



# Memo

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TO: Lexington City Council and Dawson County Board of Commissioners  
FROM: Joe Peplitsch, City Manager  
DATE: Friday, May 09, 2008  
RE: Formation of a Railroad Transportation Safety District

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On behalf of the Rural Viaduct Committee (City/County representatives), please consider this memorandum as a recommendation to create a Railroad Transportation Safety District (RTSD) for Dawson County. As part of the East Lexington Rural Viaduct Location Study recently completed, Kirkham:Michael advised the City and County to consider the formation of a RTSD to provide planning, funding, and administrative functions related to railroad crossing improvements across Dawson County.

The Nebraska Statutes provide for the creation of an RTSD in Sections 74-1301 to 74-1308. For consideration, and to ensure the proper formation of such a district, the City consulted with Richard Pedersen, a bond attorney with Baird Holm Law Firm of Omaha, NE. The attached memorandum from Pedersen discusses the ability to form a district, the formation, governance and administrative duties of the board of directors, powers of the district, procedures needed before exercising powers, and the issuance of bonds and warrants.

There are several benefits that can be realized by creating a RTSD, including:

- Planning of railroad crossing improvements throughout the County in a collaborative manner; as there is strength in numbers.
- Review and discussion process for of all entities and individuals impacted by potential improvement projects through collaborative public hearings and information dissemination.
- A mandatory cost/benefit evaluation of potential improvement projects; which deters the construction of unwarranted projects and thoroughly explains the benefit of viable projects.
- Maintains the authority to enter into contracts with federal, state and local governments, as well as private companies or individuals on potential improvement projects.
- Provides broad taxing authority under County oversight to fund viable projects through sinking funds and/or bonds; thus eliminating the strain on annual operating budgets of local governments across the County.

As previously stated, the discussion of a rural viaduct east of Lexington has brought the issue of forming a RTSD to light. The formation and use of a RTSD would benefit this specific project; however, it would also provide a mechanism to study and plan future improvements throughout the County; such as additional grade separations in the Cozad, Gothenburg, and Darr Road areas or signal, surface, and gate improvements to existing at-grade crossings.

The Rural Viaduct Committee believes it is in the best interest of Dawson County that a RTSD is formed to protect the public health, safety, convenience, and welfare as train traffic on the UPRR corridor through the county incrementally increases from current levels. The Committee asks that you please accept this recommendation and consider the issue at your next regularly scheduled Council or County Board meeting. Thank you for your time and consideration.

**If you have any questions or concerns, please call at 308-324-2341, or email [jpepp@cityoflex.com](mailto:jpepp@cityoflex.com).**

## MEMORANDUM

**To: The City of Lexington (the “City”)**

**Re: Creation of Railroad Transportation Safety District**

The Nebraska statutes provide for creation of Railroad Transportation Safety Districts (a “District”) in Sections 74-1301 to 74-1308, R.R.S. Neb. 2003, as amended (the “Act”). The following is a summary of the procedural steps required for formation of a District and required before a District may enter into contracts or other obligations:

1. Ability to form a District. Counties containing a city or cities of the primary or first class may form a District if it is “conducive to the public health, safety, convenience, or welfare” to do any or all of the following:

- (1) move, relocate, or remove any railroad tracks or railroad right-of-way, including improvements;
- (2) relocate or remove any railroad yard, switch yard, or switch tracks;
- (3) change, construct, eliminate, or reconstruct, including the use of protective devices of any kind or nature, any highway or street crossing of a railroad property;
- (4) move, construct, or reconstruct any railroad bridge, viaduct, or subway; or
- (5) acquire, negotiate, sell, or eliminate any joint trackage operating rights or any rights of other individuals or entities over, in, or on any railroad tracks, rights-of-way, switch yards, or switch tracks.

The Act allows a District to inaugurate, develop, and negotiate for programs which may involve the constructing, reconstructing, leasing, maintaining, or selling of works of public improvement when these conditions are met.

