

Decision No. 17783

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of
the County of Merced for authoriza-
tion permitting the construction of
the highway crossing over The Atchison,
Topeka & Santa Fe Railroad, in Section
36, Twp. 5 S., R. 11 E., M.D.M.

Application No. 12669.

C. E. McCray, District Attorney, for Applicant.

J. W. Walker and E. T. Lucey, for The Atchison,
Topeka and Santa Fe Railway Company.

J. J. Deuel, for Merced County Farm Bureau.

BY THE COMMISSION:

O P I N I O N

This is an application by the County of Merced for a crossing at grade over the track of The Atchison, Topeka and Santa Fe Railway Company, in the vicinity of Ballico.

A public hearing thereon was held at Merced, before Examiner Austin, on October 1st, 1926, at which time the railway company appeared and protested the granting of the application.

Ballico is situated in the northerly part of Merced County in the undeveloped townsite of the California Land Settlement Board. The railroad station and track facilities have existed for many years. At one time another townsite, the boundaries and streets of which differed somewhat from those of the present undeveloped townsite, was laid out in approximately this same location. The original subdivision, which was to have been the Town of Aladdin, lay on both sides of the track with the Santa Fe right-of-way extending diagonally through it. The new townsite, however, is laid out entirely on the

northerly side of the railroad. The only development that has so far taken place is the construction of a school on the site which has been reserved for the purpose. The school building is also used as a community center and the meeting place of several organizations. There is also a building used as a hotel and the Ballico Post Office is located in this building.

The Atchison, Topeka and Santa Fe Railway runs through this portion of Merced County in a general northwesterly and southeasterly direction, crossing the section lines at an angle of approximately forty-five (45) degrees. The county roads in this vicinity, as is customary in districts laid out in sections, are along the section lines or parallel thereto, although there is, in this particular locality, an additional important county road adjacent to and along the northeasterly side of the Santa Fe right-of-way.

The territory lying to the north of the Santa Fe tracks is but sparsely settled and but little agricultural development has taken place therein. The country to the south and west of the Santa Fe for some four or five miles toward Delhi on the Southern Pacific Company's lines is more intensely developed and most of it is under irrigation.

Rapid settlement is now taking place in this district under the auspices of the Land Settlement Board. It is from this vicinity that the majority of the users of the community facilities at Ballico come and it is necessary that they cross the tracks of the Santa Fe at some point, in order to reach them.

There is at present one public crossing over the track near the center of present Ballico townsite and it connects Ballico Avenue, the street which is designed to be the business street of the future town, with what is known as El Capitan Avenue. The latter is the main road to Delhi and the State Highway. This crossing was

granted by the Commission in Decision No. 3113, in Application No. 1428, in 1916, at the time the former subdivision was being promoted. While this crossing was probably originally designed to fit an entirely different layout of public roads, particularly on the southerly side of the track, it does actually furnish convenient access to such development as has already taken place north of the track and to a considerable portion of the more intensely developed territory to the southwest of Ballico, especially to the sections adjacent to El Capitan Avenue and Mitchell Avenue. There is, however, a small territory reached by Lombardy Avenue, an east and west road one-half mile north of Mitchell Avenue, which, due to the intervening right-of-way and tracks of the Santa Fe, has no direct outlet toward the east and toward the Ballico Townsite. It is an outlet for this territory that the county now seeks in the present application.

The true line of Lombardy Avenue crosses the railroad right-of-way at an angle of about fifty (50) degrees and at a point where the railroad is on an embankment some six (6) feet in height. Because of the acute angle and the steep approaches necessary, a grade crossing on this line would be particularly hazardous and it is accordingly proposed to locate the crossing at a point about 750 feet northwest of the true line where a right angle crossing with four (4) per cent approaches can be installed. The necessary right-of-way for the connecting road has been reserved by the Land Settlement Board.

Until the past year the residents along Lombardy Avenue having occasion to cross the track have been accustomed to use a private crossing which existed at a point about half way between the site of the proposed crossing and the crossing at Ballico Station, previously referred to, by means of a permissive traveled way over an unsold parcel of the State property parallel to the railroad

right-of-way and connecting the easterly end of Lombardy Avenue with the private crossing. Because of this public use of a crossing which had no legal status as a public crossing, the railroad company early in the present year constructed a barricade and removed the private crossing. Since the date of this closing the public has extended the above mentioned traveled way across private property to the Ballico crossing, a total distance from Lombardy Avenue of approximately one-half mile.

The exhibits filed at the hearing in Application No. 1428 may, by stipulation of the parties at interest, be considered by the Commission in the present proceeding. It appears that in the subdivision plans in effect at the time of that hearing a public thoroughfare was proposed along the route of the above encroaching traveled way. It also appears that at that time the county had under consideration the opening of a crossing approximately at the site of the one proposed in the instant application but by order of the Board of Supervisors, dated October 6th, 1915, application for this crossing was withdrawn. It is presumed that it was deemed feasible to divert the travel that would use the proposed crossing to the Ballico crossing by way of the dedicated street along the southwesterly side of the railroad.

