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TOWN OF TONASKET, a Washington municipal corporation; COUNTY of OKANOGAN, a Washington municipal corporation, Petitioners, v. BURLINGTON NORTHERN RAILROAD COMPANY, Respondent

DOCKET NO. TR-921371

Washington Utilities and Transportation Commission

1993 Wash. UTC LEXIS 125

December 7, 1993

[*1]

APPEARANCES: W. Scott DeTro, attorney, Omak, represents the petitioners, Town of Tonasket and County of Okanogan. Larry E. Leggett, attorney, Bellevue, represented Burlington Northern Railroad Company at hearing. Robert E. Simpson, assistant attorney general, Olympia, represented the Commission at hearing.

PANEL:

Sharon L. Nelson, Chairman; Richard Hemstad, Commissioner

OPINION: COMMISSION DECISION AND ORDER DENYING REVIEW; AFFIRMING INITIAL ORDER DENYING PETITION TO CONSTRUCT A CROSSING AT GRADE

NATURE OF PROCEEDINGS: This is a request by the Town of Tonasket and Okanogan County for authority to open a railway/roadway grade crossing and to install flashing light signals and gates. The stated purpose of the crossing is to provide safer access to a town park. The railroad opposes the petition claiming, among other things, that the proposed crossing would be unnecessary and dangerous, and that there are better alternatives available.

INITIAL ORDER: An initial order entered on August 13, 1993, by Administrative Law Judge Rosemary Foster would deny the petition. It would conclude that the dangers posed by opening a crossing at the proposed site outweigh the public convenience to be gained. It also [*2] would find that the petitioners have not exhausted exploration of all available alternatives.

ADMINISTRATIVE REVIEW: The petitioners seek administrative review. They contend that opening the crossing to the public would relieve a dangerous traffic condition and is absolutely necessary for the safety of children accessing the park as pedestrians, because the sole existing access to the park is through a warehouse district that is heavily congested with traffic. They contend that the initial order reached an erroneous conclusion, that it erred in considering alternatives to the status quo, and that it erred in finding that they have not adequately considered alternatives.

COMMISSION: The Commission denies the petition. It affirms the initial order. The need for the proposed crossing does not outweigh the hazards that would result from opening the crossing.

[1]* The Commission generally will not grant a petition to open a grade crossing unless the public need for the crossing outweighs the hazards that would result from opening the crossing. RCW 81.53.020.

* Headnotes are provided as a service to the readers and do not constitute an official statement of the Commission. That statement is made in the order itself.

[*3]

[2] A showing of need for a grade crossing generally should include a showing that existing routes cannot be made adequate at reasonable cost. RCW 81.53.020.

[3] Proponents of a railway/roadway crossing at grade have an obligation to consider reasonable alternatives to the proposed crossing. RCW 81.53.020.

MEMORANDUM

This is a request by the Town of Tonasket and Okanogan County for authority from the Commission to construct a grade crossing and to install flashing light signals with gates at the intersection of Okanogan County Shop Road and the Burlington Northern railroad tracks at mile post 119.46. The proposed crossing site is currently a private crossing of the Bureau of Reclamation. A map showing Tonasket and the proposed crossing is attached as Appendix A.

The town and the county propose the crossing as a safer route for pedestrian and vehicular traffic to the town's Lagoon Park, and as a means of reducing congestion on, and thereby making safer, the only existing route to the park. That route is via Railroad Avenue, a sometimes-congested industrial street bordered by apple packing facilities. [*4] Nearly half of the town's residents signed a petition supporting the proposed crossing. The town's mayor, police chief, and fire chief testified in support of the petition to open the crossing.

The railroad opposes the petition. It contends that the proposed crossing would be dangerous, that it is unnecessary, and that there are better alternatives available.

An initial order would deny the petition. It would conclude that the dangers posed by opening the crossing outweigh the public convenience and advantage that would be gained by opening the crossing. It would find that the petitioners have not adequately explored alternatives to the proposed crossing, including safety improvements along the existing route and possible extension of another street, Henderson Avenue, to Lagoon Park.

