At the system’s peak—during Woodrow Wilson’s presidency—railways stretched 254,000 miles across the United States. A century later, due to greater efficiencies and more diversity of transport options, 139,000 miles of tracks remain. 3,300 of these miles are in North Carolina, which makes the state’s rail network the 18th largest in the US (Texas, with over 10,000 miles of tracks, wins handily; Hawaii, without a single mile, is last on the list).

Though regular intrastate train travel is infeasible for most North Carolinians due to the scarcity of passenger rail service, many communities are not far from tracks used for hauling freight. In fact, it was the placement of the railroad that drove growth in many towns across North Carolina (and economic development was an intended consequence of the railroad when the state chartered the North Carolina Railroad Company (NCRR) in the mid-nineteenth century). Thus, as North Carolina towns reinvest in their downtowns—and especially as they target redevelopment efforts at the mill buildings and warehouses that grew up along the tracks—public officials and developers need to be aware of the constraints on development near railroad tracks.

In cities across the country, interest in walkability and transit-oriented development has grown in recent years. The ability to conveniently and efficiently move between home, work, and recreation is touted as a remedy to traffic jams, environmental degradation, and socioeconomic inequality. Though some people can’t shake the image of “L” trains rattling by Elwood Blues’ cramped Chicago apartment as he made white toast (dry), major transit-oriented projects such as Atlantic Yards in Brooklyn or the proposed district-wide development around 30th Street Station in Philadelphia are evidence of the increased attention paid to developing along transit lines. Closer to home in North Carolina, residents of the Triangle continue to debate the route—and some the very idea—of a proposed light rail line: while many residents eagerly await the route, others worry about its effects on the area’s affordable housing stock and the danger of car-train collisions.

But it’s not proximity to passing trains that makes the land around the tracks that run through many North Carolina communities attractive for development: living or working near a freight line, for example, doesn’t increase walkability. Rather, because of the historical pattern of commercial and industrial development, many North Carolina downtowns sit
along, or are bisected by, railways. Many plans for downtown revitalization, therefore, run up against train tracks.

**Railroad Rights-of Way in North Carolina**

In North Carolina, these tracks are owned or operated by the North Carolina Railroad Company (NCRR), Norfolk Southern, or CSX Transportation. Tracks have rights-of-way that are held by the specific freight railroad that uses the line or by third-party owners. Railroad charters and state law established the size of these rights-of-way, and they range from 30 feet to more than 200 feet. Most charters established 100-foot rights-of-way on each side of the centerline of a track. Thus, tracks often form 200-foot wide corridors. Any new development within this corridor must be approved by the appropriate railroad, and existing development is even subject to rent.

Outside of that corridor, railroads have no claim on development, but right-of-ways are not always clear, or even visible. A railroad may have an interest in a piece of land even if there is not an active track on or near the property. According to Diana Palecek of Smith Moore Leatherwood LLP in Raleigh, “less obvious clues include: a rail track nearby, but not seemingly adjoining the land; language in the legal description referring to a railway corridor or to the centerline of a railroad though no railroad is visible on the land; a trail or greenway on or near the land that once was a railroad track; railroad tracks shown on historic tax maps or aerial photographs, including those maps and photos that may be included in environmental site assessment reports or in tax records.” Even abandoned, former railroad easements may not be clear for development: oftentimes, utility companies have easements along the same routes, and their systems are buried underground, out of view.

In some communities, there are existing buildings already within the rights-of-way. Redevelopment of these buildings, or any type of investment in them, is risky: at any time, the railroad could move or destroy a building that is within its right of way, if, for example if they needed a new track. The NCRR may give short-term easements for such properties, such as for the creation of a parking lot, but does not give long-term easements because of the uncertainty of future land needs. For example, it took the City of Conover close to a year to obtain an encroachment agreement from Norfolk Southern, which allowed a street and on-street parking within the right-of-way to serve the downtown Conover Station development. Structures within the right-of-way are often charged an annual rent by the railroads.

Railroads don’t necessarily own the land on which they have a right-of-way and ownership depends on which of two general ways the railroad obtained its rights-of-way: fee simple deeds or easements. Fee simple means the railroad purchased the land from another property owner and any use of that land by another entity is considered trespassing. Some fee simple deeds have reversionary interest to abutting or adjacent landowners if the Surface Transportation Board extinguishes the railroad common carrier interest. Even where a railroad possesses only an easement on an owner’s land, the owner’s right to develop on that land is still severely restricted by the presence of the railroad easement. Owners of land subject to railroad right-of-way easements must exercise caution when considering development plans.

**Right-of-Way Easements**

An easement is specific to a parcel and “runs with the land,” in the sense that no matter who owns the burdened parcel, the railroad will maintain its easement. Thus, although land may be sold from owner to owner, a railroad’s easement of 100 feet on each side of the center track will typically remain on the land in perpetuity. An easement is usually contingent on the railroad using the land for railroad purposes. Unlike a fee simple deed, an easement does not give the railroad full rights over a piece of land, though it gives them many.

Just a decade ago, the North Carolina Court of Appeals affirmed that even when the railroad (the dominant estate) possesses only a right-of-way easement and does not own the underlying land, the underlying landowner (the servient estate) may not interfere with the railroad’s interest. As recently as 2005, in *Norfolk S. Ry. Co. v. Smith*, 169 N.C. App. 784, (2005), the court decreed that the railroad company could restrict how the underlying landowner uses land within the railroad’s right-of-way.

In addition, railroad crossings are not an exception to the rights of railroads over the easement. Railroads may, in general, exercise full control over where crossings are located. They may also close existing crossings at their discretion. Some landowners may have reserved a crossing at the time of deed conveyance to the railroad, or a railroad may have granted a crossing license at some point, but these are exceptions to the typical easement.
Determining What Interests Exist on a Piece of Land

Due to length of time that land interests may have existed, determining rights-of-way can be a complex process. The process can begin by contacting the railroad to determine what rights-of-way apply for specific properties. Railroads will generally use the most conservative calculation of size and often do not respond promptly. Knowing what claims a railroad makes on a piece of land, though, can help avoid drawn out and costly litigation.

Railroad valuation maps, or val maps, are the only useful index to the deeds that define the right-of-way, according to the NC Department of Transportation. Lawyers (and sometimes surveyors) may be necessary to sort out whether the right-of-way width assertion is valid, though, based on the legal documents used for the original right-of-way conveyance. This can be tricky: According to a paper by the Chicago Title Insurance Company, if the granting instrument for the land cannot be located, and the charter does not address the size of rights-of-way, statutory presumptions apply. From 1885 to 1900, statutes mandated rights-of-ways of at least 100 feet in towns and 200 feet outside of towns. Determining which authority is relevant to a specific property, the CTIC paper says, can be a demanding process.

Val maps are available through the National Archives, though not all are online. CSX sells val maps, as well. This paper from an attorney at Smith Moore Leatherwood, LLP, in Raleigh, provides more background and recommendations on how lawyers should approach this type of research.

In most cases, development will be simplified by avoiding areas near tracks. In the case that a development depends on close proximity to railroad tracks, a local government should be prepared for both a lengthy pre-development process and, in many cases, disappointment.

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