

Decision No. 16561.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of Northwestern Pacific Railroad Company and the Town of San Anselmo, requesting the closing of the first grade crossing east of San Anselmo in the County of Marin, State of California.

ORIGINAL

Application No. 11,892.

E. T. Zook, for Northwestern Pacific Railroad Company.  
Thos. P. Boyd, for August J. Land and R. A. Carey.  
S. P. Whitwell, for Ross Valley Chamber of Commerce.  
R. D. Box, for Ross Valley Chamber of Commerce.  
E. S. Rake, for Grosjean & Company and Tamalpais Theatre.

BY THE COMMISSION:

O P I N I O N

The above entitled joint application of the Northwestern Pacific Railroad and the Town of San Anselmo was filed on October 27th, 1925. The Commission being of the opinion that a public hearing was not necessary in the proceeding made its Decision No. 15,706 therein on November 30, 1925, in which permission was granted the joint applicants to close the first crossing east of Main Street in San Anselmo as requested in the application.

On December 15th, 1925, a petition, signed by a large number of property owners, protesting against the closing of the crossing, was filed with the Commission. Pursuant to instructions from the Board of Trustees, the Town Clerk filed a letter with the Commission requesting the establishment of a crossing for pedes-

*file*

trians at the site of the abandoned crossing. On the 29th day of December, 1925, the Commission made its order setting aside its order in Decision No. 15,706, and reopened the matter for public hearing. Public hearing was held at San Anselmo on January 11, 1926, before Examiner Austin, at which time the matter was submitted.

The crossing involved herein is on the San Rafael line of the suburban electric system of the Northwestern Pacific Railroad Company and is located about 940 feet east of the main street crossing near San Anselmo Station. The nearest public crossing toward San Rafael is located about 1150 feet east of the crossing under consideration. The railroad line from San Anselmo to San Rafael runs in an easterly and westerly direction and is paralleled on its north side by the San Rafael and Olema Road, which is now a portion of the State Highway, and on its south side by Greenfield Avenue through San Anselmo and a portion of San Rafael.

It is expected that Greenfield Avenue will ultimately be constructed as a through highway between San Rafael and San Anselmo. From the Main Street crossing in San Anselmo to the first crossing east of the one covered by this proceeding, Greenfield Avenue is adjacent to the railroad right-of-way. From the latter crossing through Highland into San Rafael, it is about 150 feet distant from the railroad. This roadway has only recently been paved and curbed and may ultimately take a considerable amount of traffic from the State Highway. The first crossing east of the crossing under consideration is situated opposite the entrance of Sequoia Drive into the State Highway and serves as a crossing connecting Greenfield Avenue with the State Highway and with Sequoia Drive and Park Way. Park Way and Sequoia Drive are the two principal roads serving Sequoia Park No. 1, a residence district lying

north of the State Highway between these two crossings. Anchovista Avenue, a rather steep road, only partially improved, enters the State Highway from Sequoia Park No. 1 at a point about 350 feet east of the crossing recently closed. Anchovista Avenue is approximately on the line between Sequoia Park No. 1 and the Anchovista Tract. Anchovista Tract is divided by Palm Avenue, another steep road, into two portions. The easterly portion is largely devoted to the Anchovista Hotel and cottages and the westerly portion contains approximately eight residences. The Anchovista Hotel and cottages are also served by a short narrow lane called Spring Lane.

Sequoia Park No. 2 is a residence section of approximately 75 homes lying north of the Anchovista Tract and Sequoia Park No. 1. Automobile traffic into both Sequoia Park Sections travels via Sequoia Drive, which is the only well paved street entering the State Highway from these two sub-divisions.

Warren Avenue enters the State Highway from the west side of the Anchovista Tract near the junction of the latter with Main Street. Inspection shows that that portion of Warren Avenue parallel with the State Highway is a paper street. Improvement of Greenfield Avenue has opened up considerable territory on the south side of the railroad for both residential and business property, giving access to San Rafael Heights, a subdivision near Highland, and Lincoln Park, a new sub-division near Main Street. There are at least 25 residences in San Rafael Heights between the crossing of Ross Valley Drive at Highland Station and the crossing opposite Sequoia Drive. Between the crossing under consideration and the first crossing east, opposite Sequoia Drive, there are only four residences and one large furniture store, the latter recently constructed. Several store buildings have recently been erected along Greenfield Avenue between Main Street and Lincoln Avenue. The

0148

lots from Lincoln Avenue to the crossing under consideration are vacant at the present time but are classified or zoned as good business property. At least 15 homes have already been constructed in Lincoln Park.

All of the sub-divisions heretofore mentioned lie on rolling hills, except that the business portion of Lincoln Park is on level ground adjacent to the main highways. Certain sections of Sequoia Park No. 1 and the land to the east thereof have very high deep cuts facing on the State Highway and these sections will probably not be improved for a very considerable period of time. A similar section of cut, 150 feet long, lies along the south side of Greenfield Avenue between the furniture store and the crossing under consideration. West of this cut a small portion of the property zoned as business property is occupied by a creek bed and will be very expensive to improve. There are no sidewalks yet constructed along Greenfield Avenue or along the State Highway, except for certain small sections in front of a few of the residences on the north side of the highway.