The town and the county seek administrative review. They contend that the public convenience and necessity of a grade crossing clearly outweigh the danger to the public of establishing the proposed grade crossing. They argue that the mixing of heavy industrial traffic, vehicular traffic, and pedestrian traffic on Railroad Avenue is a very dangerous condition, and that opening the proposed crossing [*5] to the public is absolutely necessary for the safety of children accessing the park as pedestrians. They contend that it was improper for the initial order to consider alternatives to the proposed crossing other than the existing route in its present condition. They contend that the Commission should base its decision solely on a comparison of the existing hazards on Railroad Avenue versus the danger to the public that would result from opening the proposed grade crossing. They contend that it was improper for the initial order to place on them the burden of demonstrating that they have exhausted exploration of all alternatives, and further contend that they have adequately considered the alternatives.

Neither the railroad nor the Commission Staff answered the petition.

The Commission denies the petition. It finds that the initial order properly characterizes the testimony in its findings, and properly concludes that the dangers that would result from opening the proposed crossing outweigh the public need for the crossing. The initial order's discussion of alternatives is unclear and may apply an incorrect standard. However, that does not affect the result. The proposed crossing [*6] should not be constructed.

A. The Legal Standard

Chapter 81.53 RCW grants the Commission the authority to regulate the safety of railroad grade crossings. RCW

81.53.020 states a legislative preference for overcrossings and undercrossings where practicable, and prohibits the construction of a crossing at grade without prior Commission approval.

All crossings at grade are dangerous, and the policy of the law is strongly against the allowance of such crossings. *Reines v. Chicago, Milwaukee, St. Paul & Pacific R.R.*, 195 Wash. 146, 80 P.2d 406 (1938); *State ex rel. Oregon-Washington Railroad & Navigation Co. v. Walla Walla County*, 5 Wn.2d 95, 104 P.2d 764 (1940).

Because of the strong public policy against the opening of a crossing, the proponents of a crossing have a heavy burden to overcome in order to demonstrate that a crossing should be established. It is the Commission's task to weigh the evidence of public need and convenience against the dangers inherent in all grade crossings and in particular the features of a proposed crossing. *Spokane [*7] County v. Burlington Northern, Inc.*, Cause No. TR-1148 (September 1985).

In *Department of Transportation v. Snohomish County*, 35 Wn.2d 247, 254, 212 P.2d 829 (1949), the court cited with approval the following statement of the balancing process that the Commission's predecessor followed in considering a crossing closure proposal:

Having found that the grade crossing herein is dangerous and unsafe, we must also consider the convenience and necessity of those using the crossing and whether the need of the crossing is so great that it must be kept open notwithstanding its dangerous condition.

The Commission follows the same balancing process.

[1] In *Whatcom County v. Burlington Northern Railroad Company*, Cause Nos. TR-1725 and TR-1726 (December 1985), the Commission further described the process it follows in considering a crossing opening proposal:

The Commission will direct the opening of a grade crossing within its jurisdiction when the inherent and the site-specific dangers of the crossing are moderated to the extent possible with modern design and signals and when there is an acute public need which outweighs the resulting [*8] danger of the crossing. Such needs which have been found appropriate include the lack of a reasonable alternate access; the lack of a reasonable alternate access for public emergency services; and the insufficiency of alternate grade crossings, perhaps because of traffic in excess of design capacity.

B. The Status Quo; Alternatives Considered

The Town of Tonasket has approximately 960 citizens. The town is bisected by tracks of the Burlington Northern Railroad, which run north to south. State Highway 97 runs to the east of and parallel to the tracks, at a distance of approximately one and one-half city blocks. The downtown area of Tonasket straddles the highway. Residential areas of town lie on both sides of the tracks. To the west, the town is bordered by the Okanogan River. The town's schools are on the eastern edge of town.

There are three railroad grade crossings in town. The southernmost grade crossing is the Fourth Street Crossing.

