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Conflict Resolution in Railroad Right-of-Way Disputes:
Columbia, Missouri, and Douglas County, Nebraska

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Conflict Resolution in Railroad Right-of-Way Disputes:
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ABSTRACT

The environmental mediation process has been used to avoid potential disputes and to resolve conflicts once an impasse has been reached. One successful case of dispute avoidance was in the conversion of an abandoned railroad right-of-way to a linear park in Columbia, Missouri. The potential disputes in this case were twofold: the first centered on the question of ownership of the right-of-way where the railroad holds easements; the second was the issue of how the right-of-way would be developed. This second issue was addressed through the use of third party assistance.

A member of the American Arbitration Association and a member of the Heritage Conservation and Recreation Service acted as an outside third party to facilitate negotiations between the city and adjacent landowners. The result of these negotiations is that the proposal to convert the right-of-way to a linear park has met with acceptance and the project to acquire the land is progressing.

In a similar case in Douglas County, Nebraska, third party assistance was not employed and an impasse resulted. Plans to convert the railroad right-of-way have been terminated.

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INTRODUCTION

Environmental mediation is a process for resolving the natural conflict between parties having opposing views on an environmental issue. The process of drafting environmental impact statements has increased public involvement in, and concern for environmental issues, and has also increased the number of participants. Conflict over the use or management of our natural resources has often led to an impasse or to a decision that is challenged in court. Litigation, however, does not resolve the issue, but only decides it. One or both parties may not be satisfied with the court's decision. Environmental mediation, on the other hand, is a voluntary process whereby disputants work together with an impartial mediator to resolve conflict through communication and compromise. The environmental mediation process has been used effectively, both to avoid potential disputes, and to resolve conflicts once an impasse has been reached. The basic requirements for effective mediation are that there be a definable issue and an identifiable set of parties who are willing to participate in the mediation process to reach and implement a decision.

The Department of the Interior, through the Geological Survey's Resource Planning Analysis Office (RPAO) and the Council on Environmental Quality (CEQ), co-sponsored a program to identify alternative mechanisms to resolve disputed environmental issues. As part of this project, RPAO and CEQ contracted with the American Arbitration Association to identify and resolve, through mediation, potential environmental disputes. The primary intention was to facilitate the Federal decisionmaking process and to avoid litigation where possible. One such successful case was the conversion of an abandoned railroad right-of-way in Columbia, Missouri, to a linear park.

RAILROAD RIGHT-OF-WAY CONVERSION

Railroads are abandoning an increasing number of rights-of-way in the United States. The Interstate Commerce Commission (ICC) estimates more than 20,000 miles of railroads will be abandoned in the near future.* Some local governments have expressed interest in converting these properties into linear recreational facilities. A decision of the ICC in 1972 permitted the ICC to require railroads, as a condition of abandonment, to first make the rights-of-way available for public use. The Railroad Revitalization and Regulatory Reform Act of 1976 made this a statutory requirement and directed the Secretary of the Interior (through the Heritage Conservation and Recreation Service (HCRS)) to provide technical assistance to public agencies to facilitate the conversion of these rights-of-way to recreation and conservation use. The act also authorized HCRS to make grants to communities for the acquisition of abandoned rights-of-way and their development for recreational purposes. In 1978, \$5 million was appropriated. HCRS made 10 grants to communities throughout the country, one of which was to Columbia, Missouri.

The linear nature and convenient location of the railroads make them particularly desirable for recreational use. However, these same factors also make them particularly vulnerable to conflicts in transferring property titles and in allocating resources for conversion of the rights-of-way to recreational uses. As part of the RPAO/CEQ Conflict Resolution Project, the American Arbitration Association (AAA) was asked to assist communities in developing a strategy for the conversion of their abandoned rights-of-way to linear parks. The Columbia, Missouri, railroad right-of-way conversion has thus far proved to be a successful example of dispute avoidance.

Columbia, Missouri, Case Study

In Columbia, Missouri, the ICC abandonment order resulted in negotiations between the city and the Missouri-Kansas-Texas (MKT) Railroad for approximately 8.5 miles of MKT right-of-way. Negotiations were begun in the spring of 1978. In the summer, HCRS announced the approval of Columbia's application for \$243,500 to purchase the right-of-way and develop it for recreational purposes.

