

Decision No. 1587A.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application
of the TOWN OF SAN ANSELMO, a
municipal corporation, for permis-
sion to install a grade crossing
over the property, right of way
and tracks of the NORTHWESTERN
PACIFIC RAILROAD COMPANY.

Application No. 11060.

Robert W. Harrison, for the Applicant,

Stanley Moore, for Northwestern Pacific Rail-
road Company.

BY THE COMMISSION:

O P I N I O N

In this application the Town of San Anselmo seeks per-
mission to construct a public crossing at grade across the tracks
of the Northwestern Pacific Railroad Company, said crossing to lie
between Main Street and San Anselmo Avenue and to constitute an
extension of Tamalpais Avenue from San Anselmo Avenue to Main
Street.

A public hearing was held at San Anselmo on August 10,
1925, before Examiner Austin.

The crossing applied for in this proceeding is located
across the double track line from San Anselmo to Manor immediately
northwest of the electric substation or power house which is about
four hundred and fifty feet north of the San Anselmo passenger sta-
tion building. The crossing, tracks and power house all lie in the
station grounds and yards of the railroad company which are triangular
in shape and about three hundred and eighty feet across at the widest
portion, which is near the proposed crossing. In connection with the

proposed crossing, it is proposed to construct a road forty feet in width across the station grounds or yard parallel with and along the north side of the power house. This road will bend southwest at the crossing and connect with San Anselmo Avenue and Tamalpais Avenue extended. The station grounds are paralleled on their west side by San Anselmo Creek, which crosses the railroad from the east side about four hundred and fifty feet north of the proposed crossing and recrosses to the east side about seven hundred and fifty feet south of the proposed crossing. The station grounds and yard are bounded on the east by the Red Hill and Ross Landing Road, also known as Main Street, and on the north by the San Rafael and Olema Road. These two roads meet at the apex of the triangle formed by the yard and station grounds. The yards, right of way and San Anselmo Creek are paralleled on the west by San Anselmo Avenue. The San Rafael suburban electric tracks and a wye track, connecting that line with the track running to Fairfax, cross Main Street near its connection with the San Rafael-Olema Road. The two tracks are about ninety-five feet apart at the points of crossing. The road leading through the station and yard grounds from Main Street past the power house to the proposed crossing, leaves Main Street just north of the point where the San Rafael electric suburban track enters its main street crossing.

The two public crossings nearest to the proposed crossing are located at Tunstead Avenue about eight hundred feet to the south and Madrone Avenue about eighteen hundred feet to the north. The Tunstead Avenue crossing is situated in the business district of San Anselmo and is about three hundred and fifty feet from the San Anselmo Fire Department, which is situated on the west side of San Anselmo Avenue between Tunstead Avenue and Laurel Lane. The Bolinas Avenue crossing serves the residential district at the north end of San Anselmo. The crossings serving the southerly portion of San Anselmo are located at Ross Avenue.

about six hundred feet south of the Tunstead crossing and at Bolinas Avenue about eleven hundred feet south of Ross Avenue.

The applicant desires the proposed crossing as a short and convenient route from the junction of Tamalpais Avenue with San Anselmo Avenue to the junction of Main Street with the San Rafael and Olema Road thus giving traffic from three directions on the west side of San Anselmo Creek a direct outlet to San Rafael. The record shows that prior to the 12th day of February, 1925, a crossing and roadway existed and had been in use for many years over the route proposed in this proceeding; that on said 12th day of February, the San Anselmo Creek Bridge on this roadway was washed out and that since that time the roadway has been closed to all traffic except team traffic loading or unloading from cars spotted on the team track adjacent to and parallel to the north side of said roadway from Main Street to the west end of the power house. The City proposes to build a new bridge across the creek and to construct a forty foot roadway along the route of the old road in case the application for the crossing is granted.

The record shows that although this road was open to the public for a long period of years prior to the washing out of the bridge, the Superior Court of the State of California in and for the County of Marin, ordered, adjudged and decreed on the 11th day of September, 1924, in suit brought by Northwestern Pacific Railroad Company on November 10, 1921; that the Northwestern Pacific Railroad Company is the owner of, and entitled to the possession of all of the land covered by the crossing and road across its station grounds and that said crossing and road had never been dedicated to public use or continuously or at all open or adversely used as a public street by the public or any persons whatsoever. The Town of San Anselmo was thereby enjoined and restrained from entering upon said strip of land.

The Northwestern Pacific Railroad Company contends "that the Railroad Commission has no jurisdiction to declare the strip of land, owned by and necessary for the business of the railroad, a public street or thoroughfare and that neither the Railroad Commission or any court can take said strip of land and devote the same to public use without compensating the Railroad Company for such taking." The railroad company further contends that Section 43 of the Public Utilities Act "shall cover highways crossing the track of a railroad corporation at grade; * * * * * that power over crossings of highways across the tracks of a railroad does not authorize the opening of a crossing through the station grounds or yards of a railroad where no public thoroughfare exists."

