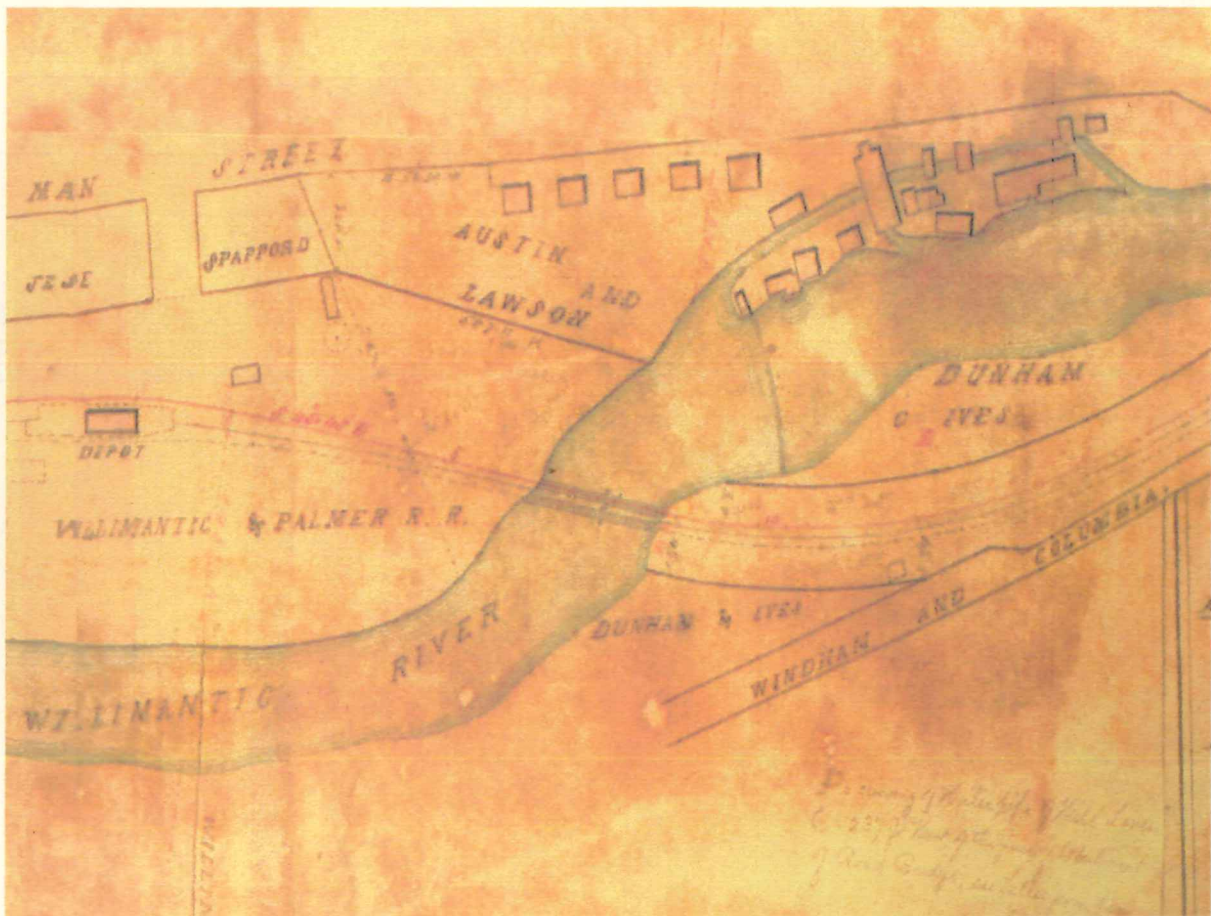


**SURVEY REPORT**  
**WILLIMANTIC RAILROAD**  
**RIGHT OF WAY SURVEY**  
**SECTION II**



*Prepared by*  
**DISTRICT II SURVEYS**

JULY, 1999  
CONNECTICUT DEPARTMENT OF TRANSPORTATION

# *WILLIMANTIC RAILROAD R. O. W. SURVEY*

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## *SURVEY REPORT OVERVIEW*

The purpose of this report is to document and provide supplemental information on the Willimantic/Windham Railroad Right of Way Survey, Section 2. This is the second in a (intended) series of boundary mapping projects. This set of maps, sheets 1-12, show the details of ownership, agreements and interest of the D.O.T. Office of Rails. The scope of this project is from Bridge Street, Willimantic to the Shetucket River (Approximately 2,000' Southeasterly of Plains Road, Windham). Reference to the "Section 1" survey is for continuity. Section 2 is a stand-alone project.

All survey field work, computations, CADD mapping, research and report preparation were performed by in house staff of D.O.T. District 2 Surveys, Right of Way Section. This project was funded by D.O.T., Office of Rails.

Bridge information was taken from inspection reports by consultants. These reports were condensed, with photographs and issues of ownership added by District 2 Surveys.

## BASE MAPPING

Mapping for this survey is based on photogrammetry flown on April 29, 1998. The flight was specifically for the purpose of mapping this survey project. Aero-Metric provided consultant photogrammetry for the D.O.T. The ground control survey, horizontal accuracy checks, and field edit were all performed by District 2 Surveys, Right of Way Section. The photogrammetry was compiled in house by D.O.T. Central Surveys.

### Ground Control

This project conforms to NAD27, which is the local grid system for this area. CGS monuments were recovered and used throughout the scope of this survey. Several traverses were necessary to establish grid control for areas identified by the photogrammetrist to control the mapping. A Sokkia SET2B instrument was used for both trigonometric levels and horizontal traverses. All horizontal loops were adjusted using STARNET weighted least squares software. Control point coordinates with ties are included with the mapping of this survey.

### Accuracy Checks

Standard D.O.T. guidelines were followed regarding the number of horizontal accuracy checks required and pinpointed the specific areas on the maps. These standards were supplemented by direct checks on or near the plotted rails. Field coordinates were compared to CADD graphics on points easily identified on both. All such comparisons, particularly those taken on track rails, checked exceptionally well. Typical discrepancy did not exceed 0.2 foot.



### Compilation

Consistent use of the NAD27 grid by past & recent surveyors allowed digital compilation of other surveys. Section I of the Willimantic Railroad Survey was simply attached and merged. Flood encroachment lines, were added using mapped coordinates, as were other surveys by the Town of Windham Engineering Department and KWP Associates. A notable compilation effort was in the form of a major D.O.T. Bridge construction project. This project entitled "Construction of State Route 661, Project No. 163-164", is active at this writing. The project consists of a new bridge from Pleasant Street to Main Street, spanning the railroads and the Willimantic River, with widening on both streets. We decided that future use of our survey would be enhanced by inclusion of these improvements. The bridge, roadway widening and roadway discontinuance are all shown as they appear on the above project construction mapping.

### Main Street, Mills, Adjoiners

The origin, changes and agreements of the railroad companies in the Willimantic railroad yard have had a historic intimacy with the factories, mills and Main Street community. The benefit of working with detailed, accurate mapping through this area was essential. This advantage allowed us to use physical ties from old surveys to buildings still standing. The property lines formed by track split agreements, and other descriptions based on track locations all require accurate locations of tracks and other physical features.

Adjacent property lines were computed and plotted when tied to surveys of railroad right of way layout. Other adjacent property lines were taken from the Town of Windham Assessor Map, as were all names of adjoining property owners.

### MAP REFERENCES:

1. RIGHT OF WAY AND TRACK MAPS OF THE NEW YORK NEW HAVEN AND HARTFORD R.R. CO. OPERATED BY THE NEW YORK NEW HAVEN AND HARTFORD R.R. CO. FROM PROVIDENCE TO WILLIMANTIC, STATION 2949+30 TO STATION 3072+79.50, TOWN OF WINDHAM, STATE OF CONNECTICUT, SCALE 1"-50 FT., DATED JUNE 30, 1915, OFFICE OF VALUATION ENGINEER, BOSTON, MASS., VALUATION MAP NUMBERS V54-68/60-64.
2. RIGHT OF WAY AND TRACK MAPS OF THE NEW LONDON NORTHERN R.R. CO. OPERATED BY THE CENTRAL VERMONT RY. CO., STATION 1425+60 TO STATION 1584+00, SCALE 1"=100 FT., DATED JUNE 30, 1917, OFFICE OF VALUATION ENGINEER, ST. ALBANS, VERMONT, VALUATION MAP NUMBERS V-1/28-30.
3. RIGHT OF WAY AND TRACK MAPS OF THE NEW YORK NEW HAVEN AND HARTFORD R.R. CO. OPERATED BY THE NEW YORK NEW HAVEN AND HARTFORD R.R. CO. FROM BOSTON TO HUDSON RIVER. STATION 4490+80 TO STATION 4596+40, TOWN OF WINDHAM, CITY OF WILLIMANTIC, STATE OF CONN., SCALE 1" -100 FT., DATED JUNE 30,1913, OFFICE OF VALUATION ENGINEER, BOSTON, MASS., VALUATION MAP NUMBERS V54-62/34 & 35.
4. "CENTRAL VERMONT RAILWAY CO., WILLIMANTIC, CONN., STATION 1478+00 TO STATION 1647+00", SCALE 1"=100 FT., DATED MAY 1924, OFFICE OF CHIEF ENGINEER, ST. ALBANS, VT., REVISED TO APRIL 1932.
5. "TRACK MAP, NEW LONDON NORTHERN R.R. CO. OPERATED BY THE CENTRAL VERMONT RY. CO., STATION 1531+20 TO STATION 1584=00", SCALE 1"=100 FT., DATED JUNE 30,1917, OFFICE OF VALUATION ENGINEER, ST. ALBANS, VERMONT, REVISED 7/30/82 & 6/14/83 BY WILLIAM F. ANDERSON, LAND SURVEYOR, VALUATION MAP NUMBER V-1/30-A.
6. "WINDHAM, PROVIDENCE DIVISION", PLOTTED JUNE 1889, BY J. W. FOSTER, ENGINEER, SCALE 50 FT. TO AN INCH, SHEET NOS. 21-23 & 26, PREPARED FOR THE NEW YORK AND NEW ENGLAND R.R. CO.
7. "WINDHAM, MAIN LINE", PLOTTED JUNE 1891, BY J. W. FOSTER, ENGINEER, SCALE 50 FT. TO AN INCH, SHEET NOS. 20-22, PEPAED FOR THE NEW YORK AND NEW ENGLAND R.R. CO.
8. "MAP OF BOSTON AND NEW YORK AIR LINE RAILROAD EXTENSION IN WILLIMANTIC", DATED DEC.23, 1880, SCALE 1"=50 FT.
9. "PLAN B, N.Y., N.H., & H.R.R., MIDLAND DIVISION, PROVIDENCE BR., PROPOSED E.G.C., WINDHAM CENTER ROAD AND ABBE ST., TOWN OF WINDHAM, CONN.", SCALE 1"=100 FT., DATED JUNE 21,1910.