The city proposed to acquire the MKT right-of-way which extends from the downtown area of Columbia to the main line near the Missouri River at McBaine, Missouri, as shown in figure 1. The line originates in a business and industrial area of downtown Columbia and extends southwest through residential areas and properties owned by the University of Missouri and the city of Columbia before passing into undeveloped and agricultural areas. The right-of-way terminates on the south end at the main MKT line near McBaine and the Missouri River. Approximately 40 percent of the 8.5-mile project is within the city limits of Columbia, and much of that land is in an area identified as open-space, green-belt areas in the Columbia General Plan. The city's proposal was to convert this property to a linear park that would provide nature trails and commuting paths for activities such as jogging, horseback riding, cross-country skiing, hiking, and bicycling.

* O'Neal, A. Daniel, 1977 Chairman, Interstate Commerce Commission, letter transmitting rails system diagram, Interstate Commerce Commission: September 1977.

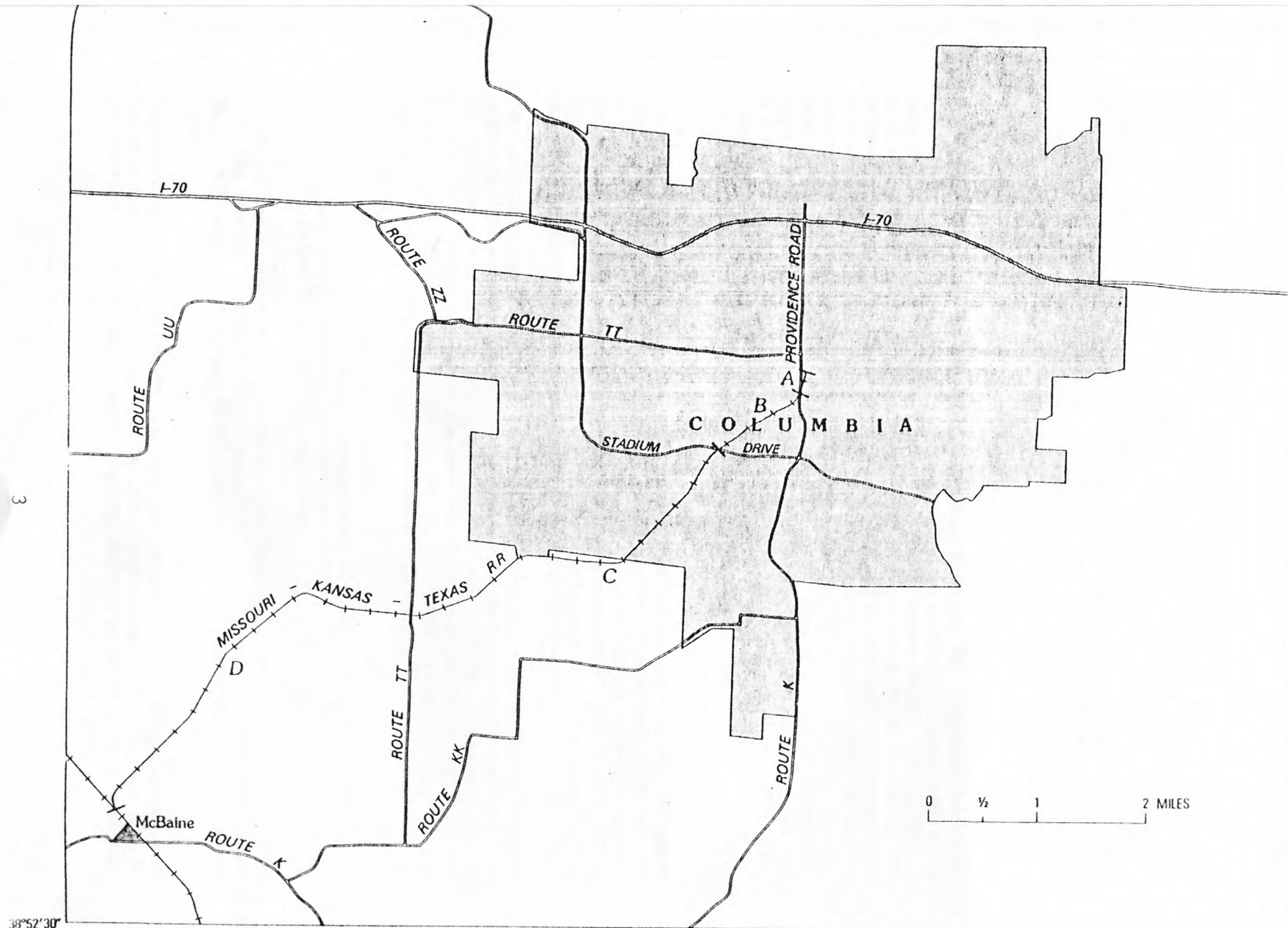


FIGURE 1. SECTION OF MISSOURI-KANSAS-TEXAS RAILROAD TO BE ABANDONED BETWEEN COLUMBIA AND MCBAIN, MISSOURI, SECTIONS A, B, C AND D ARE TO BE ACQUIRED SEPARATELY

The property consists of approximately 104 acres of land; 50 acres in fee simple ownership, and 54 acres to which the railroad held easement rights under Missouri law. The railroad originally agreed to convey the entire 104 acres to the city. However, after being contacted by an attorney for a landowner, the railroad retracted the original offer and agreed to transfer only nine tracts, or 50 acres of land. Of these, the counsel for the city felt that the city received clear title to only 13 acres, and arguable title to 10 to 20 acres. The city counselor also felt that the railroad held clear title to other portions which they refused to convey during negotiations, in order to avoid the threat of suit from owners of abutting property.

Potential Disputes

The potential disputes in this case study were twofold: the first centered on the question of ownership of the right-of-way where the railroad holds easements; the second was the issue of how the right-of-way would be developed. On the issue of title, with the abandonment of the right-of-way, there is a question as to whether the easements are extinguished. This issue is complicated by the potential interpretation that a bike or nature path is a "railroad or transportation purpose" under the Federal Railroad Revitalization and Regulatory Reform Act of 1976. If this is the case, the easements would remain intact, and the city would have the right to convert the right-of-way to a linear park. However, if it is determined that a bike or nature path is not a "railroad or transportation purpose," the easement would be extinguished under Missouri law.

