

Decision No. 16277

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
the Town of Larkspur, County of Marin,  
State of California, to remove present  
wooden bridge and approaches across  
the right of way of the Northwestern  
Pacific Railroad at Alexander Avenue  
in said town and replace same with a  
reinforced concrete bridge and ap-  
proaches.

ORIGINAL

Application No. 11800.

H. C. Symonds, for the Town of Larkspur, Applicant,  
and Town of Corte Madera.

R. W. Palmer and M. L. Gillogly, for Northwestern  
Pacific Railroad Company.

BY THE COMMISSION:

O P I N I O N

In the above-entitled application, the Town of Larkspur asks permission to remove an existing wooden overhead crossing over the tracks of the Northwestern Pacific Railroad Company at Alexander Avenue and to replace same with a reinforced concrete bridge and approaches and for an order of this Commission apportioning the cost of such replacement between the Town and the railroad company.

A public hearing was held before Examiner Satterwhite at San Rafael on October 26th, 1925, at which time the matter was submitted. Subsequently briefs were filed by the interested parties.

Counsel for applicant, Town of Larkspur, questioned the jurisdiction of this Commission in a matter of this nature, wherein the town desires merely to replace a crossing other than at grade, and to assess the cost of the improvement to the benefited parties. Counsel

for protestant, Northwestern Pacific Railroad, urged that this was a private crossing and that therefore the matter should be dismissed. Counsel for protestant further urged that even if it could be shown that the crossing had become public through use, no right existed whereby the easement so acquired could be extended as herein proposed to provide for a wider roadway.

The Town of Larkspur is divided in a north and south direction by the main line of the Northwestern Pacific Railroad Company. The business district and a portion of the residential district lies to the west of the railroad; the remaining residential section is east thereof. The overhead crossing in question is the only existing roadway between the two portions of Larkspur thus divided by the railroad.

The Town of Corte Madera lies south of Larkspur and is likewise divided by the railroad right of way, the business district lying to the east of the railroad. Traffic between the two portions of Corte Madera uses one grade crossing situated at Redwood Avenue.

The State Highway from Sausalito to San Rafael lies entirely on the west side of the railroad tracks in this vicinity and the proposed improvement of the overhead bridge does not involve any change in routing of State Highway traffic.

The evidence shows that the existing wooden bridge was built about 1911 by The Union Trust Company, et al., under the terms of an agreement entered into between these private parties and the Northwestern Pacific Railroad Company and dated January 30th, 1911. It appears that this agreement has never been placed on record in the office of the County Recorder of Marin County. The evidence further shows that the approaches to this bridge have never been closed to public use nor have any signs been placed on the bridge, calling the attention of the traveling public to the private nature of the bridge. The Town Engineer testified that a map of Palm Hill Subdivision, recorded on June 2nd, 1913, shows Alexander Avenue and Locust Avenue as

opened and dedicated streets to the railroad property line and further shows the present wooden bridge in place.

From the above, we are led to the conclusion that for the intents and purposes of Section 43 of the Public Utilities Act the crossing in question is a crossing of a public road at separated grades over the tracks of a railroad corporation. Under Section 43-b this Commission is vested with the exclusive power to prescribe the terms upon which said installation shall be made and the proportions in which the expense of the construction, alteration, relocation or abolition of such crossings or the separation of such grades, shall be divided between the railroad and the Political Subdivision affected. It appears to the Commission that it has, under this section of the Public Utilities Act, jurisdiction in the matter now before it. For former decisions in which such jurisdiction has been held, see Decision No. 3718 (11 C.R.C. 392), Decision No. 7029 (17 C.R.C. 681) and Decision No. 6771 (not printed). The latter decision covers a situation which appears somewhat analagous to the present case.

