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ROLL NUMBER

DESCRIPTION

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Dennis Halliwell
Operator's Signature

10/3/03
Date

2003 HOUSE TRANSPORTATION
HB 1403

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1403

House Transportation Committee

☐ Conference Committee

Hearing Date February 6, 2003

Tape Number	Side A	Side B	Meter #
3		x	13.4 to 28.8
		x	50.1 TO 53.7
Committee Clerk Signature <i>Lauren J. Fisher</i>			

Minutes:

Rep. Weisz, Chairman opened the hearing on HB 1403 a bill for an Act to amend and reenact section 49-09-04.2 of the North Dakota Century Code, relating to the sale of railroad right of way.

Rep. Wrnagham representing District 8 introduced HB 1403. Adds a paragraph to the Century Code. The intent is at present when the railroads abandoned line there is are steps for them to go through in disposing of the real property. The purpose of this bill is that when a railroad wants to dispose of surplus property that is parallel to the railroad -- if they wanted to sell it this provides a way for them to do so -- that is to treat it as abandoned land and use the same steps as for abandoned line.

Mark Seitz (sp?) representing the North Dakota Farmers Union spoke in support of the bill and the additional language. Their policy speaks to the adjacent land owners having first opportunity to buy the land.

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Brian Kramer representing the North Dakota Farm Bureau spoke in support of this legislation stating that their policies are the same as the Farmers Union in the regard.

Opposition:

Dan Kuntz representing the Burlington Northern Sante Fe Railway Company introduced the legal counsel for BNSF.

Brian Sweeney legal counsel for the BNSF stated they oppose this legislation for a number of the same reasons that many communities, cities and businesses would oppose this legislation. If enacted the bill could open a whole can of worms of unintended consequences. It could ultimately thwart economic development, could block expansion and relocation of businesses, and it is also vague in some of the terms. We are concerned that it could not only become unworkable but could create a cloud on the title to a lot of real property. It will put a burden on inexpensive property thus thwart sales. The existing 1979 statute grew out of the Milwaukee Railroad bankruptcy. Then the property was sold or distributed to many different hold companies who raised the rents, terminated leases and sold land and many of the people had made improvements on that land had no protection so the 1979 law came about to protect those had made investments which they need to protect. The law would put a whole new category of property into the category where there is existing rail service. The would put an existing, a new business, or an expanding business way down the list of who could be purchasers of the property. They could block a new business or one that wanted to expand. The terms are vague -- what is a public purpose? They are first in line. Is that all units of government or does it include charitable organizations, public service organizations, or it is somebody who qualifies for

Dan Kuntz
Operator's Signature

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Date

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Bill/Resolution Number HB 1403
Hearing Date February 6, 2003

eminent domain proceedings? What happens if you have competing interests? This bill can thwart business, sales, economic development, and raise more questions than it answers. This bill also compounds the problems when considered with HB 1291. We urge you not to pass this legislation.

Rep. Weisz: You brought up sales -- the example is the Tioga development -- do you categorize that as surplus property -- would that have been the case that that would have fallen under this bill?

Brian Sweeney: Yes it would -- I specifically checked with our real estate people and our industrial development people before I used that reference.

Rep. Schmidt: You have talked about towns and economic development but in our area it is farm land and desert -- it would not be economic development for the farmers if they could buy that land and control the weeds on it --- but where farm land runs \$400 an acres -- it could be a rock pile and you guys would want \$800 an acre.

Brian Sweeney: Rep. Schmidt -- you must remember that it has rail access. Seriously, this may be some thing we will have to evaluate in rural areas and I will talk to our people about their pricing policies.

Thomas Kelsch: Representing the North Dakota Railroads -- we support the BNSF in their opposition to this legislation.

There being no other persons wishing to testify for or against HB 1403, Chairman Weisz closed the hearing.

End (28.7)

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Action Tape 3 side B (50.1) Rep. Weisz, Chairman opened the discussion for committee action on HB 1403. Rep. Bernstein moved a 'Do Not Pass' motion for HB 1403. Rep. Hawken seconded the motion. On a roll call vote the motion carried 9 Ayes 3 Nays 1 Absent and not voting. Rep. Thorpe was designated to carry HB 1403 on the floor.
End of record (53.7)

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1403b

House Transportation Committee

☐ Conference Committee

Hearing Date February 13, 2003

Tape Number	Side A	Side B	Meter #
3		x	5.2 to 13.1
Committee Clerk Signature			

Minutes:

Rep. Weisz, Chairman opened the discussion for committee action. We brought this back. WE have amendments which are being distributed to each of you. The language mirrors the language of the bill we passed on the floor today on HB 1291. They are not my amendments but I like them because they answer the objections we had.

Rep. Hawken moved the amendments be approved and adopted. Rep. Headland seconded the motion. The motion carried on a voice vote.

Rep. Price moved a 'Do Pass as Amended' motion for HB 1403. Rep. Zaiser seconded the motion.

There was some discussion of the cost of reclamation.

On a roll call vote the motion carried 8 Ayes 5 Nays 0 Absent.

Rep. Weisz will be the carrier for HB 1403 on the floor.

End (13.1)

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Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1403 c

House Transportation Committee

☐ Conference Committee

Hearing Date February 18, 2003

Tape Number	Side A	Side B	Meter #
1	x		0.1 to 4.3
Committee Clerk Signature			

Minutes:

The committee was called to order to consider some amendments to HB 1403 which was recalled back to committee on the floor this date. The clerk called the roll. Chairman Welaz explained that a significant phrase had been erroneously omitted from the previous amendments. Basically the amendment should have provided and it was originally intended that in lieu of reclamation of surplus or abandoned real property the railroad companies could sell or donate or gift property.

Tim Dawson counsel read the amendment.

First, Rep. Thorpe moved to reconsider the previous action. Rep. Hawken seconded the motion.

The motion carried on a voice vote.

The motion as read -- the first sentence shall read when service is discontinued on any railroad right of way in the state the railroad shall reclaim the right of way unless the railroad sells or donates the property.

Rep. Hawken moved the adoption of the amendment. Rep. Headland seconded the motion.

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Hearing Date February 18, 2003

The motion carried on a voice vote.

Rep. Hawken moved a 'Do Pass as Amended engrossed bill HB 1403. Rep. Schmidt seconded the motion.

On a roll call vote the motion carried 6 Ayes 5 Nays 2 Absent and not voting.

Rep. Weisz was designated to carry HB 1403 on the floor.

End record (4.3).