Conflict Assessment

The question of whether conversion to trail use is still a rail use pursuant to Federal law is under review by the Office of the Solicitor of the Department of the Interior. In the absence of a position by the Federal Government, however, the city decided that it must proceed under the assumption that the easements had been extinguished pursuant to Missouri law, and that the city must acquire each of the privately held interests either by negotiated purchase or through condemnation.

On the issue of the use of the property, the AAA/HCRS team served to facilitate negotiations between the city and owners of adjacent land who are composed of three distinct groups: urban homeowners, rural farmers, and suburban developers. In June of 1978, the HCRS representative and the AAA representative met with the Columbia officials to develop a strategy for the acquisition. It was decided to divide the right-of-way into four segments, as shown in figure 1:

- Segment A - Downtown Columbia
- Segment B - Providence Road/Stewart Road to Stadium Boulevard
- Segment C - Stadium Boulevard to Route TT
- Segment D - Route TT to McBaine

It was decided to purchase the central section (Segments C and B) first and conclude with the farthest (Segment D). Acquisition of the downtown area right-of-way (Segment A) was to be delayed pending development of a downtown urban renewal plan.

Segment C is the segment having the most land held in fee. It was agreed that, once the city had title to all the land on the right-of-way within Segment C, the development of the park would begin. The next segment to be dealt with would be

Segment B. This segment is made up mostly of subdivision lots and residential properties. Segment D is made up mostly of large parcels used for farming.

The final downtown portion of the right-of-way, Segment A, will be left until last. This segment, the shortest, has the greatest number of title holders and is the segment least necessary for the successful development of the park. It is hoped that once the other two segments (C and B) are fully developed, the need for the development of Segment A will become more obvious. However, even if the park is not fully developed in Segment A, it would not significantly diminish the integrity of the recreational uses of the rest of the right-of-way. Furthermore, the land would be valued for intensive urban commercial purchases and thus would be comparatively quite expensive.

