Basics

• How did the railroad acquire its interest?
  – Private grant?
  – Federal land grant?
• Is the interest in fee simple or an easement?
• Has there been state law abandonment?
• Federal ICC/STB abandonment approval?
• Are there valid utility interests in the land?
• Is it subject to Rails-to-Trails? Any adverse possession issues?
"Consolidated Rail Corp., Inc. v. Lewellen, 682 N.E.2d 779 (Ind. 1997)"

• Facts
  – “Many” of the handwritten deeds read, “[Grantor], for consideration, ‘… hereby Conveys and Warrants to the [Railroad] the Land, Right of way and Right of Drainage for its Railway...’”
  – ICC issued decision approving abandonment of line at issue on February 24, 1982.
  – Conrail (final railroad) removed tracks by 1985, but left bridges, culverts and drainage tiles
  – West Central IN Rails to Trails, Inc. purchased interest from Conrail in 1994.

• Issues:
  – Whether railroad held fee simple or easements over land
  – Whether, if easements, the easements were abandoned
**Consolidated Rail Corp., Inc. v. Lewellen, 682 N.E.2d 779 (Ind. 1997)**

- **Holding:**
  - Grants to railroads constituted easements
    - Even though the granting language tracked the granting language in the statutes that creates fee simple.
    - Concluded against drafter.
    - Use of term “right of way” is enough.
  - Easements were abandoned
    - Common law superseded by statute
    - ICC order + removal of rails, switches, ties and other facilities (now I.C. 32-23-11-6)

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**I.C. 32-23-11-6**

(a) Except as provided in subsection (b) and in sections 7 and 8 of this chapter, a right-of-way is considered abandoned if any of subdivisions (1) through (3) apply:

1. Before February 28, 1920, both of the following occurred:
   - (A) The railroad discontinued use of the right-of-way for railroad purposes.
   - (B) The rails, switches, ties, and other facilities were removed from the right-of-way.

2. After February 27, 1920, both of the following occur:
   - (A) The Interstate Commerce Commission or the United States Surface Transportation Board issues a certificate of public convenience and necessity relieving the railroad of its common carrier obligation on the right-of-way.
   - (B) The earlier of the following occurs:
     - (i) Rails, switches, ties, and other facilities are removed from the right-of-way, making the right-of-way unusable for continued rail traffic.
     - (ii) At least ten (10) years have passed from the date on which the Interstate Commerce Commission or the United States Surface Transportation Board issued a certificate of public convenience and necessity relieving the railroad of its common carrier obligation on the right-of-way.

3. The right-of-way was abandoned under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).

(b) A right-of-way is not considered abandoned if:

1. Rail service continues on the right-of-way; or
2. The railroad has entered into an agreement preserving rail service on the right-of-way.

Ind. Code Ann. § 32-23-11-6 (West)
(a) This section applies if a railroad does not own the right-of-way fee.
(b) If a railroad abandons its right to a railroad right-of-way, the railroad's interest vests in the owner of the right-of-way fee with a deed that contains a description of the real property that includes the right-of-way.
(c) If a deed described in subsection (b) does not exist, then the railroad's interest vests in the owner of the adjoining fee. The interest of the railroad that vests in the owner of the adjoining fee is for the part of the right-of-way from the center line of the right-of-way to the adjoining property line.

Ind. Code Ann. § 32-23-11-10 (West)


• Facts:
  – Railroad entered into license with AT&T for cable placement in ROW in 1984 (1988 amendment to include land at issue in this case).

**• Issues**

– Whether railroad abandonment under state law extinguished railroad’s interest in the land (without railroad or neighbor’s complying with statutory requirements of I.C. 8-4-35-5 (no longer in place))

– Whether adjoining owners’ took subject to AT&T’s easement

**• Holdings:**

– Compliance with 8-4-35-5 is not mandatory to establish ownership to center of abandoned ROW.

– Statute codifies common law, and owners automatically own to center line even absent compliance with statute.

– AT&T did not have a valid easement or license adjoining owners took subject to because railroad did not have an interest in the land to grant to AT&T when the agreement was entered.
I.C. 32-23-11-11

a) The vesting of a railroad’s interest under section 10 of this chapter does not divest a valid public utility, communication, cable television, fiber optic, or pipeline easement, license, or legal occupancy if the railroad granted the easement before the date on which the railroad abandoned the right-of-way.

b) This chapter does not deprive a public utility, communication company, cable television company, fiber optic company, or pipeline company of the use of all or part of a right-of-way if, at the time of abandonment, the company:

(1) is occupying and using all or part of the right-of-way for the location and operation of the company’s facilities; or

(2) has acquired an interest for use of all or part of the right-of-way.

c) This chapter does not do the following:

(1) Limit the right of the owner of a right-of-way fee to demand compensation from a railroad or a utility for the value of an interest taken and used or occupied after abandonment.