A town park/playfield, Lagoon Park, is located about one-half mile south of the town, on the west side of the Burlington Northern tracks, between the tracks and the Okanogan River. The land for the park was donated to the town several years [*9] ago. The park includes two or three baseball fields and four soccer fields, and is being upgraded to include a boat ramp, a walking trail, and other recreational facilities. The park is used extensively by residents of Tonasket, particularly children, teenagers, and their parents. In the spring and early fall, children and teenagers walk to the park from the schools located on the east side of town.

The sole existing route from town to Lagoon Park is Railroad Avenue. Railroad Avenue is the first street to the west of the Burlington Northern tracks south of the Fourth Street Crossing. Traveling south from the town on Railroad

Avenue, a person must pass between the apple packing and warehouse facilities of Chief Tonasket Growers and Regal Fruit, before continuing on to the park.

The Chief Tonasket and Regal facilities stretch for about three blocks along both sides of Railroad Avenue, immediately south of the Fourth Street Crossing. All of the Chief Tonasket facilities lie on the east side of the avenue, but the Regal facilities lie on both sides. Forklifts traveling between Regal facilities cross Railroad Avenue.

Railroad Avenue varies in width where it passes between the Chief [*10] Tonasket and Regal facilities. At the narrowest point it is approximately 36 and one-half feet wide. The street has no sidewalks or designated pedestrian walkways in that area. Warehouse loading areas abut the street.

Railroad Avenue in that area is sometimes heavily congested during the day and into the evening hours, with large truck, tractor/trailer, delivery truck, and forklift traffic present at the same time that automobiles, bicycles, and pedestrians are using the avenue to travel to and from the playfields and other park facilities. Tonasket residents and town officials are concerned about the potential for accidents on Railroad Avenue. Because of the congestion, town officials have set the speed limit on the street at 5 mph, and the police have written warnings and a few citations. There has not been a serious accident on the avenue to date.

The Town of Tonasket has considered two alternatives to the existing route to Lagoon Park. One alternative would require the town to extend to the south a street that is closer to the river, Henderson Avenue. This alternative would require condemnation of a mobile home park and the crossing of wetlands. Town officials estimate the cost [*11] of building a viaduct across the wetland area to be \$ 100,000. The other alternative is the proposed crossing.

C. The Proposed Crossing

The site of the proposed crossing is located about one-half mile south of the town proper, about one and one-half blocks west of Highway 97. There is a private grade crossing owned by the Bureau of Reclamation at the site, which the Bureau will allow the public to use if this petition is granted.

Vehicular access to the crossing site from town would be south on Highway 97 to a frontage road just outside of town, then south on the frontage road, then across a county maintenance facility. The speed limit on Highway 97 changes from 25 mph to 55 mph where the frontage road leaves the highway.

A driver would approach the crossing site at an angle. There is a downhill grade from east to west at the site. The approaches to the crossing site are open.

At present one northbound train and one southbound train cross the proposed site each day. The crossing times vary by as much as several hours. The train speed is approximately 25 miles per hour at the site location. There is one set of tracks at the site.

The town proposes that the crossing be open [*12] during the day and closed when the park closes at night. The petition also includes a request for automatic signal lights and gates at the proposed crossing. The estimated cost of the lights and gates is between \$ 70,000 and \$ 95,000.

Town officials estimate that the average number of vehicles using the crossing would be 100 each day, that maximum usage would be 250 per day at times during April through September, and that usage might be as low as 20 vehicles per day during the winter months.

Town officials obtained estimates of the cost of above and below grade crossings at the proposed site before petitioning for opening of an at-grade crossing. The estimate is between \$ 750,000 and \$ 1.1 million dollars for an above grade crossing, and about 50% more for a below grade crossing. The costs would be prohibitive for the town.

D. Sufficiency of the Evidence

The petitioners contend that the evidence does not support the initial order's conclusion that they failed to establish that the public need and convenience outweigh the dangers inherent in all crossings as well as the dangers particular to this crossing. The Commission disagrees. The Commission believes that the proponents [*13] of the proposed crossing have not met the burden which must be met to establish a railway/highway crossing at grade.