In August 1978, a public hearing was held in Columbia. All the owners of abutting land and interested parties were invited to attend. The acting town manager discussed the project and the strategy for proceeding with the acquisition and encouraged questions and comments. The representative of AAA explained the role of AAA and made it clear that the representatives of AAA and HCRS stood ready to assist the citizens in making their concerns known to the public. The AAA/HCRS team recommended that a citizens' advisory committee be formed to act as a forum to resolve conflicts as they develop.

Initially, public pressure by owners of abutting land was very slight. Lobbying on the part of recreational interests was intense. After the application for and receipt of the grant for the right-of-way conversion, however, several owners of abutting land requested that the city council reconsider and perhaps abandon the project. Although the initial concern was the transfer of clear title to the city, the situation soon became one of conflict between the landowners and the city over the use of the land.

Conflict Resolution Process

On April 18 and 19, 1979, HCRS representative Glenn Tiedt and AAA representative John McGlennon met in Columbia, Missouri, for 2 days of negotiations with the individual landowners whose land abuts the first stage of the railroad right-of-way that the city proposed to acquire and develop as a recreational facility. This section of right-of-way is 100 feet wide and 3.5 miles long, and consists of approximately 40 acres of land. There are 11 landowners with title interest along this section of the right-of-way including the city of Columbia. Representatives of the city counselor's office and the Department of Parks, Planning and Development attended the landowners meetings with the AAA/HCRS team representatives.

As part of the general policy of openness, the city counselor's office made title survey information available to each landowner. During the course of the meetings, the city counselor's office outlined the options available to each landowner. These included the gift of the landowner's right-of-way interest to the city of Columbia, the purchase of the title interest by the city at an agreed upon price, or the acquisition of the title interest by the city through eminent domain proceedings. In each instance, Glenn Tiedt described the benefits to the landowner by making an outright gift of his title interest. These included (1) the tax benefits that would result from making tax deductible gifts, (2) the benefits of including restrictive covenants in the gift requiring the city to undertake to provide such things as fencing and security, and (3) the benefit of use by the city of the value of the gift as part of the city's

10 percent matching requirement of the HCRS grant. In addition, if the city did not have to acquire a title interest at full market value, more funds would be available for park development.

If the landowner did not choose to donate his title interest, his alternatives would have been to sell his land to the city at fair market value or to have the city take his land through condemnation proceedings. These alternatives would mean higher costs to the city and less funds available for park development. The city would provide no guarantees concerning the development of the parkway in the vicinity of the landowner's property, and the income to the landowner from the sale or condemnation of his property would be taxed as capital gains by the Federal Government.

Results

The Columbia, Missouri, case is one of dispute avoidance. Many citizens feel that for once their concerns were addressed rather than ignored by the public agencies. According to the city counselor, Scott Snyder, "the farmers were and remain hostile to the concept of the project, but now have come to accept its inevitability. Developers have remained neutral so long as their individual interests have been protected while the urban homeowners are, for the most part, supporters of the project."

The AAA/HCRS team served as neutral facilitators during discussions between the landowners and the city, and has provided impetus to the city to move the project along. The result of these meetings was that eight of the ten landowners appear willing to give their title interest to the city or to sell their interest to the city at a reasonable price. One of the remaining two landowners stated that he was opposed to the project and that he was fed up with the city taking his land for a variety of public works and recreational projects. However, if the city could make a final determination of the extent to which the city needed to encroach on his property and if the city could accommodate his sewer needs, it might be possible to reach a negotiated agreement. The other opponent to the project has only 99 feet of right-of-way containing 0.114 acres. The amount of settlement for him, should he contest the acquisition, would not be sufficient to warrant a suit against the city. Realizing this, he has indicated that he may attempt to get the city council to reverse their support for this project. This use of the political alternative to affect this project is not unlike the action taken by residents in Omaha, Nebraska, which resulted in a reversal of the county's decision to acquire an abandoned right-of-way.

