

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**



FILED
STATE

MAY 27 2016

HARTWELL RAILROAD COMPANY,
Petitioner,

v.

GEORGIA DEPARTMENT OF
TRANSPORTATION,
Respondent.

Kevin Westray
Kevin Westray, Legal Assistant

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: Docket No.: OSAH-DOT-RRX-1619206-
: 147-Howells
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CITY OF ROYSTON,
Petitioner,

v.

GEORGIA DEPARTMENT OF
TRANSPORTATION,
Respondent.

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: Docket No.: OSAH-DOT-RRX-1619208-73-
: Howells
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INITIAL DECISION

On October 15, 2015, Hartwell Railroad Company and the City of Royston appealed the formal determination of the Georgia Department of Transportation (“GDOT”) regarding the requested closure of four railroad crossings in the City of Royston. Those appeals were received by the Office of State Administrative Hearings on October 23, 2015. Because the two appeals involved common issues of law and fact, they were consolidated for purposes of the hearing.

The hearing in this matter was originally scheduled for December 10 -11, 2015. On December 3, 2015, the parties filed a Consent Motion for Continuance because they were in settlement discussions. This tribunal granted the parties’ Consent Motion for Continuance and the hearing was reset for January 14-15, 2016. On January 8, 2016, the parties filed a second Consent Motion for Continuance. Again the parties averred that they were in settlement negotiations and that they wished to continue such negotiations. This tribunal granted the

parties' second Consent Motion for Continuance. The hearing was reset and conducted on March 1, 2, and 22, 2016. The record was held open until April 29, 2016, to allow the parties to submit proposed Findings of Fact and Conclusions of Law and/or post-hearing briefs. For the reasons that follow, GDOT's formal determination is AFFIRMED.

Findings of Fact

1.

On November 6, 2014, Hartwell Railroad Company ("Railroad") petitioned the City of Royston ("City") to eliminate four highway-rail grade crossings: the Lee Street crossover, the Carlton Street crossover, the Bowers Street crossing, and the Tony Jones Street crossing. (GDOT Ex. 2.)

2.

On May 12, 2015, the City held a public hearing regarding the Railroad's petition.¹ (GDOT Ex. 4.) On May 26, 2015, the City Council voted to deny the Railroad's petition to close all four crossings. (GDOT Ex. 5.) The City issued its decision on June 16, 2015. The City's decision does not contain much of the analysis of the criteria required by Georgia Code section 32-6-193.1(a), Rule 672-16-.04, and the Georgia Department of Transportation's Guide for Evaluating Highway-Rail Grade Crossing Safety ("Guide").²

¹ Prior to the hearing, "the informal consensus of [the] City Council [was] to avoid any railroad crossing closures." (Exhibit 12 attached to GDOT Ex. 4.)

² The City's decision does list or describe some of the criteria. (GDOT Ex. 5.) However, it does not list or describe all of the criteria and it does not contain any of the analysis contemplated by Rule 672-16-.04 and the Guide. (*Id.*) For example, the City's decision contains no mention of the horizontal and vertical alignment of the highway; the average daily traffic volume in proportion to the population; the posted speed limits over the crossings; the use of the crossings by trucks carrying hazardous material, vehicles carrying passengers for hire, or school buses; the required clearing site distances; the "Traversing the Crossing" criterion regarding the width of the lanes; the "High Profile or 'Hump' crossing" criterion regarding the profile of the crossing; the criterion regarding land locked property; or the criterion regarding crossings signalized with bells, lights and gates located within 0.50 miles. (GDOT Exs. 5, 32.) Further, in its decision denying the closure of any of the crossings, the City considered other factors not listed in Georgia Code section 32-6-193.1(a) or the Guide. (GDOT Ex. 5.)

3.

A Highway-Rail Grade Crossing Safety Evaluation Form (“Evaluation Form”) is used to complete the assessment of a crossing’s safety. (GDOT Exs. 12, 16, 20, 24, 32; Tr. 52, 220.) The tables in the form correspond to the criteria listed in the Guide and Georgia Code section 32-6-193.1(a). Although GDOT had provided the City with preliminary evaluation forms, the City did not complete the forms prior to the public hearing or prior to issuing its decision. (Tr. 213, 267-68, 290, 596.) In fact, it appears that the City never actually completed the forms. (Tr. 334-336.)³

4.

On July 15, 2015, the Railroad appealed the City’s decision by submitting its appeal to GDOT. (GDOT Ex. 8.) On August 11, 2015, GDOT and its consultant David Bearse visited the crossings in Royston, Georgia to begin the required analysis. (Tr. 38, 218-19.)

5.

David Bearse is employed with Moreland Altobelli Associates (“Moreland Altobelli”) as a Senior Transportation Planning Engineer. (Tr. 36.) GDOT retained Moreland Altobelli to evaluate the crossings. (Tr. 36, 219.) Mr. Bearse gathered the necessary information, made the necessary measurements, and sight distance calculations, and completed the Highway-Railroad Inspection Reports and the Evaluation Forms for each of the crossings. (Tr. 40, 52-61, 68-74, 80, 87, 90-91, 95, 102-03, 107, 109, 111, 125, 130-32, 135, 182; GDOT Exs. 11, 12, 14, 15, 16, 18, 19, 20, 22, 23, 24, 26.)

6.

After reviewing and finalizing the information provided by Mr. Bearse, GDOT issued its

Formal Determination regarding the crossings on September 18, 2015. (Tr. 220-21; GDOT Ex. 27.) In its Formal Determination, GDOT determined that it was reasonably necessary, in the interest of public safety, to eliminate the Lee Street crossover and the Carlton Street crossover. (GDOT Ex. 27.) GDOT further determined that it was not reasonably necessary, in the interest of public safety, to eliminate the Bowers Street crossing and the Tony Jones Street crossing. (*Id.*)

7.

Thereafter, the Railroad appealed GDOT's determination with regard to the Bowers Street crossing and the Tony Jones Street crossing. (GDOT Ex. 29.) The City appealed GDOT's determination with regard to the Lee Street crossover and the Carlton Street crossover. (GDOT Ex. 28.)

Method to Evaluate Highway-Rail Crossing Safety

8.

The criteria used to determine whether a railroad crossing should remain open or should be closed are contained in Georgia Code section 32-6-193.1(a) and the Guide. The criteria are as follows:

1. Maximum number of passenger trains per day and maximum speed of passenger trains operated through the crossing;
2. Maximum number of freight trains per day and maximum speed of freight trains operated through the crossing;
3. Distance to alternate crossings;
4. Accident history of the crossing for the immediately preceding five-year period;
5. Type of warning device present at the crossing;

³ After the Railroad appealed the City's decision, GDOT requested the completed Evaluation Forms from the City. (Tr. 213.) However, the City has not provided any completed Evaluation Forms to GDOT. (Tr. 335-36, 663.) Additionally, the City did not present any completed Evaluation Forms during the hearing in this matter.

