

Decision No. 82866

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Irvine,
a municipal corporation, to con-
struct a bicycle trail across the
Atchison, Topeka & Santa Fe Rail-
way Right of Way within the city
of Irvine.

Application No. 54628
(Filed February 1, 1974)

Roger A. Grable, Attorney at Law, for
the City of Irvine, applicant. ✓
Thomas I. McKnew, Jr., Attorney at Law,
for The Atchison, Topeka and Santa
Fe Railway Company, protestant. ✓
Albert A. Arellano, Jr., for the Commission
staff.

O P I N I O N

The city of Irvine seeks to construct a bicycle trail at grade across the main line right-of-way of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) within the city limits. The application and the testimony both indicate that this is intended as an interim measure and that a future grade separation is proposed for the location, which would be constructed in approximately three years.

Hearing in this matter was held before Examiner Meaney on March 11, 1974. The city presented testimony from its director of public works. Santa Fe, which opposes the installation of this proposed crossing, introduced the testimony of a research psychologist specializing in traffic and pedestrian safety, and also the testimony of an operating engineer concerning train schedules on this particular line. The Commission staff also appeared and opposed the application. The matter was submitted on March 11.

The proposed crossing would be at Yale Avenue. Residential areas consisting of single family houses presently exist to the north of railroad right-of-way, and also to the southeast. To the southwest there is an open field. Part of this field will be developed for a school. There will also be single family dwellings in this area. Paralleling the railroad right-of-way, and immediately to the north is a concrete flood control channel. Bordering on the channel immediately to the north are the back fences of the residential lots. Immediately to the south of the railroad right-of-way there is an easement 184 feet wide for electric transmission lines. Part of this easement may, in the future, be developed for limited recreational use.

At Yale Avenue itself, large berms have been constructed on either side of the flood control and railroad right-of-way, in anticipation of the future development of an overpass. According to the city's testimony, the berms themselves, the flood control district's access roads adjacent to the berms, and the general area of the flood control right-of-way and the railroad right-of-way in the vicinity of Yale Avenue have become attractive to trespassers who are either pedestrians, bicyclists, or motorcyclists. There is also an unused railroad motor car take-off site near Yale Avenue, but the railroad indicated that if it would reduce the attractive nuisance feature of the general area, this could be removed.

Chain link fences have been installed by the railroad, the flood control district, and the city for the purpose of closing off the approaches to the Yale Avenue berm on the north side of the track. Sections of these fences have been repeatedly removed by trespassers.

The city's testimony indicated that adverse user of the general area might increase when a junior high school is constructed to the southwest of the crossing.

Regarding bicycling generally, Yale Avenue is planned as part of the city's master plan of bike trails. Ultimately, considerable bicycle traffic is expected over Yale Avenue because of residential development to the south of the Yale Avenue crossing, particularly since there is a "loop" street pattern to the south that, according to the city's witness, will collect much of the bicycle traffic and funnel it onto Yale Avenue.

According to the city's witness, without the proposed Yale Avenue interim grade crossing for bicycles, until the proposed overpass is constructed from three to five years in the future, bicyclists and pedestrians in the Yale Avenue vicinity must either go west to Culver Drive, a one-way distance approximately three-quarters of a mile, or about one-half mile east to Jeffrey Road. The city's witness believes that because of these distances, it would be impossible to control trespassing of pedestrians, and bicyclists in particular in the vicinity of the proposed crossing, and that therefore it would be better to construct an interim facility to channel such use and regulate it as best as possible.

The city did not introduce any evidence or testimony as to present need for a crossing to handle motor vehicle traffic. In this connection, the witness explained that the three- to five-year delay in constructing the Yale Avenue overpass would be due to financial considerations and the fact that the city feels that Culver Drive must be developed as an overpass first, to handle general traffic.

The city also did not present any comparative costs for the proposed crossing, on the one hand, and a pedestrian and bicycle overpass, on the other hand.