**MAP REFERENCES (CONTINUED)**

10. "PROPERTY OF MIRIAM C. MOSKOWITZ, MAIN STREET-WILLIMANTIC, CONN.". SCALE 1" =20 FT., DATED JUNE 1949, BY THOMAS B. DANIELSON.
11. "NEW YORK NEW HAVEN & HARTFORD RAILROAD, REAL ESTATE & RIGHT OF WAY DEPARTMENT, LAND IN WINDHAM;CONN TO BE CONVEYED TO WILLIAM J. THORNTON", SCALE 1"=100 FT., DATED JAN. 1951.
12. "NEW YORK NEW HAVEN & HARTFORD RAILROAD, OFFICE OF ENGINEER, REAL ESTATE SURVEYS, LAND IN WILLIMANTIC, CONN. TO BE CONVEYED TO GENO DESANTIS", SCALE 1"=50 FT., MAR.1952.
13. "NEW YORK NEW HAVEN & HARTFORD RAILROAD, OFFICE OF ENGINEER-REAL ESTATE SURVEYS, LAND IN WILLIMANTIC, CONN. TO BE CONVEYED TO CITY OF WILLIMANTIC", SCALE 1"=50 FT., DATED JULY 1954, REVISED THROUGH APRIL 1955.
14. "NEW YORK NEW HAVEN & HARTFORD RAILROAD, OFFICE OF ENGINEER-REAL ESTATE SURVEYS, LAND IN WILLIMANTIC. CONN. TO BE CONVEYED TO THE CITY OF WILLIMANTIC", SCALE 1"=50 FT., DATED APRIL 1955, REVISED MAY 1955
15. "NEW YORK NEW HAVEN & HARTFORD RAILROAD, OFFICE OF ENGINEER-REAL ESTATE SURVEYS, LAND IN WILLIMANTIC, CONN., TO BE CONVEYED TO WM. F. SLEDJESKI", SCALE 1" =20 FT., DATED AUG.1956.
- 16 "THE NEW YORK NEW HAVEN & HARTFORD RAILROAD CO., OFFICE OF ENGINEER - REAL ESTATE SURVEYS, LAND IN WILLIMANTIC, CONN. TO BE CONVEYED TO MOLLIE KRUG", SCALE 1"=20 FT., DATED. JULY 1957.
17. "WILLIMANTIC REDEVELOPMENT AGENCY, WILLIMANTIC, CONNECTICUT, CENTRAL BUSINESS DISTRICT PROJECT, UR-CONN R-19", DISPOSITION MAPS OF PARCEL 2 & PARCEL 5, BY KIELTYKA, WOODIS & PIKE, LAND SURVEYORS.
18. "WILLIMANTIC RIVER CHANNEL ENCROACHMENT LINES, WINDHAM, CONNECTICUT", PROJECT NO. W-133, DWG., NOS. 1, 2 & 3 OF 21, DATED MARCH 1971, BY DEGEN & KROPPER, CONSULTING ENGINEERS.
19. "MAP SHOWING LAND OF THE PENN CENTRAL TRANSPORTATION CO. TO BE CONVEYED TO THE CITY OF WILLIMANTIC, WILLIMANTIC, CONN.", SCALE 1"=100 FT., DATED JANUARY 22, 1975, REVISED MAY 5, 1975, BY C. ROGER FERGUSON, LAND SURVEYOR.
20. "SURVEY PLAN PREPARED FOR THE AMERICAN THREAD COMPANY, MAIN STREET, "WILLIMANTIC" WINDHAM, CONNECTICUT", SCALE 1"=40FT., DATED 2/19/1985, SHEET 1 OF 1, BY KIELTYKA, WOODIS & PIKE, LAND SURVEYORS

**MAP REFERENCES (CONTINUED)**

21. "SURVEY PLAN PREPARED FOR THE AMERICAN THREAD COMPANY, MAIN STREET, "WILLIMANTIC", WINDHAM, CONNECTICUT", SCALE 1"=100 FT., DATED 10/11/1985, SHEET NOS. 1 & 2 OF 2, BY KIELTYKA, WOODIS & PIKE, LAND SURVEYORS.
22. "A-2 BOUNDARY SURVEY PREPARED FOR MICHAEL E. HADDAD, BRIDGE STREET, WILLIMANTIC, CT.", SCALE 1"-40 FT., DATED 6/26/91, BY TOWNE ENGINEERING, INC.
23. "STATE OF CONNECTICUT DEPARTMENT OF TRANSPORTATION, BUREAU OF ENG. & HWY. OPERATIONS, RAILROAD/HIGHWAY GRADE CROSSING, CONN. 32 (BRIDGE ST.) IN THE TOWN OF WINDHAM", PROJECT NO.163-172, SCALE 1"=40 FT., DATED APRIL 1994.
24. "TOWN OF WINDHAM, MAP SHOWING LAND ACQUIRED FROM ARTURS MOTIVANS ET AL BY THE STATE OF CONNECTICUT RELOCATION OF STATE ROUTE 601", SCALE 1"-20 FT., DATED FEBRUARY 21, 1995, TOWN NO.163, PROJECT NO.163-164, SERIAL NO.1, SHEET 1 OF 1.
25. "TOWN OF WINDHAM, MAP SHOWING LAND ACQUIRED FROM IAN R. BLAND ET AL BY THE STATE OF CONNECTICUT, RELOCATION OF STATE ROUTE 601", SCALE 1"-20 FT., DATED FEBRUARY 21, 1995, TOWN NO.163, PROJECT NO.163-164, SERIAL NO.2, SHEET 1 OF 1.
26. "TOWN OF WINDHAM, MAP SHOWING LAND ACQUIRED FROM LOIS B. POTTER BY THE STATE OF CONNECTICUT, RELOCATION OF STATE ROUTE 601" SCALE 1"=20', DATED FEBRUARY 21.1995, TOWN NO. 163, PROJECT NO. 163-164, SERIAL NO. 3, SHEET 1 OF 1.
27. "TOWN OF WINDHAM, MAP SHOWING LAND ACQUIRED FROM CENTRAL VERMONT RAILWAY, INC. BY THE STATE OF CONNECTICUT, CONSTRUCTION OF SR. 661 BRIDGE", SCALE 1"=40 FT., DATED DECEMBER 11,1996, TOWN NO. 163, PROJECT NO.163-164, SERIAL NO.12, SHEET 1 OF 1.
28. "TOWN OF WINDHAM, MAP SHOWING LAND ACQUIRED FROM WINDHAM MILLS DEVELOPMENT CORPORATION BY THE STATE OF CONNECTICUT, CONSTRUCTION OF S.R. 661 BRIDGE", SCALE 1"=40 FT., DATED SEPTEMBER 17,1996, TOWN NO.163, PROJECT NO.163-164, SERIAL NO.14, SHEET 1 OF 1.
29. "POLE YARD BOUNDARY, BOUNDARY SURVEY PREPARED FOR WINDHAM SAND & STONE, CONN. ROUTE 203 & JERUSALEM ROAD, WINDHAM, CONNECTICUT", SCALE 1"=200 FT., DATED 12/22/1998, BY TOWNE ENGINEERING, INC.



## DEED RESEARCH

This survey represents a thorough review of all deeds, leases, easements and agreements pertaining to the subject area. The railroad right of way corridors were researched from their origin to the present.

The sources of information used for our research were:

Town of Windham Engineering Department  
Town of Windham Land Records  
Connecticut State Library  
The Thomas J. Dodd Research Center, University of Connecticut  
The Bailey – Howe Library and Archives, University of Vermont  
Connecticut Department of Transportation, Office of Rails  
Yale Law Library  
Superior Court Library, New Haven  
Attorney General's Office, Hartford

Since their origin, the railroad corridors have been expanded. Portions were released, easements obtained, and rights and agreements were granted. To further complicate the rights, title and interest issues, the railroad companies owning and/or operating on the right of way have been ever changing.

All aspects of ownership including buying, selling, mergers, foreclosures, bankruptcies and name changes were included in our research. The chain of title of what is now Department of Transportation, Office of Rails property and Central Vermont Railway, Inc. property are shown on the following "Chain of Title & Summary of Agreements" chart. This chart is a schematic time line of the ownerships, major agreements and valuation mapping of railroad companies in Willimantic, from origin to present.





## DEED RESEARCH (continued)

For each of the railroad companies shown on the previous chain of title summaries, grantee and grantor checks were made for the period of time each particular company owned the right of way. The grantee/grantor checks also allowed easements, leases, agreements and a host of irrelevant documents to surface. We made over 400 copies of instruments for further review and for our files. We excluded many times that amount through our extensive review and examination.

The railroad corridor for the scope of this survey is a result of the involvement of several rail companies over the past 150 years. The initial right of way was established in the 1840's by both the Hartford & Providence Railroad and the New London, Willimantic & Springfield Railroad companies. These two railroad companies and their successors produced a separate series of property acquisitions and their own valuation maps based on different stationing systems. Typically, the individual acquisitions were comprised of land purchases deeded by the owner, or taken by condemnation. Land lying outside of the right of way corridors was generally later released. Early on there was an immediate need to define the division line between these two railroad companies. The 1853 agreement was established for this purpose. This agreement, which split the corridor and defined joint ownerships and switch agreements, was in effect until the 1983 agreement superceded portions of it. For areas outside the scope of the 1983 agreement, the original 1853 division is still in effect.

The 1983 agreement and map between the Connecticut Department of Transportation and the Central Vermont Railway, Inc. did much to establish boundaries and condense agreements. However, it is limited to the two parties and does not include rights, title and interest relating to the historic effects on the present right of way.

The intent of our current survey described by this report is to be all-inclusive. The survey plans, sheets 1 through 12, Section 2, are a complete and accurate representation of the Connecticut Department of Transportation Office of Rails ownership and interests within the scope of this survey. This work can be readily revised if there are future changes in ownership or agreements between parties, but the maps stand alone as a complete survey of this section of railroad right of way corridor.

We have included examples of research documents in Appendix B of this report. A complete set of digital and paper files is catalogued at the Connecticut Department of Transportation, District 2 Surveys office, and copies of any of the above are available upon request, should any questions arise.

## *ANALYSIS AND USE OF THE 1853 AGREEMENT*

This agreement was between the Hartford, Providence and Fishkill Railroad Company and the New London, Willimantic and Palmer Railroad Company. Sections of this agreement have been superceded by the 1983 agreement between Central Vermont Railway, Inc. and the Connecticut Department of Transportation. Areas not included in the later agreement are still in affect.

This agreement, which is not on file in the land records, refers to a map (also not on file), on which colored lines are used to delineate lines of agreement. We eventually borrowed an original print marked in color to use in interpreting the 1853 agreement. The marked print is a schematic type sketch without dimensions or physical features. The property ownership aspects of the 1853 agreement are all related to the color marked lines for the area covered by this map.

### Property Delineation:

This agreement calls for an equidistant track split to separate ownership. This division line was created graphically using CADD. Average distances between track centerlines were connected. We then fit curves and dimensioned these lines.



**SUMMARY AND HIGHLIGHTS OF THE 1853 AGREEMENT**

<p>HARTFORD, PROVIDENCE &amp; FISHKILL RAILROAD (Party of the first part)</p> <p>Presently DOT Office of Rails</p>		<p>NEW LONDON, WILLIMANTIC &amp; PALMER RAILROAD (Party of the second part)</p> <p>Presently Central Vermont RR</p>	
<p>May relocate main running tracks of both RR companies from the Village of Willimantic easterly. Also westerly 300 feet, or more if desired or necessary for safe sight line.</p>		<p>No expense incurred for track removal &amp; relocations; provided with temporary running track.</p>	
<p>All lands northerly of dividing line, including turntable.</p>	<p>New property line between parties: Equidistant split of proposed centerlines of track as shown on Map A.</p>	<p>All lands southerly of dividing line.</p>	
<p>Freight house, woodshed, moved to their land.</p>		<p>Rights, title &amp; interest to all water related facilities including water tank, pipes, etc...</p>	
<p>Quit claim all rights over division line.</p>			

## AGREEMENT

Agreement  
Hartford, Providence and Fishkill R.R. Co.  
And  
New London, Willimantic & Palmer R.R. Co.

Jan. 27<sup>th</sup>, 1853  
Windham, Windham Co.,  
Conn.

This agreement made this 27<sup>th</sup> day of January A.D. 1853, by and between the Hartford, Providence and Fishkill R.R. Co. party of the first part, and the New London, Willimantic and Palmer R.R. Co., party of the second part, in which all the covenants and stipulations made by each party are in consideration of the covenants and stipulations make by the other, witnesseth:--

That said parties do mutually agree to and with each other as follows to wit:--

1. That the party of the first part may construct their R.R. across, along and upon the present line and grade of the R.R. of the party of the second part, at and Easterly from the village of Willimantic, and may alter and change the line and grade of said R.R. of the party of the second part, conformable to the Map marked "A", which is hereby annexed to and made a part of this Agreement. And said party of the first part may remove the crossing of the main tracks of the two roads, Westerly, as shown by said Map, the distance of three hundred feet; or further, if desired by them, but so that said crossing shall be left in fair view of both parties.

2. The said party of the first part hereby agrees, that while making the changes above authorized, the party of the second part shall be left or provided at all times with a track for the use of the trains of their road, so as not to interrupt the travel or transportation on said road.

3. All charge and expense of making said changes and alterations in the road and structures of said party of the second part shall be borne by, and are hereby assumed by, said party of the first part.

4. The said party of the first part future agrees that when said changes are completed, the track of the railroad of said party of the second part, and the Roadbed therefor, shall be left in at least as good condition as the same now is.