Lagoon Park is not inaccessible without the proposed crossing, nor is the proposed crossing necessary for access by fire and other emergency vehicles. n1

n1 The Tonasket fire chief testified that opening the crossing would improve access to the apple packing facilities on Railroad Avenue in the event of fire. However, the railroad stated that it is willing to provide emergency service personnel with keys to the gate of the private crossing that already exists at the proposed site.

Opening the proposed crossing would be of obvious benefit to Chief Tonasket Growers and Regal Fruit. They would have fewer motorists and pedestrians on Railroad Avenue to contend with.

Opening the proposed crossing also would be of benefit to motorists traveling to or from the park. They would no longer have to contend with the traffic congestion and 5 mph speed limit on Railroad Avenue.

However, significant hazards would be created for motorists if the proposed crossing were opened. Every railway/roadway crossing at grade is dangerous. Collisions involving even slow moving trains [*14] and vehicles or pedestrians involve a great risk of extensive injury. Lights and gates do not prevent the passage of vehicles. This particular crossing has specific features which add to the hazards inherent in any grade crossing. Increased use of the crossing would increase the likelihood of high-speed accidents at the intersection of the highway and the frontage road that leads to the crossing. Vehicles approaching the crossing from either direction would approach at an angle, and those approaching from the west at a steep uphill grade, making it more difficult for them to see a train approaching. The arrival times of the train are irregular, making its appearance unexpected and therefore more hazardous. It would not be possible to accurately estimate the speed of oncoming trains from the crossing site. Some vehicles would contain excited children going to or leaving a game, which would increase the likelihood that drivers would be distracted.

The benefits that would accrue to children who access the park on foot do not appear to be as great as the proponents suggest. Some children would continue to use the existing route via Railroad Avenue even if the proposed crossing were opened. [*15] Railroad Avenue is a more direct route from the part of town that lies west of the tracks. The only benefit to those children from the opening of the proposed crossing would be some reduction in car traffic on Railroad Avenue.

Opening the proposed crossing would expose children who walk to and use the park to a whole new set of hazards. For children who chose the new crossing, the most direct route to the park from the school and other points on the east side of town would take them along the state highway where the vehicles would be traveling at a much greater speed than the 5 mph limit on Railroad Avenue. While they could choose the frontage road that roughly parallels the highway, it seems likely that some children would end up along the highway or crossing the highway south of town. The tracks would be an equally direct route from town to the park, and likely would attract some children. The rural location of the crossing increases the likelihood that children will be there when no adults are present to serve as a restraining influence. Gates would not prevent pedestrians or bicyclists from crossing. The proposed crossing would be adjacent to a children's play area, and improving [*16] access to the tracks could make them an attraction to children.

The proponents of the proposed crossing demonstrated persuasively that the status quo is dangerous for children and other persons traveling to and from Lagoon Park on foot, and that there is a public need to reduce the hazards that pedestrians face in accessing the park. However, it is not apparent from the record that the proponents have given much thought to the effect on the children's traffic patterns of opening the proposed crossing, or to the new hazards that

opening the proposed crossing would bring. Neither the mayor, the police chief, nor the fire chief said anything about what would happen to the children once they were off Railroad Avenue.

Another factor that the Commission finds significant in balancing the benefits that would be gained with the crossing against the hazards that would be created is evidence that the existing alternative could be made less hazardous through improved policing and design. Improvements to the existing route would lessen any benefit that might result from the proposed crossing. The proponents of the crossing have considered alternative vehicular routes to Lagoon Park, but it [*17] does not appear from this record that they have seriously studied possible improvements to the existing route, such as those suggested in the initial order: designated sidewalk areas for pedestrians, stop-and-proceed-with-caution signs for forklift operators, and use of a flagger to guide traffic during heavy congestion periods. The only witness who testified about this alternative, a traffic engineer, concluded that the existing hazards on Railroad Avenue can be minimized through the proper use of signing and pavement marking, proper flagging operations for backing trucks, and a pedestrian sidewalk, and that with such improvements the existing route would be safer than using the proposed crossing.

Viewing the record as a whole, the Commission finds that significant hazards would be created by opening the proposed crossing, and finds that the public need for the crossing does not outweigh those added hazards.