There is no doubt in the mind of the Commission but that it has jurisdiction to act in this proceeding under Section 43 of the Public Utilities Act. The Act does not limit the Commission's jurisdiction to a particular type of track but is inclusive of all types of tracks from the very use of the word "track," without qualifications as to the use of the track or its relation to the position of/^{any} public road which it is desired to construct across such track. Whether or not the municipal authorities in any particular case desire to obtain the right of way up to the railroad before applying to the Commission is, in our opinion, of minor importance and has no bearing on the findings of this Commission as to the hazard involved or as to public convenience and necessity for the crossing. In any event, under the Act, the consent of this Commission must be obtained before the crossing may be constructed, and in this proceeding it would appear that the applicant is following the economical procedure by endeavoring to get the consent of this Commission prior to obtaining a right-of-way across the railroad.

The testimony of applicant was to the effect that the pro-

posed crossing would give a short direct route to San Rafael, and relieve a portion of the traffic from crossing the track of the San Rafael interurban line at Main Street as it is forced to do when going to San Rafael via the Timstead Avenue crossing. It was also stated that the fire department could make good use of the proposed route. The evidence shows that it is not practical to construct a separation of grades at the site of the proposed crossing on account of the location of San Anselmo Creek between the track and San Anselmo Avenue. It would be possible to construct a grade separation to the north of the proposed crossing but the separation would probably be as hazardous as a grade crossing as it would require steep grades of approach and a turn in the subway to pass under the railroad tracks. On account of the proximity of the creek the cost of a grade separation would be very high.

The railroad company objected to the construction of the crossing on account of its location through the station grounds and yard and on account of the hazard involved. The location of a forty foot road along the north wall of the power house would stop the railroad from extending its power house in that direction or from rearranging its yard and building additional yard tracks to the south of the present team track. The former objection is not unsurmountable as the power house could be extended to the south or east, if necessary, without undue expense. The amount of yard track space in this yard is limited, however, and the future growth of the community may require the track extensions proposed by the railroad in its Exhibit No. 7. There is no doubt but that a real public convenience and necessity should exist before this Commission should grant a crossing through the yard facilities of a railroad, particularly where opportunity for expanding those

facilities is meager, as it is here.

The hazard involved at the proposed crossing appears greater than at the average crossing. To the west of the crossing the banks of San Anselmo Creek are bordered with willows, which obstruct the view of the track to the south to some extent (N.W.P. Exhibits No. 5 and No. 6). On the east side of the crossing the view to the south is badly obscured by the power house, its southwest corner being but 14 feet from the center line of the north bound track (Exhibit No. 4). The location of the roadway thru the station ground from the crossing to Main Street involves an additional hazard due to its proximity to the present team track. The distance from the team track center line to the paved portion of the roadway as planned would be ten feet; from the side of a $9\frac{1}{2}$ foot car to the edge of the roadway would be $5\frac{1}{2}$ feet. A small truck 14 feet long would project $8\text{-}\frac{3}{4}$ feet into the roadway. There would appear to be a considerable hazard if high speed fire apparatus attempted to dash along this road when trucks are unloading from the team track and with travel coming in the opposite direction.

The fire house is so close to the Tunstead Avenue crossing that it would appear of practically no benefit to open the proposed crossing as additional fire protection under these conditions. The railroad company requested that the proposed crossing be protected by an automatic flagman at the expense of applicant in case the crossing were opened. This request appears reasonable as inspection shows that the former crossing was protected by a light signal installed by the railroad which was removed after the crossing was closed.

The applicant testified that the Tunstead Avenue crossing in the business district was congested and hazardous due to the close

proximity of buildings to the west side of the railroad right of way, the narrowness of the crossing and the fact that the Fairfax and Manor trains do considerable switching over the crossing. It was also stated that the number of train movements were double those over the proposed crossing and that the crossing was frequently blocked at night but not for very long periods. It appears, however, that conditions are about to be improved at this crossing by widening the crossing to the south and the railroad officials intimated on the ground that a change would be made in the switching facilities which would lessen the number of switching movements over the crossing. Full use of the entire width of the widened crossing can be obtained by prohibiting parking on the west approach between San Anselmo Avenue and the crossing.

After giving due consideration to all of the evidence, it appears to the Commission that applicant has failed to show that the public convenience and necessity to be served by the proposed crossing offsets the hazard involved at the crossing, plus the inconvenience and obstruction to railroad facilities caused by the building of the road through the railroad yard. It therefore appears that the application should be denied.

O R D E R

The Town of San Anselmo, having on May 9th, 1925, made application for permission to construct a crossing at grade across the tracks of the Northwestern Pacific Railroad Company as an extension of Tamalpais Avenue in an easterly direction through the station grounds and yard to Main Street, a public hearing having been held, the Commission being apprized of the facts, the matter being under submission and ready for decision,

IT IS HEREBY ORDERED that the above entitled application be and the same is hereby denied without prejudice.

Dated at San Francisco, California, this 15th day
of January, 1926
of ~~January, 1926~~

H. B. Bourdige

C. Schuyler

George D. Squires

Leon Whitell
Commissioners.