**AGREEMENT (Continued)**

5. The dividing line of ownership between said parties, from the crossing of their respective roads, easterly, to the point of a divergence, is hereby fixed and established between and equidistant from the proposed Center Lines of the two companies, as said center lines are marked out upon the Map hereinbefore referred to. All lands and premises and rights of way, Southerly of said dividing line which now belongs to said party of the first part, or which shall be taken by them for the purpose of making the proposed changes shall belong to said party of the second part; and all lands and premises and rights of way, Northerly of said dividing line, which now belongs to said party of the second part, including the Turntable now standing thereon, shall belong to the said party of the first.

6. The party of the first part hereby relinquishes and transfers to the said party of the second part, all right, title and interest in and to the water tank, building, pipes, and all that pertains thereto; the said party of the second part agreeing to cause said water tank and building to be removed to South side of the dividing line, without subjecting said party of the first part to any charge or expense therefor.

7. New London, Willimantic and Palmer R.R. Company to have freight house and wood shed for their sole use, to be moved and put up by Hartford, Providence and Fishkill R.R. Co. where wished by New London, Willimantic and Palmer R.R. Co.

8. The party of the first part agrees to cause the Passenger House to be moved from the position which it now occupies, to the place marked out on the Map hereinbefore referred to, so that said Passenger House shall stand midway between the proposed center line of the roads of the two companies, and shall be left in as good condition as it now is; the charge and expense of such removal to be paid by said party of the first part.

9. So much of the land of John Campbell as shall be necessary to complete the changes and alterations hereinbefore agreed upon, including so much of the land of said Campbell as is now used or occupied by said party of the second part, shall be taken, and payment therefor shall be made, by said party of the first part.

10. Said party of the first part agrees that a suitable road or way may be opened and maintained across their lands on the North side of said dividing line, so as to give convenient access to the Depot Grounds and buildings of said party of the second part.

**AGREEMENT (Continued)**

11. It is understood by the parties that so much of the lands in Willimantic from the crossing of the two roads, as established by this Agreement, Westerly to the point of divergence, as were paid for by the Hartford, Providence and Fishkill R.R. Co. and for which one half of the amount so paid has been charged to and paid by the New London, Willimantic and Palmer R.R. Co., are owned by the parties jointly; and should there be any part of said lands now occupied by said New London, Willimantic and Palmer RR. Co. , which were taken and paid for by the Hartford, Providence and Fishkill RR. Co., and for which said New London, Willimantic and Palmer RR. Co. have not made any payment, they are to pay one half of the cost of said lands to and thereafter to own said lands jointly with, said Hartford, Providence and Fishkill RR. Co. said party of the second part.

12. This Agreement shall be, and it hereby is accepted by said parties respectively, as a full, final and complete settlement of all matters of difference existing between the said parties in relation to the changes and exchanges hereinbefore specified or authorized, and to the mode or manner of them And said parties mutually release and discharge, each the other, from all claim or demands whatsoever arising out of any of said changes and exchanges and from all liabilities therefor, except as is hereinbefore specially stipulated and agreed.

In Witness whereof, the said Hartford, Providence and Fishkill RR. Co., party of the first part, and said New London Willimantic and Palmer RR. Company, party of the second part, each by their respective Presidents, duly authorized, have to this and another instrument of the same tenor and date, interchangeable set their hands and caused their respective corporate seals to be affixed this twenty seventh day of January A.D. 1853.

New London, Willimantic and Palmer Rail Road Company  
by

Gordon L. Ford  
President

Hartford, Providence and Fishkill Railroad Company  
by

James N. Bunce  
President



### *Bridges Within Scope of Survey*

This report includes a summary of the ownership and condition of each of the four bridges within the scope of this survey. The Willimantic footbridge, which extends from Pleasant Street to Main Street, is not detailed in this report. This bridge is owned by the Town of Windham and has an easement over the railroad right of way. All dual track railroad bridges in this area have a similar ownership situation. They are subject to the 1853 agreement, which divided the properties by an equidistant track split. We have carefully shown and dimensioned the property lines between tracks, as well as the exterior lines that define the railroad right of way corridor, on the survey maps for this project.

This property line (created by the 1853 agreement) slices through the variable space between tracks in the same manner, whether a bridge is present or not. The lines of ownership and agreements of record, make no attempt to separate the bridges structurally. In most cases, the track ownership is separate, with abutments requiring a shared ownership.

All bridges included in this report have had recent routine inspections performed by consultants. The overall conditions of the bridges are from fair to poor. Excerpts from the inspection reports for each bridge are included in this report. In all cases, estimates are for the entire structure.

**Bridges Within Scope Of Survey**  
**(Continued)**

**Operating Agreement : CDOT & P & W**

The Operating Agreement between Providence & Worcester Railroad Company and the Department of Transportation, Office of Rails dated July 30, 1982 addresses the issue of bridge maintenance. This agreement states that P&W Railroad is responsible for a defined scope of bridge maintenance as follows:

“Article Four - Maintenance

Section 402. Responsibility. P & W shall perform all emergency maintenance, bridge repair and routine maintenance at its own expense and shall maintain the rail facilities at the present level defined below to permit continued operation of rail freight service in compliance with the Federal Railroad Administration (FRA)'s safety standards. As of the effective date of this Agreement, the trackage between Mile Post 9.8 and Mile Post 23.3 meets FRA Class II standards and all other trackage on USRA Line 674/41 meets FRA Class I Track Standards.”

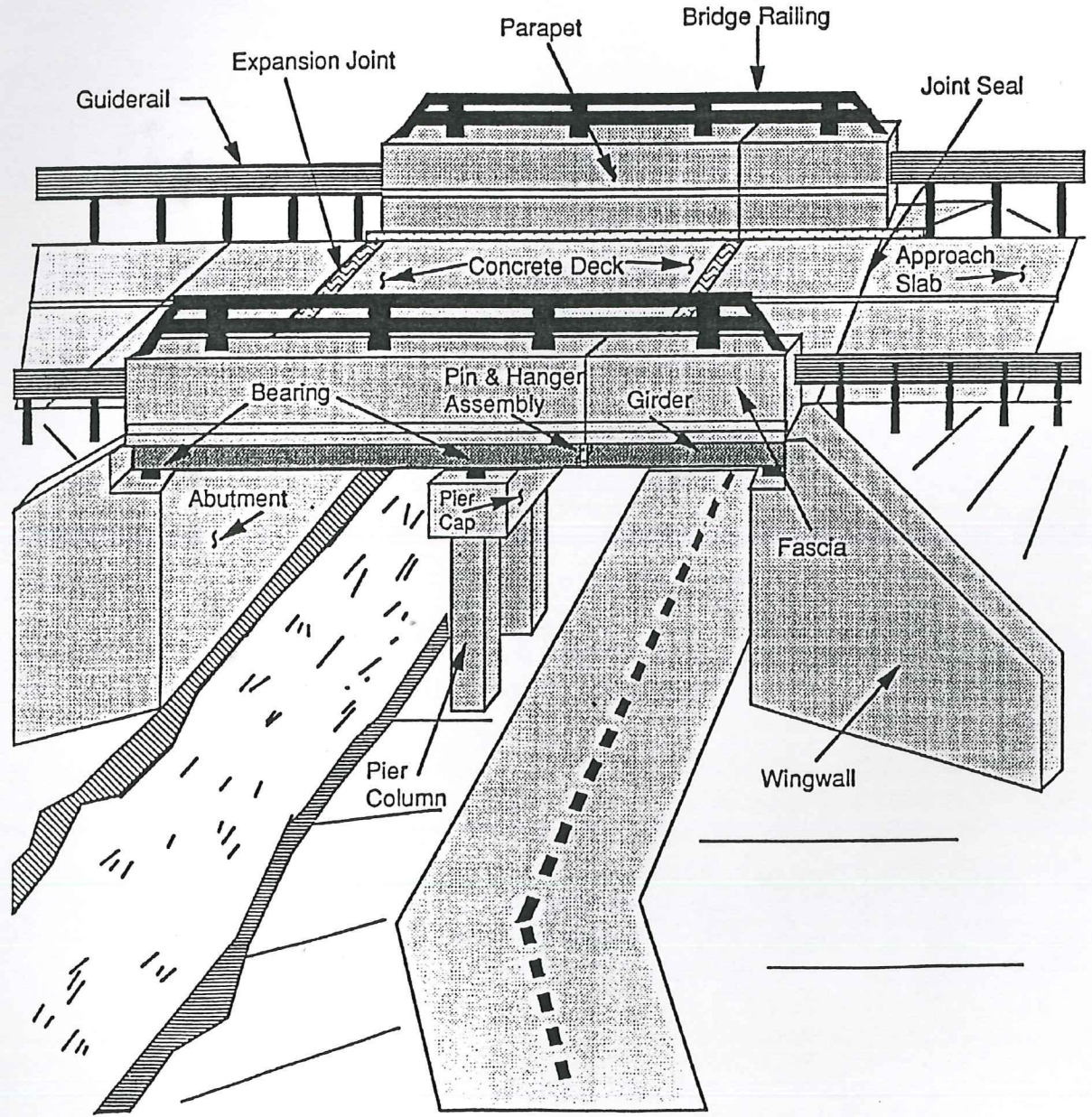
“Article One - DEFINITIONS

Section 101. Definitions. The following words and phrases shall have the following meanings ascribed to them unless the context clearly determines otherwise:

“bridge repair” means and shall include, without limitation, such maintenance items as painting, bridge timber replacement, grouting, and replacement of rivets and bolts.”

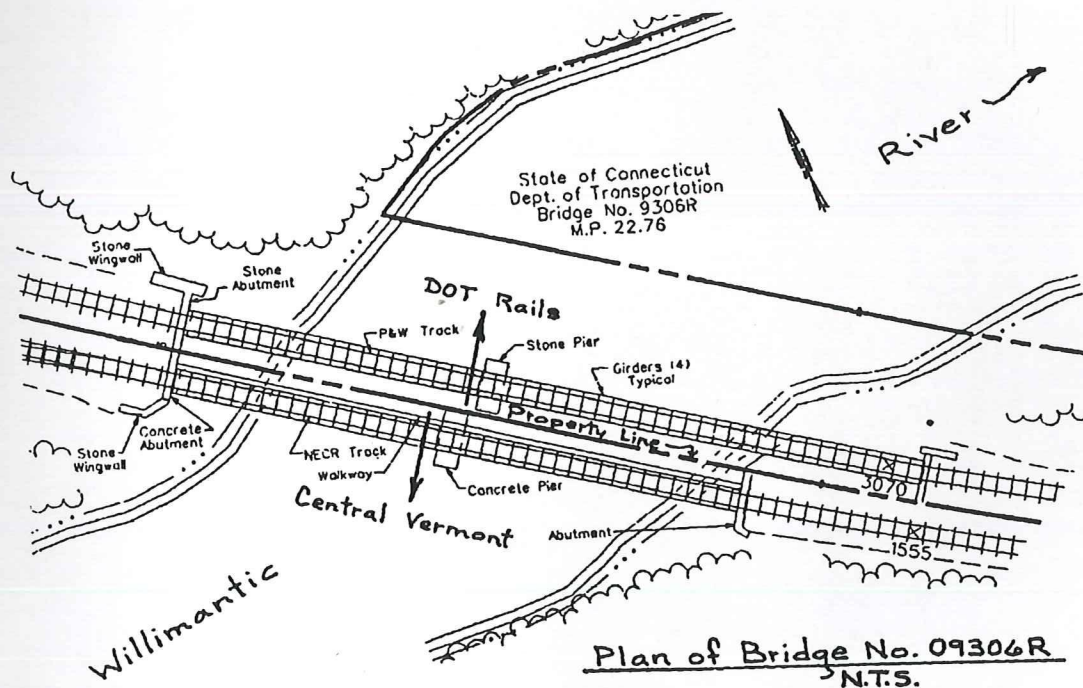


Bridge Details



**CDOT BRIDGE NO. 09306R**  
**(RAILROAD BRIDGE NO. 22.76)**  
**Providence & Worcester Railroad**

Bridge #09306R crosses the Willimantic River as shown below. The Providence & Worcester Railroad operates on the CDOT running track and the New England Central Railroad operates on Central Vermont Railroad's track. The bridge, built in 1903 and 1905 carries both tracks over three spans for a total length of 257 feet on Track 1 and two spans for a total length of 197 feet on Track 2. Spans 1 and 2 of both tracks are on a straight line while span 3 of track 1 is on a horizontal curve. The overall condition of the bridge is fair.