6. The horizontal and vertical alignment of the roadway;
7. The average daily traffic volume in proportion to the population;
8. The posted speed limit over the crossing;
9. The effect of closing the crossing upon access by persons utilizing:
 - (A) Hospital or medical facilities and public health departments, specifically including without limitation utilization by medical personnel;
 - (B) Facilities of federal, state, or local government, specifically including without limitation court, postal, library, sanitation, and park facilities;
 - (C) Commercial, industrial, and other areas of public commerce;
10. Any use of the crossing by:
 - (A) Trucks carrying hazardous material;
 - (B) Vehicles carrying passengers for hire;
 - (C) School buses;
11. Other relevant factors prescribed by the department;
 - (A) Clearing sight distance;
 - (B) Traversing the crossing;
 - (C) High profile or "hump" crossing;
 - (D) Land locked property;
 - (E) At-Grade crossing signalized with bells, lights and gates within 0.50 miles; and
 - (F) Grade separated crossing within 0.25 miles.

(GDOT Ex. 32.) Most of the criteria are assigned a range of adjustment factors depending upon the numeric value of the particular criterion. (*Id.*) The Evaluation Forms used in conjunction with the Guide contain tables with various ranges for the criteria and the associated adjustment factors. (*See* GDOT Ex. 12.) For example, the criterion regarding the number of passenger

trains and the maximum speed of those trains, has an adjustment factor range from 0 to +1.8, depending upon how many passenger trains travel through the crossing and the maximum speed of the trains. (GDOT Exs. 12, 32.) Some of the criteria have positive adjustment factors and some have negative adjustment factors. (GDOT Ex. 32.) The positive adjustment factors weigh in favor of eliminating the crossing and negative adjustment factors weigh in favor of leaving the crossing open. (*Id.*) Once adjustment factors are determined for each of the criteria, they are added together. (*Id.*) If the sum of all the adjustment factors is greater than or equal to a positive five (+5), then elimination of the crossing is justified. (*Id.*)

Lee Street Crossover

9.

The Lee Street crossover is located in the northern part of the City between Lee Street and State Route 17. (GDOT Exs. 10, 11.) There are no passenger trains traveling through the Lee Street crossover. (GDOT Ex. 13; Tr. 54-55.) There are, however, two freight trains per day which are operated at a maximum speed of 25 miles per hour. (*Id.*) Davison Street is 585 feet from the Lee Street crossover. (GDOT Ex. 12; Tr. 55.) It is the nearest alternate crossing. (Tr. 55-56.) There have never been any vehicle/train crashes at the Lee Street crossover. (GDOT Ex. 11; Tr. 57.) The only warning device at this crossing is a crossbuck, which is a white X-shaped sign with "Railroad Crossing" written in black letters. (GDOT Ex. 11; Tr. 43.) The horizontal alignment of the road to the track is 95 degrees in both the eastbound and westbound approaches. (GDOT Ex. 12; Tr. 49.) There is a 6 percent grade at the eastbound approach and a 5 percent grade at the westbound approach. (GDOT Ex. 12; Tr. 58.)

10.

The ratio of average daily traffic in proportion to the population of the City was

determined by an actual traffic count conducted by a consultant. (GDOT Ex. 11.) That number was divided by the 2010 Census for the City. (GDOT Exs. 11, 12; Tr. 41, 59.) There was an average of 74 vehicles per day using the Lee Street crossover. (*Id.*) The 2010 Census count for the City was 2582. Using these figures, the ratio of average daily traffic in proportion to the population was less than 0.25. (GDOT Ex. 12; Tr. 60.)

11.

There is no posted speed limit for the Lee Street crossover. (GDOT Ex. 11; Tr. 60-61.) The statutory speed limit is 30 miles per hour.⁴ (Tr. 61.)

12.

There is no hospital, and thus no emergency room in the City. (Tr. 319.) Nor are there any medical facilities in the vicinity of the Lee Street crossover. (GDOT Ex. 10A.) Therefore, eliminating the Lee Street crossover would not pose a major inconvenience for persons using hospitals or medical facilities.

13.

There is a City sewer lift station near the Lee Street crossover on the east side of the tracks. (GDOT Ex. 10A; Tr. 273-74.) The City's gas department is approximately 800 feet from the Lee Street crossover. It is also on the east side of the tracks. (GDOT Ex. 10A; Tr. 241.) The volunteer fire department and the Life Care facility are located further south, but also on the east side of the tracks.⁵ (GDOT Ex. 10A; Tr. 116, 317.) Additionally, City trucks can access these

⁴ O.C.G.A. § 40-6-181(b)(1). Additionally, the posted speed limit on Lee Street on either side of the crossover is 30 miles per hour. (City Exs. 28, 29.) Mr. Bearse testified that he believed that the geometry and character of the road were such that it was unlikely that a vehicle could attain a speed of 30 miles per hour. (Tr. 61.) The Guide does not provide any direction when there is no speed limit posted. (GDOT Ex. 32.) However, it does state that when there are two or more approaching roadways with different posted speed limits, "the highest posted speed limit shall be used." (*Id.*) For that reason, the undersigned finds that the higher statutory speed limit of 30 miles per hour should be used.

⁵ The Life Care facility provides overflow ambulance services when the Franklin County 911 service cannot respond. (Tr. 316-18.)

facilities from downtown using Lee Street. (Tr. 275.) Thus, the elimination of the Lee Street crossover would not pose a major inconvenience for the public or these facilities. (Tr. 63.)

14.

The only business in the vicinity of the Lee Street crossover is a law firm located on Lee Street between Allen Street and Davison Street. (GDOT Ex. 10A; Tr. 272.) The Davison Street crossing is 585 feet north of the Lee Street crossover. (GDOT Exs. 10A, 12.) It could be used to access the law firm from the west side of the tracks. (GDOT Ex. 10A.) From downtown, the law firm can be accessed by traveling up Lee Street. Elimination of the Lee Street crossover would not pose a major inconvenience for this facility or the public. (Tr. 63-64.)

15.

There are no signs prohibiting a truck carrying hazardous material from using the Lee Street crossover. (Tr. 65.) The Davison Street crossing is a safe alternative to use for trucks carrying hazardous material. (GDOT Ex. 12; Tr. 65.) There is no regularly scheduled bus transit that would use the Lee Street crossover. (Tr. 65.) According to a document prepared by the Transportation Director for Franklin County Schools, one school bus uses the Lee Street crossover. (GDOT Ex. 36; Tr. 736-37.) The Davison Street crossing is a safe alternative for school buses to use. (GDOT Ex. 12; Tr. 66.)

16.

The fire department is located south of the Lee Street crossover on the east side of the tracks between Tony Jones Street and Bowers Street. (GDOT Ex. 10A.) Life Care (i.e., the overflow ambulance service) is located south of the Lee Street crossover, on Tony Jones Street, which is on the east side of the tracks. (*Id.*) The City's gas department is also located on the east side of the tracks between Carlton Street and Allen Street. (*Id.*) Closure of the Lee Street

crossover would not pose a major inconvenience for emergency or utility vehicles. (Tr. 67-68.) There are alternative crossings that these vehicles can use in the event of an emergency. (GDOT Ex. 10A; Tr. 68.)