Dr. Slade F. Hulbert, a research psychologist specializing in the problems of human behavior associated with vehicular and pedestrian movements, testified for Santa Fe. His experience includes research as to safety considerations of railroad grade crossings, as well as the safe development and use of bicycle trails.

Dr. Hulbert visited the site on March 6 from 10:30 a.m. to 12:15 p.m. His conclusion was that it would be "unwise" to have such an at-grade crossing for only bicycles and pedestrians. He said that to his knowledge no such crossings exist.

He was particularly concerned with the fact that this type of crossing would be used primarily by children, while a regular grade crossing at which public vehicular traffic is permitted is used by a combination of adults and children. A regular crossing would cause pedestrians to walk on the side of the road and to cross at the same time as vehicular traffic. This would not be the case at the proposed installation.

The witness felt that even with flashing lights, children on bicycles would not tend to yield to them because inattention would be a definite factor. Studies regarding children, according to the witness, showed that the younger they are, the poorer they are at judging the speed of approaching vehicles. He felt that this would be a greater problem with approaching trains.

The witness could not think of any particular combination or warning devices that would really be effective at this location, pointing to the fact that the railroad track and the flood control canal would be generally open in the area, once such an installation as is proposed was operative. He admitted that attempts to fence off the area had apparently failed, but could see no reason why a solid wall would not do the job.

An assistant engineer for Santa Fe introduced a series of photographs showing the missing fence and the fact that "no trespassing" signs were removed. He stated that the fences have been repaired since the pictures were taken. He stated that he could not visualize the protective devices proposed by the city as affording adequate protection for young children at the type of crossing proposed. He was also of the opinion that young children would much better obey the lights and the gates at a regular crossing because there are cars and adults present there. The installation of actual gates, he said, would not substantially change his opinion.

He stated that the railroad would be willing to cooperate with the city and other public authorities in constructing a wall which could not be torn down. He said Santa Fe would not object to a permanent or temporary pedestrian and bicycle overpass at this location.

This witness introduced the current Santa Fe timetable. He pointed out that this is Santa Fe's main line, and at this location the maximum train speeds allowed are 90 mph for passenger trains and 60 mph for freight trains.

There are six passenger trains, three in each direction, which pass this crossing between 8:20 a.m. and 8:55 p.m. In addition, there are four through freight trains. One southbound train passes through the area between 7:30 and 8:30 p.m., and the other between 8:00 and 9:00 p.m. There is also a switching local, which this witness felt would be the biggest problem. The southbound local clears the area at around 3:00 p.m., and the northbound local between 5:00 and 5:30 p.m.

The witness explained that he observed the area and saw a motorcyclist on the northeast side of the track. The bicycle and motorcycle tracks appeared to this witness to indicate heavy use. He stated the railroad would do whatever it can including helping with

the construction of a wall. He also felt that the installation of cables interlaced through the wire in the chain link fences had cut down on attempts to remove fenced sections.

In closing argument, counsel for Santa Fe stated the railroad was considerably concerned about possible liability which might result from the opening of the proposed crossing.

Discussion

The Commission is of the opinion that public need for the type of crossing proposed at this location has not been established.

The crossing proposed here is novel in itself, and the novelty is compounded by the attempt to establish the present need for an interim crossing primarily upon the basis of adverse user of the vicinity. Prior use of a street by the public across the railroad tracks has been held not to establish present need for a crossing. (County of Fresno (1958) 56 CPUC 216.) Factors of necessity and convenience to the community and the people to be served by the crossing must be weighed against the factor of added hazard and danger to the same community and the same people, and also to the public utility in question. (City of Watts (1915) 6 CRC 414.)

It is general Commission policy that new grade crossing should only be allowed when the need is clearly established. Certainly with the safety factors present in this application, no departure from that general policy should be made.