A number of people residing in the Anchovista Tract and in Sequoia Park No. 1 testified that it was very necessary for them to reach the business section in Lincoln Park facing on Main Street and Greenfield Avenue near Main. These residents claimed that traveling to this business section via the State Highway and the Main Street crossing is very hazardous, due to the heavy traffic on the Highway and the lack of proper sidewalks. They preferred to use the crossing which has been closed and Greenfield Avenue as the traffic is much lighter on that street, although it is also devoid of sidewalks.

Mr. Harvey E. Nelson, a furniture dealer who has recently established the large furniture store, previously mentioned, protested the closing of the crossing, claiming that he has a number of customers in Sequoia Park immediately opposite his store who

use this crossing and in addition the closing of the crossing would tend to cause him to lose transient customers who might be traveling west on the State Highway and who might change their minds about turning back after having proceeded approximately another 1000 feet to the next crossing west. Through travel to the east naturally would have passed the crossing recently abolished before they were aware of the existence of his store.

It would appear from the evidence that through traffic has small need for the crossing which has been closed, as through traffic would desire to continue on either the State Highway or Greenfield Avenue as far as possible before making a turn. This traffic would be amply served by the Main Street crossing, the crossing opposite Sequoia Drive, the Highland Station Crossing and crossings east thereof.

There does not appear to be more than a very local need for this crossing. The roads in San Rafael Heights lead either to the Highland Station crossing or the crossing opposite Sequoia Drive. Sequoia Park Subdivisions Nos. 1 and 2 must, by preference, use the Sequoia Drive crossing in order to reach Greenfield Avenue, on account of the very much superior condition of this street as compared to Anchovista Avenue. It would appear, then, that the convenience and necessity of the closed crossing would be derived largely from requirements of pedestrians living on the north side of the Highway desiring to reach Lincoln Park Subdivision and the business houses therein and such local automobile use as might enter the State Highway from the short steep minor roads entering it from the north. There may also be a small local use of this crossing by delivery wagons. However, as it is only 950 feet and 1150 feet to adjacent crossings to the west and east, this local use by automobiles would not appear to be greatly in-

~~0151~~

convenienced if forced to use these adjacent crossings, as the time required in reaching them and doubling back at speeds of from 15 to 20 miles per hour would vary approximately from 1-1/2 to two minutes. This appears to be no greater inconvenience than is required in the average large city where no left turns are permitted on the main streets, thus requiring a driver to drive completely around the block.

The Commission is of the opinion that in general it is not in the public interest to allow the creation of a hazard, due to the construction of pedestrian crossing at grade, merely because the local property owners have failed to take steps to have proper sidewalk facilities installed along the main thoroughfares. However, in this particular instance, considerable inconvenience will probably be caused the residents on the north side of the State Highway by lack of such a crossing pending the installation of proper sidewalks along that thoroughfare and under these conditions it appears reasonable to create a pedestrian crossing at this location pending the construction of such sidewalks. There does not appear to be sufficient need in this instance to reopen this crossing for vehicular traffic. In general, the elimination of crossings at grade tends to speed up train service which, in this instance, is in the interest of a large number of resident commuters. The hazard of accident at this point is also permanently eliminated.

Counsel for certain protestants in this proceeding contended that the Commission had no power to close the crossing under consideration, as this crossing along with others, was established by judgment of the Superior Court in and for the County of Marin, on March 21st, 1906, in an action brought by Martin B. Magnesen, plaintiff, against the North Shore Railroad Company,

defendant, predecessor in interest of the Northwestern Pacific Railroad Company. In this action the plaintiff alleged that the crossing in question had been established as a private crossing, pursuant to the terms of the right of way deed executed by one Patrick Hayes, former owner of the 150 acre tract adjacent to these crossings and on the south side of the railroad, to the North Pacific Coast Railroad Company, predecessor of the North Shore Railroad Company, the defendant in said action. By its judgment in this action, the Court "ordered, adjudged and decreed that Martin B. Magnesen, the plaintiff, do have and recover of and from the North Shore Railroad Company, (a corporation), said defendant, four (4) streets or crossings connecting his lands, situate, at its risk and expense, so as to leave each and all said specified streets or crossings entirely free and clear of said third rail; and that said defendant is hereby further perpetually enjoined, restrained and prohibited from interfering with plaintiff in opening up, establishing, laying out and maintaining each and all of the said four (4) streets or crossings, particularly hereinbefore specified, across the said defendants right-of-way and in the manner stated as aforesaid, and from doing or permitting any act or acts so as to hinder or impede plaintiff, or occupiers of said lands of plaintiff, or purchasers or successors in interest of plaintiff, from or in the free and uninterrupted use and enjoyment of said four (4) streets or crossings, or any of them, for the purpose of crossings; that this injunction shall not, and is not to, restrain or enjoin said defendant from the use and enjoyment of its railroad and its said right-of-way for the reasonable and proper working of railroad traffic, or any part thereof; and that plaintiff to have and recover from said defendant his costs herein, amounting to \$115.75."

