

ORIGINAL

Decision No. 22140.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of the Board of Supervisors of the County of Santa Clara for permission to construct a road in Laurelwood Farm Subdivision across the right of way and tracks of the Southern Pacific Company.

Application No. 16250.

J. P. Fitzgerald, Deputy District Attorney,
for Applicant.
H. W. Hobbs, for Southern Pacific Company.
D. M. Burnett, for interested property owners.
T. M. Monell, for Metropolis Realty Company,
Interested Party.

BY THE COMMISSION:

O P I N I O N

This is an application of the County of Santa Clara to construct a crossing of a road, known as Kifer Road, at grade across the track of Southern Pacific Company near the City of Santa Clara.

A public hearing was held at San Jose on January 31st, before Examiner Williams.

The crossing, which is the subject of the present application, has been before the Commission on two other occasions, in Application No. 9461, in 1923, and in Application No. 16007, in 1929. In both of these applications authority for the crossing was granted and subsequently revoked and the applications dismissed. Pursuant to the authority granted by Decision No. 12881 in Application No. 9461, Southern Pacific Company constructed that portion of the crossing lying between lines two (2) feet outside of the outside rail, installed cattle guards and erected a wigwag. The connecting roads on either side of the

crossing and the approaches were not, however, built and, on January 17, 1928, Southern Pacific Company took up with the Commission the matter of abolishing the crossing and moving the wigwag to some other location and, upon receiving the consent of the County of Santa Clara to this proposal, the Commission entered its Decision No. 19498, in Application No. 9461, revoking its prior order and dismissing the application, provided, however, that the wigwag be installed at some other crossing in Santa Clara County.

On October 11, 1929, the County of Santa Clara filed Application No. 16007 for the reinstallation of this crossing. The Commission, in its Decision No. 21745 dated November 1, 1929 authorizing the crossing, imposed certain conditions, among them being the closing of several private crossings in the vicinity of the proposed public crossing. On January 22, 1930, the County filed with the Commission a statement that these conditions were not acceptable to it and requested that the Order be revoked and Application No. 16007 dismissed. At the same time the County filed the present application which was set for hearing in order that the Commission might have the benefit of all the facts in the matter.

The crossing involved lies on an extension of Kifer Road which is a fairly important paved county road extending easterly from the rural sections north of Sunnyvale to the Santa Clara-Alviso Road. At the present time Kifer Road terminates in this latter road about one mile north of the City of Santa Clara, but it is proposed to extend it easterly across a subdivision known as Laurelwood Farm and thence to a connection with Hoffman Avenue and Brokaw Road, thereby providing a new route into the Cities of Santa Clara and San Jose. At the

present time, however, the purpose of the extension across Laurelwood Farm is to facilitate the subdivision of that tract and provide an outlet for the prospective purchasers of real estate. Other than the owners of the subdivision, the Metropolis Realty Company, the proposed road would serve but one other owner who operates a hog ranch in connection with a dairy which he maintains in the vicinity but on another road. Practically all of the tract is at present farmed as one unit.

The Santa Clara-Oakland Line of Southern Pacific Company extends across this farm and crosses the route of the proposed road at approximately right angles about a quarter of a mile east of the Santa Clara-Alviso Road and it is this crossing which is requested in the present application. The railroad is slightly higher than the surrounding country at this location and, at the present time, there are no obstructions to the view. With the development of the subdivision, however, buildings may be erected which would increase the hazard. Southern Pacific Company operates five passenger trains and several freight trains daily over this line, the speed of passenger trains being 50 miles per hour and that of freight trains 35 miles per hour.

South of the crossing, within the limits of the holdings of the Metropolis Realty Company, there are three private crossings used by the operators of the Laurelwood Farm in conducting farm operations, the farm buildings being located on the westerly side of the railroad and a considerable portion of the farm is on the easterly side of the railroad. At the present time only one of these crossings is in actual use. As the subdivision develops

and the various parcels are sold, the farming of this property as a unit will cease and these crossings will then no longer be required for farm operations.