17.

The required sight distance for a crossing is “the distance required for a vehicle to safely pass over and clear a crossing when departing from a stopped position.” (GDOT Ex. 32.) It is determined by using a formula published by the American Association of State Highway and Transportation Officials (AASHTO). (Tr. 69.) The formula takes into consideration many variables such as the speed of the train, the speed of the vehicle, the distance between the outer rails, the grade of the crossing, the horizontal alignment of the crossing, and the length of the vehicle. (GDOT Exs. 14, 32; Tr. 70-74.) Mr. Bearse determined that the required sight distance for the Lee Street crossover was 604 feet.⁶ (GDOT Ex. 14; Tr. 74.)

18.

In general, to determine the actual sight distance, Mr. Bearse measured 25 feet from the rail. (Tr. 725.) He used 25 feet because 15 feet is the minimum distance from the rail where a vehicle must stop. He then added 10 feet to allow for the distance from the front of the vehicle to the driver’s eye. (Tr. 725.) He measured the 25 feet with a tape measure and then placed coin or a piece of ballast on the ground to mark the distance. (Tr. 726-27.) That allowed him to ensure that he is standing in the same place while making his observations. (*Id.*) He then looked around for obstructions and noted what he could and could not see. (Tr. 727-28.) Then when he returned to his office he used Google Earth to measure the distance to any obstructions he

⁶ Mr. Bearse used 65 feet as the length of the vehicle. (GDOT Exs. 14, 18, 22, 26.) According to Joe Kent, a consultant for the Railroad, the current version of the AASHTO green book states that a vehicle length of 73 feet should be used in the sight distance calculation. (Tr. 767.) Using 73 feet as opposed to 65 feet would increase the

observed. (Tr. 728.) He has been using this same process for the past 5 years.⁷ (Tr. 726.)

19.

The actual sight distance for the Lee Street crossover is more than 1,000 feet in all four quadrants. (GDOT Exs. 11, 13; Tr. 75.) Therefore, there is adequate sight distance in all four quadrants for the Lee Street crossover. (*Id.*)

20.

The criterion entitled “Traversing the Crossing” concerns the width of the lanes. (GDOT Ex. 32.) The lanes over the crossing must have sufficient width to allow the safe passage of all legal vehicles. (GDOT Ex. 32; Tr. 75.) Lanes must be a minimum of 9 feet wide. (*Id.*) Thus, on a two lane crossing, the width must be 18 feet. (*Id.*) The width of the Lee Street crossover is only 16 feet, which is not sufficient. (GDOT Ex. 11; Tr. 76.)

required sight distance. (*Id.*) Therefore, the *required* sight distances for each of the crossings at issue are actually farther than those calculated by Mr. Bearse.

⁷ Over the course of his career, Mr. Bearse has made sight distance observations for approximately 300 crossings in Georgia. (Tr. 726.) Approximately 10 years ago, when he started making these observations, he used all wheel measurements. (Tr. 728.) Around 6 to 8 years ago, he was doing wheeled measurements and comparing the wheeled measurements to Google Earth. (*Id.*) He found that on distances less than 1000 feet there was typically a few percent difference between the two methods of measurement. (*Id.*) The City used two methods to determine sight distances. First, Mayor Jordan testified that prior to the City’s public hearing he, the Chief of Police and perhaps the City manager went out to each of the crossings to measure the actual sight distances. (Tr. 637-38.) They used a wheel to measure the distances and stood somewhere between 15 to 25 feet from the rail. (Tr. 638.) However, there is no indication that the City used the same distance from the rail on each measurement. He further testified that they could see 600 to 800 or 1000 feet down the rail. (Tr. 638, 640.) Mayor Jordan did not testify as to specific sight distances for each crossing. Further, it is inappropriate to measure sight distances at 15 feet from the rail, as this does not take into account the distance between the front of the car and the driver’s eye. (Tr. 744.) Because of the lack of consistency in measuring the distance from the rail, the potential that the City did not take into account the distance from the front of the vehicle to the driver’s eye, and the lack of testimony regarding specific distances for each crossing, the undersigned did not credit the Mayor’s testimony regarding actual sight distances. Shortly before the hearing in this matter, the Chief of Police made an attempt to measure sight distances using a laser rangefinder. However, it is clear that the Chief of Police was not consistent in the location he stood to make the measurements. He testified that he stood 19 to 21 feet from the outside rail when he made his measurements. (Tr. 365-66.) This is not the correct location to make the measurement. (Tr. 725-26, 784.) The appropriate location is between 23 and 25 feet. (*Id.*) As a general rule, the closer you are to the rail the better the actual sight distance will be. (Tr. 784.) Because the Chief of Police was standing too close to the rail to accurately measure sight distances, the undersigned does not credit the Chief of Police’s testimony regarding actual sight distances.

21.

The grade of the Lee Street crossover is such that it is not considered a high profile or humped crossing. (Tr. 76.) Closing the Lee Street crossover would not cause any property to become land locked. (Tr. 77.) There are no crossings with bells, lights and gates within 0.5 miles of the Lee Street crossover. (Tr. 77.) Finally, there are no grade separated crossings within 0.25 miles of the Lee Street crossover.⁸ (Tr. 77.)

22.

Based on the evidence presented and the above factual findings, the chart below shows the appropriate adjustment factors for the Lee Street crossover.

Table	Criteria	Adjustment Factor
T. 1	Passenger Trains	0
T. 2	Freight Trains	+1.2
T. 3	Distance Along Rail to Alternate Crossing	+0.5
T. 4	5-Year Vehicle/Train Crash History	0
T. 5	Existing Type of Warning Device	+0.5
T. 6	Roadway Characteristics	N/A
T. 7	Ratio of Average Daily Traffic/Census Population	0
T. 8	Posted Speed Limit	+0.5
T. 9	Effects of Elimination	0 ⁹

⁸ A grade separated crossing is one where the highway goes over or under the railroad tracks (i.e., an overpass or underpass). (Tr. 77.)

⁹ The City Manager testified that he believed that this adjustment factor should be -1.0, because the gas department is within 800 feet of the Lee Street crossover. (Tr. 241-42.) However, he simply opined that because there was a government facility located near the crossing that adjustment factor should be -1.0. There was no showing that elimination of the crossing would be a "clear major inconvenience" for the facility or the public, which is what this criterion requires before assigning a -1.0 adjustment factor. (GDOT Ex. 32.) Notwithstanding, even if this tribunal found that the adjustment factor should be a -1.0, which it has not, the outcome would be unchanged. The sum of all adjustment factors would be +7.7, which still justifies elimination of the crossing.

