

Decision 89 06 001 JUN 7 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
the City of Riverbank for authority)
to construct an at-grade crossing)
over the tracks of The Atchison,)
Topeka and Santa Fe Railway Company)
at 8th Street in the City of)
Riverbank, County of Stanislaus,)
State of California.)

ORIGINAL

Application 88-09-004
(Filed September 2, 1988)

Felix J. Reichmuth, for the City of Riverbank,
applicant.
R. Curtis Ballantyne, Attorney at Law, for
The Atchison, Topeka and Santa Fe Railway
Company, protestant.
Edward P. Thurban, for the Safety Division.

OPINION

In this application the City of Riverbank (applicant) requests authority to construct an at-grade crossing over a lead track of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) in Riverbank, Stanislaus County. The proposed crossing would be created by the southerly extension of Eighth Street from Kentucky Avenue to Townsend Avenue, a distance of approximately 700 feet. Applicant asserts that the need for the crossing is due to increased subdivision build-out planned near the southerly city limits. Santa Fe protested the application, alleging that there is insufficient need for the crossing, and that the proximity of nearby Townsend Avenue would cause traffic to stop on its tracks.

A duly noticed public hearing was held before Administrative Law Judge John Lemke on March 8, 1989. The matter was submitted with the close of hearing.

Evidence

Applicant

Felix Reichmuth, a consulting engineer, sponsored Exhibits 1 and 2. Exhibit 1 is a schematic showing existing development in the area in question; Exhibit 2 shows the proposed development. In the planned build-out as displayed in Exhibit 2, there will be approximately 230 new residential lots, and a new city park constructed in the immediate area. The proposed crossing, part of the extension of Eighth Street, would cross the Santa Fe lead track about 25 feet north of Townsend Avenue, an east-west street, at a 90-degree angle. Townsend Avenue is the only street, existing or planned, which will bisect the entire planned development. The Eighth Street extension cannot reach Townsend Avenue without crossing the Santa Fe lead track.

Pamela Carder, applicant's planning director, sponsored Exhibit 3, a Negative Declaration issued by the City of Riverbank and filed with the County of Stanislaus in January 1988. The exhibit includes an update of the Circulation Element of the general plan. The study does not mention the subject rail crossing, and apparently did not address the issue specifically before us in this proceeding, since page 49 of the Initial Study by applicant contains a statement that the project will not require approval by other agencies.

Protestant

Santa Fe presented its case principally through the testimony of Rudy San Miguel, a civil engineer. The witness stated that Santa Fe's policy is to recommend disallowance of requests for at-grade crossings. This is also the policy, the witness stated, of the United States Department of Transportation and the Federal Highway Administration. He believes that there will be sufficient access to the planned new home development without the extension of Eighth Street to Townsend Avenue. He stated that there are two westbound movements of loaded cars per month along the subject lead

track, and two movements of unloaded cars in the reverse direction, each movement consisting of only two cars. He maintains that the proposed at-grade crossing would impose potential operating hazards and delays for Santa Fe. An area map is shown in Appendix A.

Discussion

The alleged delays resulting from construction of the proposed crossing certainly cannot be significant ones, in view of the extremely light traffic operating over this track. Potential hazards will be mitigated through the construction of adequate protection devices in accordance with the provisions of our general orders.

In our view, the purpose of the planned development would be frustrated because of inadequate traffic circulation if Eighth Street could not be extended to Townsend Avenue; and Eighth Street cannot be so extended except by crossing the protestant's lead track. It has not been a policy of this Commission to disallow the construction of crossings over lead tracks in these circumstances. Santa Fe observes that while it might be convenient sometime in the future to have the proposed crossing in place, there is no present need therefor. It is not necessary that there be a present need. That is the purpose of the application. We are concerned with a future need resulting from construction of the planned development. The evidence adequately demonstrates that the crossing will be necessary when the new residential area is completed. The application should be granted on its merits. The authority granted will be conditioned upon applicant's placing stop signs on Townsend Avenue at the intersection of Eighth Street. This will minimize the likelihood of vehicular traffic stopping on Santa Fe's tracks, with resultant delays and potential hazards.