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Dennis Hall
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10/3/03
Date

Date: 2-6-03
Roll Call Vote #: _____

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1403

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Bern Seconded By Hank

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Lois Delmore	<input checked="" type="checkbox"/>	
Kathy Hawken - Vice Chairman	<input checked="" type="checkbox"/>		Arlo E. Schmidt		<input checked="" type="checkbox"/>
LeRoy G. Bernstein	<input checked="" type="checkbox"/>		Elwood Thorpe	<input checked="" type="checkbox"/>	
Mark A. Dosch	<input checked="" type="checkbox"/>		Steven L. Zaiser		<input checked="" type="checkbox"/>
Pat Galvin	<input checked="" type="checkbox"/>				
Craig Headland	<input checked="" type="checkbox"/>				
Clara Sue Price	<input checked="" type="checkbox"/>				
Dan J. Ruby	<input checked="" type="checkbox"/>				
Dave Weiler	<input checked="" type="checkbox"/>				

Total Yes 9 No 3

Absent 1

Floor Assignment Rep. Thayer

If the vote is on an amendment, briefly indicate intent:

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Operator's Signature

10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
February 7, 2003 1:21 p.m.

Module No: HR-25-1996
Carrier: Thorpe
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1403: Transportation Committee (Rep. Welsz, Chairman) recommends DO NOT PASS
(9 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1403 was placed on the
Eleventh order on the calendar.

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10/3/03
Date

30693.0101
Title.0200

Adopted by the Transportation Committee
February 14, 2003

VR
2/14/03

HOUSE AMENDMENTS to HB 1403 htrn 2-14-03

Page 1, line 6, remove "or surplus"

Page 1, line 7, overstrike "and" and insert immediately thereafter "all right of way must be reclaimed. If"

Page 1, line 9, overstrike "property must first be offered for public purposes" and insert immediately thereafter "present owner or operator of the fixed assets located on the property must be given the first option to purchase, lease, exchange, or otherwise acquire the property described in the lease. Adjoining landowners must be given the next option to acquire adjoining railroad property. The sale price of abandoned railroad property cannot exceed comparable values of adjacent and similar property"

Page 1, line 10, overstrike "If right-of-way property along abandoned rail lines is first offered for public"

Page 1, overstrike lines 11 through 15

Page 1, line 16, overstrike "3."

Page 1, remove lines 21 through 23

Renumber accordingly

Page No. 1

30693.0101

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Donna M. Hall
Operator's Signature

10/3/03
Date

Date: 2/13/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1403

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Do Pass as Amended
Action Taken ✓

Motion Made By Rep. Price Seconded By Rep. DeLmore

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	✓		Lois DeLmore		✓
Kathy Hawken - Vice Chairman		✓	Arlo E. Schmidt	✓	
LeRoy G. Bernstein	✓		Elwood Thorpe	✓	
Mark A. Dosch		✓	Steven L. Zaiser	✓	
Pat Galvin		✓			
Craig Headland	✓				
Clara Sue Price	✓				
Dan J. Ruby	✓				
Dave Weiler		✓			

Total Yes 8 No 5

Absent 0

Floor Assignment Rep. Weisz

If the vote is on an amendment, briefly indicate intent:

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Donna Hall Smith
Operator's Signature

10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
February 14, 2003 2:53 p.m.

Module No: HR-29-2827
Carrier: Weisz
Insert LC: 30693.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1403: Transportation Committee (Rep. Weisz, Chairman) recommends
AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS**
(8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1403 was placed on the Sixth
order on the calendar.

Page 1, line 6, remove "or surplus"

Page 1, line 7, overstrike "and" and insert immediately thereafter "all right of way must be
reclaimed. If"

Page 1, line 9, overstrike "property must first be offered for public purposes" and insert
immediately thereafter "present owner or operator of the fixed assets located on the
property must be given the first option to purchase, lease, exchange, or otherwise
acquire the property described in the lease. Adjoining landowners must be given the
next option to acquire adjoining railroad property. The sale price of abandoned railroad
property cannot exceed comparable values of adjacent and similar property"

Page 1, line 10, overstrike "If right-of-way property along abandoned rail lines is first offered for
public"

Page 1, overstrike lines 11 through 15

Page 1, line 16, overstrike "3."

Page 1, remove lines 21 through 23

Renumber accordingly

30693.0201
Title.0300

Adopted by the Transportation Committee
February 18, 2003

V/R
2/18/03

HOUSE AMENDMENTS to HB 1403 htrn 2-19-03

Page 1, line 7, replace "all" with "the railroad shall reclaim the"

Page 1, line 8, replace "must be reclaimed" with "unless the railroad sells or donates the property"

Renumber accordingly

Page No. 1

30693.0201

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Deanna Hall Smith
Operator's Signature

10/3/03
Date

Date: 2/18/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1403

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30693-0100
amend original

Action Taken Do Pass as Amended

Motion Made By Rep. Price Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	✓		Lois Delmore		✓
Kathy Hawken - Vice Chairman		✓	Arlo E. Schmidt	✓	
LeRoy G. Bernstein	✓		Elwood Thorpe	✓	
Mark A. Dosch		✓	Steven L. Zaiser	✓	
Pat Galvin		✓			
Craig Headland	✓				
Clara Sue Price	A				
Dan J. Ruby	A				
Dave Weiler		✓			

Total Yes 6 No 5

Absent 3 absent

Floor Assignment Rep. Weisz

If the vote is on an amendment, briefly indicate intent:

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Diana Hall
Operator's Signature

10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
February 19, 2003 7:44 a.m.

Module No: HR-32-3206
Carrier: Welsz
Insert LC: 30693.0201 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1403, as engrossed: Transportation Committee (Rep. Welsz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). Engrossed HB 1403 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "all" with "the railroad shall reclaim the"

Page 1, line 8, replace "must be reclaimed" with "unless the railroad sells or donates the property"

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

HR-32-3206

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2003 SENATE TRANSPORTATION

HB 1403

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Deanna Holcomb
Operator's Signature

10/3/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1403

Senate Transportation Committee

☐ Conference Committee

Hearing Date 03/21/03

Tape Number	Side A	Side B	Meter #
1	x		1181 - 5141
1		x	2450 - 5895
Committee Clerk Signature <i>Mary K Monson</i>			

Minutes:

Chairman Trenbeath opened the hearing on HB 1403, relating to the sale of railroad right of way. Representative Weisz testified in support of the bill. (meter # 1185) This is a simple and basic bill that sets up a priority list of who gets the first chance on abandoned property. The present owner or operator would have the first option to purchase, lease, exchange or otherwise acquire; then the adjoining landowners and finally, it would be open to everyone. There are two controversial parts of the bill. If the land is sold the price cannot exceed comparable values of adjacent similar properties. If the railroad does not divest itself of the land, they would be responsible for reclaiming the land. This has been proposed because there have been some problems on abandoned property where the land is not being transferred. There are weed problems, and other issues. On leased property that the railroad would like to sell, the standard for pricing the land is ten times the lease price. For some small elevators the selling price is \$25,000 to \$75,000 for a couple of acres. In other parts of town, that property would sell for

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Senate Transportation Committee
Bill/Resolution Number HB 1403
Hearing Date 03/21/03

\$500. They are being held hostage because they have structures on the property. This bill helps level the playing field. There are some amendments that authorize donation of such property to a political subdivision or a landowner's association. Representative Weisz does not have a problem with that because the whole idea is to get the land back to the private landowners.