T. 10-1	Vehicle Crossing Usage (Haz Mat, Vehicles for Hire, School Buses)	+2.0 ¹⁰
T. 10-2	Vehicle Crossing Usage (Emergency Vehicles, Utility Vehicles)	0
T. 11	GDOT Defined Variables	+4.0
	Sum of All Adjustment Factors	+8.7

¹⁰ The City Manager testified that he believed this adjustment factor should be 0, because school buses and trucks do not use the Lee Street crossover. (Tr. 243-47.) He based his opinion on the fact that there are “No Trucks” signs in that area and his observation of the crossing during school hours. (Tr. 243-44.) In other words, he did not observe any school buses using the crossing during school hours. (Tr. 246-47.) The undersigned finds that the adjustment factor of +2.0 was appropriate, given the notification by the Franklin County Schools’ Transportation Director that a school bus did use the crossing and the absence of a sign specifically prohibiting “Haz Mat” vehicles. Notwithstanding, if the adjustment factor were changed to 0, it would not change the overall outcome. The total adjustment factor would be reduced to +6.7, which is greater than +5.0 and, therefore, is justification for elimination of the crossing. Further, if both the adjustment factor for Table 9 and Table 10-1 were changed as suggested by the City Manager, the total adjustment factor would be +5.7, which still justifies elimination of the crossing.

Carlton Street Crossover

23.

The Carlton Street crossover is located north of downtown between Lee Street and State Route 17. (GDOT Exs. 10, 15.) There are no passenger trains traveling through the Carlton Street crossover. (GDOT Ex. 17; Tr. 88.) There are, however, two freight trains per day which are operated at a maximum speed of 25 miles per hour. (*Id.*) College Street is 840 feet from the Carlton Street crossover. (GDOT Ex. 16; Tr. 88.) It is the nearest alternate crossing. (Tr. 88-89.) There have never been any vehicle/train crashes at the Carlton Street crossover. (GDOT Ex. 15; Tr. 89.) The only warning device at this crossing is a crossbuck. (GDOT Ex. 15; Tr. 90.) The horizontal alignment of the road to the track is 105 degrees at the eastbound approach and 110 degrees at the westbound approach. (GDOT Ex. 16; Tr. 90-91.) There is 12.5 percent grade for the eastbound approach and a 6 percent grade for the westbound approach. (GDOT Ex. 16; Tr. 90.)

24.

The ratio of average daily traffic in proportion to the population of the City was determined by an actual traffic count conducted by a consultant. (GDOT Ex. 15.) That number was divided by the 2010 Census for the City. (Tr. 91.) There was an average of 582 vehicles per day using the Carlton Street crossover. (GDOT Ex. 15; Tr. 91.) The 2010 Census count for the City was 2582. (Tr. 91.) Using these figures, the ratio of average daily traffic in proportion to the population was less than 0.25. (GDOT Ex. 16; Tr. 91.)

25.

There is no posted speed limit for the Carlton Street crossover. (GDOT Ex. 15; Tr. 91.)

The statutory speed limit is 30 miles per hour.¹¹ (GDOT Ex. 15.)

26.

There is no hospital, and thus no emergency room in the City. (Tr. 319.) Nor are there any medical facilities in the vicinity of the Carlton Street crossover. (GDOT Ex. 10A.) Therefore, eliminating the Carlton Street crossover would not pose a major inconvenience for persons using hospitals or medical facilities which are located elsewhere.

27.

The only government facility near the Carlton Street crossover is the gas department. (GDOT Ex. 10A; Tr. 260-61.) It is located on Lee Street on the east side of the tracks and appears to be within 100 feet of the Carlton Street crossover. (GDOT Ex. 10A.) Other government or quasi-government facilities such as the volunteer fire department and the Life Care facility are located further south, but also on the east side of the tracks. (GDOT Ex. 10A.) There are several other crossings that the volunteer fire department and the Life Care facility vehicles can use to get to the west side of the tracks. (GDOT Ex. 10A.) Vehicles leaving from or going to the gas department can use the Hartwell College Street crossing which is 1,270 feet (i.e., less than a quarter of a mile) feet from the Carlton Street crossover. (GDOT Exs. 10A, 16.) Thus, elimination of the Carlton Street crossover would not pose a major inconvenience for these facilities or the public. (See Tr. 301-02, 579.)

28.

There are multiple businesses in the vicinity of the Carlton Street crossover. For example, there is an equipment rental business, a convenience store, Sims Mortuary, Healthy

¹¹ O.C.G.A. § 40-6-181(b)(1). Mr. Bearse testified that he believed that the character of the road would make it unlikely that a vehicle could attain a speed limit of 30 miles per hour. (Tr. 91.) As noted above, the Guide does not provide any direction when there is no speed limit posted. (GDOT Ex. 32.) However, it does state that when there are two or more approaching roadways with different posted speed limits, "the highest posted speed limit shall be

Climate Air Condition and Heating Control, a bakery, Royston Drive-In Restaurant, and two local second-hand shops. (Tr. 93, 176-77, 279-80.) Mr. Bears determined that elimination of the Carlton Street crossover would be a major inconvenience for commerce facilities. (GDOT Ex. 16; Tr. 93.) However, he acknowledged that it would be safer for the traffic going to and from the equipment rental business to use the Hartwell Street crossing as opposed to the Carlton Street crossover. (Tr. 176.) In fact, he acknowledged that it would not be a major inconvenience for the equipment rental business if the Carlton Street crossover was eliminated. (Tr. 177.) Although the City Manager identified several other businesses in the vicinity of the Carlton Street crossover, Mr. Bears only identified two businesses (i.e., the equipment rental and a convenience store). (Tr. 176-77.) Furthermore, there was testimony that a segment of the City's population does not own cars and frequently walks to businesses. (Tr. 511.) However, those are the people residing between Tony Jones and Hartwell Street. (Tr. 510-11.) Thus, it is more likely that pedestrians would be using a crossing in the southern part of the City, as opposed to the Carlton Street crossing. Accordingly, there is insufficient evidence that elimination of the Carlton Street crossover would pose a "clear major inconvenience," which is what this criterion requires before assigning a negative adjustment factor. (GDOT Exs. 16, 32.)

29.

Trucks carrying hazardous materials are not prohibited from using the Carlton Street crossover. (Tr. 93.) However, the nearest alternative crossing is the College Street crossing, which is not a safe alternative due to limited sight distance in one of the quadrants. (GDOT Ex. 16; Tr. 93.) There is no regularly scheduled bus transit that would use the Carlton Street crossover. (Tr. 93.) According to a document prepared by the Transportation Director for

used." (*Id.*) Given the Guide's preference for using the higher of two applicable speed limits, the undersigned finds that the higher statutory speed limit of 30 miles per hour should be used.

Franklin County Schools, two school buses use the Carlton Street crossover. (GDOT 36; Tr. 94, 736-37.) College Street is the nearest alternative crossing and it is not a safe alternative due to the limited sight distance in one quadrant. (Tr. 93-94.)

30.

The volunteer fire department is located south of the Carlton Street crossover on the east side of the tracks between Tony Jones Street and Bowers Street. (GDOT Ex. 10A.) Life Care (the overflow ambulance service) is located south of the Carlton Street crossover, on Tony Jones Street, which is on the east side of the tracks. (*Id.*) The City's gas department is also located on the east side of the tracks between Carlton Street and Allen Street. (*Id.*) Elimination of the Carlton Street crossover would not pose a major inconvenience for emergency or utility vehicles. (Tr. 94-95; *see also* Tr. 579.) There are alternative crossings that these vehicles can use in the event of an emergency. (GDOT Ex. 10A.)