Counsel for protestant argued, as before stated, that even if the roadway across protestant's property had become public by use, no right existed by which the easement so acquired could be widened as herein proposed so as to provide a wide roadway. We are of the opinion that ample authority exists in the laws of this state to enable the applicant to acquire by proper procedure such property rights or easements as may be required to provide public highway of necessary and convenient capacity. The duty of this Commission under Sections 43-a and 43-b of the Public Utilities Act is to determine the necessity for a public crossing over a railroad, the manner of crossing, including the adequacy of design, and to apportion the costs of construction and maintenance. This proceeding does not appear to be one in which we are called upon to determine the matter of property damage or cost of acquisition of this additional easement.

The overhead crossing under consideration serves the residential district of Larkspur on the east side of the tracks. The location at which the present overhead bridge is constructed is not only well suited for a grade separation, on account of the railroad tracks being in a cut about 12 feet deep, but it is the location which geographically most satisfactorily serves the public convenience and necessity in this vicinity, as there is no other satisfactory location for a substitute crossing at grade or otherwise within the limits of Larkspur which would as satisfactorily serve the same public need, even were a consideration of the hazard involved by the large number of train movements in this vicinity entirely neglected.

The territory on the east side of the track is essentially a residential district. At the present time there are about 11 houses in this tract and a large number of unimproved lots. A count showed that about 55 school children cross on the bridge on school days to attend the grammar school which is located just west of the crossing. The Town of Larkspur has undertaken a paving program, as shown by its Exhibit "B", which includes the paving of a number of the streets and connection with one of the streets of Corte Madera on the east side of the track. When these improvements are completed, it is believed that some of the traffic from Corte Madera, now using the existing grade crossing at Redwood Avenue, will be diverted therefrom and will use the proposed new overhead bridge.

That the present wooden bridge is unsafe and inadequate is shown by the testimony introduced to the effect that the approaches to the bridge are safe only for axle loads not exceeding 2300 pounds and the truss is safe only for axle loads not exceeding 5000 pounds. Furthermore, there is no portal or sway bracing between the bridge trusses which results in excessive vibration when a vehicle crosses the bridge. Some of the truss members are of knotty timber and others are badly weathered.

It thus appears that the bridge is unsafe for practically any truck or even for heavy passenger automobiles. The Larkspur fire truck, having an axle load of 11,000 pounds, cannot use the bridge in reaching fires east of the track and must be routed by way of the Redwood Avenue crossing in Corte Madera, an additional distance of over one-half mile and through another municipality.

The plans entered in evidence by the Town of Larkspur for the new bridge show a roadway for vehicles with a clear width of 20 feet and sidewalk width of 5 feet. The existing structure has a clear roadway for vehicles of only 15 feet 4 inches and no sidewalk area whatsoever, which is not sufficient to allow for two automobiles to pass each other on its entire length of 190 feet. The approach grades are steep and it is difficult for a motorist on one side to see whether a vehicle is approaching on the other side. These conditions make it necessary, at times, for one autoist to back up in order to allow another to proceed. These conditions are corrected in the new design. The railroad clearances are substantially the same in the new structure as in the old, both designs providing for clearances which are in conformity with General Order No. 26-a of this Commission. The new structure, however, provides space for an additional railroad track on the east side of the present main line, which provision was not made in the old structure. The cost of the new structure is estimated by the Town Engineer to be approximately \$12,000., this low cost being possible by reason of the advantageous location of the bridge.

After a consideration of all of the testimony in this application, we are of the opinion that public convenience and necessity and public safety require the replacement of the existing wooden structure with a reinforced concrete bridge as applicant desires.

The evidence shows that the Town of Larkspur will receive benefits from the proposed improvement in that the safety and convenience of the residents and of the traveling public using the bridge

will be increased. Protection against fire to the residents east of the track will be materially improved.

The Northwestern Pacific Railroad Company will benefit in that some traffic now using grade crossings will be attracted to this crossing at separated grades and consequently lessen the liability of accident on the part of the Railroad Company. For instance, relief of traffic to some extent on the Redwood Avenue crossing and consequent lessening of hazard and liability to the Railroad Company will result upon completion of the proposed viaduct. The safety of the passengers in trains of the Railroad will be increased by the removal of an unsafe overhead structure. Space for an additional track, which the superintendent of railroad testified may be necessary in the near future, will be provided.