A routine inspection of this bridge was conducted by Greiner, Inc. in 1996. This very comprehensive report devotes much of its 42 pages to details of the design, dimensions and materials of this structure.



**BRIDGE NO. 09306R**



Central Vermont Track, Facing Easterly CDOT Track on Left



Approach to Bridge, Facing Easterly

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July, 1999  
Willimantic Railroad Right of Way Survey  
CONNECTICUT DEPARTMENT OF TRANSPORTATION  
District 2 Surveys



**BRIDGE NO. 09306R**



CDOT Track Looking Easterly, Central Vermont Track on Right

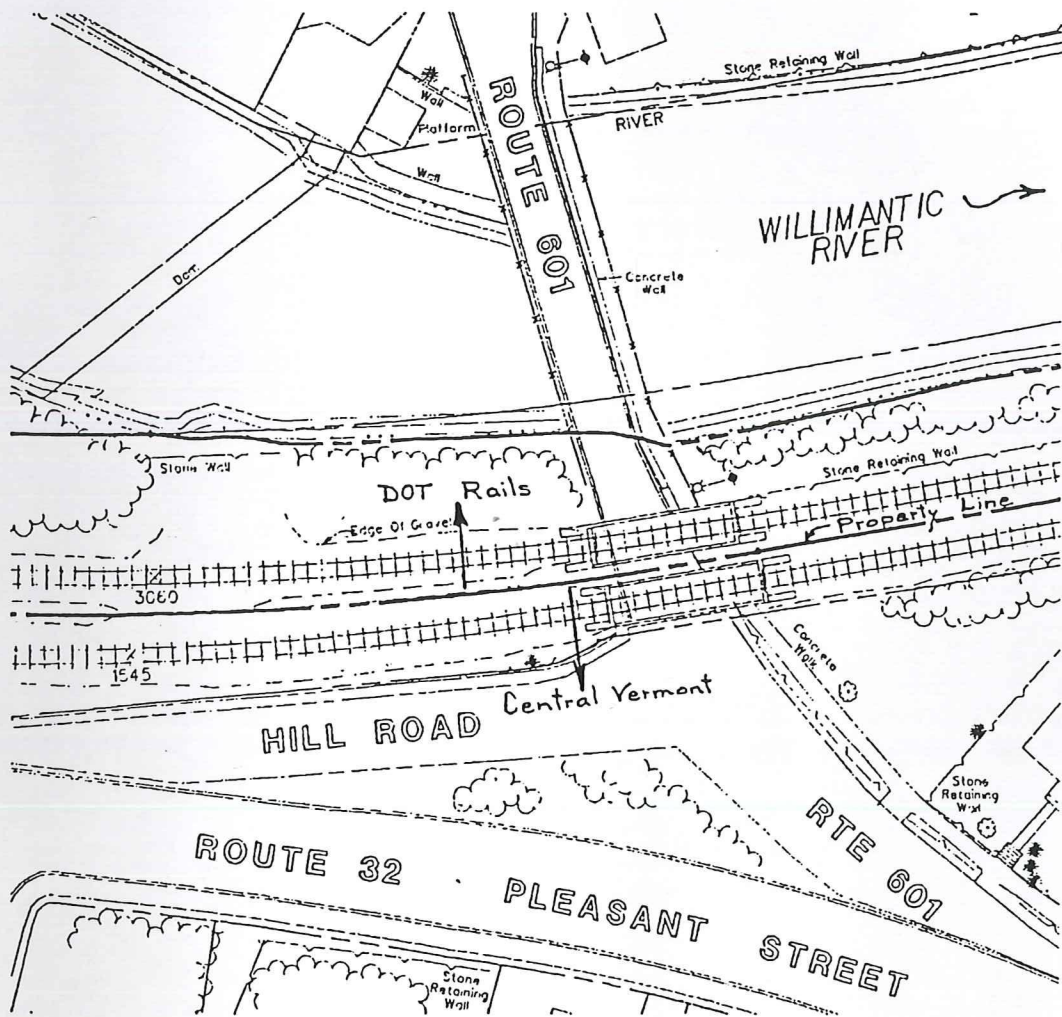


View Under CDOT Track Facing Easterly





**Bridge No. 01849R**  
**(Railroad Bridge No. 22.55)**  
**Providence & Worcester Railroad**



Plan of Bridge No. 01849R  
N.T.S.



**CDOT Bridge No. 01849R**  
**Railroad Bridge No. 22.55**  
**Providence & Worcester Railroad**

This bridge crosses South Main Street in the Willimantic section of Windham, at the former center of the American Thread factory complex. The structure built in 1892 and 1902 carries two tracks over South Main Street (State Route 601).

Vehicular traffic passes beneath this bridge with minimal clearance, combined with a steep grade and narrow travel lanes. These conditions have contributed to collisions with trucks and construction equipment over the years.

These collisions have taken their toll on an aging, poorly maintained structure, as detailed in the March, 1998 routine inspection by Grenier, Inc. The Executive Summary by Greiner, Inc., which details maintenance and structural deficiencies, is included in this report.

**BRIDGE NO. 01849R**



CDOT Track Looking Easterly



Central Vermont Track Looking Easterly



**BRIDGE NO. 01849R**



Bridge over South Main Street, Looking Southerly



View From Beneath Bridge, Looking Easterly At Willimantic River

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July, 1999  
Willimantic Railroad Right of Way Survey  
CONNECTICUT DEPARTMENT OF TRANSPORTATION  
District 2 Surveys

**BRIDGE NO. 01849R****Excerpt from Report by Greiner, Inc.****EXECUTIVE SUMMARY**

Bridge No. 01849R at Track Mile 22.55, carries the Central New England Railroad (NECR) and Providence & Worcester Railroad (P & W) over South Main Street in Windham, CT. The structure built in 1892 and 1902 carries two tracks on a horizontal curve. Track 1, which is on CDOT property, carries the P & W Railroad. Track 2; however is not on CDOT property and carries the NECR Railroad. A routine inspection performed in March 1998 found the overall condition of the bridge to be poor due to collision damage to girders and stringers.

The rails are in fair condition, having light to moderate surface rust throughout with random gouged and abraded areas. There are guard rails on the bridge. Ties are in satisfactory condition with longitudinal checks and splits up to 3/4 inch wide. Steel strapping at Track 1 is in good condition with only light surface rust. Spacer blocks are used in lieu of strapping at Track 2.

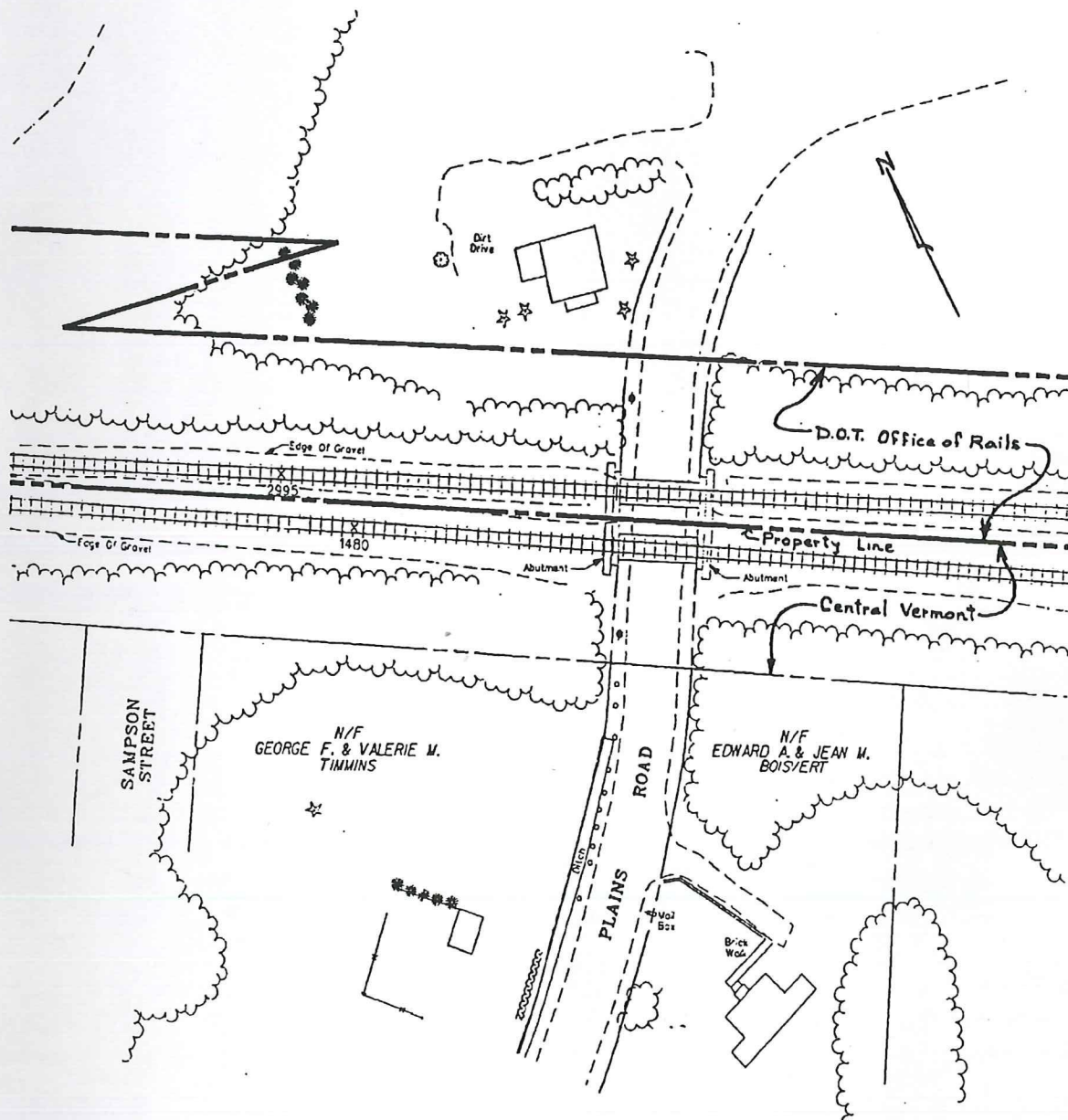
The bridge superstructure consists of two simply supported open deck girder/floorbeam/stringer structures one of which carries Track 1 and other carries Track 2. The fracture critical built-up riveted girders bear on stone masonry abutments. The paint system has deteriorated up to 50% with top and bottom flanges of Track 2 girders having no paint protection and the web protected by paint, however flaky at random locations. The girder web of Track 1 structure is cracked 1/2 inch wide by 33 inches high near midspan by impact and bottom flange members of Track 2 girder are also bent by impact. Top of bottom flange angles exhibit heavy laminated rust with section losses of up to 1/4 inch at Track 2 girders. Several stringers of Track 1 are also damaged at bottom flange by impact; one of which is split in bay 2 with a 15 inch longitudinal crack.

The stone masonry abutment and wingwalls are in fair condition with missing mortar at joints and gaps of up to 2 inches at random locations. A couple of stones have split. The abutments are capped with concrete at Track 2. The dry masonry retaining wall at the southeast corner is leaning outward about 7 3/4 inches over an area of 5 feet by 6 feet.

The load rating on file was performed in April 1996 (for P & W track only) using the allowable stress method and as built sections. The inventory rating of E62 and operating rating of E92.



**CDOT BRIDGE NO. 09305R**



Plan Showing Bridge No. 9305R  
N.T.S.

**BRIDGE NO. 09305R**



CDOT Track, Looking North Westerly



Southerly Abutment, View Under CDOT Track





Central Vermont Track, Looking North Westerly



View Under Central Vermont Track, Looking North Westerly

**CDOT BRIDGE NO. 09305R**  
**(RAILROAD BRIDGE NO.21.28)**  
**Providence & Worcester Railroad**

**EXECUTIVE SUMMARY**

Bridge No. 09305R at Track Mile 21.28, carries the Central New England Railroad (NECR) and Providence & Worcester Railroad (Willimantic Branch) over Plains Road in Windham, CT. The structure built in 1911 carries two tracks on a straight line. Track 1, which is on CDOT property, carries the P & W Railroad. Track 2, however is not on CDOT property and carries the NECR Railroad. A routine inspection performed in March 1998 found the overall condition of the bridge to be fair.