31.

The required sight distance for the Carlton Street crossover is slightly more than 618.¹² (GDOT Ex. 18; Tr. 99.) A large tree in northeast quadrant restricted the actual sight distance to 300 feet.¹³ (Tr. 101.) Therefore, there is inadequate sight distance in the northeast quadrant.

32.

The width of the Carlton Street crossover is 20 feet. (GDOT Exs. 15, 16.) Thus, there is

¹² As noted above, if Mr. Bearse had used the vehicle length of 73 feet, which is what is required in the current AASHTO green book, then the required sight distance would be farther than the amounts calculated by Mr. Bearse.

¹³ In August, when Mr. Bearse made his observations the tree had leaves. (Tr. 730.) The Chief of Police's observations using the rangefinder were done at the end of February. (*See* Tr. 362.) At that time there were no leaves on the tree. (City Ex. 2, page 2.) Furthermore, the pictures and measurements were completed by the Chief of Police who is 6 feet 2 inches tall, presumably at his eye height. (Tr. 381.) The AASHTO green book provides eye heights for different kinds of vehicles. (Tr. 746.) The eye height for a tractor-trailer is 7.6 feet. (*Id.*) There would be more vegetation and therefore more obstruction at higher elevations. (*See* Tr. 747.) The approach of the AASHTO green book is to accommodate a wide range of potential circumstances, so that crossings are safe for all vehicles. (*See* Tr. 745.) Because crossings must be safe for all vehicles and at all times during the year, the undersigned credits Mr. Bearse's observation of the sight distance in the northeast quadrant of the Carlton Street crossing.

no adjustment for the “Traversing the Crossing” criterion.

33.

The grade of the Carlton Street crossover on the eastbound approach is 12.5 percent. (GDOT Ex. 16; Tr. 101.) This meets the criterion for a high profile or “hump” crossing. (Id.) Closing the Carlton Street crossover would not cause any property to become land locked. (Tr. 101.) There are no crossings with bells, lights and gates within 0.5 miles of the Carlton Street crossover. (Tr. 101.) Finally, there are no grade separated crossings within 0.25 miles of the Carlton Street crossover. (Tr. 102.)

34.

Based on the evidence presented and the above factual findings, the chart below shows the appropriate adjustment factors for the Carlton Street crossover.

Table	Criteria	Adjustment Factor
T. 1	Passenger Trains	0
T. 2	Freight Trains	+1.2
T. 3	Distance Along Rail to Alternate Crossing	+0.5
T. 4	5-Year Vehicle/Train Crash History	0
T. 5	Existing Type of Warning Device	+0.5
T. 6	Roadway Characteristics	N/A
T. 7	Ratio of Average Daily Traffic/Census Population	0
T. 8	Posted Speed Limit	+0.5
T. 9	Effects of Elimination	0 ¹⁴

¹⁴ The City Manager testified that he believed that this adjustment factor should be -2.0. (Tr. 261.) In other words, he believed that an additional -1.0 should have been added to the -1.0 determined by Mr. Bearse for the major inconvenience to commerce. The City Manager based his opinion on the fact that the gas department is near the Carlton Street crossover. (Tr. 260-61.) However, he simply opined that because there was a government facility

T. 10-1	Vehicle Crossing Usage (Haz Mat, Vehicles for Hire, School Buses)	-2.0 ¹⁵
T. 10-2	Vehicle Crossing Usage (Emergency Vehicles, Utility Vehicles)	0
T. 11	GDOT Defined Variables	+8.0
	Sum of All Adjustment Factors	+8.7

Bowers Street Crossing

35.

The Bowers Street Crossing is located in the downtown area of the City. (GDOT Ex. 10A; Tr. 682.) There are no passenger trains traveling through the Bowers Street crossing. (GDOT Ex. 21; Tr. 110.) There are, however, two freight trains per day which are operated at a maximum speed of 25 miles per hour. (GDOT Exs. 19, 21; Tr. 110.) Tony Jones Street is 315 feet south of the Bowers Street crossing and Harwell Street is 315 feet north of the Bowers Street crossing. (Tr. 110.) These are the nearest alternate crossings. (*Id.*) There have never been any vehicle/train crashes at the Bowers Street crossing. (GDOT Ex. 19; Tr. 110.) The only warning device at this crossing is a crossbuck. (GDOT Ex. Ex. 19; Tr. 110-11.) The horizontal alignment of the road to the track is 90 degrees at both the eastbound and westbound approaches.

located near the crossing that adjustment factor should be -1.0. There was no showing that elimination of the crossing would be a "clear major inconvenience" for the facility or the public, which is what this criterion requires before giving a -1.0 adjustment factor. (GDOT Ex. 32.) Notwithstanding, even if this tribunal found that the adjustment factor of -1.0 should be added for the gas department and if this tribunal found that there was a major inconvenience for commerce, which it has not, an adjustment factor of -2.0 would not change the outcome. The sum of all the adjustment factors would be +6.7, which still justifies elimination of the crossing.

¹⁵ The City Manager testified that there is a no truck zone beyond Allen Street and that he believed that school buses do not use the Carlton Street crossover. (Tr. 243-47.) He based his opinion on the fact that there are "No Trucks" signs in that area and his observation of the crossing during school hours. (Tr. 243-44.) In other words, he did not observe any school buses using the crossing during school hours. (Tr. 246-47.) The undersigned finds that the adjustment factor of -2.0 was appropriate, given the notification by the Franklin County Schools' Transportation Director that two school buses did use the crossing and the absence of a sign specifically prohibiting "Haz Mat" vehicles. Notwithstanding, if the adjustment factor were changed to 0, it would not change the overall outcome. The sum of all the adjustment factors would increase to +10.7, which is greater than +5.0 and, therefore, is justification for elimination of the crossing. Further, if both the adjustment factor for Table 9 and Table 10-1 were

(GDOT Ex. 20; Tr. 111.) There is a negative 6 percent grade for the eastbound approach and a positive 5 percent grade for the westbound approach. (*Id.*)

36.

The ratio of average daily traffic in proportion to the population of the City was determined by an actual traffic count divided by the 2010 Census for the City. (Tr. 111.) There was an average of 597 vehicles per day using the Bowers Street crossing. (GDOT Exs. 19, 20; Tr. 111.) The 2010 Census count for the City was 2582. (Tr. 111.) Using these figures, the ratio of average daily traffic in proportion to the population was less than 0.25. (GDOT Ex. 20; Tr. 111.)

37.

The posted speed limit on Bowers Street is 25 miles per hour. (City Exs. 23, 24.)

38.

There is no hospital, and thus no emergency room in the City. (Tr. 319.) Nor are there any medical facilities in the vicinity of the Bowers Street crossing.¹⁶ (GDOT Ex. 10A.) Therefore, elimination of the Bowers Street crossing would not pose a major inconvenience for persons using hospitals or medical facilities.