In response to these two opponents, the city counselor's office arranged a meeting with the city Public Works Department and the landowner concerned about excessive takings of his property. The city counselor also informed the city council that at least one citizen may attempt to obtain a reversal of their approval of the right-of-way. The AAA team is satisfied that if these two problems can be overcome, this segment of the right-of-way should be acquired and developed without further delay or litigation.

As of May 1981, the acquisition of the trail is progressing; although, increasing costs and time delays may result in less than an 8-mile trail. The involvement of neutral facilitators has enabled the city to begin the acquisition and the unfinished trail is already in extensive use. Condemnation has been used only as a legal tool in the case of one resisting landowner. (Snyder, Scott, City Counselor, Columbia, Missouri, oral communication.)

Rails-to-Trails Conversion, Douglas County, Nebraska

In contrast to the Columbia, Missouri, rails-to-trails conversion which is progressing as a result of third party assistance, the rails-to-trails conversion in Douglas County, Nebraska, has been terminated, and the county commissioners have rescinded their support for the project and have returned the HCRS grant. The reason for failure in this case was that the situation which began as favorable for the acquisition and development of a linear park ultimately resulted in rejection after the fears of owners of the adjoining land were voiced.

Background

In May of 1978, HCRS approved the preliminary application of the Douglas County commissioners for a grant to purchase and develop 8.7 miles of railroad right-of-way for a multipurpose recreational trail. The right-of-way was abandoned by the Chicago and Northwest Transportation Company and is located in two unconnected sections northwest of the city of Omaha, Nebraska, as shown in figure 2.

The eastern section runs along the north edge of Omaha and is about 3.5 miles long, containing 49 acres. The west section runs just northwest of Irvington to Bennington Road in Bennington. This section is about 5.2 miles long and contains 78 acres.

The right-of-way is a minimum of 100 feet wide with several wider sections scattered throughout the length. Except for the roadbed, the right-of-way is in a natural state. It is heavily forested and serves as a refuge for wild birds and animals of all kinds. The track along the east section has been removed, and the track in the west section was to be removed before Douglas County purchased the property and four bridges which Douglas County had requested remain in place.

In January of 1978, the Douglas County Board of Commissioners held a public hearing on the proposed park. Public sentiment was mixed. There had been some vandalism on houses abutting the existing right-of-way in the east section. However, in June of 1978, after the receipt of the notice of HCRS approval of the preliminary application, the board voted four to one to approve the filing of a final application to HCRS for the grant.

Strategy for Conversion of Rails-to-Trails

Also in June 1978, AAA representative John McGlennon and HCRS representative Glenn Tiedt went to Omaha to meet with the county surveyor-engineer. The principal topic of discussion was the problem of acquiring clear title to the right-of-way. The strategy decided upon was for the county to complete its title examination and then to determine the best means of acquisition. Three basic options were to be considered if the railroads interest had been extinguished. First, the landowner would be asked to consider making a tax-deductible gift of his segment of the right-of-way to Douglas County. Second, if the landowner did not wish to make a gift, he would be asked to sell his interest in the right-of-way to the county for an agreed-upon sum. Third, if all else failed, the right-of-way would be condemned.

At the conclusion of the discussion, the AAA and the HCRS representatives inquired whether or not Douglas County wanted to take advantage of the services of the conflict resolution research team (McGlennon and Tiedt) in the same way that the officials in Columbia, Missouri, were planning to do. The county surveyor-engineer

