos speculated that the Court of Appeals ruling may make many rail corridors viable for conversion to biking and hiking trails. North Carolina Court rulings have sided with railroads over ownership of abandoned rail corridors when the property is held in fee by the railroad thus knocking out the principal of "squatters' rights."

Safe Routes

(Continued from page 1)

been linked to a 74 percent increase in asthma rates among children ages 5-14 and a 160 percent increase in children up to age 4.

Childhood obesity rates have more than tripled since 1970.

"NCDOT's Division of Bicycle and Pedestrian Transportation looks forward to working with local partners, including NCRT, to identify eligible trail projects," said Tom Norman, director of the division. "We also need advocacy groups like NCRT to encourage local officials."

Earlier this year the Transylvania County School system researched potential safety and legal problems surrounding SRTS then voted unanimously to participate. Randy Ronning, administrator of California's \$140 million SRTS program, said his 500 SRTS projects have experienced no legal problems. SRTS summary at www.ncdot.org/programs/saferoutes/

Shellie Pfohl, a veteran of state and non-profit agencies advocating physical activity, joined the North Carolina Rail-Trails Board in October. She has over 15 years of networking experience in the state.

Pfohl is vice president and chief operating officer of Be Active North Carolina Inc., a non-profit organization that encourages physical activity for all ages. The South Durham resident said advocacy is a strength she brings to the board.

Pfohl and her staff of nine at Be Active attend six to 10 conferences per month in the spring and fall and will push the rail-trails gospel where appropriate, she said.

"Rail-trails are an excellent outlet to be active," said Pfohl. "Wanting to change our health behavior and doing it are two different things. Rail-trails bring positive changes to the community environment that support our healthy behaviors."

For the last 10 years the graduate of the University of Northern Iowa and Northern Illinois University, where she earned a master's in exercise physiology and fitness leadership, kept bumping into board members Carolyn Townsend and AL Capehart. Pfohl also hails from Iowa where rail-trails are plentiful. She has seen firsthand the positive benefits to the economy and the health of citizens.

"I was at a place where I thought my background and experience here in North Carolina on the health side of things could benefit the organization," she said.

Pfohl co-founded Be Active North Carolina in 1998. The program has won over 20 national awards and has garnered more than \$14 million in corporate and foundation support. She was executive director of the N.C. Governor's Council on Physical Fitness and Health from 1990-98 and also worked in the state Department of Health and Human Services as head of the Physical Activity and Nutrition Branch.

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Resource Contacts

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| NC Parks Trails Program | Darrell McBane | 919-846-9991 |
| NC DOT Rail Planner | David Bender | 919-733-4713 |
| NC DOT Bike-Ped. Div. | Tom Norman | 919-715-2342 |
| NPS Field Office, RTCA | Deirdre Hewitt | 828-271-4779 X-272 |
| Rails-to-Trails Conservancy | Betsy Goodrich | 202-974-5122 |

Safe Routes Q&A

Safe Routes to School (SRTS) was recently moved from the Office of the Secretary to N.C. Department of Transportation (NCDOT) to the department's Division of Bicycle and Pedestrian Transportation. Tom Norman, the division's director, responded to questions posed by "Little Toot" about SRTS.

Q: The application process has yet to be solidified. When do you expect to release the first grants?

The official kick-off for the North Carolina Safe Routes to School program was Sept. 13. We are in the process of developing a full range of programs including workshops, grants, educational materials, encouragement materials and other toolkits which will assist communities across the state with establishing a SRTS program in their area.

Q: Any preliminary indications as to how many schools districts or counties will apply between now and January '08?

We have five schools from the Winston-Salem Forsyth County system which participated in a SRTS workshop. We are currently receiving requests from other schools across the state to conduct workshops in their community.

By 2008 we anticipate that our grant program will be underway, which will provide an opportunity for schools, school systems, government agencies and other organization to apply for funding to implement infrastructure or non-infrastructure projects. We are currently developing the processes for how to implement the grants. It will be a competitive reimbursement program with no local match required.

Q: The grants call for 70 to 90 percent to be spent on infrastructure. We assume this will entail coordination with local departments of planning.

The foundation of any successful SRTS effort includes partnering with stakeholders. One of the first steps in holding a workshop is to get the right people in the room to share ideas. For each individual school, several key players are involved one way or another, including school representatives, parents, local planners, traffic engineers, law enforcement, health advocates and neighbors.

In some cases, improving the walkability and bikeability within two miles of a school will incorporate a state-maintained road.

In most cases, it will involve local roads. Funding can only be used for infrastructure improvements within the public right-of-way in the vicinity of schools serving grades K-8.

Q: What role can NCRT play in SRTS?