39.

There is a park in the vicinity of the Bowers Street crossing. (Tr. 136, 160-61.) There is a post office and a police department in the vicinity; however they are located south of Bowers Street and are closer to the Daniel Street crossing. (GDOT Ex. 10A.) City Hall is on the west side of the tracks across from Dill's grocery store. (Tr. 512; GDOT Ex. 10A.) As noted above,

changed based on the testimony of the City Manager, the total adjustment factor would be +8.7, which still justifies elimination of the crossing.

¹⁶ There is a rehab facility on the west side of the tracks. (GDOT Ex. 10A.) However, it is a significant distance from the Bowers Street crossing and it is closer to the Daniel Street crossing. (*Id.*)

there is a segment of the City's population who live on the east side of Lee Street between Tony Jones and Hartwell and who do not have cars for transportation. (Tr. 509-511.) Part of that population is elderly and their mode of transportation is walking. (Tr. 510-11.) Hartwell Street is the next crossing to the north of the Bowers Street crossing. (GDOT Ex. 10A.) It is unsafe for pedestrians to cross at the Hartwell Street crossing because Hartwell Street is also Highway 29. (Tr. 517-18.) Therefore, eliminating the Bowers Street crossing would pose a major inconvenience for the people living in that area and whose mode of transportation is walking.

40.

The only grocery stores in the City are on the west side of the tracks. (Tr. 510-12.) There is a significant commercial development on the west side of the tracks near the Bowers Street crossing. (Tr. 114.) Thus, elimination of the Bowers Street crossing would pose a major inconvenience on the pedestrian public shopping at those enterprises.

41.

There are no signs prohibiting a truck carrying hazardous material from using the Bowers Street crossing. (Tr. 115.) The Hartwell Street crossing is a safe alternative to use for trucks carrying hazardous material. (GDOT Ex. 20; Tr. 115.) There is no regularly scheduled bus transit that would use the Bowers Street crossing. (Tr. 115.) According to a document prepared by the Transportation Director for Franklin County Schools, two school buses use the Bowers Street crossing. (GDOT Ex. 36.) The Hartwell Street crossing is a safe alternative for school buses to use. (GDOT Ex. 20; Tr. 115.)

42.

The volunteer fire department is located on the east side of the tracks between Tony Jones and Bowers Street. (GDOT Ex. 10A.) Life Care (i.e., the overflow ambulance service is

located on the east side of the tracks on Tony Jones Street. (*Id.*) Because of the fire department's proximity and direct access to Bowers Street, elimination of the Bowers Street crossing would pose a major inconvenience.¹⁷

43.

As noted above, the City's gas department is north of the downtown area on the east side of the tracks. (GDOT Ex. 10A.) Elimination of the Bowers Street crossing would not pose a major inconvenience to the gas department's ability to respond to emergencies. (Tr. 116.)

44.

The required sight distance for the Bowers Street crossing is slightly more than 558 feet.¹⁸ (GDOT Ex. 20; Tr. 118.) A gazebo in the northwest quadrant restricts the actual sight distance to 300 feet. (GDOT Ex. 19; Tr. 118-20.) Therefore, there is inadequate sight distance in the northwest quadrant.

45.

The width of the Bowers Street crossing is 47 feet. (GDOT Ex. 19.) Thus, there is no adjustment for the "Traversing the Crossing" criterion. (Tr. 121.)

46.

The grade of the Bowers Street crossing is such that it is not considered a high profile or humped crossing. (Tr. 121.) Closing the Bowers Street crossing would not cause any property to become land locked. (Tr. 121.) There are no crossings with bells, lights and gates within 0.5 miles of the Bowers Street crossing. (Tr. 121-22.) Finally, there are no grade separated

¹⁷ Because the Life Care facility is located on Tony Jones Street, elimination of the Bowers Street crossing would not likely pose a major inconvenience for it. In other words, the Life Care facility is more proximal to the Tony Jones crossing. However, even if it was considered a major inconvenience for the Life Care facility, there would be no change in the adjustment factor. (*See* GDOT Ex. 32.) The criterion regarding the vehicle crossing use by emergency vehicles gives the same adjustment factor (i.e., -3.0) if *any* emergency vehicles are impacted. (*Id.*) There is no change in the adjustment factor if more than one type of emergency vehicle is impacted. (*Id.*)

crossings within 0.25 miles of the Bowers Street crossing. (Tr. 122.)

47.

Based on the evidence presented and the above factual findings, the chart below shows the appropriate adjustment factors for the Bowers Street crossing.

Table	Criteria	Adjustment Factor
T. 1	Passenger Trains	0
T. 2	Freight Trains	+1.2
T. 3	Distance Along Rail to Alternate Crossing	+0.5
T. 4	5-Year Vehicle/Train Crash History	0
T. 5	Existing Type of Warning Device	+0.5
T. 6	Roadway Characteristics	N/A
T. 7	Ratio of Average Daily Traffic/Census Population	0
T. 8	Posted Speed Limit	0
T. 9	Effects of Elimination	-2.0
T. 10-1	Vehicle Crossing Usage (Haz Mat, Vehicles for Hire, School Buses)	+2.0
T. 10-2	Vehicle Crossing Usage (Emergency Vehicles, Utility Vehicles)	-3.0
T. 11	GDOT Defined Variables	+4.0
	Sum of All Adjustment Factors	+3.2

Tony Jones Street Crossing

48.

The Tony Jones Street crossing is located in the downtown area of the City south of the

¹⁸ As noted above, if Mr. Barse had used the vehicle length of 73 feet, which is what is required in the current

Bowers Street crossing. (GDOT Ex. 10A.) There are no passenger trains traveling through the Tony Jones Street crossing. (GDOT Ex. 25; Tr. 132.) There are, however, two freight trains per day which are operated at a maximum speed of 25 miles per hour. (GDOT Exs. 23, 25; Tr. 132.) The Daniel Street crossing is 313 feet south of the Tony Jones crossing and the Bowers Street crossing is 313 feet north of the Tony Jones Street crossing. (Tr. 133.) These are the nearest alternate crossings. (*Id.*) There have never been any vehicle/train crashes at the Tony Jones Street crossing. (GDOT Ex. 23; Tr. 134.) The only warning device at this crossing is a crossbuck. (GDOT Ex. 23; Tr. 134.) The horizontal alignment of the road to the track is 90 degrees at both the eastbound and westbound approaches. (GDOT Ex. 24; Tr. 135.) There is a negative 8 percent grade for the eastbound approach and a positive 9 percent grade for the westbound approach. (GDOT Ex. 24; Tr. 134.)

49.

The ratio of average daily traffic in proportion to the population of the City was determined by an actual traffic count divided by the 2010 census for the City. (GDOT Ex. 23; Tr. 59, 135.) There was an average of 116 vehicles per day using the Tony Jones crossing. (GDOT Exs. 23, 24; Tr. 135.) The 2010 census count for the City was 2582. (Tr. 59, 135.) Using these figures, the ratio of average daily traffic in proportion to the population was less than 0.25. (GDOT Ex. 24; Tr. 135.)