For purposes of this proceeding applicant is the lead agency, and this Commission the responsible agency, as defined in §§ 21067 and 21069, respectively, of the California Environmental Quality Act. Santa Fe argues that the application should be denied

because the Negative Declaration offered during the hearing (Exhibit 3) does not include, in its Circulation Element Update, specific reference to the proposed crossing. The Initial Study, filed in September 1987, states that the project will not require the approval of any other agency. As construction of the proposed crossing requires approval of this Commission, it appears that the crossing was not considered in formulating applicant's general plan. Nevertheless, we will grant the application based upon the evidence demonstrating the need for the crossing, the minimal impact upon the environment associated with the construction of the crossing, and our agreement with applicant's determination of negative impact in connection therewith.

The Traffic Engineering Section of the Commission's Safety Division took a neutral position on the question whether to grant the application. However, it stated in its Advice of Participation that an at-grade crossing would be safe, provided automatic gate type warning devices are installed.

In accordance with Public Utilities Code § 311, the Administrative Law Judge's proposed decision was mailed to appearances on April 21, 1989. Comments were received from the Commission's Safety Division and from Santa Fe, pointing out that Ordering Paragraph 3 is in conflict with the second paragraph on page 4 of the decision concerning warning devices. The decision will be modified to reflect this inconsistency.

Findings of Fact

1. Applicant requests authority under Public Utilities Code §§ 1201 et seq. to construct an at-grade crossing over the tracks of Santa Fe in the City of Riverbank.
2. Construction of the proposed crossing will be necessary in order to provide adequate vehicular traffic circulation in the area when the planned development involving the construction of approximately 230 new homes, and a new city park, is completed.
3. Construction of the proposed crossing will have no significant impact on the environment.

Conclusion of Law

The application should be granted as set forth in the following order.

ORDER

IT IS ORDERED that:

1. The City of Riverbank (applicant) is authorized to construct an at-grade crossing over the tracks of The Atchison, Topeka and Santa Fe Railway Company at the location and substantially as shown in the application and this order.
2. Construction of the crossing shall be in accordance with the provisions of General Order (GO) 72-B. Clearances shall conform with the provisions of GO 26-D. Walkways shall conform with GO 118.
3. Protection at the Eighth Street crossing shall be two Standard No. 9 automatic gate-type signals, in accordance with GO 75-C. ✓
4. Construction expense of the crossing, and installation and maintenance costs of the automatic protection shall be borne by applicant.
5. Maintenance of the crossing shall conform with the provisions of GO 72-B.
6. Applicant shall place two stop signs on Townsend Avenue at the intersection of Eighth Street.
7. Within 30 days after completion of the work authorized by this order, applicant shall advise the Commission in writing that the authorized work has been completed.
8. The authority granted by this decision shall expire if not exercised within two years of the effective date of this order, unless time is extended or if the above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

9. The application is granted as set forth above.
This order becomes effective 30 days from today.
Dated JUN - 7 1989, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

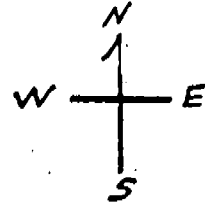


Victor Weisser, Executive Director

SB

APPENDIX A

CITY OF RIVERBANK, STANISLAUS COUNTY



Existing residential

EIGHTH STREET

Existing residential

KENTUCKY AVENUE

Proposed city park

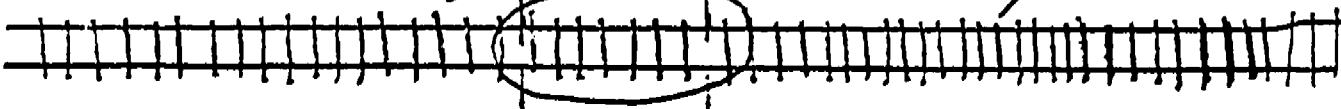
Existing residential

Proposed Eighth Street Extension

Proposed residential

Proposed crossing

A.T. S.F. Ry. Co. lead track



TOWNSEND AVENUE

Proposed residential

Proposed residential