Senator Trenbeath asked about the language regarding reclaiming the right of way, do we know what reclaim means? (meter # 1620)

Representative Weisz said the point of the language is not to make them reclaim, the point is to make them assure the land is transferred.

Senator Trenbeath asked if the railroad rights of way while being used for railroad purposes, are centrally taxed but when they are abandoned, the counties can tax? (meter # 1699)

Representative Weisz said that is true and that is one reason they would like to get rid of the land. In many cases, it is in the best interest of the railroad to get rid of the property. There has been a suggestion to change the word reclaim to restore. This language was used to insure they would come to the table.

Senator Trenbeath asked who would determine comparable values? (meter # 1832)

Representative Weisz said there is a political sub or the Public Service Commission could be involved because they are a utility and they have some authority already. It could end up in court.

Senator Trenbeath said you could end up with two appraisers or surveyors in court.

Steve Strege, North Dakota Grain Growers Association, testified in support of the bill. (meter # 1924) They are especially interested in the section that states the current owner or operator gets first priority in buying the property and would want to be assured of this, even if the property is

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Hearing Date 03/21/03

donated to a political sub division or an association. They are also in support of the sale price being comparable to local values. Regarding the reclaiming issue, some of this property has become drainage ditches and if removed they might create more problems.

Senator Trenbeath said he is not sure that is the case

Dan Kuntz, representing the BNSF railroad, testified in opposition to the bill. (meter # 2060)

(written testimony) He submitted proposed amendments for the committee's consideration.

Senator Trenbeath asked if they allow sublets?

Mr. Kuntz said he would have to look at the lease.

Senator Taylor said they do not need statutory authority to donate abandoned property to association of landowners. (meter # 2990)

Mr. Kuntz said they have to meet the first priority requirements.

Senator Trenbeath asked if the intent of the amendment is for the railroads to deal with the lessees individually and to deal with the adjoining landowners through published notice? (meter # 3130)

Mr. Kuntz said they know who the lessees are and they do not necessarily know who the adjoining landowners are so they would notify them by published notice. If a group of lessees and landowners or a county would approach the railroad they want to be able to accommodate that, they think that would enhance the progress.

Senator Nething says current law says adjoining landowners must be given next option, why can you live with that law and not this one? (meter # 3200)

Mr. Kuntz said that is the portion they are trying to amend. They do not know who the adjoining landowners are and another process could make this quicker and less costly.

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Senate Transportation Committee

Bill/Resolution Number HB 1403

Hearing Date 03/21/03

Senator Nothing said he thought they were testified against the language on lines 13 and 14 and the language on lines 19 and 20 and 21 is pretty close to the same.

Mr. Kuntz said they don't mind giving them first option, they want the landowners to come to the railroads after public notification so the railroad doesn't have to find them. They also want the authority to sell to an association so they don't have to go back to each individual landowner and give them the option. If the adjoining landowners did not express an interest within so many days, the railroad could proceed with the sale.

Senator Trenbeath said he has a single experience with abandoned railway rights and it was a landowner's association. It was the railroad's suggestion to deal with the association because it would reduce the transaction fees, \$2400 per deed. (meter # 3565)

Mr. Kuntz said now it really takes someone in the public to initiate the sale process and get an organization started.

Senator Espgaard asked what is the best way for abandoned railway property to become a trail?

Mr. Kuntz said after the railroad abandons the property, the Public Service Commission sends someone out notice to the entities who might have interest in the property who see if it fits with their system and acquire the land if it works.

Senator Espgaard asked if this amendment interferes with that process?

Mr. Kuntz said he didn't think so because they have tried to work in an ability to avoid the priority process if they sell the land for public use. He also doesn't think the state law could pre-empt the federal statute to make that land available for rail to trail.

Tom Kelsch, representing Canadian Pacific Railroad, testified in favor of the amendment offered by BNSF. (meter # 3900)

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Bill/Resolution Number HB 1403
Hearing Date 03/21/03

Walter Piehl, from Minot and previously from Marion, testified against the bill. (meter # 3920)
(written testimony) Striking the language that abandoned railroad property must be first offered for public purpose puts them at a real disadvantage. It is an advantage to small towns to have the trails going through them.

Senator Trenbeath asked if there were improvements of a substantial nature that are agriculture related on that land?

Mr. Piehl said no. They have no problems with elevator operators purchasing the portions of abandoned railroad property that affects their operations. When the trails come through small times, there are many routes to get through the town without crossing the elevator's property. They are interested in the stretches of open prairie.

Senator Trenbeath clarified they are looking for priority behind the existing lease holders and ahead of the adjacent landowners?

Mr. Piehl said that is correct.

Senator Mutch said, just out of curiosity, if they are having any success in other states in establishing trails on abandoned railroads?

Mr. Piehl said Minnesota has 30 or 40 trails. Around Chicago there are hundreds of trails from abandoned railroads. This is a new thing in North Dakota. Much of this land goes through beautiful prairie country.

Senator Trenbeath asked how he thinks the property should be valued for sale? (meter # 5057)

Mr. Piehl said price should be determined by sale of local property in that area. They are putting together their offer based on appraised land values.

Chairman Trenbeath closed the hearing on HB 1403

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Senate Transportation Committee
Bill/Resolution Number HB 1403
Hearing Date 03/21/03

Note: Because of the similarity of HB 1291 and HB 1403, the committee held general discussion of the both bills. Notes regarding this discussion appear in the minutes of both bills.

Chairman Trenbeath opened discussion of HB 1291 and HB 1403. (meter # 2450)

Senator Trenbeath said both bills do not need to survive, one can go. The house would just as soon see HB 1403 survive.

Senator Nething said he would like to see abandoned railroad property used for bicycle trails and open hunting. Some of the finest pheasant hunting used to be along the abandoned railroad track between Jamestown and Edgely. Senator Nething thinks this land has been turned over to adjoining landowners. The group from Marion is on the right track and Senator Nething is concerned about the price they have been quoted. He likes the sale price idea, that it not exceed values of adjacent and comparable property.