50.

There is no posted speed limit for the Tony Jones Street crossing. (GDOT Ex. 23; Tr. 135.) The statutory speed limit is 30 miles per hour.¹⁹ (GDOT Ex. 23.)

AASHTO green book, then the required sight distance would be farther than the amounts calculated by Mr. Bearse.
¹⁹ O.C.G.A. § 40-6-181(b)(1). Mr. Bearse testified that he used 25 miles per hour based on the character of the road. (Tr. 135.) For the reasons stated above, the undersigned finds that the higher statutory speed limit of 30 miles per hour should be used.

51.

There is no hospital, and thus no emergency room in the City. (Tr. 319.) Nor are there any medical facilities in the vicinity of the Tony Jones Street crossing.²⁰ (GDOT Ex. 10A.) Therefore, elimination of the Tony Jones Street crossing would not pose a major inconvenience for persons using hospitals or medical facilities.

52.

There is a post office and a police department in the vicinity of the Tony Jones crossing; they are, however, located closer to the Daniel Street crossing. (GDOT Ex. 10A.) City Hall is on the west side of the tracks across from Dill's grocery store. (Tr. 512; GDOT Ex. 10A.) As noted above, there is a segment of the City's population who live on the east side of Lee Street between Tony Jones and Hartwell and who do not have cars for transportation. (Tr. 509-511.) Part of that population is elderly and their mode of transportation is walking. (Tr. 510-11.) Notwithstanding, when one member of the community was asked about closing the Tony Jones crossing, he indicated that any hardship from the closure would be mitigated if the Daniels Street crossing remained open. (Tr. 520-24.) Specifically, he testified that for the people living on Daniel Street and Baker Street, the Daniels Street crossing is the main crossing that the seniors use to get to the post office, police department and the grocery store. (Tr. 523-24.) Therefore, eliminating the Tony Jones crossing would not pose a major inconvenience the government facilities or the public.

53.

The only grocery stores in the City are on the west side of the tracks. (Tr. 510-12.) However, as Mr. Johnson testified, the seniors who live on Daniel Street and Baker Street mainly

²⁰ There is a rehab facility on the west side of the tracks. (GDOT Ex. 10A.) However, it is a significant distance from the Bowers Street crossing and it is closer to the Daniel Street crossing. (*Id.*)

use the Daniel Street crossing to get to the grocery store. (Tr. 523-24.) The commercial enterprises in the center of town are farther away from the Tony Jones Street crossing. (Tr. 136.) Thus, elimination of the Tony Jones Street crossing would not pose a major inconvenience to the pedestrian public shopping at those enterprises.

54.

There are no signs prohibiting a truck carrying hazardous material from using the Tony Jones Street crossing. (Tr. 136-37.) The Bowers Street crossing and the Daniel Street crossing are not safe alternatives for trucks carrying hazardous material, as both have sight distance concerns. (Tr. 136-37.) There is no regularly scheduled bus transit that would use the Tony Jones Street crossing. (Tr. 137.) According to a document prepared by the Transportation Director for Franklin County Schools, one school bus uses the Tony Jones Street crossing. (GDOT Ex. 36.) However, the Bowers Street crossing and the Daniel Street crossing are not safe alternatives. (GDOT Ex. 24; Tr. 137.)

55.

The volunteer fire department is located on the east side of the tracks between Tony Jones and Bowers Street. (GDOT Ex. 10A.) Life Care (i.e., the overflow ambulance service is located on the east side of the tracks on Tony Jones Street. (*Id.*) The fire department does not have direct access to Tony Jones Street. (GDOT Ex. 37; Tr. 565-66.) Instead, the fire department vehicles would have to turn left out of the parking lot onto Lee Street and then drive to Tony Jones Street. (Tr. 575.) When turning onto Lee Street, the fire department vehicles can go north to Bowers Street or south to Tony Jones Street. (Tr. 575-76.) Tony Jones is slightly closer to where the parking lot lets out onto Lee Street. (Tr. 576.) However, the difference between the distance to Tony Jones Street and Bowers Street may be as little as 100 feet. (Tr.

576.) The City's expert testified that closing the Tony Jones Street crossing and requiring the fire department vehicles to use the Bowers Street crossing was not a "major" inconvenience. (Tr. 579.) Accordingly, elimination of the Tony Jones Street crossing would not pose a major inconvenience for emergency vehicles.

56.

As noted above, the City's gas department is north of the downtown area on the east side of the tracks. (GDOT Ex. 10A.) Elimination of the Tony Jones Street crossing would not pose a major inconvenience to the gas department's ability to respond to emergencies. (Tr. 138.)

57.

The required sight distance for the Tony Jones Street crossing is slightly more than 562 feet.²¹ (GDOT Ex. 24; Tr. 141.) A former railroad freight house, which is currently used as a community building, located in the northwest quadrant restricts the actual sight distance to 550 feet. (GDOT Exs 23, 24; Tr. 139-41.) Therefore, there is inadequate sight distance in the northwest quadrant.

58.

The width of the Tony Jones Street crossing is 46 feet. (GDOT Ex. 23.) Thus, there is no adjustment for the "Traversing the Crossing" criterion. (Tr. 142.)

²¹ As noted above, if Mr. Bearse had used the vehicle length of 73 feet, which is what is required in the current AASHTO green book, then the required sight distance would be farther than the amounts calculated by Mr. Bearse.

The grade of the Tony Jones Street crossing is such that it is not considered a high profile or humped crossing. (Tr. 142.) Closing the Tony Jones Street crossing would not cause any property to become land locked. (Tr. 142.) There are no crossings with bells, lights and gates within 0.5 miles of the Bowers Street crossing. (Tr. 142.) Finally, there are no grade separated crossings within 0.25 miles of the Bowers Street crossing. (Tr. 142.)

Based on the evidence presented and the above factual findings, the chart below shows the appropriate adjustment factors for the Tony Jones Street crossing.

Table	Criteria	Adjustment Factor
T. 1	Passenger Trains	0
T. 2	Freight Trains	+1.2
T. 3	Distance Along Rail to Alternate Crossing	+0.5
T. 4	5-Year Vehicle/Train Crash History	0
T. 5	Existing Type of Warning Device	+0.5
T. 6	Roadway Characteristics	N/A
T. 7	Ratio of Average Daily Traffic/Census Population	0
T. 8	Posted Speed Limit	+0.5
T. 9	Effects of Elimination	0
T. 10-1	Vehicle Crossing Usage (Haz Mat, Vehicles for Hire, School Buses)	-2.0 ²²

²² The Railroad argued that Mr. Bearse should have considered alternative crossings for the Haz Mat vehicles and the school buses other than the nearest adjacent crossing. For the purposes of Table 10-1, the Guide does not specify which alternative crossings should be considered. (GDOT Ex. 32.) However, for the purposes of Table 3 entitled "Distance to Alternate Crossing," the Guide does specify that this is the distance to the *next nearest* crossing in either direction. (*Id.*) (emphasis added). Mr. Bearse testified that he uses the Table 3 description of alternate crossing contained in the guide as the basis for using the next nearest crossing in Table 10-1. (Tr. 152.) In other

T. 10-2	Vehicle Crossing Usage (Emergency Vehicles, Utility Vehicles)	0 ²³
T. 11	GDOT Defined Variables	+4.0
	Sum of All Adjustment Factors	+4.7

Conclusions of Law

1.