Since practically all of the tract is now in one ownership, it would appear that the private crossings now provide all the access necessary to the owners and that the establishment of a public crossing solely for the benefit of the Laurelwood Farm is not justified. The same development which will, however, in time obviate the necessity for these farm crossings will increase the necessity for access by public road over the railroad and it would appear reasonable that the farm crossings be abolished at such time as their use for farm operations ceases.

The chief public necessity for this road, at the present time, appears to be as a connecting route between the existing Kifer Road and the Brokaw Road and, unless the connection beyond the limits of Laurelwood Farm is constructed, we can find no necessity for the establishment of an additional public grade crossing over the track of Southern Pacific Company in this vicinity. The application will, therefore, be granted subject to the condition that this road be constructed from the Santa Clara-Alviso Road to the Brokaw Road.

It appears that when the crossing was originally constructed, in 1923, the Metropolis Realty Company paid the entire cost of installation, including the cost of the wigwag protection, and that this company received no compensation and was not notified at the time the crossing was abolished in 1928. At the hearing, this owner took the position that it should not again be burdened with the cost of restoring the crossing.

In proceedings such as this, the Commission can recognize only the political subdivision concerned and cannot adjudicate

the question of whether or not the actual cost of the crossing shall be borne by such political subdivision or by some other interested party. It assesses the cost to the applicant and is not concerned in applicant's method of financing. If the Metropolis Realty Company has a proper claim, it should find relief in the courts.

O R D E R

The Board of Supervisors of the County of Santa Clara, State of California, having filed the above entitled application with this Commission asking for authority to construct a public road, known as Kifer Road, at grade across the track of Southern Pacific Company in Laurelwood Farm Subdivision, in the vicinity of the City of Santa Clara as hereinafter set forth, a public hearing having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision;

IT IS HEREBY FOUND AS A FACT on the record herein that the establishment of a crossing of Kifer Road with the track of Southern Pacific Company, as herein applied for, will be required at such time as the County of Santa Clara constructs a road from the easterly terminus of said Kifer Road, as projected on the map of Laurelwood Farm Subdivision attached to the application in this proceeding, to provide an outlet to Brokaw Road.

IT IS HEREBY ORDERED that permission and authority be and it is hereby granted to the Board of Supervisors of the County of Santa Clara to construct said road at grade across the track of Southern Pacific Company at a point where said Kifer Road, as projected, will cross the track and right of way of Southern Pacific Company, this point being approximately 3,100 feet measured in a

southerly direction along the center lines of said Southern Pacific Company right of way with the Santa Clara-Alviso Road.

The above crossing shall be identified as Crossing No. L-43.2.

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 Southern Pacific 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 Southern Pacific Company.

(2) The crossing shall be constructed of a width not less than twenty-four (24) feet and with grades of approach not greater than four (4) 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 Standard No. 1 crossing sign as specified in General Order No. 75 of this Commission, and shall in every way be made suitable for the passage thereon of vehicles and other road traffic.

(3) Said crossing shall be equipped with an automatic wigwag conforming with Standard No. 3 of the Commission's General Order No. 75. The labor cost of installing said wigwag shall be borne by applicant and the material cost by Southern Pacific Company. Southern Pacific Company shall thereafter bear the expense of maintaining said wigwag.

(4) Said crossing shall not be opened as a public

crossing until such time as a public road from the present easterly terminus of Kifer Road, as projected on the map of Laurelwood Farm Subdivision as filed with this application, to and connecting with Brokaw Road shall have been constructed and open to public travel.

(5) Applicant shall procure from the owners of Laurelwood Farm Subdivision a stipulation to the effect that they will not oppose the closing of the three private crossings located approximately 1,300 feet, 2,420 feet and 5,610 feet southerly from the crossing herein authorized when, in the judgment of this Commission, the use of these crossings for conducting farming operations on said Laurelwood Farm Subdivision as a unit has ceased. Applicant shall file with this Commission a copy of the said stipulation.

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

(7) 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.

(8) 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 19th day of February, 1930.

Clarence
Spencer

John D. Lott

Commissioners.