2. Formation of District. Dawson County’s (the “County”) board of commissioners and the City’s council (the City being the only city of the first class in the County) must adopt resolutions finding that the District “is conducive to the public health, safety, convenience, or welfare” and forming the District. Once the governing bodies of the County and the City have adopted such resolutions, the District comes into existence. Such resolutions of the City and the County should also designate the representatives who will serve on the governing body of the District. Attached are separate proposed forms of resolutions for the City and the County to form a District.

3. Governance of the District and Administrative Duties of the Board of Directors. The governing body of the District will be a board of directors (the “Board”) made up of three (3)

members from the city council of the City and three (3) members from the board of commissioners of the County, as designated in the resolutions of formation passed by the City and County, respectively. The Board shall be appointed annually. Directors may only be compensated for expenses and cannot receive other compensation for their role as a director.

The Board will annually elect a president, vice president, secretary and any other officers it sees fit. The County's treasurer shall also be the District's treasurer (the "Treasurer"). The District's officers shall be bonded, with the surety bonds conditioned upon faithful performance of each officer's duties and the proper accounting for funds of the District.

The Board must keep minutes at its meetings, allow its books and records to be subject to public inspection at reasonable hours. The Board is also subject to the Nebraska Open Meetings Act, Sections 84-1407 to 84-1414 Neb. R.S.Supp. 2006.

The Board needs to prepare an itemized annual budget for the District by July 1 of each calendar year for the following fiscal year. This budget will be submitted by the Board to the County's board of commissioners, which will levy a tax sufficient to provide funds to the District. The tax may not exceed two and six tenths cents on each one hundred dollars on the taxable value of the taxable property in the County. The tax will be collected in the same way as other taxes in the County. The proceeds will be held in a separate account in the name of the District, and the funds will be distributed by the Treasurer.

The Treasurer shall annually prepare and file with the County clerk a detailed written report of all receipts and disbursements of the District. The report must be verified under oath, and must contain the following information:

- (1) the funds on hand belonging to the district;
- (2) the amount, if any, in the hands of the county treasurer;
- (3) all money received during the preceding year from all sources; and
- (4) all items of disbursement during such year and the purposes for which the same have been paid out, including all compensation paid to officers of the district and all other expenses of administration.

4. Powers of the District. The Board of the District may, after notice and public hearing and after complying with the duties described in section 5 below:

- (1) purchase railroad rights-of-way, including improvements, within or without the County;
- (2) purchase land for additional right-of-way or switch or yard space where desirable or necessary (and also acquire land for such purposes through the exercise of eminent domain with the approval of 2/3 of the Board and the consent of all railroad companies involved in the improvement);

(3) sell or lease land and improvements to governmental entities for public purposes so long as the sale or lease is found to be in the best interest of the District and, if the fair market value of property to be sold is over \$5,000, there is due notice and hearing before the sale; and

(4) enter into contracts with federal, state or local governmental entities or other persons or companies for cooperation or assistance with any aspect of the design, construction, maintenance, lease, ownership or operation of improvements or property of the district.

5. Procedures of the District Before Exercising Powers. Before implementing any plans affecting matters of planning by or the interests of the following affected parties:

(1) any planning commission located within the District;

(2) any municipalities, counties or state educational institutions or school districts a portion of which lie within the District;

(3) any agricultural society, any airport authority, any natural resources district, or any other similar political entity, that is affected by the District's plans; and

(3) any railroads, shippers, and affected property owners.

The District is required to consult with and submit plans for review, comment and suggestion to each such party. With respect to any specific safety project or proposal, it would be advisable for the Board to review the listing set forth above to determine which parties are affected or interested as to the project or proposal. A notice briefly describing the proposed project and requesting comments and suggestions should then be mailed to each such party. Detailed plans and specifications should be made available for inspection at some convenient office.

Approval of these affected parties is not required, but all affected parties must be given the opportunity to review and offer comments on the plans.