Senator Trenbeath said when the adjoining ground is \$1200 per acre but the adjoining ground does not have a railroad right of way on it, where do you go from there? When the railroad is done with it, most of the gravel is gone but there are broken ties and railroad spikes.

Senator Nething said there is another way they could go on this, assessed value.

Senator Trenbeath said assessed value of railroad property would be central here and it would be assessed as useful as a railroad, it might be overvalued now.

Senator Nething said when it is abandoned the assessed value should be reduced.

Senator Trenbeath said there is a point that some counties miss, when the property is no longer used as a railroad, the counties should put it on the county rolls. That usually encourages them to sell.

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Senator Espegard said as far as reclamation goes, the rules should require them to pick up the junk and level the surface, at least make a navigable road for spraying weeds. (meter # 2978)

Senator Taylor said he wonders what they have done in Minnesota, he used a cross country trail on abandoned railroad property and it was smooth. Perhaps a local group developed the trail and smoothed it. He said we would be doing ourselves a disservice by not allowing the trails.

Senator Trenbeath said he agreed but the first option should go to the adjoining landowner or lessee. After priority is established, the railroad should publish a notice and ask such persons to come forward. (meter # 3111)

Senator Espegard said it would be nice for the farmer to make an acceptable crossing. He doesn't think it reclaims very well for farming but it would be nice to have a crossing so the farmer could get his equipment from one side to the other.


Senator Nething said there are two categories to give priority, the lessee and the adjacent landowner for agricultural use, then come along with public use.

Senator Espegard said the thing about public use is it doesn't solve any problems if they don't have the funds to maintain it. (meter # 3480)

Senator Nething said you would establish your values. The highest value is with the leased property, in all likelihood, the second highest value is with an adjacent farmer. The least value would be for public use. If its not used for public use, get it on the tax rolls and there would be some incentive for them to donate it.

Senator Trenbeath said he agrees with the priorities but if you allow the adjacent landowner priority over public use, you are never going to have public use.

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Senator Espegard said if you have a public entity interested in a 30 mile right of way and you have to offer first priority to adjacent landowners, you might end up with interrupted pieces. Give them access to cross with equipment. Give them better access than they've had for the last 50 years.

Senator Taylor asked if that needs to be spelled out. How do you access value if its loaded with spurge?

Senator Trenbeath said there are two categories of title and the fees are different. You can't always find it in the public record.

There was some discussion of easements.

There was concurrence that the leaseholder be protected.

Senator Mutch asked if the leaseholder know what is in their lease?

The House Transportation Committee has copies of the CP lease.

Senator Espegard said he would like to see a preference list drafted and a requirement that if it is for public use, they have to allow for a public crossing every quarter mile, they don't have to make it, just allow for it. (meter # 4431)

Senator Taylor said that would only apply to land that is farmed on both sides.

Regarding the price proposal, what properties are similar to railroad properties?

Senator Taylor asked if its necessary to specify that land for public use must have noxious weeds controlled. (meter 4840)

Regarding reclaiming, you don't want to drive up the cost. It is important for it to be cleaned up and make a level roadway.

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The clerk will check at the Public Service Commission regarding definitions of reclamation and we are interested in the lowest level.

Senator Trenbeath said the bills relate to 49-09.2 in the Century Code and he read this portion of the code. We might want to add something about leveling and smoothing.

Senator Mutch said as far as appraisals, the Public Service Commission could be delegated that authority. They should be able to come up with a fair appraisal.

The clerk will also check with the tax department regarding accessing value of the property.

Senator Trenbeath reviewed what the committee wants to do with the bill:

1. Set priorities as discussed
2. Examine Public Service Commission involvement in setting values
3. Look at condition right of way should be left in by railroad
4. Maintaining existing crossings

Chairman Trenbeath closed the discussion of HB 1291 an HB 1403.

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10/3/03
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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1403

Senate Transportation Committee

☐ Conference Committee

Hearing Date 3-27-03

Tape Number	Side A	Side B	Meter #
1	X		355-2175
Committee Clerk Signature <i>Mary K Monson</i>			

Minutes:

Chairman Trenbeath opened HB 1403 for discussion.

Senator Trenbeath presented some proposed amendments. With respect to present owner or operator in the priority, the new language would be "the present lessee of the property must be given first option to purchase, lease, exchange, or otherwise acquire the property described in the lease".

(Meter 500) An amendment to another section addressed concerns by Senator Espgaard in regards to the condition of the right of way. It says "and leave the surface in a condition easily traversable by a motor vehicle."

Senator Trenbeath gave his thoughts for discussion. The person who holds the lease on a piece of property probably should have the first opportunity to purchase it when it comes up for sale.

Ordinarily he has an investment in it. Then it comes up to whether the second should be a public recreational purpose or the adjoining landowner. He thinks it should be a public recreational

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Senate Transportation Committee
Bill/Resolution Number HB 1403
Hearing Date 3-27-03

purpose, if there is such an interest. If you have an adjoining landowner first, there will be a patchwork of adjoining landowners who buy. Then there is something that isn't any good for recreational purposes. His thoughts on the leasehold sale price of abandoned property is that it should be set at some factor of the lease price.

(Meter 780) Discussion about setting the price with some reflection of the lease price. It was thought that maybe that had been done and that could be what is causing the problem. There was also some discussion as to whether it makes any sense, other than the ability to cross it, to own the land and rehabilitate it back to farmland. It might be more valuable for a public recreational resource than it is as a farming resource.

Senator Espegard thought that maybe there should be a plan required if a public entity is interested in the property. (Meter 1120)

Senator Trenbeath said that, in his mind, they were looking at two bills that were almost identical. It was his inclination to kill one or the other. With respect to 1403 either kill it or delete the reference to reclamation of the right of way because there is another statute that talks about clearing rails, ties, materials, supplies etc. Anything done with this bill isn't going to be enforced any more strictly than the existing law. He also addressed the idea of exercising the priorities by publishing a notice in the local newspaper indicating that the property is available and inviting interested parties to express their interest in writing. Based on what response they get they can determine who has priority and make their offers to sell.

Senator Taylor asked if most of the lessees would agree that their lease rates are equitable.

Senator Trenbeath replied maybe not.

Deanna Hall Smith
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Senator Espegard asked if the leasehold land would be worth less if the railroad land was abandoned. (He was thinking about a small town.)

Senator Trenbeath said that if it was a shipping related entity that holds a lease, yes.

(Meter 1850) Discussion on whether they should be messing with setting the parameters of the sale price.