An example of a successful rail-trail conversion that can be utilized by several schools is the American Tobacco Trail. At a SRTS workshop held at Fayetteville Street Elementary School in Durham, this trail was seen as a useful means by which children could access the school.

Questions about how to improve the safety of the trail, trail crossings with busy streets and general trail use were discussed during the workshop. NCRT can be a valuable partner in other local SRTS programs where there is potential for schools and trails to intersect. Abandoned rails may now have more benefit as a trail conversion project, if they can serve as an asset to a school. Communicating with local agencies and other partners to improve a SRTS program is a wonderful way for NCRT to be involved.

For further information about the Safe Routes to School initiative, contact Sarah Worth O'Brien, interim Safe Routes to School coordinator, NCDOT – Division of Bicycle and Pedestrian Transportation, 919-515-8703, skworth@ncsu.edu

SRTS clearinghouse

Thanks to a \$6-million federal grant, information to encourage children to walk and bike safety to school will be distributed from the National Center for Safe Routes to School (SRTS) clearinghouse established in May at UNC-Chapel Hill.

Researchers and bureaucrats are hoping more walking and biking will reduce childhood obesity rates that have more than tripled since 1970. In 2001 less than 16 percent of the students between the ages of five and 15 walked or biked to or from school compared to 42 percent in 1969, according to the National Household Travel Survey.

The U.S. Department of Transportation Federal Highway Administration funds the clearinghouse for the national SRTS program.

The Web site for the National Center for SRTS is www.saferoutesinfo.org and has the following features: a Question & Answer segment with 150 entries; a sign-up for emails; and a provision for people to share their SRTS ideas and materials. The toll-free number is 1-866-610-SRTS.

NCRT

(Continued from page 4)

Hill. The bikeway shares the right of way with the State University Railroad and provides a daily transportation alternative for 1,400 bicyclists and walkers during the academic year.

When considering expanding rail service, please remember that we are also seeking the return of rail service. Revitalizing abandoned and unused corridors for alternate transportation is, in the long view, preparation for expanded transportation alternatives.

North Carolina Rail-Trails asks for your support on three crucial matters: the Land for Tomorrow initiative; the protection of the state's existing rail corridor infrastructure; and the retrieval of abandoned and unused corridors for alternative transportation.

We also ask you to seek the "Best possible use of the state's rail corridor assets."

JOIN THE NORTH CAROLINA RAIL-TRAILS INITIATIVE, NOW!

Name _____ Address _____

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Reason for interest in rail-trails _____

NCRT annual memberships: Individual - \$25, Corporate - \$100

Mail to North Carolina Rail-Trails, PO Box 61348, Durham, NC 27715-1348

(Fall '06)

NCRT is a 501-c(3) public non-profit tax exempt organization founded in 1990. All contributions and donations are tax deductible to the fullest extent of the law.

NCRT: Save rail corridors

AL Capehart, president and co-founder of North Carolina Rail-Trails Inc. (NCRT), made these remarks before the N.C. House Select Committee on Expansion of Rail Service on Oct. 19.

North Carolina Rail-Trails Inc. (NCRT) is an all volunteer state-wide advocacy organization and federal railbanking land trust. It facilitates the meetings of the North Carolina Rail Corridor Round Table whose mission is to seek the "Best possible use of the state's rail corridor assets."

From your hearings across the state you are very knowledgeable of the conditions, circumstances and aspirations of the rail service community for North Carolina and for regional connectivity.

Each recommendation before you raises at least two questions: How much will it cost? Where will the money come from? Rail corridors serve a transportation, communications and commercial purpose. North Carolina's public highway doctrine recognizes transportation as a public purpose and therefore a responsibility of the state.

The proposals before you seek to return rail service to areas that had rail service previously. Even the depots are being repaired and updated in support of and in anticipation of the return of passenger rail and/or transit.

In comparing the 2005 NCDOT map and the 1936 (circa) railroad atlas, you will notice that about 2,800 miles of the state's 5,200-mile railroad infrastructure has been abandoned or is no longer in service. The Rail Corridor Round Table and NCRT proposes retrieval of selected, unused rail corridors for transportation purposes.

The funding source for buying back these rail corridors was included in the proposed bond legislation for Land for Tomorrow. One funding category in the Land for Tomorrow proposal is to reacquire unused rail corridors for bicycle and pedestrian transportation and greenways. If a feasibility study justifies the return of rail or rail transit to the corridor, then both transportation functions could share the corridor.

This phenomenon is called rail with trail. The best example of rail with trail is the Libba Cotton Bikeway between Carrboro and Chapel

NCRT (Continued on page 3)

NCRT Winter Board Meeting

Saturday, Jan. 13, 10:30 a.m.
Pender County Library
103 S. Cowan St.
Burgaw, N.C. 28245
Exit 398 off I-40. Left on NC 53. Left on Cowan Street.

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