The District also must consider and "examine the costs and benefits to the community or communities, the railroads, and the highway users." The District should "calculate the costs and benefits by consideration being given but not limited to loss of revenue, increased operating costs, costs of installation, acquisition of real and personal property, relocation, signalization, communication, utilities, avoidance of hazards, creation of transportation efficiencies, resolving conflicts of land use, and any other ancillary or peripheral costs or benefits." It would be advisable to prepare a formal cost benefit analysis to present to the Board before awarding contracts or issuing bonds.

Evidence of consideration of the these duties should be included in any resolutions passed and adopted by the District.

6. Issuance of Bonds and Warrants. The District may borrow money and issue general obligation bonds. The bonds may be issued in amounts and pursuant to terms decided by the Board, without a vote of the electors. The District may establish a sinking fund for such bonds into which tax levy monies would be deposited in amounts sufficient to make the payments.

The District may also issue warrants to contractors or others furnishing services or materials to satisfy obligations of the District entered into pursuant to the Act. The Board may determine the amounts and terms of the warrants, and may pay the warrants upon receipt of bonds or other available funds.

DOCS/852241.1

Resolution No. 08-\_\_\_\_\_

BE IT RESOLVED by the Mayor and Council of the City of Lexington, as follows:

Section 1. The Mayor and Council hereby find and determine that it will be conducive to the public health, safety, convenience and welfare of the general public of the City of Lexington to provide for one or more of the following projects:

- (a) To move, relocate, or remove any railroad tracks or railroad right-of-way, including improvements.
- (b) To relocate or remove any railroad yard, switch yard, or switch tracks.
- (c) To change, construct, eliminate, or reconstruct, including the use of protective devices of any kind of nature, any highway or street crossing of a railroad property.
- (d) To move, construct, or reconstruct any railroad bridge, viaduct, or subway.
- (e) To acquire, negotiate, sell, or eliminate any joint trackage operating rights or any rights or other individuals or entities over, in , or on any railroad tracks, rights-of-way, switch yards, or switch tracks, or
- (f) To do any two or ore of the activities listed above.

Section 2. For the reason and purposes set forth in Section 1 of this Resolution, there is hereby ordered created the Railroad Transportation Safety District of Dawson County, Nebraska, (the "District") to come into existence as of \_\_\_\_\_, 2008.

Section 3. The following members of the Council of the City of Lexington are hereby designated to serve on the initial Board of Directors of the District:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Section 4. This resolution shall be in force and effect from and after its adoption as provided by law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Resolution No. 08-\_\_\_\_\_

BE IT RESOLVED by the Board of Commissioners of the City of Lexington, as follows:

Section 1. The Board of Commissioners hereby finds and determines that it will be conducive to the public health, safety, convenience and welfare of the general public of the County of Dawson to provide for one or more of the following projects:

- (a) To move, relocate, or remove any railroad tracks or railroad right-of-way, including improvements.
- (b) To relocate or remove any railroad yard, switch yard, or switch tracks.
- (c) To change, construct, eliminate, or reconstruct, including the use of protective devices of any kind of nature, any highway or street crossing of a railroad property.
- (d) To move, construct, or reconstruct any railroad bridge, viaduct, or subway.
- (e) To acquire, negotiate, sell, or eliminate any joint trackage operating rights or any rights or other individuals or entities over, in , or on any railroad tracks, rights-of-way, switch yards, or switch tracks, or
- (f) To do any two or ore of the activities listed above.

Section 2. For the reason and purposes set forth in Section 1 of this Resolution, there is hereby ordered created the Railroad Transportation Safety District of Dawson County, Nebraska, (the "District") to come into existence as of \_\_\_\_\_, 2008.

Section 3. The following members of the Board of Commissioners of the County of Dawson are hereby designated to serve on the initial Board of Directors of the District:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Section 4. This resolution shall be in force and effect from and after its adoption as provided by law.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

ATTEST:

\_\_\_\_\_

County Clerk