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Decision 92-01-017 January 10, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Oceanside)
to construct a street crossing at)
grade at Third Street across the)
tracks of the Atchison, Topeka, and)
Santa Fe Railway Company.)

ORIGINAL

Application 90-04-045
(Filed April 26, 1990)

Vera M. T. Todorov, Attorney at Law, for the
City of Oceanside, applicant.
Messrs. Hill, Farrer & Burrill by R. Curtis
Ballantyne, Attorney at Law, for The
Atchison, Topeka and Santa Fe Railroad
Company; James P. Jones, for The United
Transportation Union; Ron Scolaro, for
Amtrak; and Sharon Greene and Joanna Capelle,
for Los Angeles - San Diego Corridor Agency;
protestants.
Raymond R. Toohey, for the Safety Division.

OPINION

The City of Oceanside (Oceanside) seeks authority to construct an at-grade crossing across the main line tracks of The Atchison Topeka and Santa Fe Railway (AT&SF) at Third Street in Oceanside. The application is protested by AT&SF, the United Transportation Union (UTU), Amtrak, Los Angeles - San Diego Corridor Agency (Corridor Agency). The Commission's Safety Division filed an appearance and expressed its opposition to the application.

Public hearings were held before Administrative Law Judge O'Leary at Oceanside on November 8, 1990, January 3, 4, 30, and 31, 1991. The matter was submitted subject to the filing of late-filed Exhibit 39 and the filing of concurrent briefs by the parties no later than September 3, 1991. Briefs were filed by Oceanside, AT&SF, and the Safety Division.

Background

On December 19, 1984, AT&SF and Oceanside entered into an agreement (relocation agreement) whereby AT&SF agreed to the relocation of its switching yard and related trackage from downtown Oceanside to the Camp Pendleton Marine Corps Base located north of Oceanside. The agreement also provided for the construction of a new at-grade crossing at Mission Avenue. The agreement also provided for the closing of the existing at-grade crossings at Third Street and Tyson Street.

On May 16, 1988, Oceanside filed Application (A.) 88-05-033 seeking authorization from this Commission for the construction of the Mission Avenue at-grade crossing. That application alleged in part that:

"The principal need associated with establishment of a crossing at grade for MISSION AVENUE is the improved circulation within the downtown area of Oceanside and related beach access.

"The immediate benefits gained for downtown include direct access from Interstate 5 (located about one mile east of the new crossing) to the waterfront area, including beaches and the new Oceanside Pier; better spacing of track crossings; improved visibility; safer road-railroad approaches including a boulevard with medians at the track crossing; improved crossing surfaces; and direct access to waterfront parking and recreational facilities.

"In addition to MISSION AVENUE serving as the central east to west arterial connecting freeway to waterfront, it will serve as a view corridor from the freeway out to sea. It also provides the most direct access to the Oceanside Transit center presently serving sixteen Amtrak trains daily. The center also serves multiple local transit bus routes, including some that cross the railroad. The new MISSION AVENUE crossing will provide a smoother crossing with improved visibility for drivers of transit buses.

"The MISSION AVENUE crossing is included in the Master Street Plan for Oceanside and was a consideration in switching yard relocation agreements and local coastal plan certification."

A.88-05-033 was not protested. It is apparent that no protest was filed by AT&SF because of the terms of the relocation agreement. On August 24, 1988, we issued Decision (D.) 88-08-053 authorizing Oceanside to construct Mission Avenue at grade across the tracks of the AT&SF.

In June of 1989, the Mission Avenue crossing was opened and the Third Street crossing was closed. The Tyson Street crossing was closed prior to the filing of A.88-05-033. Mission Avenue is located one block south of Third Street.

This application seeks the reopening of the same at-grade crossing that was closed due to the opening of the crossing at Mission Avenue.

Applicant's Position

Oceanside is proceeding to redevelop the area which formerly embraced the AT&SF switching yard and related trackage. Pursuant to that redevelopment process a major tourist commercial development is planned for a nine-square block area in the immediate vicinity of the pier. The pier which protrudes as an extension of Third Street westerly into the Pacific Ocean is the focal point of the beach area. Plans for projects within the nine-square block area have been prepared by Catellus Development Corporation and Keenan/Watkins Redevelopment Group.

