

Decision No. 17032.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

DERBY ESTATE COMPANY, a corporation,  
Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a corporation,  
Defendant.

**ORIGINAL**

Case No. 2,213.

Mr. A. K. P. Harmon, for the Derby Estate  
Company.

Mr. H. W. Hobbs, for Southern Pacific  
Company.

BY THE COMMISSION:

O P I N I O N

This is a proceeding filed by the Derby Estate Company as a complaint against the Southern Pacific Company in which a private crossing is asked by complainant over the tracks of defendant. Defendant Southern Pacific Company has refused its consent to the construction of this private crossing at grade across the tracks of the so-called "Alameda Horseshoe Line" of its Alameda, Oakland and Berkeley suburban service near Fruitvale Station. Public hearing was held before Examiner Satterwhite at San Francisco on May 14th, 1926.

The Derby Estate Company owns a tract of land lying in the southwest corner of the intersection formed by the right-of-way of the Southern Pacific Company's line through Fruitvale and the right-of-way of the above mentioned Horseshoe Line which is

parallel to and west of Fruitvale Avenue. This property is bounded on the southwest by Elmwood Avenue, on the southeast and east by the right-of-way of the Alameda Line of the Southern Pacific Company and on the north and west by lands owned by other holders. The Derby Estate Company desires to sub-divide and sell this land for industrial purposes and in order to get a maximum use of the tract proposes to install spur tracks leading from the south on the Alameda Branch of the Southern Pacific and turning westerly and running parallel to Elmwood Avenue the full width of the tract. It is proposed to install two of the spur tracks on 13-foot centers about 180 feet north of Elmwood Avenue and a third spur track along the northerly edge of the property. It is also proposed to install a 60-foot street running east and west through the tract half-way between these two sets of spur tracks. The crossing desired is to be used in connection with this proposed street. The proposed crossing is approximately 440 feet distant from the center of the existing public crossing at Elmwood Avenue.

Mr. A. K. P. Harmon, witness for the Derby Estate Company, testified that although the proposed crossing was requested as a private crossing for the Derby Estate Company, it would be used by the general public in carrying on their business with the various industries which might later occupy the tract, although at the present time the tract is merely a bare field without improvements.

Considerable testimony was taken relative to the physical conditions surrounding the crossing sought and relative to necessity therefor. This evidence will now be discussed.

The Southern Pacific Company objects to the opening of this crossing and takes the position that this tract can be adequately served by the construction of a street along the westerly boundary of the tract from Elmwood Avenue north to the east and west street proposed by the Derby Estate Company. The Railroad Company claims that such a

street would give access to all of the industries in this tract and would confine traffic to the existing crossing on Elmwood Avenue or would give an outlet to the west via Elmwood Avenue and 29th Avenue, which latter is a highly improved artery connecting with East 14th Street but which crosses all of the main tracks and electric suburban tracks of the Southern Pacific Company running through Fruitvale.

The record shows that the Railroad Company operates from 46 to 50 electric movements and 21 or 22 steam movements daily over the Alameda Branch tracks intersected by the proposed crossing. Fourteen of the steam train movements are through movements into Alameda. The speed of the electric trains averages about 22 miles an hour and the speed of the steam trains averages about 15 miles per hour.

Witness for the Derby Estate Company, in answer to the position of the Southern Pacific Company, stated that the proposed road along the westerly side of the property would be difficult to find, on account of its being a back entrance into the property, as compared to the ease with which the proposed east and west street could be reached by the crossing applied for. He also stated that the construction of this road would cut off some 60 feet from each spur track and prevent their extension into the adjoining property. It does not appear that the latter condition necessarily follows as the spur tracks could be extended across the roadway.

The position of this Commission, with regard to the construction of crossings at grade, at short intervals, across the tracks of this suburban line, was fully set forth in its Decision No. 3917, Application No. 2573, which covered the application by the City of Oakland for a crossing at grade at Chapman Street, a street a short distance south of Elmwood Avenue. Although this decision was rendered on December 6th, 1916, street conditions in this vicinity are practically the same as described at that time in that decision.

It appears to the Commission that this property could be served almost as well by the road lay-out proposed by the Southern Pacific Company as by the route proposed by complainant and that the inconvenience caused the owners of this tract by such a lay-out is more than off-set by the elimination of the hazard which would be created by the construction of another crossing at grade but 440 feet distant from the existing crossing at Elmwood Avenue.

From the testimony presented in this proceeding, the construction of a crossing at grade at the location proposed, which is but four hundred and forty (440) feet from an existing public crossing serving a road adjacent to one side of the property owned by complainant, does not appear necessary and this complaint will therefore be dismissed.

O R D E R

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

IT IS HEREBY ORDERED that the above entitled complaint be and it is hereby dismissed.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 2d day of

July 1926.

H. B. Pennington

C. Seaver

Ernest Wood

Commissioners.