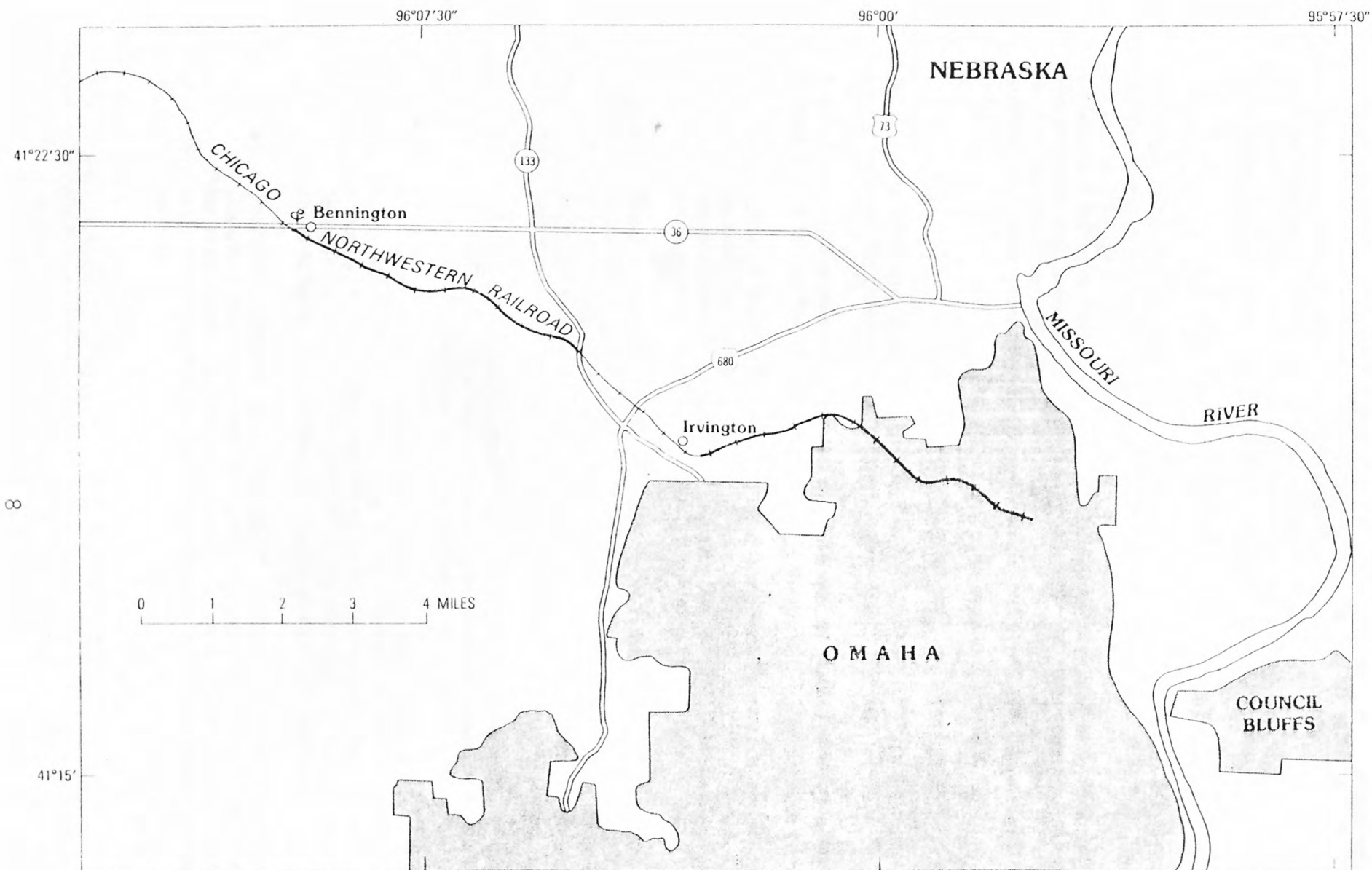


FIGURE 2. TWO SECTIONS OF THE CHICAGO AND NORTHWEST RAILROAD
TO BE ABANDONED, DOUGLAS COUNTY, OMAHA

was confident that he had the support of the majority of the Board of Douglas County Commissioners and that he could overcome much of the opposition being evidenced by the owners of abutting land. He also felt that the county was dealing from a position of strength in its exercise of eminent domain authority. He concluded that, if a lawsuit did result from the implementation of this strategy, it probably could not be avoided through use of the services of the conflict resolution team.

Project Reversal

In March 1979, the Douglas County Board of Commissioners voted four to one to terminate the project and to return the grant to the HCRS. The HCRS immediately asked the AAA research team to return to Omaha, interview the county commissioners, and try to determine the cause or causes of the collapse of this project. The investigation was seen as an opportunity to find out what conditions led to the reversal by the Board of Commissioners so that the HCRS could be alert to similar conditions in other grant-receiving communities and avoid additional grant cancellations.