On review, the proponents argue that the Commission may only balance the status quo against the hazards that would result from the proposed crossing, and cannot consider whether improvements to the existing route would reduce the existing hazards. n2 The Commission emphatically [*18] rejects that notion. It is entirely proper for the Commission, in considering whether there is a need for a new crossing, to consider whether the perceived hazards of congestion, maintenance, and traffic conditions on existing alternative routes could be ameliorated through the installation of traffic signals, improved policing, improved maintenance, or improved design. *Spokane County v. Burlington Northern*, supra; *Dept. of Transportation v. Spokane County*, supra.

n2 They contend that the initial order "erred when considering alternative solutions to the proposed grade crossing, rather than determining whether public convenience and necessity as they exist outweigh the danger to the public of having a grade crossing." They later argue: "Petitioner submits that if the initial order properly weighed the hazards and dangers as they exist on Railroad Avenue against the inherent dangers posed by the crossing, the only conclusion that could be reached would be that the petitioner adequately established that need for the crossing outweighed the inherent dangers posed by the crossing."

[2] The present dangerous situation exists because of [*19] the condition of a public way over which the Commission has no jurisdiction. The Town of Tonasket has the authority to make improvements on Railroad Avenue. It should demonstrate to the Commission that it has reasonably explored improvements that are within its power before it asks the Commission to approve a new grade crossing. As the Commission noted in *Whatcom County v. Burlington Northern Railroad Company*, supra, the statutes and the cases have determined that railway/highway grade crossings are inherently dangerous. There is no such determination regarding roadways or street intersections. The Commission will not assume that a hazardous roadway cannot be improved sufficiently to make a new grade crossing no longer an acute public need.

The sufficiency of the proponents' consideration of other alternatives to the proposed crossing is the final issue on review. The petitioners contend that the initial order erred in placing on them the burden of demonstrating that they have exhausted exploration of all available alternatives, and in finding that they have not sufficiently explored extension of Henderson Avenue as an alternative to the proposed crossing.

[3] Proponents of [*20] a new grade crossing have an obligation to consider reasonable alternatives. If there are reasonable alternatives to the status quo that would eliminate the perceived need for a proposed crossing, the proposed crossing is not in the public interest.

The initial order words the requirement to explore alternatives too broadly. The proponents' exploration of alternatives should be reasonable in scope and depth, but need not be exhaustive. Factors such as cost, environmental problems, hazards, and similar factors may quickly eliminate some possibilities. An example of an alternative that the Commission would expect proponents to explore is the completion of roadways along existing rights of way. When, as here, the existing hazards are principally to pedestrians, a pedestrian overpass at convenient sites should be explored. n3 In most cases, it probably is not necessary to consider the construction of a bridge across a river, extensive condemnation of a new right of way through territory occupied by homes or businesses, and similar very costly alternatives.

n3 There is no indication in the record that the proponents of the proposed crossing have considered a pedestrian overpass over the Burlington Northern tracts as an alternative route for children and other pedestrians to take to and from the park. Because the proponents principally advocate the proposed crossing as a necessity for the protection of children and teenagers who walk to the park, the Commission would expect the advocates to consider alternative pedestrian routes and not just alternative vehicular access.

[*21]

The Commission believes that the petitioners adequately considered the possible extension of Henderson Avenue. They demonstrated that the route would be prohibitively expensive, would disrupt a wetland, and would expose users to some of the same hazards they presently face. It also appears to the Commission that the alternative would not be a practical solution to getting pedestrians off Railroad Avenue, because it is a less direct route to Lagoon Park than the present route.

The initial order reaches a proper result. Based on the evidence in this record, the need for the proposed crossing is not so great that it outweighs the hazards that would result from opening the crossing. Opening the proposed crossing would provide a more convenient route for some motorists and would avoid existing hazards on the present route, but would create substantial new hazards. The overall result would not be an improvement in public safety over the status quo. Improvements in the policing and design of the existing Railroad Avenue route are possible, and if made would substantially reduce the benefit that would result from opening the proposed crossing. The proposed crossing should not be opened. [*22]

FINDINGS OF FACT

Having discussed the evidence and having stated findings and conclusions, the Commission makes the following findings of fact and conclusions of law. Portions of the preceding findings pertaining to the ultimate facts are incorporated herein by this reference.