Brian Johnson, the project manager for Catellus Development Corporation (Catellus), testified that Catellus has five blocks parallel on both sides of the railroad track between Mission and Fifth Street. The redevelopment project in the pier area calls for a mixed-use residential/commercial development adding about 318 residential units, 20,000 square feet of office space, 80,000 square feet of retail and restaurant space, and approximately 1,200 automobile spaces on both sides of the tracks.

To make the project economically attractive and feasible, a circulation "loop" should allow traffic to enter west on Mission, north along Myers, and logically east on Third Street. Mr. Johnson added that an underground or overhead crossing creates a physical barrier to pedestrians and an unattractive alternative to an at-grade crossing.

Howard Meachum, a licensed architect and employee for the Keenan/Watkins Redevelopment Group (Keenan/Watkins), testified that they have two parcels: Parcel 1, bounded by Mission, Hill, Tremont, and First, is east of the pier area and east of the railroad tracks, and is not located within the nine-square block area; parcel 2, bounded by First, Fifth, Myers, and Pacific streets, is within the nine-square block area. On parcel 2, Keenan/Watkins will develop a mixed-use project of 120 condominiums, 320 vacation time-share condominiums, 240 hotel rooms, 1,500 parking spaces, and 80,000 to 100,000 square feet of retail space. Mr. Meachum emphasized the existence of "activity centers" (i.e., center generating a lot of pedestrian traffic in and around the pier area) including the transit center and the civic center complex. He further indicated that Third Street was the natural pedestrian corridor from those centers and again emphasized the need for a natural "loop" for vehicular traffic to Third Street. He indicated plans calling for a specialty retail center, similar to the recently constructed Sea Port Village in San Diego, and a pedestrian promenade on Pacific Street to the west of the project. He further testified that the Third Street crossing was necessary if the development was to have visibility and accessibility.

James M. Watkins, resort developer with Keenan/Watkins, has been in resort development for over 35 years. He testified the Keenan/Watkins project could cost between \$150 million to \$200 million to construct and that transient occupancy and sales taxes could generate \$3 million per year for the City of Oceanside. He

doubted the economic viability of the project absent the reopening of the Third Street crossing. He also felt that there would be less criminal activity from an at-grade crossing than a grade separation.

Oceanside also presented testimony by representatives of its police and fire departments both of whom advocated the opening of the Third Street crossing in order to reduce response time to the beach and pier area in the event of emergencies. The aquatics superintendent for the beach lifeguard services testified that average attendance at the beach during the summer is 21,000 people per day. He also advocated the opening of the Third Street crossing in order to reduce emergency response time, especially paramedics, to the area.

AT&SF and Safety Division's Positions

AT&SF and the Commission Safety Division both argue that any new crossing at Third Street should be a separated grade crossing rather than an at-grade crossing. They also argue that Oceanside should be bound by the relocation agreement.

Oceanside did not prepare or present a specific engineering study on the possibility of an underpass grade separation. A design study for an overcrossing (Exhibit 8) was presented by Oceanside. The City Engineer testified that a separated grade structure would not be feasible.

Mr. Rudy San Miquel, the manager of public projects for AT&SF, testified that he is responsible for the monitoring and handling of grade crossing applications within the State of California and elsewhere. In that capacity he is involved with separated grade and at-grade crossings. Although he is not a civil engineer, Mr. San Miquel testified that he has testified as an expert in numerous crossing applications on behalf of AT&SF before this Commission.

Mr. San Miquel submitted preliminary drawings which indicate that an underpass could be constructed with minimal impact on surface streets in the vicinity of the proposed crossing.

An associate transportation engineer of the Commission's Safety Division presented testimony and a report (Exhibit 38). This witness concluded that a grade separation at the locations is feasible. With respect to the feasibility, the witness concluded in Exhibit 38, that if a grade separation were ever to be built at Third Street, now would be the time to do so. All four quadrants of the proposed crossing site are undeveloped and free of structures.