The rails are in satisfactory condition, having light to heavy surface rust throughout. There are no guard rails on the bridge. Ties are embedded in ballast and only the top is visible with longitudinal checks and splits. P & W track ties and strapping have random areas of section loss due to rot up to 40%.

Each track is supported by two main girders, which are in satisfactory condition. The P & W girders (G1 & G2) have medium to heavy spotty rust due loss of up to 90 percent of protective coating. The NECR girders (G3 & G4) have light spotty rust with a few areas of peeling paint. All anchor bolts for girders G1 & G2 are tilted toward the backwall and there is no evidence of movement at the bearings.

The substructure is in fair condition. There are numerous vertical and horizontal cracks on abutments and wingwalls. There are also random areas of heavy spalling, hollow areas and scaling. Both abutment backwalls have severe scale areas under the NECR track resulting in undermining of the railroad ties over backwall.

The load rating on file was performed in March 1996 for (P & W track only) using the allowable stress method and the as built sections. The inventory rating of E97 and operating rating of E113.

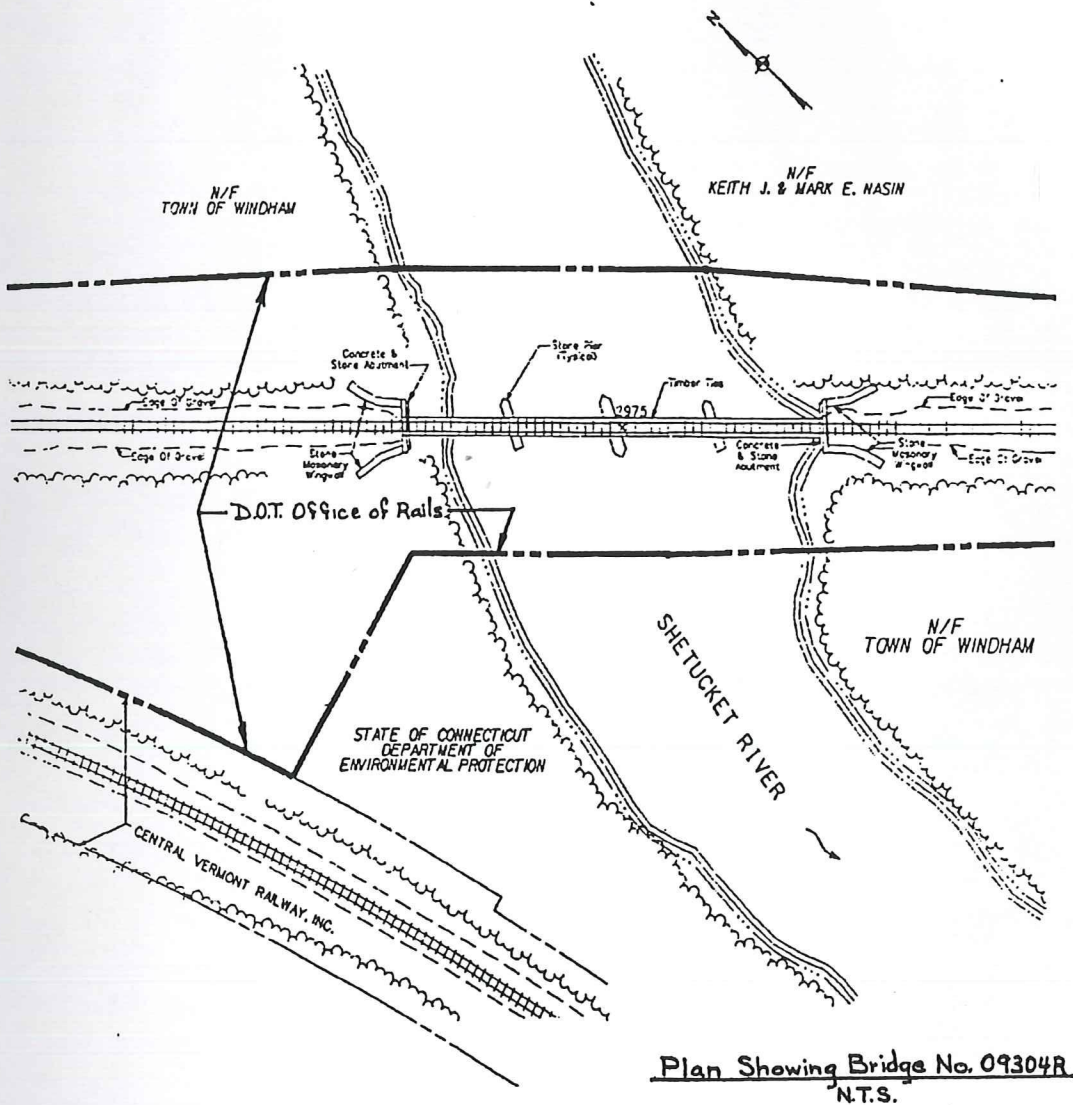


## CDOT BRIDGE NO. 09305R

### LIST OF DEFICIENCIES AND RECOMMENDATIONS (From Most Important to Least Important)

1. There is no advance warning of low clearance for southbound traffic. Vertical clearance sign is also missing from south fascia of bridge. Post required signs (2 EA).
2. Heavy scaling of both abutment backwalls has resulted in undermining of railroad ties for NECR track. Repair the undermined area (1 CF).
3. The ties on the P & W track have up to 40% section loss due to rot. Replace ties as necessary.
4. There are numerous hollow areas, spalls, severe scaling, and cracking at abutments and wingwalls. Patch deteriorated areas (2 CY).
5. The bottom timber member is missing at the southeast cribwall. Install new timber member (1 EA).
6. Protective coating has deteriorated up to 90% at Girders 1 & 2. Clean and paint structural steel (1100 SF).

# CDOT BRIDGE NO. 09304R

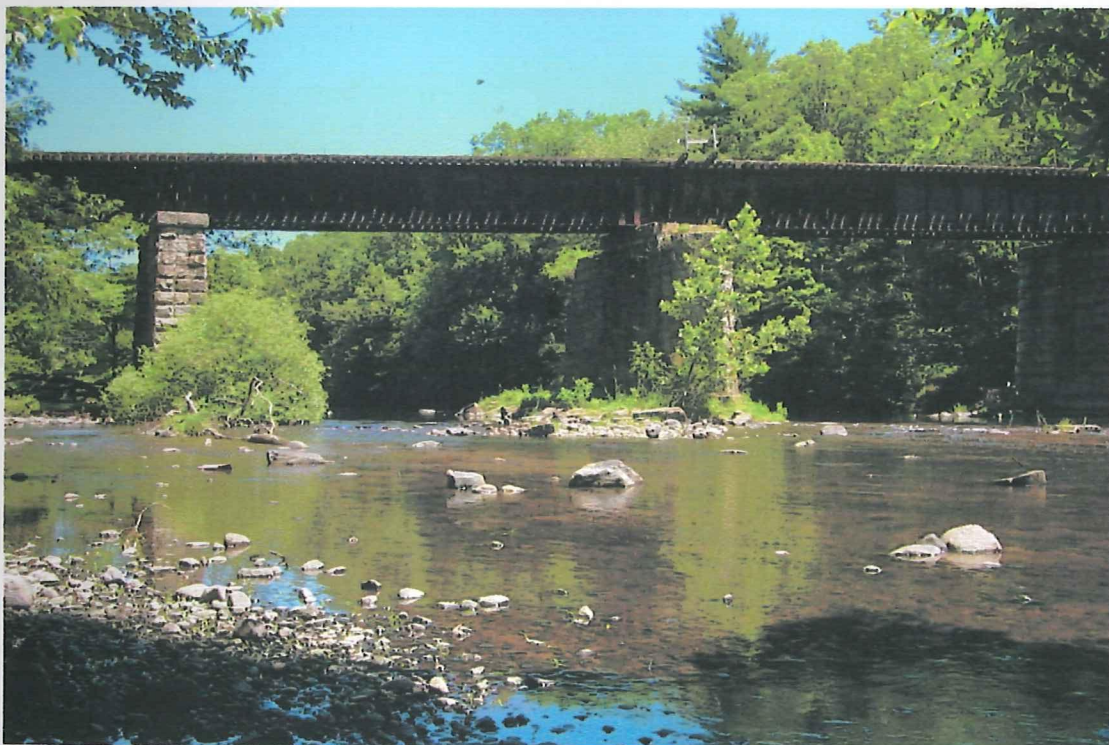




**BRIDGE NO. 09304R**



Top of Bridge, Looking Southerly



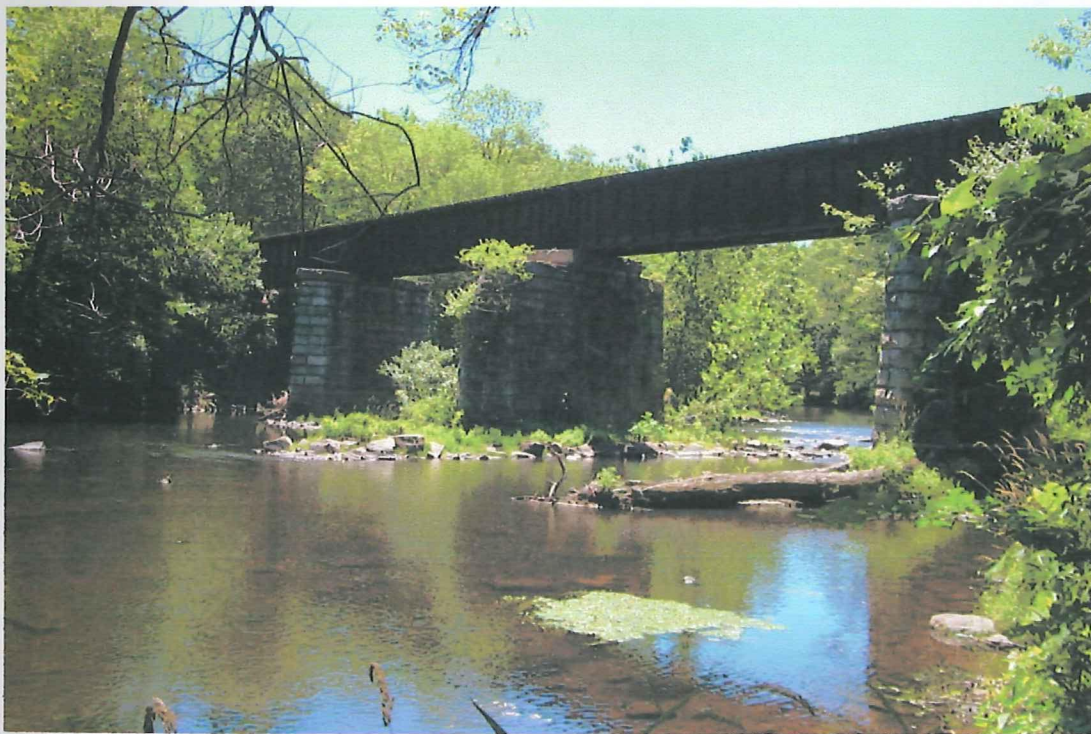
View of Span and Abutments, Looking Easterly



**CDOT BRIDGE NO. 09304R**



View of Span and Abutments, Looking Southeasterly



View of Span and Abutments, Looking Southerly



**Bridge No. 09304R**  
**(RAILROAD BRIDGE NO. 20.93)**  
**Providence & Worcester Railroad**

**EXECUTIVE SUMMARY**

Bridge No. 09304R is located in Windham at Track Mile 20.93 along the Willimantic Branch of the Providence and Worcester Railroad. The bridge was constructed in 1907 and carries one track across the Shetucket River. The bridge has four simple spans with a total structure length of approximately 245 feet as measured from back of abutment to back of abutment. Each span has two built up deck girders to support the deck. The girders are considered to be fracture critical.