1. On November 30, 1992, the Town of Tonasket and Okanogan County filed a joint petition seeking authority to construct a grade crossing and install flashing light signals with gates at the crossing site. The location of the proposed crossing is at the intersection of Okanogan County Shop Road and the tracks of the Burlington Northern Railroad Company at railroad mile post 119.46, approximately one-half mile south of the town. The stated reason for the proposed crossing is safer access to a town park/playfield, Lagoon Park.

2. A private crossing exists at the site of the proposed crossing. It is owned by the Bureau of Reclamation.

3. On December 23, 1992, the Burlington Northern Railroad Company filed an answer opposing the proposed grade crossing. The answer alleges that the proposed crossing is unnecessary and dangerous, that there are other routes that would provide access to the playfield area, [*23] that the crossing would allow a private business to use a public street for its loading operations, and that existing streets could be extended to provide alternative access to the playfield area.

4. Five witnesses testified in support of the petition: Tom Fancher, Mayor of Tonasket; Raymond Cobert, general

manager of Chief Tonasket Growers; Ron Gonsales, supervisor, Regal Fruit; Jack Thomas Stevens, fire chief for Tonasket; and Don Schneider, chief of police for Tonasket.

5. The Town of Tonasket has approximately 960 residents. It extends eastward from the Okanogan River. The Burlington Northern tracks run north to south through the town. Highway 97 parallels the tracks, one and one-half blocks to the east of the tracks through town. The downtown area straddles Highway 97. There are three railroad grade crossings in town. The southernmost crossing is the Fourth Street Crossing.

6. Just south of the Fourth Street Crossing and abutting the tracks to the west are the apple packing and warehouse facilities of Chief Tonasket Growers and Regal Fruit. Those facilities extend for about three blocks. A street, Railroad Avenue, runs north to south through those facilities, parallel to the [*24] tracks. All of the Chief Tonasket facilities lie between the tracks and Railroad Avenue. Regal Apple has facilities on both sides of Railroad Avenue. Railroad Avenue varies in width between the facilities, and is as narrow as 36 and one-half feet at one point. There are no sidewalks or designated pedestrian areas along Railroad Avenue where it runs between the facilities.

7. Railroad Avenue continues for several blocks to the south of the apple facilities, ending at the Lagoon Park playfields. It is the only existing route to the park for both vehicles and pedestrians.

8. Lagoon Park is bordered by the Okanogan River on the west and by the Burlington Northern tracks on the east. The playfield includes two or three baseball fields and four soccer fields. The park is being improved to include a boat ramp, a walking trail, and other recreational facilities. The playfield is used extensively by the residents of Tonasket. Children, teenagers, and their parents in particular use the baseball and soccer fields. The heaviest use is during the spring and early summer; as many as 400 players use the fields during the busy season. Children and teenagers use the sport fields after school, and [*25] some of them walk to the fields from the town's schools that lie on the east side of town.

9. The period when use of Lagoon Park is at its peak is also a busy time for the fruit companies. Railroad Avenue is frequently congested in the area of Chief Tonasket and Regal Fruit, due to trucks making deliveries and pick ups at the facilities, forklifts crossing the street, and automobiles, bicycles, and pedestrians traveling to and from Lagoon Park. The conditions existing along Railroad Avenue at such times are particularly dangerous for pedestrians. Tonasket officials are concerned that the traffic situation will result in a serious accident, although there has not been a serious accident in the area to date. They have reduced the designated speed in the area to 5 miles per hour and have issued warnings and some citations, but those measures have not eliminated the hazardous situation along Railroad Avenue.

