

Decision No. 17836

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of COLONIAL IMPROVEMENT COMPANY, a corporation, to have a street crossing at grade constructed and installed over and across the right-of-way of Central California Traction Company, a public utility corporation, at the intersection of Herbert Avenue, as said Avenue is shown on the Official Map or Plat of Colonial Acres No. 3, and the right-of-way of said Central California Traction Company.

ORIGINAL

Application No. 12,218.

J. J. Henderson and W. A. Green for
Sacramento County.
Hinsdale and Otis, by Hinsdale for
Colonial Improvement Company.
Butler, Van Dyke and Desmond, by
G. M. Desmond for Central California
Traction Company.

BY THE COMMISSION:

OPINION ON REHEARING

This is an application of the Colonial Improvement Company and the County of Sacramento for a crossing at grade over the track of the Central California Traction Company in the vicinity of the City of Sacramento. A public hearing was held in Sacramento on April 16th, 1926, and the Applicant failing at that hearing to show sufficient public necessity to warrant the opening of the additional grade crossing, the application was denied by the Commission in its Decision No. 16,867, dated June 9th, 1926. A petition for rehearing was filed in this matter and on September 24th, 1926, rehearing was held at Sacramento before Examiner Austin.

The Colonial Improvement Company is a corporation organ-

ized primarily for the purchase, subdivision and sale of real estate. It has during the past few years subdivided and promoted the sale of a tract of land known as Colonial Acres, lying immediately south of the City of Sacramento between 14th Avenue, which for a portion of its length, forms the southerly city limits, and the private right of way of Central California Traction Company a half mile to the south. This tract has now been disposed of and is being built up by the purchasers.

The Colonial Improvement Company now contemplates the subdivision of a tract of some 200 acres lying south of the Traction Company line and between the track and the Fruitridge Road, which is parallel to and one-half mile south of the railroad, and the crossing requested proposes the extension of Herbert Avenue, one of the streets in the original subdivision, across the Central California Traction Company track into the new subdivision. Due to the fact that a portion of the property over which this extension of Herbert Avenue would have to pass is under a different ownership, the proposed extension would not extend the entire distance to Fruitridge Road. In order to reach the latter road a detour over certain other streets in the subdivision would be necessary.

Both 14th Avenue and the Fruitridge Road extend westerly to the State Highway or Upper Stockton Road as it is known locally, a main north and south artery. The Traction Company track is laid in this highway south from Sacramento to a point midway between 14th Avenue and Fruitridge Road where it turns east into the private right of way above mentioned. The Traction line crosses the track of Southern Pacific Company about two miles east of the State Highway at separated grades.

The nearest crossing to the west of Herbert Avenue is Glenn Avenue, 2360 feet distant, while Brighton Road, 3360 feet to the east of Herbert Avenue, crosses under the track of the Trac-

tion Company through the structure which carries the electric line over the main line of the Southern Pacific Company. Both of these roads extend the entire distance between 14th Avenue and Fruitridge Road and the area lying between them and south of the Traction Company's right of way is at present undeveloped and without habitation of any sort. This is the tract which the Colonial Improvement Company now desires to subdivide as hereinbefore stated.

Of the roads described above, the State Highway and 14th Avenue from the Highway to a point in the vicinity of the intersection of Glenn Avenue are paved and the other roads are of earth or surfaced with gravel. South of the track, Herbert Avenue is graded but not at present traveled. The record shows that there is a possibility that Fruitridge Road will be paved in the near future.

The Central California Traction Company offered no objection to the opening of this crossing, stating that the development of the tract would probably result in the company receiving additional revenue. The site of the crossing is level and the track tangent in both directions for some distance. There are no existing obstructions to the view and since streets are provided parallel and adjacent to both sides of the railroad right of way, there is slight possibility that the view will ever become badly obscured. The Traction Company operates six passenger trains daily each way at a speed of approximately fifty miles per hour. It also operates two regular freight trains, and in the fruit season two additional freight trains at a speed of twenty-five miles per hour. These passenger movements are generally one and occasionally two car trains, and the freight trains seldom exceed twelve or fourteen cars. Being lighter than steam trains and cars, they are more easily handled and can be more readily controlled in an emergency.