The bridge has an open deck system consisting of 9 1/4 inch x 9 1/4 inch timber ties that bear on two 85 3/8 inch deep riveted built up deck girders. The ties are in fair to poor condition and exhibit checking throughout the bridge. Approximately 100 of 205 ties, exhibit hollow sounding areas, rotting with section loss and/or splitting. In addition, 18-inch diameter holes have been bored between the ties at Piers 1 and 3 and several ties are missing from above Pier 2, which may be a result of fire damage. There is a 4 1/4 inch x 8 1/2 inch timber strap along each end of the ties. The straps are lag screwed to each end of every other tie and exhibit splitting and rot over more than half the total length. There is also a platform in Span 2 at the south end of Pier 2. The deck planks and railing are missing from the platform.

The steel bearings are in fair condition. There is heavy accumulation of debris and moderate to heavy rust at all bearing locations. There are no signs of movement at any bearing and no indications of which bearings were designated for movement. Anchor bolts are tilted/bent and anchor bolt nuts are untightened at random locations. In addition, the corner of the masonry plate of the bearing for Girder G1 at Abutment 1 and Girder G2 at Abutment 2 hangs off the edge of the stone seat which has resulted in a loss of bearing area.

The girders, cross frames and lateral bracing are all in satisfactory condition. There is a heavy accumulation of debris up to 2 inches deep at random locations along the inside of the girder bottom flanges. There are rust holes up to 2 inches x 2 inches at the base of the bearing stiffener for Girder G2 at Abutment 1 and Girder G1 at Pier 2 in Span 3. The protective coating has failed and there is moderate rust throughout the structure. In addition, the angle leg of cross frame D5 in Span 1 is bent at two locations.

## Bridge No. 09304R

### EXECUTIVE SUMMARY (Continued)

The piers, wingwalls and abutment stems are all in good condition. The substructure is primarily stone masonry with the exception of the abutment backwalls, which are concrete. M1 substructure units exhibit loose, cracked and/or missing joint mortar at random locations. Both abutments have gaps in the stone seats, which appear to part of the original bridge construction. The abutment backwalls are in fair condition. They exhibit areas of hairline map cracking up to 6 feet x 7 feet, hollow sounding areas up to 6 feet x 7 feet, cracks up to 7 feet long and spalls up to 1 foot x 2.5 feet x 9 inches deep. There is also moderate vegetation along all wingwalls.

### LIST OF DEFICIENCIES AND RECOMMENDATIONS

(From Most Important to Least Important)

1. Deteriorated and missing timber ties. Replace the ties. (100 EA)
2. Overhanging masonry plate of bearing for Girder G2 at Abutment 2 and Girder G1 at Abutment 1. Extend the seats to support the plate.
3. Deteriorated concrete backwalls. Repair the concrete. (5 CY)
4. Bearing anchor bolts tilted/bent. Replace half of the bearings with expansion bearings. (8 EA)
5. Debris on bearings, abutment seats and along both girder flanges. Remove debris as required.
6. Failed protective coating system. Paint the superstructure. (12300 SF)
7. Loose, cracked and/or missing joint mortar at random locations. Repoint the joints. (260 LF)



APPENDIX A

SUPREME COURT RULING

THE WINDHAM COTTON MANUFACTURING CO.  
VS  
THE HARTFORD, PROVIDENCE AND FISHKILL  
RAILROAD COMPANY AND OTHERS

Connecticut Reports: Supreme court of errors  
CONNECTICUT REPORTS:

CONTAINING

CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT OF ERRORS,

IN THE YEARS

1854 AND 1855.

BY WILLIAM N. MATSON.

VOL. XXIII.

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HARTFORD:

PRESS OF CASE, TIFFANY AND COMPANY.

M.DCCCLVI.



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Windham Cotton Man'g Co. v. H., P. & F. R. R. Co. and others.

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grant, of the use to which the property shall be appropriated, has been held to import a condition. In this grant, moreover, it appears that it was made for a valuable consideration, proceeding from the grantees, or those for whose use it was made, and it is quite plain that it was made for the benefit of the latter, exclusively, and not that of the grantor. And it is equally obvious, that the conveyance was intended to be made to the grantees in trust, for those who appear to be beneficially interested in it, because the former could legally take, whereas the latter, not being a corporate body, could not be vested with such a legal title as would effectuate the object of the conveyance.

We therefore advise that judgment be rendered for the defendant.

In this opinion the other judges concurred, except Church, C. J., who was not present when the cause was argued.

Judgment for the defendant.

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THE WINDHAM COTTON MANUFACTURING COMPANY *vs.* THE  
HARTFORD, PROVIDENCE AND FISHKILL RAILROAD COMPANY  
AND OTHERS.

The defendants being a railroad corporation, remonstrated against the acceptance of the report of H as a committee in a bill in chancery, because while H was acting as such committee, his wife was a shareholder in an incorporated bank, which bank had stock in said railroad, as security for a loan of money. Held, that H was not disqualified from acting as such committee, on the ground that he was a party to such bill, but was disqualified, as being interested in the event of the suit, if the objection had been taken at the proper time.

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Windham Cotton Man'g Co. v. H., P. & F. R. R. Co. and others.

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Where, however, such remonstrance did not allege, and it was not shown, that this fact was unknown to the remonstrants, when such committee was appointed; it was held, that the omission amounted to a waiver, and that the report ought to be accepted.

Two railroad corporations, whose roads were constructed parallel and near to each other, on the northerly side of the plaintiffs' ware-house, agreed to make and maintain a turn-out or side track for the accommodation of the plaintiffs from either or both said companies' main tracks to said ware-house, and the plaintiffs claimed, that the turn-out from the track farthest from said ware-house should cross the track of the other road and a single side track be laid from thence to their ware-house, while the defendants claimed that said turn-out should be made on the outer sides of said roads respectively. On a bill in chancery for a specific performance of said contract, the committee to whom the cause was referred, found that a single side-track laid as the plaintiffs required, would, unless managed and used with proper care and prudence, expose the public travel along said railroad to serious danger from collisions and other causes, but if the same were under the supervision of the railroad companies, and a reasonable degree of prudence and care were exercised in its management and use, the danger arising therefrom would be very slight and scarcely appreciable, but did not find that it was indispensable or necessary that said turn-out should be constructed in such mode, nor that some other mode would not answer as well as that. Held, 1. That if the contract required said turn-outs to be made as required by the plaintiffs, the court would not specifically enforce it, but leave the plaintiffs to their remedy at law. 2. That a reasonable construction of said contract, might require said turn-outs to be made as claimed by the defendants, or in some other manner, not proposed by either the plaintiffs, or the defendants. And 3. That there should be further enquiry as to the best mode of doing this.

THIS was a bill in chancery, brought by the Windham Cotton Manufacturing Company, against the Hartford, Providence and Fishkill Railroad Company, and the New London, Willimantic and Palmer Railroad Company, to enforce the specific performance of an agreement. The superior court, at the April term, 1853, appointed James A. Hovey, Esq., a committee, to hear the parties, and find and report the facts in the case. At the next term of the court, the committee, having heard the parties, made his report, finding the following facts.

Previous to the 29th day of August, A. D. 1849, the defendants, in accordance with the provisions of their charter, had laid out, and located the roads, which they were author-



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Windham Cotton Man'g Co. v. H., P. & F. R. R. Co. and others.

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ized to make, and maintain, across certain lands of the plaintiffs, in the village of Willimantic, established the grade thereof, and caused the damage done thereby to be assessed, and the amount thereof, being thirty-five hundred dollars, to be paid to the plaintiffs. On the 29th day of August, 1849, the defendants determined to change said location, and grade, and to enable them to do so, entered into the following agreement in writing with the plaintiffs:

“The Windham Cotton Manufacturing Company agree to the change of centre line and change of grade, as is described in an agreement, this day made, between the Smithville Cotton Manufacturing Company, and the Hartford, Providence and Fishkill Railroad Company, and the New London, Willimantic and Palmer Railroad Company, and that the centre line and roadway, heretofore laid over and across said Windham Manufacturing Company's land, may be changed to conform thereto, both as to location and grade. And, in consideration of the receipt of three thousand five hundred dollars, by said manufacturing company, from said Hartford, Providence and Fishkill Railroad Company, and of the agreement of each of said railroad companies, to give said manufacturing company five shares of stock in each of their respective railroads, said manufacturing company agree to make, execute, and deliver, within ten days from the date hereof, a good and sufficient deed, in the usual form of conveyance, to said railroad companies, conveying to them jointly, the land over which said new location will be placed, as now agreed herein to be changed, the same to be of such width as may be needful to make, and forever maintain a railroad bed, at its graded surface, of forty feet in width in excavations, and thirty feet in width, at the graded surface, in embankments; with such additional width as may be needful for permanent slopes of earth to such excavations, and embankments, and for necessary drains, and ditches, along said railroads. Said Windham Manufacturing Company are not to erect, or place any building within forty feet

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Windham Cotton Man'g Co. v. H., P. & F. R. R. Co. and others.

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of the centre line of said railroads, on either side thereof. Said railroad companies have the right to use a strip of land, not exceeding twenty feet wide, outside of said road bed, on each side of said centre line, to pass and repass, for all necessary purposes of repairing and maintaining said road beds, drains and ditches. The railroad companies are to pay one dollar a rod in lieu of fencing, and said manufacturing company, in consideration thereof, agree to make and maintain good and lawful fences, between their lands and said railroads, and shall make and place no part of such fences within twenty feet of said centre, and shall so place, make, and maintain, such fences, as not to injure the stability of the railroad bed, nor endanger the safety, or increase the expense of the operations of said railroads, or either of them, reserving a right for said manufacturing company to cross said railroads at convenient places, not exceeding three in number, at such times as will not interfere with the use of the same by said railroad companies; said crossings to be made and maintained by said railroad company. Said deed is to be executed and delivered within ten days from date; but if within said ten days from date, said manufacturing company give notice that they prefer submitting to arbitration the question as to amount of damages to be paid for such deed of their lands, the parties bind themselves to submit the matters in difference to the final award of Elisha Harris, late governor of Rhode Island, David Whitman, of the town of Cranston, in said state, Jedediah. Leavens, of the town of Norwich, Connecticut; and the parties hereby do submit said question to said arbitrators aforesaid, upon the basis of this agreement; the hearing to be had with as little delay as may be, and so that the award may be made and published, within thirty days from the date hereof. Said manufacturing company are to remove, at their own expense, all buildings standing on any part of said railway location, within twenty days, except the cotton house, which may remain where it is, until the first of January next. Said railroad companies



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have the right to commence forthwith, the construction of their road-bed across the lands of said company."

The land mentioned in said agreement, which was to be conveyed to the defendants, was owned by the plaintiffs, as an estate in fee simple, and was situated near the manufacturing establishment of the plaintiffs. The sum of thirty-five hundred dollars, mentioned in said agreement as a part of the consideration thereof, was the same money paid by the defendants to the plaintiffs, for damages assessed to them, on account of the first location of said railroads, prior to the 29th day of August, 1849.

Within ten days after the execution of said agreement, the plaintiffs gave notice in writing, to the defendants, that they preferred to submit to arbitration the question, as to the amount which should be paid by the defendants, for a deed of said land, as provided in said agreement, and afterwards, on the 10th of September, 1849, the defendants informed the plaintiffs, that they should not perform, or abide by, the terms of said agreement on their part, and expressed a desire, that some other arrangement between the parties might be made, which would settle and adjust all matters of difference between them. The parties thereupon entered into negotiations, for the adjustment and settlement of said matters, which resulted in a second agreement between them, which was as follows:

"Whereas the Hartford, Providence and Fishkill Railroad Company, the New London, Willimantic and Palmer Railroad Company, and the Windham Cotton Manufacturing Company made an agreement, in relation to the rights of way necessary for said railroad companies to have, whereupon to construct their railroads, which agreement was dated at Willimantic, Aug. 29, 1849: and whereas, in a certain contingency, the damages to be paid to said manufacturing company, by said railroad companies, was to be left to the appraisal of three men, named in said agreement: now therefore, to save the expense and delay of an appraisal, and

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Windham Cotton Man'g Co. v. H., P. & F. R. R. Co. and others.