Senator Trenbeath suggested that the committee use HB 1291 as the vehicle. As he sees it, the only difference between the two bills is the reclamation language. He doesn't think the suggested language gets any further than the existing statute with respect to cleaning up the debris after the abandonment.

Senator Nething moved a **Do Not Pass on HB 1403**. Seconded by **Senator Mutch**.

Roll call vote 5-0-1. **Passed**. Floor carrier is **Senator Mutch**.

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Date: 3-27-03
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1403

Senate **TRANSPORTATION** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do not pass

Motion Made By Senator Dething Seconded By Senator Mutch

[illegible]

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Mutch

If the vote is on an amendment, briefly indicate intent:

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REPORT OF STANDING COMMITTEE (410)
March 27, 2003 12:40 p.m.

Module No: SR-55-5901
Carrier: Mutch
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1403, as reengrossed: Transportation Committee (Sen. Trenbeath, Chairman)
recommends DO NOT PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Reengrossed HB 1403 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-55-5901

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2003 TESTIMONY

HB 1403

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Demetrius Hall
Operator's Signature

10/3/03
Date

Presented by
Dan Kuntz
to Senate Transportation
Committee

**COMMENTS OF BURLINGTON NORTHERN SANTA FE
RAILWAY COMPANY TO HB 1403**

- Railroads are currently required to remove all rail, ties, materials, and debris from and central noxious weeds on abandoned right-of-way. N.D.C.C. § 49-09-04.3.
 - government can perform the work and assess the railroad
- Current statutes hinder sale of abandoned right-of-way unless buyer actively seeks to purchase.
 - no defined public use or public entity
 - railroad does not have identity of adjoining property owners
 - transactional time and costs associated with individual transfers discourages sales to both parties
- Reclamation is not the solution.
 - adds to the cost of the property
 - some of the property can't be productively reclaimed
 - reclamation could impact surrounding properties – particularly for drainage
 - reclamation may not improve marketability re: adjoining road right-of-way
 - HB 1403 does not define time frames for sale, reclamation standards, etc.
 - Bill assumes railroad can transfer property and there may not be anyone willing to accept transfer of property, i.e. adjoining landowners not interested
- Market value limit is not the solution.
 - questionable constitutionality
 - who determines value – what's the effect of noncompliance
 - most of the property can't be sold for surrounding market values
 - some property may be more valuable than surrounding property

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- **Proposed amendments to facilitate transfer of abandoned right-of-way.**
 - limit option to lessees and to adjoining property owners that express an interest after notice by publication
 - allow transfers for public use without first option, i.e. counties, utilities, trails
 - allow transfers to associations of lessees and landowners to reduce transaction costs

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Dennis Halliwell
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PROPOSED AMENDMENTS TO REENGROSSED
HOUSE BILL NO. 1403

Page 1, line 7, remove the overstrike over "and", and remove "the"

Page 1, remove line 8

Page 1, line 9, remove "property. If"

Page 1, line 11, replace "owner or operator of the fixed assets located on" with "lessee of"

Page 1, line 14, after "property" insert "except a railroad is not required to give an adjoining landowner an option to purchase railroad property if the adjoining landowner fails to provide a written statement of interest to purchase the property within thirty days after notice of the railroad's intent to dispose of the property is published in a newspaper of general circulation in the county where the property is located. This subsection shall not apply to property sold, leased, exchanged, or donated by a railroad to a political subdivision or to an entity for a public use or to an association of two or more lessees, adjoining landowners or their representatives", and remove "The sale price of abandoned railroad"

Page 1, remove line 15.

Renumber accordingly

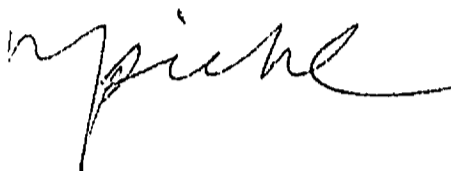
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10/3/03
Date

TO: Senator Joel Heitkamp

FROM: Walter Piehl, Jr.
11000 86th St. SE
Minot, ND 58701
701-858-3109



DATE: March 17, 2003


RE: Reengrossed House Bill No. 1403

I am part of a newly formed citizens group working in the Barnes County area to purchase and convert 33 miles of abandoned railroad line into a multi use trail. This trail adjoins Barnes County Park, Clausen Springs, is near a second county park, Little Yellowstone, crosses a nationally designated scenic back county byway, The North County Trail, and is only a few miles from Ft. Ramson State Park. The proposed trail will provide many recreational opportunities to state residents and out of state tourists. The trail will go through six small communities, Marion, Litchville, Hastings, Kathryn, Nome and Lucca. We will be working with the city councils in each of these communities and adjacent landowners so that they can utilize the trail right of way in a way beneficial to them.

Our group, the Ladies Line Trail Committee, is raising funds to seek state and federal grants to develop this trail. The communities, landowners, and recreational users will all benefit from this project.

Reengrossed House Bill No. 1403 has struck out original language that would have helped us and groups like ours to develop this Rail to Trail. There will be many abandoned rail lines in North Dakota's future. We need to have this original language returned to the legislation "it must first be offered for public purposes" to give us a chance to purchase this line and develop these kinds of economic and recreational opportunities for the future of North Dakota

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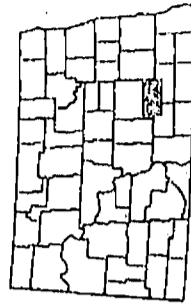
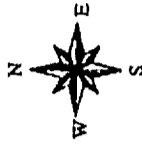