10. Mayor Fancher testified about alternatives that the Town of Tonasket has explored for alleviating the hazardous situation persons encounter when traveling to or from Lagoon Park. It has considered two alternatives. One alternative would involve extending a street that lies near [*26] the river on the west side of town, Henderson Avenue, to the south. They have rejected this alternative because it would require condemning a mobile home park, crossing a wetland, and building a viaduct across the wetland at a cost of \$ 100,000, and would not entirely avoid the congestion around the Regal Fruit complex.

11. The other alternative that the town has considered is construction of the proposed crossing. It would access Lagoon Park using Highway 97 out of town, then a frontage road from the highway to a county shop facility, then passage across that facility to the proposed crossing site. The Bureau of Reclamation is willing to allow public use of the existing private crossing if the Commission approves the petition. The average number of vehicles using the crossing would be 100 per day, and maximum usage would be about 250 per day at times during April through September. The town proposes that the crossing be open during the day and closed at night when the park is closed. The petition also includes a request for signal lights and gates to be installed at the proposed crossing. The estimated cost of the automated lights and gates is between \$ 70,000 and \$ 95,000.

12. [*27] Town officials have obtained estimates of the cost of above and below grade crossings at the proposed

site. The estimate is \$ 750,000 to \$ 1.1 million for an above-grade vehicular crossing. An underpass would be even more expensive and would be impractical. The area lies in a flood plain, and the rail bed serves as a dike.

13. Mayor Fancher presented a petition with 420 signatures from Tonasket residents supporting the proposed crossing.

14. Mr. Gonsales testified, on cross examination, that if children used the proposed crossing rather than the route along Railroad Avenue, they would not have to walk along Highway 97, and could walk along a frontage road instead. He considers Railroad Avenue to be more unsafe presently than the hazards posed by the proposed crossing.

15. Fire chief Stevens recounted difficulties in fighting a fire which occurred several years ago at the apple facilities after access via Railroad Avenue was blocked. He believes that the proposed crossing is needed as a second means of access to the facilities. In response, the railroad offered to give the town officials a key to the blockade at the existing private crossing so that the barrier could be moved to [*28] allow access to Railroad Avenue from the south by fire fighting equipment and personnel.

16. Police chief Schneider, in addition to testifying about traffic patterns on Railroad Avenue, the speed limit reduction, and the issuance of warnings and citations, supported the proposed crossing as an alternative in the event a long train were to stop in town and block all three existing crossings.

17. Rich Perkins, trainmaster for Burlington Northern, testified in opposition to the proposed crossing. As trainmaster, Mr. Perkins oversees from his Wenatchee base the territory which includes the portion of track that runs through Tonasket. One train goes through Tonasket to Oroville and returns each day, going north in the early afternoon and south in the evening. The times when the train passes vary each day by as much as several hours. The average train is 5,000 tons, is 2,400 feet in length, and has about 35 cars. The train speed is approximately 25 miles per hour through town; that also is its approximate speed at the proposed crossing site. At this speed, it would take approximately one-half mile to stop an average loaded train, and a quarter or three-eighths of a mile to stop an unloaded [*29] train. System-wide, the speed of the train at the time of most accidents is below 30 mph. The railroad is not opposed to the use of the existing private crossing at the proposed crossing site for access by emergency vehicles.

18. John Cowles, coordinator of public programs for Burlington Northern, testified in opposition to the proposed crossing. The railroad has a policy favoring closure of existing grade crossings and disfavoring new crossing proposals in view of the dangerousness of grade crossings even when equipped with flashing signals and gates.

19. Kenneth Cottingham, an engineer who specializes in highway traffic engineering and accident reconstruction, testified against the proposed crossing on behalf of the railroad. Roadway alignment and widths on Railroad Avenue are sufficient for the types and combinations of traffic testified to. There is sufficient turning radius for trucks. There are presently no traffic controls on Railroad Avenue. It resembles a parking lot rather than a street. Trucks and pickups are left parked in and along it. The traffic congestion testified to by other witnesses can be minimized through the proper use of signing and pavement marking, proper [*30] flagging operations for backing trucks, and a pedestrian sidewalk. Pedestrian traffic could best be controlled by the painting of a sidewalk on the west side of Railroad Avenue. "Watch for pedestrians" signs should be installed at forklift crossings.

