

**ARGUMENT BEFORE THE BOARD OF RAILROAD
COMMISSIONERS OF MASSACHUSETTS IN
BEHALF OF THE LEXINGTON & BOSTON STREET
RAILWAY COMPANY AND THE NEWTON
STREET RAILWAY COMPANY IN
RE PETITION OF WALTHAM STREET RAILWAY
COMPANY, PP. 1-88**

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Argument Before the Board of Railroad Commissioners of Massachusetts in Behalf of the Lexington & Boston Street Railway Company and the Newton street Railway company in re petition of Waltham street railway company, pp. 1-88 by Clarence A. Hight & William H. Coolidge

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CLARENCE A. HIGHT & WILLIAM H. COOLIDGE

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ARGUMENT

BEFORE THE

Board of Railroad Commissioners
OF MASSACHUSETTS

IN BEHALF OF THE

Lexington & Boston Street Railway Company

AND THE

NEWTON STREET RAILWAY COMPANY

IN RE PETITION OF

WALTHAM STREET RAILWAY COMPANY

For approval of Location of Tracks in Main Street,
Parallel to existing Tracks of Newton Street
Railway Company.

WILLIAM H. COOLIDGE,
CLARENCE A. HIGHT,
Counsel.

FEBRUARY 24,
1902.

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CONTENTS.

	PAGE
INTRODUCTORY.....	5
I. PARTIES.....	5-8
1. Waltham Street Railway Company.....	5
2. Abutters.....	7
3. Lexington & Boston Street Railway Company.....	7
4. Newton Street Railway Company.....	7
5. The General Public.....	8
II. JURISDICTION OF THIS BOARD.....	8-14
1. None over Revocation.....	8
(a) Waltham Co. cannot petition.....	8
(b) Premature even if possible.....	9
2. Waltham Co. not "an interested party".....	10
3. Acceptance by Newton Co. necessary.....	10
III. LEGAL OBJECTIONS TO THE ORDER.....	14-23
A. Revocation of Tracks, Lexington Co.	14-15
1. "Use of the Streets".....	14
2. "Good and sufficient reasons".....	14
3. Object may not be accomplished.....	15
B. Alteration of Tracks, Newton Co.	16-18
1. "Interested Party".....	16
2. Failure of Acceptance.....	16
3. Sixty days insufficient.....	16
4. Cannot operate between Waltham and Watertown	17
5. Indefinite.....	17
6. \$50,000 expense to Newton Co.	18
7. Increased obligations.....	18
C. Extension of Tracks, Waltham Co.	19-23
1. Original location invalid.....	19
2. Connection existing track necessary.....	20
3. Three orders in one, improper.....	20
4. Transfers cannot be compelled.....	21
5. Location of poles indefinite.....	22
6. Portion location has been already revoked.....	22
IV. QUESTION OF PUBLIC POLICY.....	23-60
Introductory.....	23
A. Power of Board of Railroad Commissioners.....	24-26
1. Cannot approve part of order.....	24
2. Considers whole case <i>de novo</i>	24
B. Rights of whole public are not protected.....	26-43
1. Lexington & Boston Street Railway Company..	26
2. Newton Street Railway Company.....	26-28
(a) Expense of \$50,000.....	26
(b) Break at Watertown boundary.....	27
(c) Danger of two electric systems in street..	28
(d) Stockholders.....	28

	PAGE
3. Abutters upon Main Street	28-30
4. Investing Public	30-43
(a) Permanency of Franchise	31
(b) Competition	34-43
(1st) Quotations State Authorities	34
(2nd) This case is competition	37
(3rd) Original enterprise and purpose Waltham Company	37
(4th) Evidence of competition	40
(5th) Line to Waverly	42
C. Convenience Public not promoted	43-50
1. Travellers upon cars	44-48
(a) No Joint Use	44
(b) Three Tracks in Street	45
(c) Boston & Worcester Case	45
(d) Waltham Co. no connection with Boston ..	46
(e) No connection Watertown Line	47
(f) Delay and danger	47
(g) No connection Waltham and other tracks ..	48
2. Travellers on Highway and Abutters	48-50
(a) Joint use of Tracks	48
(b) Excessive number poles and wires	49
(c) Danger	49
D. Public Necessity	50-61
Definition	50
1. Main Street Tracks	50-54
(a) Unnecessary	50
(b) Present Facilities Waltham	51
(1st) Fitchburg R.R.	51
(2nd) Central Mass. R.R.	52
(3rd) Newton Company via Watertown ..	52
(4th) Newton Company via Newton ..	52
(5th) Newton Company via Bemis	53
(c) Present Facilities Roberts	53
(d) Unnecessary Capitalization	54
2. Waverly Extension	55
3. Newton Company not Waltham Company should build on Main Street	55
(a) Present conditions govern	56
(b) Financial ability	57
(c) Past Service by companies	58
V. CONCLUSION	61
Appendix A—Petition to Aldermen	65
Appendix B—Order of Aldermen	68
Appendix C—Protest Abutters	81
Appendix D—Petition to this Board	82
Appendix E—Order of Notice	84
Appendix F—Requests for Rulings	85

Mr. Chairman and Gentlemen:

This case comes before this Board upon the petition of the Waltham Street Railway Company after a protest of the requisite number of abutters upon Main Street, who object to the order of the Board of Aldermen of Waltham, dated December 3, 1901, wherein it attempts to revoke one portion and to alter another portion of the location of the Lexington & Boston Street Railway, to alter a portion of the location of the Newton Street Railway, and to extend the location of the Waltham Street Railway.