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to settle the case finally, and to the mutual satisfaction of all parties interested, we, whose names are hereunto subscribed, agree for the companies, by whom we are respectively employed, as follows:

“ Said railroad companies are to make and maintain a bank or retaining wall, on both sides of the excavation, from the eastern side or line of said Windham Company's land, through the meadow, of five feet in height, or to the surface of the ground; from thence to the garden lot, said railroad companies are to make and maintain a bank wall, of two or three feet in height, above the general surface of the ground, on the northerly side of the excavation, and also a wall four and one-half feet in height, or to the surface of the ground, on the opposite side of said railroads; from thence, through the said garden lot, the said railroad companies are to build, and maintain, a bank wall of at least five feet in height, on the northern side of said railroads, and to make a lawful fence on the opposite side of the same; and for the purpose of building said walls, the said railroad companies are to have such old walls in the vicinity as have been agreed upon. Said Windham Manufacturing Company reserve the right to make, at their own expense, a bridge, for foot passengers, over said railroads, so as not to interfere with the operations of the same; and said railroad companies are to make all other needful fences, if any are necessary, to fence their railroads, and to make suitable gates through the same, at two convenient places; the crossings and gates to be made to the satisfaction of said Windham Cotton Manufacturing Company, and said railroad companies agree to make and maintain a turnout or side track, for the accommodation of said manufacturing company, from either or both of said companies' main tracks, at any time within five years from date, if required by said manufacturing company, and said manufacturing company are not to make any charge for the necessary lands therefor, and said railroad companies are not to pay to said Windham Company any thing for



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fencing, as stipulated in the before mentioned agreement, as aforesaid, dated at Willimantic, Aug. 29, 1849, and said manufacturing company are released from making, and maintaining, the fences therein named.

“All other parts of the before mentioned agreement, dated Aug. 29, 1849, remain in full force and effect.”

Immediately after said agreement was executed, said railroad companies went into possession of said land, and constructed their railroads across the same, and thereafter continued in the uninterrupted use and occupation thereof. The defendants made the walls, fences, and gates, mentioned in said agreement, as therein provided, but always neglected and refused to give to the plaintiffs, five shares of the capital stock of each of said railroad companies, and to make the crossings in said agreements mentioned.

In making, and entering into said agreement of the 11th of September, the parties well understood, and it was on the part of the defendants agreed, that the turnout or side track, in said agreement mentioned, if required by the plaintiffs to be laid, should be so constructed, as to enable the plaintiffs to load and discharge cotton, coal and other merchandise, which they might send, or receive, over either of the said railroads, at their store-house; and it was equally well understood between the parties, that if said store-house should be placed, as it subsequently was, on lands south of said roads, the turnout or side track, if required by the plaintiffs to connect with the track of the New London, Willimantic and Palmer Railroad, should cross the track of the Hartford, Providence and Fishkill Railroad, by means of switches, and thus form what is termed a “connection” therewith, and that the same should be extended thence to said store-house. A turnout or side track from the New London, Willimantic and Palmer Railroad cannot be constructed, so as to enable the plaintiffs to load and discharge merchandise sent, or received, by them over that road, at their store-house, or furnish them with the accommodation contemplated by said

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agreement, unless connected with, or extended in some other mode, across the said Hartford, Providence and Fishkill Railroad. The committee, however, found that a side track, laid or constructed in such a manner, would, unless managed and used with proper care and prudence, expose the public, traveling over said railroads, to serious danger from collisions and other causes; but if the same were under the supervision of the said railroad companies, and a reasonable degree of prudence and care were exercised in its management and use, the danger arising therefrom would be very slight and scarcely appreciable.

Soon after the defendants went into possession of said lands, and before said railroads were graded, the plaintiffs gave them notice that they required a turnout or side track, to be made for their accommodation, from both said railroads, as provided in said agreement of the 11th of September; but the defendants neglected, and refused, to make the same. Some time in the month of November, or December, 1850, the New London, Willimantic and Palmer Railroad Company procured the requisite materials and put in the necessary ties and frog, for said turnout or side track, and were about to lay the rails thereof, when they were prohibited from proceeding with, and completing the same, according to the understanding and agreement of the parties, by said Hartford, Providence and Fishkill Railroad Company.

The committee further found, that said turnout or side tracks, if made according to said understanding and agreement, would be of great value to the plaintiffs; and the want thereof would subject the plaintiffs to much inconvenience in carrying on their business, and be seriously detrimental to their interests.

On the first day of December, 1851, the plaintiffs prepared and executed a deed, in proper form, conveying to said railroad companies, jointly, the lands mentioned in said agreement of the 29th of August, and exhibited the same to



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the said Hartford, Providence and Fishkill Railroad Company, on the 13th day of December, 1851; and to the said New London, Willimantic and Palmer Railroad Company, on the 15th day of December, 1851; and the plaintiffs then informed said railroad companies respectively, that said deed was ready for delivery, and would be delivered to them, whenever they performed said agreements on their parts.

But the committee did not find that the deed, so exhibited to the defendants, or any other deed conveying to them said lands, was ever delivered by the plaintiffs.

At the term of said court, holden in October, 1853, the defendants filed a remonstrance against the acceptance of this report, when the following facts were found by the court.

Said Hovey, at the time of his appointment as committee, and until the 20th day of August, 1853, was the owner of seven shares of the capital stock of the Phoenix Bank, an incorporated bank, and Jemima L. Hovey, his wife, was the owner of eight shares of the capital stock of said bank, which were standing in the name of Moses Ensign, as her trustee, until the 7th day of September, 1853, when said trustee transferred the same to her on said books, and during all that period, said Jemima L. was the wife of said Hovey, and the sole owner of said eight shares in said bank, and the president, directors and company of the Phoenix Bank, during all the period aforesaid, had eighty-five shares of the capital stock of said railroad company, standing in the name of said bank, upon the books of said railroad company, but the said bank never owned said shares, but merely held them as collateral security for moneys loaned. On the 22d day of August, 1853, the parties, by notice of that date, were cited to appear before said committee, at Willimantic, on the 31st day of August, 1853, when and where the parties appeared, and the said railroad company, upon the facts stated in their remonstrance, objected to said Hovey's acting in said case, claiming that he was disqualified; but said Hovey, notwith-

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Windham Cotton Man'g Co. v. H., P. & F. R. R. Co. and others.

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standing the objection, and, although his wife was the owner of stock as aforesaid, did proceed in the trial of said case.

The questions, whether the facts proved by said superior court were sufficient to set aside the report of said committee, and if said court should be of opinion, that they are not sufficient for that purpose, whether, upon the facts contained in said report, the plaintiffs were entitled to the relief prayed for in their bill, and if so, what relief,—were reserved for the advice of this court.

*Foster*, for the plaintiffs.

*E. Perkins* and *R. D. Hubbard*, for the defendants.

ELLSWORTH, J. A question is made, whether the report of Mr. Hovey is not open to objection, inasmuch as, it is said, he was a party in the suit, or at least had an interest in the event of the suit.

It appears that the wife of Mr. Hovey was a stockholder of the Phoenix Bank, during the time he was acting as a committee; her stock stood, a part of the time, in her own name, and before that, in the name of her trustee. The Phoenix Bank was a stockholder of the Hartford, Providence and Fishkill Railroad Company, holding eighty-five shares, as security for money borrowed. The defendants claim, first, that Mr. Hovey was a party, and could not act as a committee, and secondly, that he was interested as a party, and could not act as a judge or committee man.

We do not think Mr. Hovey or his wife was, in strictness, a party in the cause, however it may be as to interest. For certain purposes, it is true, as in *Wood v. Hartford Fire Ins. Co.*, 13 Conn. R., 210, and in *English v. Smith*, 221, and other cases, we have held, that where it is necessary in order to take jurisdiction of the case, or to maintain a pure administration of justice, we can look through the charter of a corporation, to the individuals who are united under it, and who really



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possess its property and franchises; but we do not think that the doctrine has ever been carried, or ought to be carried, to the extent now claimed. Correctly speaking, the stockholders of an incorporated company are not the parties on record; they do not sue, neither are they sued, nor do they employ counsel, or control the suit, nor are they liable for damages or costs, nor are their acts or admissions admissible in evidence; but on the other hand, they may be sued by the company, and may themselves sue, in turn, in all respects as if they were strangers and uninterested. The members of *quasi* corporations, such as the inhabitants of towns, societies, districts, &c., are in a higher sense parties in a suit; for they may appear as parties, may employ counsel to conduct the cause, and are personally liable for damages and costs. *Atwater v. Woodbridge*, 6 Conn. R., 223. *McLoud v. Selby*, 10 Conn. R., 390. In other corporations, there is sometimes, as we have said, in order to take jurisdiction, a necessity to look through the charter, as was done in *Wood v. Hartford Fire Ins. Co.*, 13 Conn. R., 210. *Bank of Augusta v. Earl*, 13 Pet., 521. But even then, the application of the principle is limited by the peculiar circumstances of the cases. Church, Ch. J., in the first case, expresses himself thus: "We do not dispute the general principle, that the corporation, in its corporate capacity, is the responsible and actual party, and so to be regarded, and treated, in all cases where no actual necessity exists, of looking beyond the form of its being; and therefore we admit, with the defendants, that a corporator cannot control an action in which the corporation is the party; that his confessions cannot affect the corporate interests, and indeed, that he may even prosecute an action against the corporation of which he is a member." In the present case, we see no occasion nor necessity for holding, that the numerous stockholders of the Phoenix Bank are stockholders of the Hartford, Providence and Fishkill Railroad Company; or are to be treated strictly as defendants on the record; and therefore we hold, that the first objection to Mr. Hovey's capacity

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to act, is not well sustained. To hold otherwise would, we think, lead to great perplexity and confusion.

There is more difficulty with the second objection. It must be agreed, that interest in the event of the suit, whether for or against the party raising the objection, is a disqualification for judicial action. It must be so, whether we infer it from our statute which declares a judge to be incompetent to act in cases much less objectionable than this, or from the common law, which does not allow a man to be judge in his own case. Here, the Phoenix Bank are certainly interested as stockholders, and Mr. Hovey is a stockholder in that bank. It is said, his interest is too remote and contingent, not fixed nor appreciable. Waiving this point, and assuming, as most of the court believe the law to be, that Mr. H. had an interest which disqualified him, still we think the objection of interest must be overruled; for we hold, that the defendants have waived it, by not making it at the time the committee was appointed, or as soon after as they had knowledge. This is the rule in relation to jurors, creditors and county commissioners, as we have decided in numerous cases, and as is decided elsewhere. *Groton & Ledyard v. Hurlbut*, 22 Conn. R., 182. *Quinebaug Bank v. Leavens*, 20 Conn. R., 87. *Crone v. Daniels*, 20 Conn. R., 331. *Selleck v. Sugar Hollow Turnpike Co.*, 13 Conn. R., 453. In this last case, the court held, as to a juror, that the motion in arrest is bad, unless it is stated therein, that the party moving for the new trial did not know of the disqualification, before the verdict was rendered in court. The court say: "It is not alleged in the motion, nor does it any where appear, that the defendants did not know of this objection, at the trial. If they did, they were bound to make it at that time. A party cannot be permitted to lie by, after having knowledge of a defect of this kind, and speculate on the result, and complain only when the verdict becomes unsatisfactory to him." These remarks are applicable to the case before the court. For aught we know, the defendants favored, or at least acquiesced



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in the appointment of Mr. H., when they could have objected to him, and another person would have been appointed in his place. Ignorance at that time was an all important fact. Therefore, when the report was presented to the superior court, the defendants should have stated, and then they would have been permitted to prove, that they were ignorant at the time the committee was appointed, if it was so; certainly we cannot assume it. This rule of law is most reasonable in itself, and indeed it is well nigh indispensable, if there is to be an end to litigation; and we see not why the plaintiffs are not entitled to the benefit of it in this instance. We conclude therefore, that the report is unobjectionable, and must be accepted.

Still, a most important question remains to be decided, one which has engaged much of our attention, and is not free from difficulty. What decree shall be passed upon the report, when accepted? It is most obvious that the defendants are liable to the plaintiffs on the contract of the 11th September, 1849, wherein they stipulate "to make and maintain a turnout or side track for the accommodation of the petitioners." They have neglected and refused to do this, and are liable to be sued for the injury to the plaintiffs, or there may be a specific performance ordered in chancery, as the court may think best. The plaintiffs insist, and perhaps with propriety, that the latter is the proper and only certain and adequate remedy.