Pursuant to Georgia Code section 32-6-193.1, railroads may petition the appropriate governing authority to eliminate a grade crossing on a public road. O.C.G.A. § 32-6-193.1(b)(1). If the public road is part of the municipal street system, then the initial petition must be filed with the municipal governing authority.²⁴ *Id.* Thereafter, in deciding whether to grant or deny the petition, the municipal governing authority must conduct a public hearing. O.C.G.A. § 32-6-193.1(b)(3). As stated in the Findings of Fact, the Railroad Petitioned the City to eliminate four highway-rail crossings: the Lee Street crossover, the Carlton Street crossover, the Bowers Street crossing, and the Tony Jones Street crossing. The City held a public hearing on May 12, 2015.

2.

To eliminate a grade crossing on a public road, the appropriate governing authority must

words, he interpreted the language describing “alternate route(s)” in Table 10-1 to be consistent with “alternate crossing” in Table 3. Because the Guide is silent as to which alternate crossings should be considered in Table 10-1, the undersigned finds that it is appropriate to interpret “alternate route(s)” consistently with the description of alternate crossings in Table 3.

²³ The City’s Manager opined that elimination of the Tony Jones Street crossing should be considered a major inconvenience for the fire department and the Life Care facility. (Tr. 258-59.) However, with respect to the Life Care facility the testimony was nothing more than the physical location of the Life Care facility. Assuming that the location of the Life Care facility would make it a major inconvenience for the overflow ambulances and assuming, without deciding that the elimination of the Tony Jones Street crossing would be a major inconvenience for the fire department, the outcome of the analysis would not change. In other words, the current sum of all the adjustment factors is +4.7 which does not justify elimination of the crossing. If the adjustment factor of -3.0 is added for the vehicle crossing usage of emergency vehicles, then the sum would be +1.7, which still does not justify elimination of the crossing.

²⁴ If the public road is part of the county road system, then the initial petition is filed with the county governing authority. *Id.* Alternatively, if the public road is part of the state highway system, then the initial petition is filed with GDOT. *Id.*

determine that the elimination of the grade crossing is “reasonably necessary in the interest of public safety.” *Id.* at 32-6-193.1(a). In other words, the governing authority must determine that “the enhancement of public safety resulting from such elimination of the grade crossing will outweigh any inconvenience to the reasonable passage of public traffic, specifically including without limitation emergency vehicle traffic, caused by such rerouting of traffic.” *Id.* Here, the City denied the Railroad’s petition to eliminate the four crossings. In its decision, the City wrote that the elimination of the crossings was not reasonably required for public safety. However, as noted in the Findings of Fact, the City did not perform the required analysis to reach such a decision.

3.

If the railroad is aggrieved by the local governing authority’s order denying its petition to eliminate a grade crossing, the railroad may make a written request for GDOT to review the order. *Id.* at 32-6-193.1(c)(3)(A). In this case, the Railroad requested GDOT to review the City’s decision on July 15, 2015. Thereafter, both the Railroad and the City appealed GDOT’s Formal Determination.

4.

In making the determination of whether a grade crossing should be eliminated or remain open, GDOT and the local governing authorities must make that determination by considering all of the criteria listed in Georgia Code section 32-6-193.1(a) and “in accordance with the ‘Georgia Department of Transportation’s Guide for Evaluating Highway-Rail Grade Crossing Safety.’” Ga. Comp. R. & Regs. 672-16-.04. Additionally, the governing authority making that determination must “retain the completed ‘Highway-Rail Grade Crossing Safety Evaluation’ form along with all calculations and supporting documentation used in completing the

assessment for a minimum of one (1) year.” Ga. Comp. R. & Regs. 672-16-.04(a). As noted above, the City, in this case, did not complete the evaluation forms.

5.

The criteria that must be considered in determining whether to eliminate or keep open a crossing include the following:

- (1) Number and timetable speeds of passenger trains operated through the crossing;
- (2) Number and timetable speeds of freight trains operated through the crossing;
- (3) Distance to alternate crossings;
- (4) Accident history of the crossing for the immediately preceding five-year period;
- (5) Type of warning device present at the crossing, if any;
- (6) The alignments, horizontal and vertical, of the roadway and the railroad and the angle of the intersection of those alignments;
- (7) The average daily traffic volume in proportion to the population of the municipality if the crossing is located within a municipality or the population of the county if the crossing is located within an unincorporated area of a county;
- (8) The posted speed limit over the crossing;
- (9) The effect of closing the crossing upon access by persons utilizing:
 - (A) Hospital or medical facilities and public health departments, specifically including without limitation utilization by medical personnel;
 - (B) Facilities of federal, state, or local government, specifically including without limitation court, postal, library, sanitation, and park facilities; and
 - (C) Commercial, industrial, and other areas of public commerce;
- (10) Any use of the crossing by:
 - (A) Trucks carrying hazardous material;

- (B) Vehicles carrying passengers for hire;
- (C) School buses;
- (D) Emergency vehicles; or
- (E) Public or private utility vehicles, specifically including without limitation water, sewer, natural gas, and electric utility maintenance and repair vehicles; and

(11) Any other relevant factors as prescribed by the department.

O.C.G.A. § 32-6-193.1(a).

6.

Each of the criteria has a range of associated numerical adjustment factors. “A sum total of adjustment factors greater than or equal to a positive five (+5) shall be justification to eliminate a crossing.” Ga. Comp. R. & Regs. 672-16-.04. Stated differently, if the total of the adjustment factors is greater than or equal to a positive five (+5), then it is reasonably necessary in the interest of public safety to eliminate the crossing. O.C.G.A. § 32-6-193.1(a); Ga. Comp. R. & Regs. 672-16-.04.


7.

As noted in the above Findings of Fact, the sum total of the adjustment factors for the four crossings was as follows: Lee Street crossover (+8.7), Carlton Street crossover (+8.7), Bowers Street crossing (+3.2), Tony Jones Street crossing (+4.7). Accordingly, the undersigned concludes that it is reasonably necessary in the interest of public safety to eliminate the Lee Street crossover and the Carlton Street crossover. O.C.G.A. § 32-6-193.1(a); Ga. Comp. R. & Regs. 672-16-.04. For the Bowers Street crossing and the Tony Jones Street crossing, the inconvenience to the reasonable passage of public traffic outweighs the enhancement of public safety if those crossings were eliminated. Therefore, they should remain open.

DECISION

For the above and foregoing reasons, the formal determination of GDOT is AFFIRMED.

SO ORDERED this 27th day of May, 2016.


STEPHANIE M. HOWELLS
Administrative Law Judge