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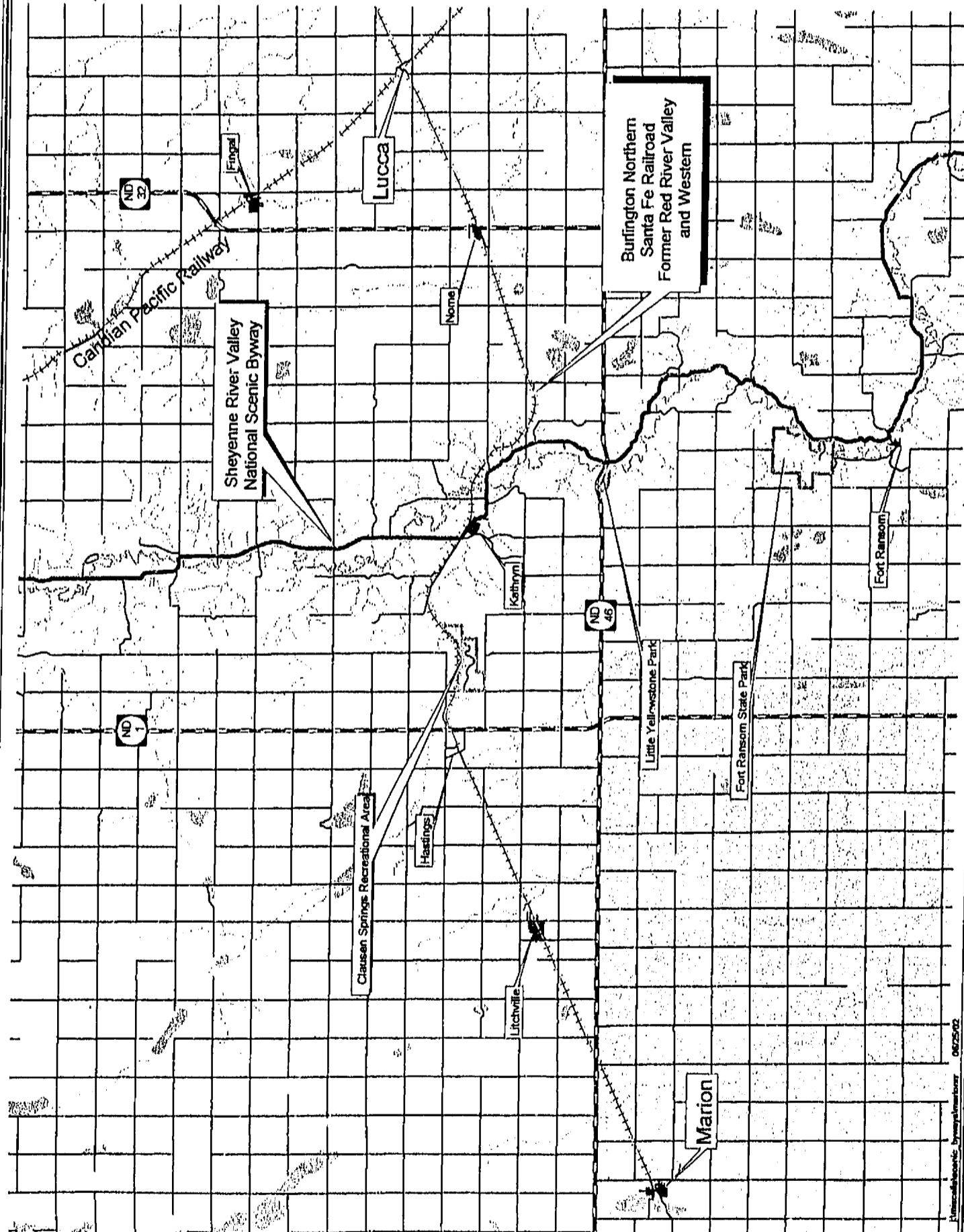
Abandoned Railroad Marion to Lucca RRV & W

- State & County Parks
- Sheyenne River Valley National Scenic Byway
- Railroad Lines
- State Roads
- County Roads
- Water Ways
- River/Lakes
- Ransom County
- LaMoure County
- Barnes County

0 2 4
Miles



Kadma
Lee &
Jackson
Engineers, Surveyors
and Planners



Sheyenne River Valley National Scenic Byway 06/25/02

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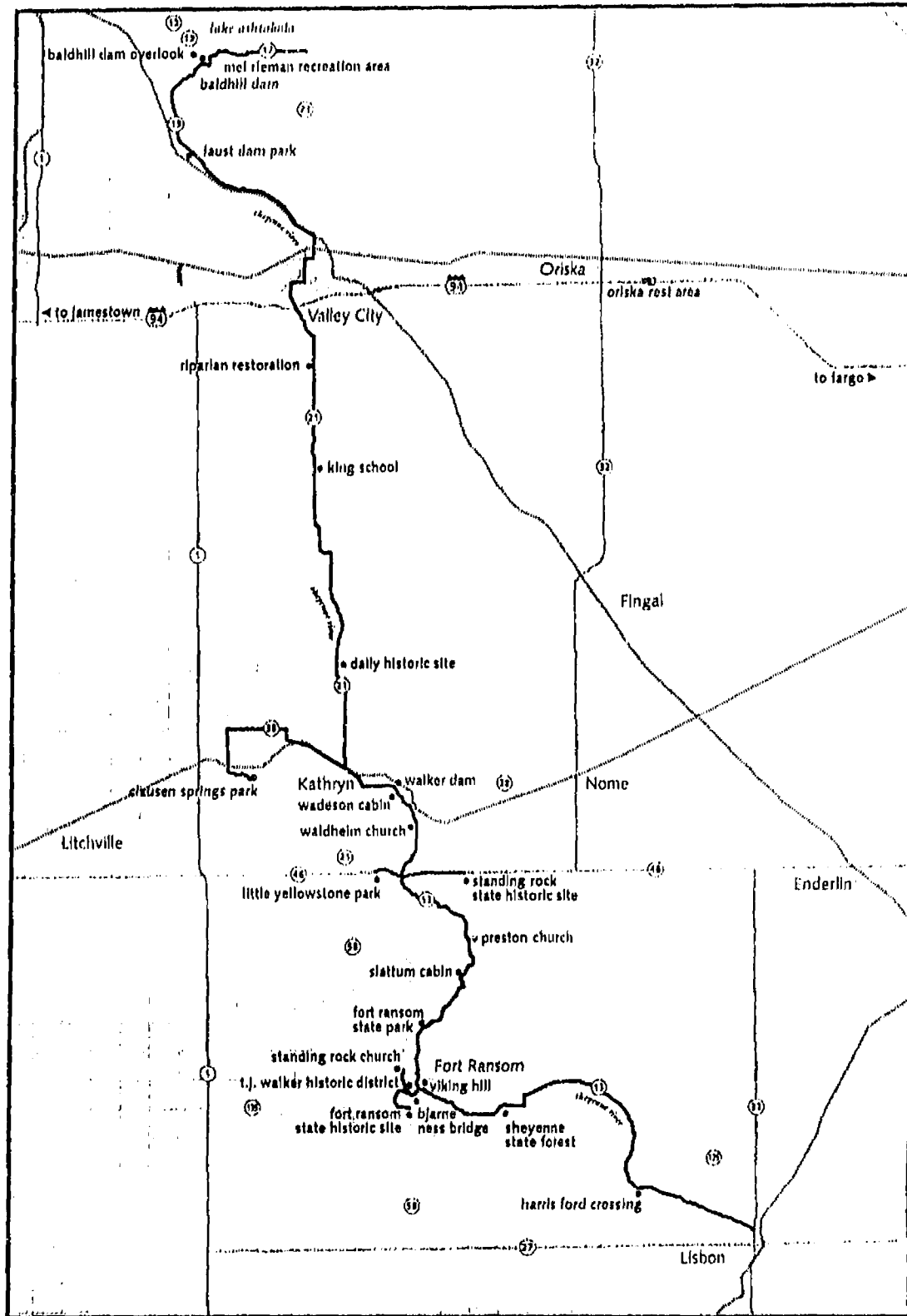
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Sheyenne River Valley National Scenic Byway

As you drive the scenic byway, watch for these signs posted along the way.