We agree with the contentions of Santa Fe that a crossing which is not a normal street and which will primarily be used by children who are either pedestrians or bicyclists is undesirable in itself. Add to this the fact that the particular track in question is Santa Fe's main line, upon which high speeds are permitted, and it can be seen that unusual hazards exist. There is sufficient train traffic during daylight and early evening hours so that there is a

real danger of conflicts between improper use of the proposed crossing and approaching trains. In any event, a crossing with infrequent train traffic is often the most dangerous, since those who use it become accustomed to crossing the tracks without seeing trains, and thus grow careless. (City of Compton (1915) 6 CRC 683.)

We further agree that if the city does not see fit to construct an interim pedestrian and bicycle overpass, a better approach would be more substantial protection of the area. The back fences of the houses on the north side of the track insulate the area in part, so that the unauthorized crossings take place in the area of the Yale Avenue right-of-way. This area could be walled off. The railroad has indicated it would cooperate in this regard.

In this connection it is recognized that gates would be necessary so that flood control district vehicles may enter the flood control right-of-way. There is no reason why, however, with the construction of an adequate wall, more substantial gates could not be constructed, thus minimizing the chance for unauthorized entry into the right-of-way.

In this regard we note that the land to the southwest of the proposed crossing is undeveloped, and for various reasons it is impractical to fence this at the present time. However, as was indicated during the hearings, if the ingress and egress to the railroad and flood control rights-of-way are adequately walled or otherwise closed off on the north side, the use of the area as a crossing is effectively forestalled.

It has been general Commission policy that temporary grade crossings will not be established when the evidence indicates the need for a separation. (City of Burbank (1927) 30 CRC 764.) In this case, the city indicates that it will construct an overpass in this area within three to five years. We have examined the map of

the city and find that the distance between the present crossings, that is, those at Jeffrey Road and Culver Drive, is not excessive for normal bicycle and pedestrian traffic, even though it may cause some delay and inconvenience to the future school students who will have to use one of these two streets pending the development of Yale Avenue.

Since the application will be denied because of the aforementioned factors, it is not necessary for the Commission to consider any environmental issues.

Findings of Fact

1. Applicant seeks to construct a crossing at grade across the main line of Santa Fe at Yale Avenue, within the city limits of the city of Irvine.

2. This location is in the middle of an area which is primarily residential.

3. The proposed crossing would be used for pedestrians and bicyclists only. A high percentage of the users would be children.

4. The proposed crossing is intended as an interim measure. Within three to five years, an overpass will be constructed, making use of existing berms which have been constructed for this purpose.

5. The primary reason for the city's desire to construct such an interim crossing is the present adverse use of the area for a crossing by motorcyclists, bicyclists, and pedestrians. Some of such persons have caused repeated removal of fences and signs designed to prevent the use of the area for a crossing.

6. The danger of accidents at the proposed crossing, as designed and with the use as proposed, would be higher than at a normal grade crossing.

7. No combination of warning devices was proposed which would reduce this danger.

8. The track at this location is Santa Fe's main line in the area, and at this location maximum train speeds allowed are 90 mph for passenger trains and 60 mph for freight trains. There are a significant

number of trains scheduled to pass through the area at times when it might be expected to be used by pedestrians and bicyclists.

9. The distance between the presently existing crossings is not excessive for normal bicycle and pedestrian traffic, although some delay and inconvenience will result to persons in the area without the proposed crossing.

10. The record does not indicate that an interim pedestrian and bicycle overpass is unfeasible, nor does the record show that trespassing could not be controlled by the use of more substantial barricades.

Conclusion of Law

Public convenience and necessity do not require the construction and installation of a pedestrian and bicycle crossing at grade at Yale Avenue across the track of Santa Fe in the city of Irvine.

O R D E R

IT IS ORDERED that the application is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 15th day of MAY, 1974.

William S. Jones Jr. President
William S. Jones Jr.
William S. Jones Jr.
William S. Jones Jr. Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.