

Decision No. 10387

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application of ANNA SPUEHLER CONDOS, for permission to install a private crossing over the tracks of the Tidewater & Southern Railway Company, a corporation.

Application No. 14257.

ORIGINAL

McNoble & Arndt by Stanley M. Arndt, for Applicant.
C. W. Dooling, for Tidewater Southern Railway Company.

BY THE COMMISSION:

O P I N I O N

This is an application on the part of Anna Spuehler Condos, under Section 485a of the Civil Code, for a private crossing across the tracks of the Tidewater Southern Railway Company at a point about twelve miles southeast of Stockton, in order to have a means of ingress and egress to her land situated on the south side of the railroad in the northwest quarter of Section 24, T. 1 S., R. 7 E., M.D.B. & M. and separated from the highway by the railroad right-of-way.

A public hearing was held at Stockton on January 19, 1927, before Examiner Satterwhite at which time the matter was submitted.

The land owned by Mrs. Condos is situated along the south side of the railroad right-of-way, which is fifty feet wide and parallel and adjacent to the south side of the French Camp Road, between Stockton and Escalon via Atlanta.

It appears, from the testimony, that the land now owned by Mrs. Condos, consisting of approximately five acres,

was held jointly by her first husband and his brother as part of a ten-acre tract; that the house now occupied by Mrs. Condos, her husband and child, was within about three weeks of completion when her first husband died; that upon settlement of the estate, the tract was divided into the two present holdings, and that up until recently the Condos family have not been living on their parcel.

It further appears that the Condos family have been driving across the acreage, owned by the brother of her first husband, to his private crossing, but that he has just lately ploughed his land for sowing and has requested them to stop such use, and they now have no means of ingress and egress, and, therefore, require the use of some other private crossing.

The management of the Tidewater Southern Railway Company admits that applicant has need of a means of ingress and egress to her land, but requests that a roadway be used from her garage, which is on the extreme easterly portion of the property, northwesterly along the front of the property to her west line, where it can be joined to an existing private crossing used by the adjoining land owners, named Moffat.

Mr. Thos. Condos, husband of the applicant, testified that the crossing, proposed by the management of the railroad company, was not satisfactory as to location in that it took a strip of valuable land across the entire front of the property; was inconvenient; that the use of the proposed roadway would injure crops planted along it, due to road dust settling on the plants; and that applicant desired a direct road immediately in front of the garage.

Testimony by Mr. E. L. Gamble, Manager of the Tidewater Southern Railway Company, indicates that the greater the number of private crossings spread out over a short distance of railroad, the greater the general hazard due to the necessity of

the motorman being required to devote more attention to watching ahead for automobiles, which might emerge from private property onto the track by one or more of the crossings, and that a concentration of traffic on fewer crossings was therefore desirable. He admitted that the hazard to the individual crossing the track was no greater at one location than at another, providing all conditions, as to the respective points of crossing, were equal. He estimated that a new crossing at the location requested, by applicant, would cost \$125., and that the widening of the existing private crossing used by the Moffats, would cost about \$70. The latter estimate makes no allowance for the strip of land applicant would be required to sacrifice to use this crossing. In addition, it appears that the estimate of \$125. for the new crossing is based on approach fills entirely of gravel or crushed rock, while generally these approach fills are composed of earth with a driveway of gravel or crushed rock several inches deep on top. This type of crossing would be cheaper than the one estimated by Mr. Gamble. Mr. Gamble estimated the cost of a gravel driveway across the front of the property at about \$100., and the value of the land used at about \$40. The total cost of the crossing proposed by the railroad would, therefore, be in the neighborhood of \$210.

The railroad company operates a total of ten passenger trains daily except Sunday, when four trains are operated over this track. Passenger train speeds vary from 35 to 44 miles per hour. It also operates two freight trains daily for eight months of the year, and from four to six freight trains daily during the four months of the fruit season. Freight train speed is from fifteen to thirty-five miles per hour. There are no trees or other obstructions to the view in the vicinity of either of the crossings under consideration. Grades of approach, on the crossing applied for by applicant, would be somewhat steeper than those

on the crossing advocated by the railroad company.

While in general the Commission is of the opinion that in situations where private owners subdivide land holdings which require additional private crossings under Section 485a of the Civil Code, an attempt should be made to consolidate the use of such crossings between two owners where reasonably possible, it is the opinion of the Commission that in this case the crossing desired by applicant is the one that should be constructed and that the application should be granted.

O R D E R

Anna Spuehler Condos having made application to this Commission for a private crossing across the tracks of Tidewater Southern Railway Company, a public hearing having been had, the Commission being apprised of the facts, the matter being under submission and ready for decision,

IT IS HEREBY ORDERED that permission be and it is hereby granted to Anna Spuehler Condos to construct a private crossing at grade across the tracks of Tidewater Southern Railway Company near the easterly line of her property in the N.W. $\frac{1}{4}$ of Section 24, T. 1 S., R. 7 E., at the location shown by the map attached to the application.

Said private crossing shall be constructed subject to the following conditions, viz:

(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 rails shall be borne by applicant. The maintenance of that portion of the crossing between lines two (2) feet outside of the rails shall be borne by Tidewater Southern Railway Company.

(2) The crossing shall be constructed of a width not less than sixteen (16) feet and at an angle of ninety (90) de-

grees to the railroad and with grades of approach not greater than eight (8) per cent; shall be constructed equal or superior to Standard No. 1 as specified in General Order No. 72 of this Commission, shall be protected by private crossing signs and shall in every way be made suitable for the passage thereon of vehicles and other road traffic.

(3) Tidewater Southern Railway Company shall, within thirty (30) days thereafter, notify this Commission, in writing, of the completion of the installation 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 20th day of February, 1928.

C. Seaver

Edward C. ...

George R. ...

M. A. ...
Commissioners.