

Land Use Regulation And The Railroads: Who's In Charge?

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You can practice land use law in Connecticut for a long time and never run into a question about the preemption of local regulations by federal railroad law, but when you do run into such an issue, it can be confusing for all involved.

The basic premise of the preemption is that federal law has broad jurisdiction over rail service and expressly preempts state and local governments from interfering with that jurisdiction. The Interstate Commerce Act, established in 1887, and then the Interstate Commerce Termination Act (“ICCTA”) of 1995 grants the Surface Transportation Board (“STB”) authority over rail service. That authority includes the ability to regulate rates, classifications rules, practices, routes, services, and facilities as well as the construction, acquisition, operation, abandonment or discontinuance of spur, industrial, team, switching, or side tracks even if the tracks are located entirely within one state. The definition of “transportation” included within the STB’s purview is equally expansive, including a locomotive, car, vehicle, vessel, warehouse, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers and/or property by rail.

The reason federal control of rail transportation is important is clear – if every City, town, and state could put its own restrictions on rail service, it would cripple it and destroy any semblance of a unified national system. The smooth operation of the rail system is protected by prohibiting states and municipalities from any requirements that would inhibit that system. However, very limited local or state regulation is allowed if the regulation is directly related to public health and safety, such as compliance with building and fire codes. But rail lines cannot be required to apply for local wetland permits or other environmental permits governed by local or state law. See [Green Mountain Railroad Corp. v. Vermont](#), 404 F.3d 638 (2005).

In some cases, restrictions on activities somewhat removed from actual rail service are also prohibited because they would have an effect on the provision of rail service. In [Norfolk Southern Railway Co. v. City of Alexandria](#), 608 F.3d 150(2010), the City’s ordinance regulating when trucks could enter and leave the rail facility was struck down because that restriction would cause a back-up in unloading the rail cars and have a limiting effect on rail service.

More locally, and recently, a town in Connecticut agreed that its zoning regulation restricting the delivery of goods to an industrial site to certain hours of the day could not be applied to deliveries coming by rail because that served as a limit on rail service. The regulation itself does not mention rail service, but when

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applied to rail delivery, it interferes with federal jurisdiction over rail travel. One can imagine that if each town along that rail line had different time restrictions, the result would be chaos to the rail schedule. It is likely that other municipalities have equally neutral regulations that only become a problem if the delivery method is by rail.

Attempts by states and municipalities to exert their authority over rail-related service or structures usually fails. The city of Auburn in Washington State tried to require a full environmental impact statement of a proposed rail line reopening, but was denied. City of Auburn v. US Government, 154 F. 3d 1025, 29 Env'tl. L. Rep. 20,096 (1998). More recently in Massachusetts, the Surface Transportation Board denied the request of Winchester, Mass. to regulate use of a freight yard which residents claimed was too noisy at night. Winchester claimed that its zoning regulations prohibited the use, but the STB ruled that federal law preempted the town's regulations. Boston & Maine Corporation & Springfield Terminal Railroad Company – Petition for Declaratory Order, 2013 WL 5869470, October 30, 2013.

While it does not seem necessary for towns to review their regulations to determine whether they could violate the federal regulation of rail service, it is worth remembering that there may be situations where normally appropriate local regulations cannot be applied in a manner that interferes with rail service.

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