The title to this road passed to the State of California on August 7th, 1923, as Merced County abandoned the streets and roads within the limits of the townsite of Aladdin which it had previously accepted. Subsequently, a portion of the right-of-way of this previously dedicated road was sold and is now in private ownership.

The amount of travel having occasion to cross the Santa Fe tracks in this vicinity is very small and could be adequately cared for by one crossing centrally located with convenient means of access. If the original layout of public thoroughfares which the

Commission no doubt took into consideration in granting the former application had been adhered to, there would now be no need for the County to come before this Commission seeking a second crossing. The County of Merced should be well aware of the policy of the Commission, which seeks to keep the number of grade crossings of public roads with railroad tracks at a minimum consistent with public convenience and necessity and in the laying out, acceptance or abandonment of streets and roads in the vicinity of railroads, it would be well for governing bodies to adopt procedure consistent with this policy. In the present case practically all of the lands involved were, until recently, in one ownership and that owner the State of California, and the problem of public crossings over the track and right-of-way of The Atchison, Topeka and Santa Fe Railway could, with proper study, have been solved for many years. As this apparently was not done, we believe that the County of Merced should take whatever steps may be necessary to acquire a right-of-way for and to construct a road connecting Lombardy Avenue with El Capitán Way and thus eliminate the apparent necessity for the crossing herein applied for.

On the other hand, it does not appear proper that the residents along Lombardy Avenue who purchased their holdings with the understanding that they would be furnished with a permanent outlet to the east at some time in the future, and who, in the meantime, have had available for their use an outlet by means of a crossing of uncertain status, should be forced to continue to make a long detour to reach a public grade crossing. It is, therefore, recommended that until such time as the County can provide the proper outlet, suggested above, they should be temporarily given permission to cross the railroad. This crossing can be effected either at the point applied for or, if it is not desired to incur the expense of grading and constructing approaches for temporary use, the old pri-

vate crossing which the railroad company recently closed could probably be restored and re-opened at slight expense and access to it gained without encroachment on any private holdings. It appears that the residents in the vicinity of Lombardy Avenue used this latter crossing without inconvenience and, according to some of the testimony in the present record, this crossing was at a more convenient location than the one applied for. Since a crossing at this point appears to offer but little hazard, it is probably the logical point for the temporary crossing. The present application, however, is for a crossing some 2,000 feet northwest of this point and this order will therefore provide for a temporary crossing at that location. If the County of Merced prefers to establish this temporary crossing at the prior location of private crossing, as above suggested, it should at once make application accordingly.

O R D E R

County of Merced, State of California, having made application to this Commission for permission to construct a public road at grade across the tracks of The Atchison, Topeka and Santa Fe Railway Company near the station of Ballico, in said County, a public hearing having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision, therefore

IT IS HEREBY ORDERED that permission and authority be and it is hereby granted to the Board of Supervisors of the County of Merced, State of California, to construct a public road at grade across the tracks of The Atchison, Topeka and Santa Fe Railway Company as follows:

A tract of land described as commencing at a point in the southerly boundary of the right-of-way of The Atchison, Topeka and Santa Fe Railway Company, that is N. $52^{\circ} 11'$ W. 737.6 feet from the intersection of the east and west one-half section line through Section 36, Twp. 5 S., R. 11 E. M.D.B. & M., with the southerly boundary of the said right-of-way; thence along the southerly boundary of said right-of-way N. $52^{\circ} 11'$ W. 40.0 feet; thence N. $37^{\circ} 49'$ E. 100.0 feet to the northerly boundary of said right-of-way; thence along said right-of-way boundary S. $52^{\circ} 11'$ E. 40.0 feet; thence S. $37^{\circ} 49'$ W. 100.0 feet to the point of commencement, containing 0.092 acres;

and as shown by the map attached to the application, said crossing to be constructed subject to the following conditions, namely:

(1) The entire expense of constructing the crossing shall be borne by applicant. The cost of maintenance of said crossing up to lines two (2) feet outside of the outside rails shall be borne by applicant. The maintenance of that portion of the crossing between lines two (2) feet outside of the outside rails shall be borne by The Atchison, Topeka and Santa Fe Railway Company. 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 The Atchison, Topeka and Santa Fe Railway Company.

(2) The crossing shall be constructed of a width not less than twenty (20) feet and at an angle of ninety (90) degrees to the railroad and with grades of approach not greater than $2\frac{1}{2}$ per cent; shall be constructed substantially in accordance with Standard No. 2 as specified in General Order No. 72 of this Commission; shall be protected by a suitable crossing sign and shall in every way be made safe for the passage thereon of vehicles and other road traffic.

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

(4) The authorization herein granted for the installation of said crossing shall lapse and become void on December 31st, 1927, whereupon said crossing shall be abolished unless further time is granted by subsequent order of this Commission.

(5) 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 and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

The authority herein granted shall become effective on the date hereof.

Dated at San Francisco, California, this 20th day of December, 1926.

H. B. Brundage
C. Seaver
Frank J. ...
Thos. D. ...

Commissioners.