This is the third appearance before this Board upon the same general matter, two former orders of the Board of Aldermen having been disapproved by this Board. At the former hearings briefs have been submitted and arguments and statements have been made, to which, so far as they are pertinent to the present issues, we beg leave to refer.

I. PARTIES.

1. The Waltham Street Railway Company, petitioner in this case, claims to be a corporation organized under the general laws of this Commonwealth. Its Articles of Association are dated January 22, 1900. Upon the petition of a majority of its Board of Directors, prior to its organization as a corporation, the Board of Aldermen made an order, dated April 23, 1900, purporting to grant to the Waltham Company a location beginning at the boundary line between Waltham and Weston on South Street, thence through South Street to Main Street, thence through Main Street to Prospect Street, thence through Prospect, Moody, Maple and High Streets to the Newton boundary line, all as shown upon the plan submitted herewith. The location as granted upon Main Street covers the same place now and for many years occupied by the Newton Street Railway Company, or its predecessor. The Waltham Street Railway Company has received its charter from the Commonwealth and

has partially constructed three disjointed pieces of track upon the location granted by the Board of Aldermen; one piece between the Weston boundary line and the Fitchburg Railroad at Roberts crossing, the second between the Fitchburg Railroad and Main Street, the third between Main Street and the Newton boundary line. No attempt has been made to obtain a crossing, either at grade or otherwise, over the Fitchburg Railroad at Roberts Crossing, no attempt has been made to construct its road upon Main Street, and up to the present time no attempt has been made to operate any portion of its road.

The company has obtained an order from the Board of Aldermen purporting to extend its line westerly through Main and other streets to the Weston boundary line. Upon the ground that it has constructed and is operating its road, it has obtained from this Board the right to construct a road in Weston. But up to the present time the selectmen of Weston have not granted such right. It has also, upon the petition of a majority of its Board of Directors, obtained from the Board of Aldermen the order of December 3, 1901.

On the ninth of December, 1901, without notice or hearing, the Board of Aldermen modified its order of December 3rd by striking out in section 15 of paragraph C, the following words: "Otherwise this order shall be null and void." On December 12 the order was accepted by a majority of the Board of Directors of the Waltham Street Railway Company. By section two of paragraph C of the order it was provided that a portion of the location in said order granted might be revoked and a new location given in a new street to be laid out by the Board of Aldermen. On the thirty-first day of December, 1901, the Board of Aldermen passed an order revoking a portion of the location and granting a location on a new street laid out, but not constructed by the city of Waltham. This new location was accepted on the eighth day of January, 1902.

The petition now pending before this Board was brought by the Waltham Street Railway Company on the thirty-first day of December, 1901, and notice thereof was ordered by this Board to be published and also to be served upon the Lexington & Boston Street Railway Company, and the Newton Street Railway Company.

2. Abutters, representing property upon Main Street, valued at more than \$1,500,000, who have duly filed their protest under the statute.

3. The Lexington & Boston Street Railway Company, a corporation duly organized under the laws of this Commonwealth, operating more than thirty miles of road between Waltham and Lowell. By the order of the Board of Aldermen an attempt has been made to alter one portion of its location and to revoke another portion of its location in Main Street, for the alleged "good and sufficient reason" that such revocation is necessary in order to carry out the general order of the board.

4. The Newton Street Railway Company, a corporation organized under chapter 341 of the Acts of 1886, authorized by chapter 44 of the Acts of 1889 to purchase the then existing Newton & Waltham Street Railway Company, and extend into Watertown, and further authorized by chapter 375 of the Acts of 1893 to extend its road into Lexington, Belmont, Weston, Lincoln, Wellesley, Needham and Boston, and to purchase and consolidate other railroads in those cities and towns. It operates about fifteen miles of track in the cities of Waltham and Newton. It has a single track location upon Main Street, Waltham, a portion of which was built about thirty years ago and the most easterly portion of which was built in 1893. There are side tracks and turnouts in the street from 250 to 300 feet in length.

Since the decision of this Board upon the former case, dated October 7, 1901, arrangements have been made by the stockholders of the Lexington & Boston, the Newton, the Newton & Boston, the Commonwealth Avenue and the Wellesley & Boston Street Railways for a joint ownership and consolidation, and so fast as possible this consolidation is being carried forward. The Board of Aldermen of Newton have unanimously passed a vote favoring the consolidation; and Mayor Weeks of Newton, in his inaugural delivered on January 13, 1902, referred to the consolidation in the following language:

"The recent consolidation, in the form of a trust agreement, of four of the street railway companies having the whole or larger part of their mileage in our city is, in my opinion, of direct