Conflict Assessment

On April 5, 1979, the AAA and the HCRS representatives visited Omaha. Their survey included the Douglas County commissioners.

The following list presents the reasons given by one or more of the opponents of the project during the course of the interviews:

- Some of the abutters opposed the projects. Their reasons for opposition included the potential for crime, vandalism, litter, and noise. Abutters were concerned about the adequacy of fencing their property, and the property of at least one abutter was divided by the right-of-way.
- There were other competing projects that had a higher priority for county resources. As the Omaha World Herald put it, "There are so many other things in the community that warrant attention." Competing interests included mental health facilities, a new correctional facility, public health and welfare services, and police and fire services.
- There was concern over the county's ability to adequately police the right-of-way. The right-of-way goes through deep cuts of land that provide potential sites for rape, mugging, or other violence.
- The county commissioners estimated that the operation and maintenance costs would be excessive. These costs would be approximately \$100,000 annually, \$50,000 of which would be for police surveillance. The Nebraska legislature has put a 7 percent lid on increases in county spending, and there is heavy competition for the use of existing revenues.
- There was concern about the ability to respond to medical emergencies. Douglas County is served by a volunteer fire department, and they would be responsible for rescuing injured citizens. The effectiveness of this system on a trail was questioned because of the volunteer nature of the services.

- There was no broad-based support for the project within the community. It was suggested that the park did not meet a publicly felt need.
- The timing was wrong for this project. The county commissioners were forced to make this decision while citizens were concerned about major problems of inflation, the energy crisis, and the Middle East. It was felt that there is a conservative trend against taking on new projects and future obligations.
- Existing recreational facilities, specifically an existing bike trail, were currently underutilized.
- A question was raised concerning the legality of using county transportation funds to maintain the right-of-way.
- The plans for the development of the right-of-way did not include adequate parking or sanitary facilities.
- There was concern over the ability of the county to obtain clear title to the right-of-way. There was a natural desire to avoid litigation and controversy in acquiring the right-of-way.

Conclusions

As can be readily seen, the above list is a remarkable array of reasons to oppose a project of this nature. However, it was the conclusion of the AAA/HCRS team that the fundamental reasons for the County Board of Commissioners reversing itself on this project was the problem of acquisition of clear title to the right-of-way. It was the opinion of the research team that all the other reasons given for the Board of Commissioners' opposition to the project would not themselves have caused the abandonment of the project. The fundamental reason for terminating the project was probably the desire to avoid litigation.

The AAA/HCRS team concluded that, had the railroad been able to convey clear title to the county commissioners, the commissioners could have moved expeditiously to acquire and develop the right-of-way, thus allaying the concerns of the owners of abutting land. Unfortunately, 9 months elapsed between the acceptance of the grant and the decision to cancel the project. This time was required to survey the right-of-way and determine who the landowners were and how much property was at stake in order to initiate condemnation procedures.

Comparison: Columbia case vs. the Douglas County case

In the Columbia, Missouri, case study, the rails-to-trails conversion appears to be progressing smoothly as of May 1981. The techniques of dispute avoidance have addressed the concerns of the citizens at the outset, and the involvement of the AAA/HCRS team has served to keep the project moving along. The concerns of the citizens were discussed in open meetings, and they have come to accept the project. Although the city has the power to condemn and acquire title to the land, eight of the ten landowners appeared willing to give their title interest to the city or to sell their interest to the city at a reasonable price. In Omaha, where negotiations did not seem to require the assistance of a neutral third party, the project has failed. The project

manager in Omaha initially felt that the county was negotiating from a position of strength and that assistance from the AAA/HCRS research team would not be necessary. Once the concerns of the citizens were voiced; however, the county commissioners chose not to wield this power but to avoid the possibility of litigation by returning the grant.

RECOMMENDATIONS

The primary issue is one of conveying clear title. In order to facilitate the future acquisition of rights-of-way throughout the United States, additional Federal action is needed to tighten up the title question. Once the issue of the transfer of clear title is resolved, there are a variety of dispute resolution mechanisms, including environmental mediation, that can serve to help avoid disputes by providing information to all parties with the commencement of negotiations and by providing a neutral third party to facilitate the negotiations.

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