It appears that the opening of Herbert Avenue will permit residents of Colonial Acres, living north of the Traction Company's line, to reach Florin and other points in that vicinity and will allow those residing south of Fruitridge Road to reach East Sacramento by way of East 65th Street; also it will reduce the distance to Sacramento from that portion of the tract adjacent to the railroad right of way, but it will not materially shorten the distance from the central and southerly sections of the tract. During the winter season Fruitridge Road is frequently flooded and at times impassable, but if the road is paved this condition will disappear. Until this has been done, however, the proposed crossing would furnish a convenient outlet from the tract. There was also testimony to the effect that residents of the subdivision would use the crossing when traveling to and from Sacramento or in visiting the section lying immediately north of the tract, or in order to reach the Traction Company's station.

It is apparent that in this proceeding the crossing is sought primarily to serve the future needs of the community, rather than its present necessities. As we have stated, there are now no residences on the tract, but it is quite close to Sacramento and its settlement in the near future seems assured. It is true that in our former decision in this matter (Decision No. 16867) we held that it was not our policy to grant public grade crossings over railroad tracks merely to promote the sale of real estate or as a convenience to salesmen exhibiting the property to prospective purchasers, but that decision was predicated upon an incomplete record which did not disclose the facts in their entirety. It now appears that this sub-division is adjacent to the City of Sacramento and its development and settlement may reasonably be anticipated as a part of the necessary and logical expansion

sion of the community. Therefore, it does not seem essential to await the actual settlement of the tract before granting access to it, nor should the crossing be withheld until such time as it has been settled, the residents being subjected in the meantime to the annoyance and inconvenience arising from the necessity of using circuitous routes in order to reach their homes. Sound policy requires, in the upbuilding of our communities, that prospective residents be assured of reasonable access to their homes, and after making their investments they should not be required to await the uncertain outcome of some future proceeding before the Commission. In other words, access to a given territory logically should precede its development and not follow it. We do not mean to sanction the practice of opening crossings indiscriminately to facilitate the subdivision of land, irrespective of its location, but our decision must be confined, as we have stated, to the legitimate and reasonably anticipated expansion of a community. Because of the dissimilar circumstances surrounding grade crossings in different localities, it is difficult to evolve any general principles applicable to proceedings of this nature; each case necessarily must be determined according to its own facts.

In view of the facts appearing in this record, the application will be granted and an order will be entered accordingly.

O R D E R

The Board of Supervisors of the County of Sacramento, State of California, having made application for authority to construct a public road known as Herbert Avenue at grade across the track of Central California Traction Company, in the vicinity of the City of Sacramento, a public hearing having been held, the Commission being apprised of the fact, the matter being under submission and ready for decision,

It is hereby found as a fact that public convenience and

necessity require the establishment of a public crossing at grade at the point indicated, therefore,

IT IS HEREBY ORDERED that permission and authority be and it is hereby granted to the Board of Supervisors of the County of Sacramento, State of California, to construct Herbert Avenue at grade across the track of Central California Traction Company at the location shown by the map attached to the application.

Said crossing shall be constructed subject to the following conditions and not otherwise:

(1) The entire expense of constructing the crossing shall be borne by applicant. The cost of maintenance of that portion 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 Central California Traction 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 Central California Traction Company.

(2) The crossing shall be constructed of a width not less than twenty-four (24) feet and at an angle of ninety (90) degrees to the railroad and with grades of approach not greater than three (3) 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 in-

stallation of said crossing.

(4) If said crossing shall not have been installed within one year from the date of this order, the authorization herein granted shall then lapse and become void, unless further time is granted by subsequent order.

(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 5th day of January 1927.

H. H. Burdick
C. S. Seaver
Frank J. ...
Leon ...
Thos ...

Commissioners.