Discussion

The Public Utilities (PU) Code, § 1201, provides that no public road, highway, or street shall be constructed at grade across a railroad track without prior permission from this Commission and places exclusive jurisdiction with this Commission to require, where in our judgment it would be practicable, a separation of grades. (PU Code § 1202.) The reason for this latter requirement is that railroad grade separations constitute ultimate protection, since all grade crossing accidents and delays then are eliminated. It has long been recognized that the Commission should not grant applications for crossings at grade where there is a heavy movement of trains, unless public convenience and necessity absolutely demand such a crossing. (Mayfield v. S.P. Co. (1913) 3 CRC 474.) The advantages which might accrue by way of added convenience and financial benefit are outweighed by the dangers and hazards attendant upon a crossing at grade. Accident incidents are related to the number of crossings; therefore, grade crossings should be avoided whenever it is possible to do so (Kern County Bd. of Supervisors (1951) 51 CPUC 317).

Amtrak currently operates 16 passenger trains a day (8 round trips) between Los Angeles and San Diego. Additional Amtrak trains, as well as several commuter trains, are planned for the near future. AT&SF also operates on an average 6 trains daily (3 round trips) over the proposed Third Street crossing.

We have stated:

"Today in this State a proponent who desires to construct a new at-grade crossing over mainline railroad trackage carrying any appreciable volume of passenger traffic has a very heavy burden to carry. Against the aforesaid formidable backdrop of fundamental statutory and professional opprobrium, he must convincingly show both that a separation is impracticable and that the public convenience and necessity absolutely require a crossing at grade." (City of San Mateo, SoPac Transp. Co. (1982) 8 CPUC 2d 573.)

It is incumbent upon municipalities to include separated grade crossings in redevelopment plans wherever practicable. When a separated grade is not practicable, an application for an at-grade crossing should include engineering studies showing in precise detail why a separated crossing is not practicable. Oceanside has not met its burden of proof in this regard.

The evidence in this application is clear that a separated grade is practicable¹ especially in view of the redevelopment of the area.

1 And it should be carefully noted that the word used in the statute (and carried over to the requirements for applications in Rule 38(d) of our Rules of Practice and Procedure) is "practicable" rather than "practical". "Practicable" means being possible physically of performance, a capability of being used, a feasibility of construction. On the other hand "practical" connotes the means to build, the possibility of financing. For example: "A plan might be practicable in that it could be put into practice, though not practical because...too costly..." (Webster's New Dictionary of Synonyms (1973) p. 625.)

After full consideration of the evidence, we are of the opinion that the application should be denied.

Comments to the Proposed Decision

The ALJ's proposed decision was filed and mailed to the parties on December 2, 1991. Comments on the proposed decision were filed by AT&SF. None of the other appearances filed comments. The comments point out minor inaccuracies and certain typographical errors. This decision makes changes in the ALJ's proposed decision to correct the minor inaccuracies and typographical errors. The comments also suggest a revision to Finding of Fact 10 which has been adopted.

Findings of Fact

1. Oceanside and AT&SF entered into a relocation agreement which provided for the following:

- a. The relocation of AT&SF's switching yard from downtown Oceanside to the Camp Pendleton Marine Corps Base;
- b. An at-grade crossing over AT&SF's main line tracks at Mission Avenue; and
- c. The closure of the at-grade crossings at Tyson and Third Streets upon the opening of the Mission Avenue crossing.

2. Oceanside seeks the reopening of the at-grade crossing at Third Street.

3. Mission Avenue is located one block south of Third Street.

4. The Oceanside pier which protrudes into the Pacific Ocean from Third Street is the focal point of Oceanside's beach area.

5. A major tourist commercial development is planned in the immediate vicinity of the pier, which could cost in excess of \$150 million dollars.

6. The city engineer of Oceanside concludes that a separated grade is not feasible; however no specific study regarding the possibility of separated grade in the form of an underpass was

presented by Oceanside. A design study for an overpass was presented by Oceanside.

7. Evidence presented by both AT&SF and the Safety Division indicates that an underpass could be constructed with minimal impact on surface streets in the vicinity of the proposed crossing.

8. Amtrak currently operates 16 passenger trains a day (8 round trips) and AT&SF operates an average of 6 trains daily (3 round trips) over the proposed crossing.

9. Public Safety requires that crossings be at separated grades at railroad mainline tracks wherever practicable.

10. A grade separation at Third Street has been shown to be practicable.

Conclusion of Law

The application should be denied.

ORDER

IT IS ORDERED that Application 90-04-045 is denied.

This order is effective today.

Dated January 10, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President

JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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

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NEAL J. SCHULMAN, Executive Director