

# How a South Boston real estate fight could delay new MBTA Red Line cars



BARRY CHIN/GLOBE STAFF/FILE

The MBTA's Track 61, the preferred site for testing new Red Line cars, runs from the T's South Boston maintenance shop along the South Boston Bypass Road (above).

By [Adam Vaccaro](#)

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Tucked behind the Boston Convention & Exhibition Center is one of the last untouched empty lots in the bustling Seaport District, a narrow scrub of land lined by a rail spur that hasn't seen a freight train in years.

The rust-orange stretch of rails and ties is known as Track 61. And it will carry the hopes of long-suffering subway riders when the Massachusetts Bay Transportation Authority next year begins testing hundreds of new Red Line cars over it.

Unless, that is, the owners of the iconic No Name Restaurant get in the way.

The Contos family, best known for serving fried seafood along the South Boston Waterfront for generations, also owns one of the two lots where the Red Line tests would end, and the family has sued the MBTA to block the effort.

The family says the project will interfere with its plan to build apartments on the overgrown lot, which has sometimes been used by neighbors as a makeshift dog park.

The lawsuit stands out from the typical real estate fight in Massachusetts Land Court because it could delay one of the T's most urgent improvements to a line that serves a quarter-million passengers a day. Once the new cars are fully deployed within five years, transit officials said, Red Line commuters could expect to wait no more than three minutes for a ride during rush hour.

"It's in the public interest to have the Red Line trains online as soon as possible," said James Aloisi, a former state transportation secretary, who suggested the T should consider alternatives in case the testing is blocked. "I wouldn't want to have that held up by a private player."

Despite the lawsuit, MBTA spokesman Joe Pesaturo said the agency is quickly preparing Track 61 for the 252 new cars, each of which must undergo hundreds of miles of testing before being put into service.

"Because of this project's critical importance to the hundreds of thousands of daily riders who rely on the Red Line, the MBTA and its contractor are continuing the work that is necessary to begin testing new cars," he said.

The T has already issued a \$21 million contract to convert a portion of Track 61 into an electric railway suitable for subway cars and build a big vehicle shed to test communication and security systems. Subway cars would run along a half-mile stretch of the line from the Cabot Yards outside South Station to the Contos lot.

The state owns nearly all of Track 61, except for the small stretch that runs over the Contos family's land, which the family bought from freight carrier Conrail in 1985.

But the T says it can use the tracks for testing, under the terms of an easement and a 1991 agreement among the state, the Contos family, and Conrail that accommodated the Big Dig construction project.

In court documents, the Contos family argued the easement only allows for certain railroad uses — not running subway cars. The family also says it must give the agency permission to change how the tracks are used.

The Contos family's lawyer, Armando Batastini, said the family "would prefer to work out any issues related to development of the property in an amicable fashion and only engaged in litigation as a last resort."

Meanwhile, the owner of a smaller adjacent parcel, Core Investments, is also suing the state, arguing the project will interfere with its plan to build lab space on its lot. The company declined to comment except to say it hopes to resolve the issue in court.

Pesaturo said officials "will strongly defend our property rights" in both matters.

The dispute could still end in a settlement that allows the T to use the tracks. The family indicated in legal filings that it would like to install support structures near the tracks to allow it to build above them in the future.

But there's been no agreement, and the two parties are careening toward a court showdown, with a pretrial conference scheduled for August.

Fred Salvucci, who tussled with the Contos family as the state transportation secretary who planned the Big Dig, predicted the state would prevail if the case goes to trial.

"It's just a nuisance lawsuit," he said. "It certainly seems to me that testing the Red Line cars is a proper public purpose."

In March, Land Court Judge Michael Vhay said the T could work on the tracks, but cautioned that any MBTA construction would be at risk. With the T planning to begin tests next year, both parties are likely seeking a quick resolution, said Kate Carter, a real estate attorney with the Boston firm Dain, Torpy, who reviewed the case for the Globe.

She added that the T's urgency on the Red Line cars probably won't carry much weight in determining the Contos family's property rights.

"The court is not going to be influenced by the absolutely acknowledged need of greater rapid transit in the area," she said.

Instead, the court will be asked to wade into the tangle of easements and legal agreements dating back to before the Big Dig, and decide whether the MBTA has the right to test the cars over the Contos land.

The tests would likely generate interest among train wonks, as well as beleaguered Red Line riders who see the new cars as a symbol of future relief. [Test runs of new Orange Line cars](#) in Medford have inspired celebratory photos on social media over the last few months.

[Some elected officials](#) have also suggested the test track could eventually lead to new transit service in the traffic-choked Seaport. [But the project has also faced](#) opposition from neighbors who worry the test trains will cause noise and spread dust.

The agency chose Track 61 from among five possible Red Line test sites. Officials said it was the only option that would not interfere with regular maintenance work at other properties, and still connect directly to the T's main Red Line facility in South Boston. Testing the new cars overnight on regular Red Line tracks isn't an option, because it would take years longer to get the cars into service, Pesaturo said.

Adam Vaccaro can be reached at [adam.vaccaro@globe.com](mailto:adam.vaccaro@globe.com). Follow him on Twitter [@adamtvaccaro](#).