

ORIGINAL

Decision No. 18078.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of  
 the COUNTY OF SONOMA for authoriza-  
 tion permitting the construction of  
 the grade crossing over the Santa  
 Rosa and Sebastopol Railroad, in  
 Section \_\_\_\_\_, Twp. 7 N., R. 8 W., M.D.M.

Application No. 12,958.

J.W.Ford, Asst. District Attorney,  
 for Applicant.

Donald Geary for Petaluma and Santa Rosa  
 Railroad Company.

W.F.Price for Golden Gate Realty Company  
 of Fresno.

BY THE COMMISSION:

OPINION ON REHEARING.

This is an application by County of Sonoma for a public crossing at grade across the Petaluma and Santa Rosa Railroad at Fresno Avenue, about two miles west of the city limits of Santa Rosa. Permission to construct this crossing was given under Decision No. 17420, dated October 1, 1926, subject to certain conditions, among which were the following:

(1) A thirty-foot dedicated public roadway shall be laid off parallel and adjacent to the south line of the railroad right-of-way from Wright Avenue to Fresno Avenue and a well gravelled roadway suitable for public travel shall be properly constructed thereon before Fresno Avenue may be constructed across the tracks of the railroad company and opened to travel. Two-thirds (2/3) of the cost of said road shall be paid for by applicant and one-third (1/3) shall be paid for by Petaluma and Santa Rosa Railroad Company. An agreement between the interested parties, agreeing to the construction of this road and to the above apportionment of cost thereof, shall be filed by the railroad company with the Commission before the authority granted in this order shall become effective.

(2) Petaluma and Santa Rosa Railroad Company shall keep its right-of-way fenced between Wright and Stony Point

Avenues and shall equip all private crossings between said Avenues with gates.

On October 15, 1926, Petaluma and Santa Rosa Railroad Company, hereinafter called the railroad Company, filed a petition for rehearing as to the above two conditions which petition was granted by order of the Commission dated November 18, 1926. Rehearing was had before Examiner Austin at Santa Rosa on December 2, 1926, at which time the matter was again submitted.

Petaluma and Santa Rosa Railroad Company contends that it will not be benefitted by the construction of the roadway required under condition (1) above; that the Golden Gate Realty Company is the real party in interest in the original application; that the railroad company is informed and believes that a thirty-foot roadway parallel to and along the southside of the railroad for use of purchasers of lots in the Leddy Tract was laid off and shown on the map of the tract on file in the County Recorder's office at Santa Rosa; that lots have been sold without regard to the proposed roadway and that houses have been constructed on portions of land embraced in the proposed roadway; that three private crossings have been established for certain lot owners between Fresno and Wright Avenues; that the railroad company has advised the Golden Gate Realty Company that no further crossings would be permitted and requested said Realty Company to provide such road or roads as would be necessary to serve said tract without the necessity of further crossings; that at the first hearing no testimony was offered as to the cost of the road proposed in Condition (1).

With regard to Condition (2), the railroad company states that Condition (2) of said Decision No. 17420 is in conflict with agreements in writing heretofore made by and between the railroad

company and property owners in Leddy Tract, wherein at the request of property owners, the railroad company agreed that the fences along the southerly boundary of its right-of-way might be removed provided that the property owners, their successors and assigns would forever release said railroad company from any and all damage that might result due to the removal of the fences; that all private crossings have gates maintained thereon.

At the rehearing investigation developed the fact that the map of the Leddy Tract on file with the County Recorder did not have the thirty-foot road reserved thereon as believed by railroad company and set forth in the petition for rehearing. It appears however that the Golden Gate Realty Company has agreed by letter to the railroad company to sell the remaining lots facing the railroad rights-of-way with reservations establishing sufficient portions of the road required under above mentioned Condition (1) to allow purchasers of lots to reach existing crossings.

W. G. Rennison, Engineer for the railroad company, testified that the half mile of road proposed under Condition No. 1 would cost in the neighborhood of Seven Thousand Two Hundred and Fifty Dollars (\$7,250.) to construct. He also stated that the necessary drainage due to building the road would cost about Three Thousand Dollars (\$3,000.) but admitted that the railroad must take care of the drainage water in any event. It therefore appears reasonable to exclude this item from the estimate. The portion of the estimate of Seven Thousand Two Hundred and Fifty Dollars (\$7,250.) assessed to the railroad under the Commission's Decision No. 17420 would be One Thousand Eight Hundred Twelve Dollars and Fifty Cents (\$1,812.50). Although the railroad company insists that the benefit it would derive by the elimination of the exist-

ing private crossings which would result from building the road, would not justify this expenditure on its part, the Commission is of the opinion that the expenditure required is small considering the number of crossings involved. Under ordinary conditions such an expenditure on the part of the railroad would appear well justified. In the case under consideration, however, the cost of the road outlined above, is not the only item of cost involved in carrying out Condition 1 of the Order. In addition to building the road, it would be necessary to move back several residences which have been built on the lots sold without road reservations and to acquire the front of those lots from the private owners.

The opening of the proposed thirty-foot road to its full length is further complicated by the fact that the county could not legally take the road over as a county road until it was widened to forty feet as the law requires county roads to be of that width. The carrying out of these conditions would appear to work an unreasonable hardship on these lot owners, who bought in good faith and who have already arranged with the railroad company about combining certain of their private crossings in order to cut down the number required.

It therefore appears reasonable to require that a roadway be provided only for that portion of the Leddy Tract as yet unsold and it would appear reasonable that the owners of the tract should supply such a roadway and that the railroad should be exempt from paying any portion of the cost for the reason that the existing crossings are to be allowed to remain. As all of the existing private crossings have been equipped with gates and as the railroad company and the property owners have agreed as to

the right-of-way fences, the second condition of Decision No. 17420 appears unnecessary. The original decision of the Commission in this proceeding with the exception of Conditions 1 and 2 appears just and reasonable and Decision No. 17420 will therefore be sustained subject to the withdrawal of Conditions 1 and 2 contained therein.

O R D E R

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

IT IS HEREBY ORDERED that the Commission's order in this proceeding in Decision No. 17420, dated October 1, 1926, be and it is hereby sustained except as to Conditions No. 1 and No. 2 contained therein, and said Decision No. 17420, except as to Conditions No. 1 and No. 2 shall in all respects remain in full force and effect.

IT IS HEREBY FURTHER ORDERED that Conditions No. 1 and No. 2 of said Order of said Decision No. 17420 as more particularly set forth in the foregoing opinion, be and they are hereby revoked.

IT IS HEREBY FURTHER ORDERED that the authority granted in Decision No. 17420, shall be subject to the following condition:

(1) The Petaluma and Santa Rosa Railroad Company shall within ninety (90) days and prior to the opening of Fresno Avenue across the railroad tracks, file a certified copy of an agreement, duly executed, entered into by said railroad company and the Golden Gate Realty Company, which agreement shall restrict the number of private crossings across the Petaluma and Santa Rosa

Railroad in the Leddy Tract to those in use or agreed to by the Realty Company and the railroad company prior to January 1st, 1927, said agreement to be approved by the Commission.

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

Dated at San Francisco, California, this 24<sup>th</sup> day of February, 1927.

James M. [unclear]  
H. B. [unclear]  
Chas. [unclear]  
Leon [unclear]  
Thos. [unclear]

Commissioners.