(2) Grant to the owner of a right-of-way fee the right to obtain duplicative compensation from a utility or pipeline company for the value of any portion of the right-of-way that is subject to the terms of an agreement previously entered into between the utility or pipeline company and the owner of the right-of-way fee. For purposes of this subdivision, “pipeline” does not include a coal slurry pipeline.

Ind. Code Ann. § 32-23-11-11 (West)

Hefty v. All Other Members of the Certified Settlement Class, 680 N.E.2d 843 (Ind. 1997)

• Court reviewing a class action settlement for fairness.

• Among other things, the court found that the settlement was unfair because it required some defendants to buy rights in the land they owned.

  – Lower court interpreted deeds as giving railroad fee; Supreme Court interpreted as easement.
**Tazian v. Cline, 686 N.E.2d 95 (Ind. 1997)**

**Facts:**
- Cline bought a strip of land from a railroad in 1985 that abutted land owned by the Tazians.
- Handwritten deed to railroad recited cash consideration and “in further consideration of the benefits of anticipated from said railroad when constructed,” and conveyed and warranted the transfer.
- Granted a 50’ strip of land on west line of railroad over a described tract of ground.

**Issue:**
- Whether the railroad held fee simple or easement.

**Holding:**
- The railroad held fee because the deed was not qualified on railroad use, nor did it only convey a right or similar.
- The tract was locatable. Cline owned the tract in fee.

If a railroad owns a right-of-way fee that becomes landlocked after the right-of-way is abandoned, the railroad retains an easement of necessity in the abandoned right-of-way:

1. from the landlocked property to the nearest public highway, road, or street; and
2. to the extent necessary to reach and use the landlocked fee interest for its intended purpose.

Ind. Code Ann. § 32-23-11-15 (West)
Federal Land Grants

• Original interpretation was that a federal grant of ROW gave the railroad fee simple.
• Evolved to be fee simple subject to a condition subsequent (limited fee with a condition of reverter to the government if no longer used as a railroad).
• Congress acted to clarify, and future court cases held ROW meant easement.

Rails-to-Trails Program

• Federal legislation from 1988 prescribed that easements for railroad rights of way that reverted to the federal government would be held for the purpose of creating public greenways.
  – Upon abandonment, the interest is transferred to the adjoining landowners (if the government no longer owns the adjoining land).
  – Limits some Rails-to-Trails concerns.
Rails-to-Trails Program

A right-of-way is not considered abandoned if the Interstate Commerce Commission or the United States Surface Transportation Board imposes on the right-of-way a trail use condition under 16 U.S.C. 1247(d).

Ind. Code Ann. § 32-23-11-7 (West)

The use by the public (of the) right of way or depot grounds of any railroad in this state by riding, driving or walking thereon, shall not ripen into a right to continue to do so even though it has been so used for a period of twenty (20) years or more; nor shall such use be evidence of a grant to do so except where such use is made across such ground to connect a street or highway on each side thereof, and except where a court of competent jurisdiction has adjudged the existence of a street or highway.

Ind. Code Ann. § 8-3-15-1 (West)

Utility and Communications Concerns

• As the *Calumet* case outlines, parties that take on termination of a railroad easement take subject to valid utility and communications licenses.

• *Marvin Brandt Trust* did not address whether the federal government could reenter former FGROW land and grant utility licenses.
Access Issues

• I.C. 8-6-14-1 is pretty neat:

Owners of tracts of land separated by the right of way of a railway company, or owner of a tract or tracts of land separated by the right of way of a railway company from a public highway or road, lying and situated immediately contiguous to and adjoining said right of way, may, if such right of way has been or shall hereafter be acquired by condemnation and appropriation, or by purchase or donation, construct and maintain wagon and driveways over and across such right of way leading from one of such tracts to another on the opposite side of such right of way, or leading from such tract or tracts of land on one (1) side to the highway on the other side of the right of way, at any point most convenient to such owner.

For this purpose, such owner may enter upon such right of way and construct such embankment, or make such excavation, on one (1) or both sides of the track of such railway as may be necessary to establish easy grades from one (1) tract of land to the opposite tract or highway, and may spike planks on the ties of such railway on the line of such way for the space of the width of such way, of such thickness as not to be elevated above the top of the rails of such railway, and may also bridge the gutters at the sides of such railway track in such manner as not to obstruct the flow of water therein:

Provided, The railroad company shall make the crossing.

Ind. Code Ann. § 8-6-14-1 (West)