We can, undoubtedly, if we think it best, decree a specific performance, or, when we take a just and enlarged view of the public and private interests involved, leave the plaintiffs to their remedy at law; but the latter course is unsatisfactory to the plaintiffs, and it may be unequal and unfair, in view of its inadequacy, and we may be bound to give them a specific execution, if the request can be granted in a reasonable and prudent manner. The contract or obligation, in one sense, is indefinite and ambiguous. "The respondents are to make and maintain a turnout or side track for the accom-

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modation of the plaintiffs, from either or both of said companies' main tracks, at any time within five years," &c. The exact mode is not pointed out, and the plaintiffs seem to have been permitted to introduce parol evidence without objection, to show exactly what the parties expected and agreed, at the time, should be done. Whether this testimony was admissible or not, if objected to, we have no occasion to enquire, for upon this part of the report we have not come to any definite conclusion. The mode expected, it seems, was, if the plaintiffs wished; as they subsequently have done, to pass from the track of the New London, Willimantic and Providence railroad, which lies northernmost, to and upon the track of the Hartford, Providence and Fishkill railroad, and thence, by switches, forming a communication with said last mentioned track, passing along upon it, and thence to the storehouse of the plaintiffs, which lies on the south-west side of the track. This is what the plaintiffs claim they are entitled to, under said contract and the contemporaneous understanding. The Hartford, Providence and Fishkill railroad company insist, that the writing is indefinite, and does not point out any particular mode of crossing their track, but only that it is to be done in some reasonable mode, and they say, that the mode asked for by the plaintiffs is not reasonable, but quite otherwise and unnecessary, and that if adopted, it will work a most serious if not ruinous injury to their road; and besides will endanger the public travel, from collisions and other accidents. They say that a turnout can be made on the south side of their own track to the plaintiffs' storehouse, and that another turnout can be made on the north side of the track of the Hartford, Providence and Fishkill company, extending down a short distance, and thence connecting with the storehouse by crossing, at right angles, the tracks of both companies; that this will give the plaintiffs all they have occasion to enjoy, and that it will not greatly injure the defendants, nor endanger public travel. On this point, the report is not as full as we could wish. It says



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“that a single side track laid as the plaintiffs demand, would, unless managed and used with proper care and prudence, expose the public travel along said railroads to serious danger from collision and other causes; but if the same were under the supervision of the railroad companies, and a reasonable degree of prudence and care were exercised in its management and use, the danger arising therefrom would be very slight and scarcely appreciable.” It is to be observed, that the report does not say, that this particular mode is indispensable or necessary, nor that some other and perhaps the one pointed out by the defendants, would not answer as well, or nearly so. Perhaps Mr. Hovey did not feel at liberty to take this range in his examination. He seems to have directed his attention chiefly to the practicability and propriety of the mode, which he says the parties contemplated in the outset, and even as to this, he has expressed himself with not a little caution, and has annexed numerous and important provisions and conditions, sufficiently significant and pertinent to induce us to pause before we adopt it. Furthermore, we are satisfied, if we may appeal to universal observation and all past experience, that this mode is not free from imminent danger to the public, from interruption and collisions, and especially when we consider that imprudence and carelessness are, to a great extent, incident to the thing itself, if not almost inevitable. We shall not, we are persuaded, approve of this mode at all, but shall rather leave the plaintiffs to their legal remedies, than decree such a specific performance. On the whole, we have concluded, that the report shall be accepted, but that there must be a further hearing, as the superior court shall direct, as to the best mode of making a turnout, or side track, for the accommodation of the plaintiffs.

In this opinion the other judges concurred, except CHURCH, C. J., who was absent.

Report accepted, and further hearing to be had.

**APPENDIX B**

**WILLIMANTIC FOOTBRIDGE**

CONDITION SUMMARY BY AI ENGINEERS, INC.

PHOTOGRAPHS OF BRIDGE

EASEMENT INSTRUMENT FOR FOOTBRIDGE  
( NOT ON FILE)



## EXECUTIVE SUMMARY

### INTRODUCTION

Bridge No. 09307R is a pedestrian bridge over New England Central Railroad and Natchaug River from Main Street to Pleasant Street in Windham, Connecticut. All five spans of the bridge have timber decking supported by floor beams and stringers on two steel through trusses. The truss members are bolted together using gusset plates. The dimensions and vertical clearances are as follows:

DIMENSIONS (In Feet)						
SPAN	LENGTH	CLEAR WIDTH	HEIGHT	DISTANCE ABOVE	FEATURE SPANNED	TRUSS TYPE
1	156	8	15.6		45 ft. above river	Heavy Pratt
2	124.8	8	8.5		C. 24 above bank	Triangular
3	156	8	15.6		C. 24 ft. above tracks	Heavy Pratt
4	124.8	8	8.5		C. 24 ft. above bank	Triangular
5	<u>72</u>	8	8.5		C. inclined parking lot	Small Pratt
	633.6					

The overall length of the bridge is 633.6 feet.

The bridge was constructed in 1906 and rehabilitated in 1982. The bridge was found to be in satisfactory condition in this inspection (Overall Rating = 6, rated according to NBIS Bridge Coding Guide see sheet 5 of 5 for description of numerical rating).

### HISTORIC SIGNIFICANCE

The bridge is of great local significance because of its status as a landmark. It has been one of the most prominent features of the downtown area as well as a vital avenue for pedestrian traffic since its construction. Its impressive length, its central location, visibility and usefulness in linking Main Street with residential areas to the south combine to make it a familiar and essential part of Willimantic's cityscape. The bridge is also significant as a historical resource and a typical example of the periods bridge construction techniques.

### CONDITION INSPECTION

#### Deck

The overall condition of the wood plank deck is satisfactory. The deck exhibits few small areas of wood rot up to 12 in. L x 2 in. W x 1/2 in. deep at random locations. The wire mesh protective fence exhibits light rust and peeling paint at random locations and is not secured to the posts at a number of locations. The lighting on the bridge has missing and or broken bulbs and covers.

### Superstructure

The overall condition of the superstructure is satisfactory. The elastomeric bearings at abutment 2 are overhanging the bridge seat up to 7 in. (about 55 percent) and are not functioning as designed. The east truss of span 5 is resting on less than 10 percent of the bearing at abutment 2. These were installed in 1982 rehabilitation, however the remaining bearings over bents and piers have shown no evidence of movement (frozen) which could induce stresses on the truss members not considered in the original design. Also heavy laminated rust with section losses at random locations up to 3/16 in. on rocker pins of the east truss over pier 3 in span 3 was found. All stringers exhibit up to 1/8 in. pitted area mostly in top flange areas in bending and up to 1/8 in. pitting in webs in shear. Some floor beams have 1/8 in. + loss at bottom flanges near supports at gusset plate locations at truss joints at random locations throughout. Floor beam FB1 in span 5 exhibits section loss of 1/8 in. x 2-1/2 in. W x 12 in. L on the bottom flange near the center in bending. Isolated areas of laminated rust at gusset plate locations and accumulation of debris throughout and up to 2 in. x 2 in. hole in gusset plate over pier 4 in span 5. There is light to heavy lamination of rust on bottom lateral bracing at the intersection with gusset plates and each others at random locations throughout and up to 30 in. long x 4 in. high rusted thru hole in the bottom angle over east abutment. The top chord bracing exhibit peeling paint, exposed primer and isolated areas of light rust throughout the bridge. Also, there is bent/bowed top chord bracing up to 6 in. upward in span 4.

The general condition of the trusses is satisfactory. Generally, the top and bottom chords exhibit light to moderate rust, peeling paint, exposed primer, graffiti and poor paint quality with runs. The top chords exhibit pitting up to 1/16 in. x full height of channel webs. There is impacted rust between connection plates and top cover plates and missing bolts or nuts through out span 3. The bottom chord of the east truss in span 4, at FB2, exhibits section loss up to 5/16 in. x 4 in. H x 3 1/2 ft. L on the vertical leg of the outside angle. The inside bottom chord angle in span 3 exhibits heavy rust 12 in. L x 2 in. W on the horizontal leg of the angle. Also, cover plates or angles have been welded to the bottom chord in span 4; cover plates between FB2 and FB3 and angles at FB3, FB5 and FB7.

The masonry plate of the west truss bearing overhangs the pier by up to 2 in.

### Substructure

The overall condition of the substructure is satisfactory. The stone masonry north abutment and wingwalls have a few random small areas of deteriorated or missing pointing between the stones. Piers 1, 3, and 4 (steel bents) exhibit peeling paint of structural steel. There are section losses up to 1/4 in. in some lattice members. The east pin of pier I is covered with concrete and is inaccessible. There is 1/2 in. impacted rust between the web of the leg and the pin plate at the west pin. There is up to 5/16 in. gap between the pin plate and the nut and also, the nut is not snug at either side at the southeast pin.



**WILLIMANTIC FOOTBRIDGE**  
**(Bridge No. 9307R)**



View of Center Span, Looking Easterly



View Beneath Bridge Looking Southerly



CITY & CENTRAL VERMONT RAILWAY

ARTICLES OF AGREEMENT, made this 31<sup>st</sup> day of October  
in the year of our Lord one thousand nine hundred and  
five, between the CENTRAL VERMONT RAILWAY COMPANY, a  
corporation operating a railroad in and through the  
State of Connecticut, and having a principal office at  
New London, in said State, party of the first part, and  
the CITY OF WILLIMANTIC, a municipal corporation located  
in the town of Windham, County of Windham and State of  
Connecticut, party of the second part, WITNESSETH:-

That the said party of the first part, in consider-  
ation of the covenants and agreements hereinafter recit-  
ed, to be kept and performed by the said party of the  
second part, does for itself, its successors and assigns,  
covenant, promise and agree, to and with the said party  
of the second part, that it will permit the said party of  
the second part to construct, erect and maintain a foot-  
bridge and approaches thereto, extending from Main street  
to Pleasant street, in Willimantic, Connecticut, over and  
across the land and railroad tracks of said party of the  
first part, at a point where a southerly continuation  
of Railroad Street in said city would extend across said  
land and tracks, and will permit said party of the second  
part to construct, establish and maintain piers and sup-  
ports for said bridge on the land of said party of the  
first part. Said foot-bridge is to be an elevated  
structure, with a minimum clearance of twenty-three feet  
above rails.

Said bridge and the piers and supports thereof shall  
be constructed in accordance with the plan hereto attached  
and made a part of this agreement, which plan shall also



be filed in the office of the Railroad Commissioners of the State of Connecticut at Hartford.

And the said party of the second part hereby covenants and agrees to so construct pier No. 2, as shown on said plan, so that the top thereof shall not be at a grade higher than the present surface of the ground in the locality where said pier is to be built, which said pier is located partly on land of the Central Vermont Railway Company and partly on land of the New York, New Haven and Hartford Railroad Company.

And the said party of the second part hereby further covenants and agrees that it will save the party of the first part harmless from all loss, cost or damage sustained by it, and to all persons and property, resulting from the construction, erection or maintenance of the foot-bridge aforesaid, and will save harmless and reimburse the party of the first part from all cost or damage which it may sustain or legally incur by any injury to person or property, resulting from said construction, erection or maintenance of said foot-bridge.

And the said party of the second part hereby further covenants and agrees that it will claim nothing from the party of the first part for damage to said foot-bridge at any and all times, resulting from fire caused by the neglect or want of care of the party of the first part, its servants, agents or employees, or otherwise.

IN WITNESS WHEREOF the parties to these presents have hereunto set their names and seals the day and year first above written.

Signed, sealed and  
delivered in pres-  
ence of--

*C. W. Miller*  
*James G. Jones*  
*Samuel Chubb*  
*J. Henry Dabnick*

CENTRAL VERMONT RAILWAY COMPANY,

By

*J. Jones*  
General Manager.  
*Cesar Chamberlain* L.S.  
*Ernest F. Lusk*  
*Patrick J. Shanahan* J.S.  
*John S. Sullivan* L.S.

Foot-Bridge Committee of the City  
of Willimantic, Connecticut.



# ACKNOWLEDGEMENTS

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**JULY 1999**  
**CONNECTICUT DEPARTMENT OF TRANSPORTATION**