For more information:

Valley City Area Chamber/Convention & Visitors Bureau 701-845-1891

Lisbon Civic & Commerce 701-683-5680

Fort Ransom Tourist Hotline 701-973-4811

Fort Ransom State Park 701-973-4331

Websites
www.hellovalley.com
www.byways.org

Sheyenne River Valley National Scenic Byway

The sixty-three mile, newly designated National Scenic Byway follows the ancient Native American foot paths and pioneer wagon trails along the breathtaking Sheyenne River Valley. Paved from Baldhill Dam to Kathryn, it continues as a gravel road to Lisbon.

www.hellovalley.com

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Ladies Line Time-line of Events

Early 2002

Tom Balzer contacted Bobby Koepplin regarding consideration of Byway to adopt the land under the wings of Byway. Liability issue was discussed. State Parks and Recreation was unable to take over due to land not being attached to a state park.

May 33rd and 30th, 2002

Walter Piehl contacted Bobby Koepplin, phone conversation led to a meeting requesting Sheyenne River Valley Byway to apply for Rail-banking.

June, 2002

- Contacted Federal/National Surface Transportation Board for information on Rails to Trails. Spoke with Ann Newman at 302-565-1629.
- Telephoned Dan Schelske-ND Parks & Recreation at 701-328-5369 on available grants.
- Telephoned Bennett Kubischta at 701-328-3555 about grants available through NDDOT.
- Telephoned Bob Wolf, Burlington Northern Rail Property Management Office. Indicated 32.9 miles of track and 584.39 acres of right-of-way. He said that part of the railroad bed sold in the Red River Valley sold for \$450/acre and applying that figure on the remaining land it should be worth \$235,000.
- Telephoned Tom Balzer, ND Parks & Recreation at 701-328-5348 about grants and applications.
- Contacted Dan Zink, Red River Valley & Western Railroad at 701-642-8257. He was willing to work with us but said after the salvage the right-of-way would revert to BNSF.
- Contacted Brian Yourish, Rails to Trails Conservancy, 202-974-5148 regarding Rail-banking requirements. Very helpful but until after the fact did not realize the Rail-banking deadline for this project expired February, 26, 2002.
- KLJ developed map of 33 mile railroad trail project for Rail-banking request and future grant applications. Paid for by Scenic Byway Committee.

June 25th, 2002

Bobby Koepplin sent letters requesting Rail-banking to Washington, D.C. by certified mail. Walter Piehl provided the \$150 filing fee.

August 1st, 2002

Received letter from Surface Transportation Board that on May 28, 2002 the abandonment was consummated, therefore, the Surface Transportation Board no longer had jurisdiction.

October 3rd, 2002

- Walter Piehl phoned Bobby Koepplin indicating land area included 584.39 acres and that Burlington Northern Santa Fe wanted \$235,000. Walter requested that KLI add Clausen Springs, Little Yellowstone Ft. Ransom State Park and National Byway to a map that they were producing for grant requests etc.
- Walter Piehl contacted Sandy Edmunds, Nature Conservancy and through several phone calls found that they would not be able to help us with this project as all of their funds are committed to other projects.

November 6th, 2002

Bobby Koepplin requested reimbursement of \$150 filing charges.

November 15th, 2002

Notified that reimbursement was denied.

December 2002

Walter Piehl contacted Tom Balzer about updated application materials for a ND Parks & Recreational grant.

January 2003

- Walter Piehl had telephone contact with many people in the Valley City and Kathryn area to arrange a meeting in Kathryn on January 15th to form an action committee and pursue the rail to trail project.
- Tom Balzer, ND Parks & Recreation agreed to attend but had to cancel. Dan Zink, Red River Valley & Western Railroad was available for a phone call with specific abandonment information.
- Bobby Koepplin contacted Alicia Hoffarth, co-chairman of North Country Scenic Trail to see if the NCT could develop the trail as a spur and certify sections. Yes NCT could do that, then the National Park Service could be responsible for liability.

February 16th, 2003

- Meeting held in Kathryn at Dew Drop Inn, attendee list on file.
- Walter Piehl and Bobby Koepplin gave an overview of the events to date.
- Discussion :
 - Rail salvage and trestles:
Consensus of the group was to request Red River Valley & Western to retain the trestles through low areas and across the Sheyenne River. Also, to request the rail bed area be left with a slight crown after salvage to allow adequate trail drainage.
 - Signage:
Signage at road crossings was discussed
 - Railings:
Railings on trestles were discussed, safety a concern

Donna Hall
Operator's Signature

10/3/03
Date

Project was discussed and work assignments were delegated:

- o Name:
Ladies Line Trail Committee
- o Type of Trail:
Shared use, rail bed-hiking/walking, possible horseback riding, biking and cross country skiing in ditch area
- o Land Ownership:
 - Entire route acquired by Trail Committee
 - Allow adjoining landowners to purchase or use 200 feet of right-of-way with landowner responsible for maintaining weed control, in return-permanent easement for trail access granted to Ladies Line Trail Committee or their assignee
- o Press Release:
Charlotte draft and send to Bobby
- o Time-line of Events:
Bobby K and Walter P would write up a project history
- o Letterhead:
Walter Piehl will get a letterhead designed and forward to Bobby
- o Landowners:
Ann Wendel, Joan Trapp & Becky Salberg-identify landowners, develop Microsoft Access spreadsheet and forward to Charlotte
- o Next Meeting set for Friday, February 28, 2003 at Kathryn Church.

February 18th, 2003

Walter Piehl received letter from Daniel Vogel, Vogel Law Firm, Fargo, ND with information and contact person for BNSF land division.

February 26th, 2002

Scott Tichy and Bobby discussed umbrella agency. Scott was going to contact Tom Balzer, ND Parks & Recreation to see if ND Parks & Recreation could be umbrella agency, more clout than Ladies Line Trail Committee.

March 18th, 2003

Bobby Koepplin asked the Barnes County Commissioners for their endorsement and their willingness to act as preliminary sponsors of the project for grant application purposes.

The commissioners voted in favor of the request.