Mr. Cottingham recommended extension of Henderson Avenue as an alternative means of access to Lagoon Park preferable to construction of the proposed crossing. A culvert rather than a bridge should be adequate for crossing the creek without any invasion into the stream flow. Mr. Cottingham does not know how much private land would have to be condemned for the project.

Mr. Cottingham related hazards associated with use of the proposed crossing. There would be an increased risk of vehicular accidents at the intersection of Highway 97 and the frontage road that leads to the crossing site. The highway is two lanes wide at that point, and the speed limit on the highway changes from 25 mph to 55 mph at that point. Vehicles slowing or stopping to exit Highway 97, and vehicles entering the highway from the access road, risk being

involved in high-speed accidents with other vehicles on the highway. The fact that vehicles on the highway are accelerating [*31] or decelerating at that point adds to the risk. Because the proposed crossing is a rural crossing, there is greater likelihood that the gates will be broken by vandals and that vandalism will not be noticed promptly. The irregularity of the train's arrival each day makes its appearance more unexpected and therefore more hazardous. Even a crossing with flashing lights and gates will not prevent people from driving around the gates, and some pedestrians and bicyclists will cross under the gates when they are down. It is not possible to estimate accurately the speed of an oncoming train from a crossing site. Accidents are actually more frequent when trains are traveling at slower speeds. Gates come down 20 seconds before a train arrives, and young people especially may be tempted to try to beat the train. The rural location of the crossing increases the likelihood that children will go around the gates, because they are likely to feel less restrained than when other people are observing them. Some children would walk down the tracks or along the highway to the proposed crossing site rather than take the safer frontage road if the crossing were authorized.

20. Dennis Heatherington, coordinator, [*32] Operation Lifesaver, Pacific Division, Burlington Northern, testified in opposition to the petition. The company has an educational program regarding the dangers inherent in grade crossings. Fifty percent of grade crossing accidents involving automobiles and trains occur at crossings with gates and signal lights. The biggest reason for crossing accidents is lack of driver attention. The fact that cars crossing the proposed crossing will sometimes have excited children leaving a game increases the risk of accidents at that site. When tracks go alongside parks, there is a tendency of people to use the tracks to access the park.

21. Patrick Walter, a Tonasket resident, testified in support of the proposed crossing. He is the father of two young children who use Lagoon Park. He does not allow them to walk on Railroad Avenue because of the multiple traffic hazards there. He believes that Railroad Avenue is the wrong place to have a route to Lagoon Park. He believes that the proposed crossing would be safer because the children would only have one hazard, the train.

22. Scott Olson, a resident of Tonasket, testified in support of the proposed crossing as a public witness. Mr. Olson teaches [*33] fifth grade. His class has adopted the wetland area through which Henderson Avenue would have to pass if it were extended toward Lagoon Park. A great deal of work has been done to restore the creek area, including planting 500 salmon each of the last two years. Some children would continue to use Railroad Avenue if the proposed crossing were built. Mr. Olson believes that those continuing to use it would be safer than now because another crossing would alleviate congestion on Railroad Avenue.

23. The need for a grade crossing at the proposed site does not outweigh the dangers that would result from opening a grade crossing at the proposed site.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this petition and the parties thereto.

2. The construction of a grade crossing and installation of automatic signals and gates at the intersection of Okanogan County Shop Road and the Burlington Northern railroad tracks at railroad mile post 119.46 is not in the public interest and is not required by the public convenience and necessity.

3. The petition of the Town of Tonasket and Okanogan County to construct the [*34] crossing should be denied.

ORDER

WHEREFORE, THE COMMISSION ORDERS That the joint petition of the Town of Tonasket and Okanogan County to construct a grade crossing and install automatic signals and gates at the intersection of Okanogan County Shop Road and the Burlington Northern railroad tracks at railroad mile post 119.46 is denied.

DATED at Olympia, Washington, and effective this 7th day of December 1993.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHARON L. NELSON, Chairman

RICHARD HEMSTAD, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

APPENDIX A

[SEE MAP IN ORIGINAL]