It is contended by these protestants that they, as the

successors in interest of the plaintiff Magnesen, have a right to the free and uninterrupted use of this crossing, of which the Commission cannot deprive them. It will be noted that this judgment went no further than to establish the right to a private crossing as between the parties to the action, for the use of plaintiff therein, his successors in interest, and purchasers and occupiers of the tract formerly owned by Hayes. The rights of the public were not in issue nor decided in the action, so therefore, under the terms of the judgment itself the Commission is not precluded from determining the question of public convenience and necessity for the proposed crossing.

Moreover, we are of the opinion that under the power vested in it by the Constitution and the Public Utilities Act, (Sec.43), the Commission is clothed with jurisdiction to make such orders with relation to the opening, closing or alteration of grade crossings as the public interest may require, entirely independent of the provisions of any private contract between individuals assuming to restrict such action.

Our Supreme Court has held that the Commission may establish rates for a public utility service which will supersede the rates for such service previously fixed by private contract between the consumer and the company. This, it has been held, is a valid exercise of the police power which neither impairs the obligation of a contract nor deprives of property without due process of law.

Law vs. Railroad Commission, 184, Cal., 737, 195 Pac.423  
 (Citing earlier decisions to the same effect). A similar conclusion was reached by the United States District Court for the Northern District of California in a recent decision.

Market Street Railway Co. vs. Pacific Gas & Electric Co., 6 Fed. (2nd) 633, 635.



hw

We can see no distinction between the power to modify contract rates and the power to modify a private crossing agreement. Both alike rest upon the police power and are justified by changes in conditions which warrant the establishment of new rates or the establishment or abolition of a crossing when required by the necessities of the public. We, therefore, conclude that in the instant case the judgment referred to in no way precludes the Commission from abolishing this crossing for public use, wholly or in part.

Furthermore, physical conditions in this vicinity have changed considerably and alter the necessity of the number of crossings at grade. At the time Patrick Hayes entered into his agreement with the North Pacific Coast Railroad Company and at the time judgment was rendered by the Superior Court in and for the County of Marin there was no improved highway such as Greenfield Avenue parallel to the railroad company on the south side thereof and between it and the lands formerly owned by said Patrick Hayes. At the present time Greenfield Avenue, a well paved and curbed highway, affords access to and from this property toward both San Rafael and San Anselmo, directly by crossings at Highland, at a point opposite Sequoia Drive, and at Main Street.

The Commission is of the opinion that the crossing under consideration is not necessary for vehicular traffic and that the permission to close same, granted by the Commission to the Town of San Anselmo and to the Northwestern Pacific Railroad Company, in its Decision No. 15,706, dated November 30th, 1925, should again be granted, providing, however, that a crossing for pedestrians should be reopened in its stead.

O R D E R

The Northwestern Pacific Railroad Company and the Town

of San Anselmo, having made application to the Commission for permission to close the first highway crossing at grade east of Main Street in San Anselmo, across the tracks of the San Rafael Suburban Electric Line of the Northwestern Pacific Railroad Company, public hearing having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision,

IT IS HEREBY FOUND AS A FACT, that public convenience and necessity do not require the continuance of a public crossing at grade for vehicular traffic at the point above indicated.

IT IS HEREBY FURTHER FOUND AS A FACT, that public convenience and necessity require the establishment of a pedestrian crossing at grade at the point above indicated, pending the construction of sidewalks along the San Rafael and Olema Road between Sequoia Drive and the junction of San Rafael and Olema Road with Main Street, San Anselmo, therefore,

IT IS HEREBY ORDERED, that permission and authority be and they are hereby granted to the Northwestern Pacific Railroad Company and to the Town of San Anselmo, to abolish for public use with respect to vehicular traffic, the first grade crossing east of Main Street, at Railroad Engineer Stations 524+56.7 and 525+16.7, in the Town of San Anselmo, County of Marin, State of California, and as indicated as No. 5 on the Map (C.E.1633-36) attached to the application; and that said crossing shall not be re-established as an open public crossing without the consent of this Commission being first obtained therefor.

IT IS HEREBY FURTHER ORDERED, that Northwestern Pacific Railroad Company be and it is hereby directed to construct a crossing for pedestrians at Engineer Station 524+56.7 or its near vicinity, subject to the following conditions, namely:

(1) The cost of the installation of such pedestrian crossing and the cost of its maintenance thereafter shall be borne by the Northwestern Pacific Railroad Company.

(2) Said pedestrian crossing shall be abolished when sidewalks shall have been constructed along the San Rafael and Ol-ema Road from Sequoia Drive to the junction of said Road with Main Street in San Anselmo.

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

(4) The Commission reserves the right to make such further orders relative to the location, construction, operation, maintenance and protection of said pedestrian crossing as to it may seem right and proper and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The authority herein granted shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 26<sup>th</sup> day of April, 1926.

H. B. Prudig  
C. Seavey

Leon Whiteley

Commissioners.