

Loop Trolley Rolls Forward
After Boundary-Related Lawsuit by Property Owners

by

James R. Keller

This article appeared in *St. Louis Construction News and Review*, p. 6, January-February, 2018.

Missouri's Eastern District Court of Appeals has ruled that the trolley-car rail system along Delmar Boulevard may proceed even though its tracks extend 535 feet beyond the boundaries of the original Loop Trolley Transportation Development District ("District"). This decision allows construction to be completed and operation to begin for the Loop Trolley Company.

The case is *Glickert v. Loop Trolley Transportation Development District*, 2017 WL 6459964, decided December 19. The project extends from the Loop in University City to Forest Park in St. Louis, about 2.2 miles.

After some financial delays, the trollies are expected to run sometime in the early part of 2018.

The project began when the State of Missouri enacted the Missouri Transportation Development District Act ("TDD Act"), authorizing the creation of transportation development districts to plan, fund and construct transportation and related infrastructure projects. The District is a political subdivision created by this Act.

The Loop Trolley Company is a non-profit corporation. It contracted with the District to operate the trollies.

In 2007, pursuant to the TDD Act, St. Louis City and University City passed resolutions calling for the joint establishment of the District. Its purpose was to fund, promote, plan, design, construct, improve, maintain and operate the trolley-car rail system project.

In August 2007, University City filed a petition in St. Louis County Circuit Court to create a transportation development district under the TDD Act. The petition sought to commence the project and impose a one-percent sales tax within the District.

The petition contained a legal description for the proposed District. It was a general description of the "approximate" location that the project's improvements would be along Delmar Boulevard between Kingsland Avenue

and DeBaliviere Avenue and along DeBaliviere Avenue between Delmar Boulevard and Lindell Boulevard within the boundaries of the District. The project's description anticipated that the project may need to include one or more turn-around areas and other improvements located within or adjacent to Delmar Boulevard and DeBaliviere Avenue.

The Circuit Court approved a mail-in election for voter approval of the project within the District. The ballot's results showed overwhelming voter support for the project.

Peter Sarandos, the only plaintiff in this lawsuit who filed an appeal, voted against the project. He owned commercial property within the District.

With the voters' approval, the Circuit Court entered a final judgment establishing the District as a political subdivision in accordance with the TDD Act and authorized the sales tax. The judgment contained a "general description" of the project with its "approximate" location and allowed the District broad authority to "also" construct improvements necessary for the proposed trolley-car system.

Between 2008 and 2016, the District collected about \$5,034,679.00 in sales tax to be used to plan, design, implement and construct the project. A grant from the Federal Transportation Administration helped finance the project with an additional \$22.1 million.

The court noted that since 2000, plans for the project have been subject to considerable public discussion and media attention as well as community meetings. Since 2008, the District's plans included project improvements that extended beyond the District's boundaries on both ends of the route.

The final plans included an extension of the trolley-car route by 300 feet beyond the District's boundaries on the eastern end and a connection that extended 235 feet beyond the District's boundaries on the western end.

Construction for the overall project began in approximately January 2015. Construction for the extra track began in December 2015.

By April 2016, construction was substantially complete with track at 85%, maintenance facility at 70%, catenary system at 85%, the first two trolleys at 80% and utilities at 95%. Construction costs totaled \$46.96 million with overall project costs at \$50.90 million.

The plaintiffs filed their lawsuit in July 2015. They sought a declaratory judgment and a permanent injunction alleging that the District lacked authority to build, maintain and operate the project beyond the boundaries of the District. Thus, the dispute was over the additional 535 feet of track.

The trial court granted summary judgment in favor of the District, finding that the plaintiffs unreasonably delayed bringing their lawsuit. The court determined—applying a remedy frequently raised but seldom granted—that the plaintiffs’ delay created laches. The trial court also found that the project was located within the “approximate” location described in the prior court’s judgment and that the work on the extra track length was necessary.

The appellate court upheld the trial court’s decision, finding that the plaintiffs knew or easily could have ascertained years ago that the District’s plan extended beyond the original boundaries.

Laches can apply where one party delays taking action for such a long period of time that it puts the other party at a disadvantage which could have been avoided if the lawsuit had been filed earlier.

The appellate court noted that Joe Edwards, Chairman of the Board of Directors of the District, had testified by affidavit at the trial court level. He testified that the proposed trolley route had included a portion of the Forest Park line on the east end and the Kingsland Avenue line on the west end since the planning efforts for the project began in 2008. He further testified that the project’s website had provided similar information about the project and its proposed route.

The District had expended considerable resources to design and construct the project. The ultimate boundaries were publicly available by about 2010, according to the Eastern District Court of Appeals. Without the additional 535 feet, the District would have had to redesign the entire project at a minimum additional cost of \$5,000,000 in non-grant funds.

The appellate court concluded that the additional few hundred feet fit within the project’s description as to its “approximate” location. The court also concluded that the project was consistent with voter approval.

The appellate court noted that Edwards testified that the extension was necessary to the project. The extension increased ridership and revenue, provided a safe stop for riders to embark and disembark, and offered a safe stub for the trolley to be able to stop in Forest Park, switch travel directions and proceed back to the Loop along DeBaliviere Avenue without causing safety issues and minimizing traffic congestion.

The Eastern District concluded, based upon these factors, that the trial court correctly determined that the slight extension of a few hundred feet beyond the boundaries on each terminus fell within the broad category of “additional” items called for in the original judgment.

James R. Keller is a partner at Herzog Crebs LLP where he concentrates his practice on construction law, complex business disputes, real estate and ADR. He also is an arbitrator and a mediator. He can be reached at 314-231-6700 or jrk@herzogcrebs.com.