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Date

**Ladies Line Trail Committee Meeting
Friday, February 28, 2003
Kathryn, ND - Church**

Post-It [®] Fax Note	7671	Date	3-11-03	# of pages	2
To	Walter Pichl	From	Bobby Koepplin		
Co./Dept.		Co.	Cross County Electric		
Phone #		Phone #	701-845-2251		
Fax #	1-701-858-3874	Fax #	701-845-2252		

Present: Ann Wendel, Denise Majerus, Dave Majerus, Dale Maasjo, Becky Heise, Ken Clauson, Sharon Clauson, Marvin Nelson, Bradley Edin, Chris Hoffarth, Neil Tangen, Alicia Hoffarth, Bobby Koepplin

Minutes: A map showing the abandoned rail line from Marion to Lucca was distributed. The rail bed is 32.9 miles long. After the line is salvaged, the railroad prefers to sell the entire piece to one party. A timeline of events was compiled. This was reviewed to update the group. Ann moved to approve the timeline as official minutes of the first meeting held February 16, 2003. Sharon seconded. Motion carried.

Landowners: A list of landowners is being compiled. Our main concern may be working with landowners.

Issues of Concern:

- Need to look closely at the line to determine the condition of the trestles, the number of road crossings, damage to the bed, and any other issues.
- The railroad is currently taking care of the fences on each side of the easement. Need to determine who would be responsible for the fences if our group were to buy the land, whether we would develop it or not.
- The trestles over the river will need to be cleaned out periodically. This could be a liability for the group.
- We will need the support of the county and the townships.
- Currently a bill in the ND Legislature which may affect how the land is transferred from the organization leasing the land, back to the owner, and then distributed. We need to gain a better understanding of how this will affect us.
- The economic impact of the potential trail would be significant.
- Question how much we can feasibly do. Should we develop only a small section? We would probably try to purchase the entire length but the group feels it would be best to concentrate on developing the area from Highway 1 to the Ease Edge - approximately 8 miles.

Committee: There needs to be a formal committee so we can move forward with grant applications. We need to hold public meetings. Someone may be interested in coordinating the organization from those meetings. We will develop a questionnaire to determine interest.
Interim organization: Bobby Koepplin - Chair, Dave Majerus - Vice Chair, Charlotte Brett - Secretary.

Purchase of Land: Does the railroad have motivation to sell this land either to one party or multiple parties. Generally they prefer to sell the entire section to one party. At this point the group needs to secure enough funds to hold the land.

Funding Sources: Becky reviewed the following grants

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Donna Hoffarth
Operator's Signature

10/3/03
Date

- National Recreation Trails: Deadline is April 1st. 80/20 match up to \$40,000. In-kind donations are allowed.
- Land and Water Conservation: Deadline May 1st. 50/50 match.
- Kodak American Greenways: Deadline June 1st. \$2500
- Bikes Belong Coalition: Quarterly applications accepted. \$10,000
- Transportation Enhancement Fund: Deadline in October. 80/20 Match
- Economic Development Funds: tourism is considered primary sector so the project may qualify.

Ask the salvage company to determine the value of retaining the trestles. We can use this amount as an in-kind donation.

Tasks

1. Evaluate the bill in the Legislature: Bobby will ask Robin Huesby
2. Contact the land company to determine timeline - Bobby
3. Write letter to Dan Zink formally requesting that the trestles and crown be left
4. Determine who will be responsible for the adjacent fence
5. Develop a Fact Sheet for distribution at the Public meetings
6. Contact the Litchville & Enderlin papers to list the public meeting - Sharon will get the deadlines.
7. Determine the status of the railbed including the trestles and the number of road crossings - Bobby & Scott Tichy
8. Ask Walter Piehl to raise \$10,000 - Bobby
9. Inform the Barnes County Commission of our current plans - Dale
10. Contact Dakota Fence to see if we can get old fence for the river crossings - Denise
11. Research the process and funding used for the trail near Walker, MN - Alicia
12. Set public meetings in Kathryn and Litchville preceded by a letter to the landowners. Tentative dates are March 18th and 20th.

Adjourned

7/7/03 11:00 AM

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10/3/03
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PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1403

Page 1, line 1, replace "section" with "sections" and after "49-09-04.2" insert " and 49-09-04.3"

Page 1, line 2, replace "the sale of" with "abandoned"

Page 1, line 7, remove the overstrike over "and" and remove "the"

Page 1, remove line 8

Page 1, line 9, remove "property. If"

Page 1, line 10, after "the" insert "present lessee of the property must be given the first option to purchase, lease, exchange, or otherwise acquire the property described in the lease. The", remove the overstrike over "property must", after "first" insert "next" and remove the overstrike over "be offered for public"

Page 1, line 11, remove the overstrike over "purposes" and remove "present owner or operator of the fixed assets located on the property"

Page 1, remove line 12

Page 1, line 13, remove "the property described in the lease", after "must" insert "then", and remove "next"

Page 2, after line 2, insert:

"SECTION 2. AMENDMENT. Section 49-09-04.3 of the North Dakota Century Code is amended and enacted as follows:

49-09-04.3. Abandoned railway lines - Removal of abandoned materials - Charge by city, county, or state. Unless otherwise allowed by the commission, any railroad corporation abandoning the use of any railway line in this state shall remove and clear all rail, ties, materials, supplies, and debris from the railway line and leave the surface in a condition easily traversable by a motor vehicle, and shall control noxious weeds on the railway line right of way within a reasonable time. On request of a city or county in which there is an abandoned line, the commission shall require the railroad corporation, as to railway line right of way in that city or county, within a reasonable time, to take the action required by this section. On request of any state agency having an interest in any property abutting an abandoned railway line right of way, the commission shall require the railroad corporation, as to that railway line right of way, within a reasonable time, to take the action required by this section. The commission shall take all action necessary and appropriate, including the adoption of rules under chapter 28-32, to enforce this section. If a railroad corporation fails to take action required by this section, the requesting entity may do the work on the parts of the abandoned railway line right of way under that entity's jurisdiction. A county may do the work on the parts of the abandoned railway line right of way in the county, regardless of whether those parts are inside city limits. The entity doing the work may charge the railroad

Page 1 of 2

Donna Hall
Operator's Signature

10/3/03
Date

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Title.

Prepared for the Transportation Committee
March 26, 2003

corporation the reasonable expense of doing the work. If the charges remain unpaid after ninety days, the entity may certify to the county auditor the amount of the charges imposed under this section. These charges become part of the taxes levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes and placed to the credit of the jurisdiction entitled to the charges. The taxpayer's right to appeal the assessment is governed by chapter 57-23."

Renumber accordingly

Page 2 of 2

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Deanna Halliwell
Operator's Signature

10/3/03
Date