As set forth in Decision No. 6875 (17 C.R.C. 527), Decision No. 14244 (25 C.R.C. 552) and Decision No. 14872 (26 C.R.C. 400), a railroad corporation is under the obligation of providing means whereby the public may have convenient and safe access from one side of the railroad right of way to the other. The record indicates that the proposed replacement is the most feasible, inexpensive and safe method of providing such access.

In order that residents in Corte Madera may have convenient access to the proposed grade separation, applicant should provide paved roadway not less than twenty (20) feet in width from the bridge to a connection with an existing north and south paved roadway within Corte Madera. Exhibit "B" indicates that applicant proposes such a roadway, and the order will be conditioned to that effect.

After careful consideration of all of the evidence, we conclude that the cost of removing the existing wooden viaduct and replacing same with a reinforced concrete viaduct should be divided fifty (50) per cent to the municipality and fifty (50) per cent to the railroad, and the order will so provide.

## O R D E R

A public hearing having been held in the above entitled matter, the Commission being apprised of the facts, the matter being under submission and ready for decision,

IT IS HEREBY FOUND AS A FACT, that the crossing of Alexander Avenue in the Town of Larkspur over the tracks of the Northwestern Pacific Railroad Company is a crossing at separated grades of a public road over the tracks of a railroad corporation.

IT IS HEREBY FURTHER FOUND AS A FACT, that public convenience and necessity and public safety require that the existing wooden bridge carrying Alexander Avenue over the tracks of the Northwestern Pacific Railroad Company be replaced by a reinforced concrete viaduct substantially similar to that shown in Exhibit "A" attached to the application, therefore based upon these findings of fact and other findings of fact contained in the opinion preceding this order,

IT IS HEREBY ORDERED, that the Town of Larkspur and Northwestern Pacific Railroad Company be and they are hereby authorized and directed to remove the existing wooden bridge at Alexander Avenue across the tracks of the Northwestern Pacific Railroad Company and to replace same with a reinforced concrete structure carrying the Alexander Avenue over the railroad subject to the following conditions:

(1) Said crossing shall be constructed with clearances in conformity with this Commission's General Order No. 26-a.

(2) Said crossing shall be constructed substantially in accordance with the plans attached to the application and marked Applicants' Exhibit "A".

(3) A paved roadway not less than twenty (20) feet in width shall be constructed and maintained by the Town of Larkspur on the east side of the railroad right of way, beginning at or near the east approach of the viaduct herein authorized and ending at a point on the northerly boundary of the Town of Corte Madera, said point to be coin-

cident with the center line of an existing north and south paved roadway in the Town of Corte Madera, and to lie not further east than Lot 14 nor further west than Lot 9 of Palm Hill Sub-division. Town of Larkspur shall cause suitable road signs to be erected and maintained, calling attention to this route.

(4) Applicant shall, within thirty (30) days thereafter, notify this Commission, in writing, of the completion of the installation of said crossing.

IT IS HEREBY FURTHER ORDERED that the cost of constructing the reinforced concrete structure and of removing the existing wooden bridge shall be borne fifty (50) per cent by Applicant, Town of Larkspur, and fifty (50) per cent by Northwestern Pacific Railroad Company. The cost of paving up to the structure shall be borne by applicant. The cost of maintenance of said reinforced concrete viaduct shall be borne by applicant. No portion of the cost herein assessed to applicant for the construction or maintenance of said crossing shall be assessed by applicant, in any manner whatsoever, to the operative property of Northwestern Pacific Railroad Company.

The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper.

For all other purposes the effective date of this order shall be twenty (20) days from and after the making thereof.

Dated at San Francisco, California, this 25<sup>th</sup> day of March, 1926.

L. B. Brundage  
C. J. Seaver  
Frank J. C. ...