

ORIGINAL

Decision No. 24782.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the Application of
 the CITY OF SAN BERNARDINO, a municipi-
 pal corporation, for an order direct-
 ing the reconstruction of an overhead
 highway over certain railroad tracks.

Application No. 17618.

William Guthrie, City Attorney, for
 City of San Bernardino.

A. H. Lowe, City Engineer, for City
 of San Bernardino.

Howard Way, for County of San Bernardino.

C. W. Jones, for State Highway Commission.

E. Q. Sullivan, for State Highway Commission.

R. H. Mack, for San Bernardino Chamber of Commerce.

M. W. Reed, for The Atchison, Topeka and Santa
 Fe Railway Company.

C. W. Cornell, for Pacific Electric Railway Company.

E. C. Renwick and L. T. Jackson, for Los Angeles
 and Salt Lake Railroad Company.

WEITSELL, Commissioner.

O P I N I O N

The City Council of the City of San Bernardino filed the above entitled application with this Commission, seeking authority for the reconstruction of the viaduct along Mount Vernon Avenue over the tracks of The Atchison, Topeka and Santa Fe Railway Company in the said City of San Bernardino.

A public hearing on this application was held in San Bernardino on April 12, 1932, at which time the matter was duly submitted.

Mount Vernon Avenue extends in a general north and south direction through the westerly portion of the City of San Bernardino.

To the north, said Avenue connects with the main route to Barstow and easterly points as well as the route to Lake Arrowhead and other San Bernardino Mountain resorts. To the south, Mount Vernon Avenue is the direct route to Colton and Riverside and connects with the route to Redlands, San Diego and Imperial Valley points. Fourth Street (Foothill Boulevard), the main state highway route between San Bernardino and Los Angeles, intersects Mount Vernon Avenue immediately north of The Atchison, Topeka and Santa Fe Railway Company's railroad yard.

The Planning Commission of San Bernardino has designed a highway belt system around the city, consisting of Mount Vernon Avenue on the west, Waterman Avenue on the east, Highland Avenue on the north and Mill Street on the south, for the principal purpose of routing through traffic around the business section of the city.

At the present time there is a viaduct twenty feet in width with a six-foot sidewalk along the west side thereof constructed along the line of Mount Vernon Avenue from Fourth Street to Third Street, over the tracks and railroad yard of The Atchison, Topeka and Santa Fe Railway Company, which connects by a right angle turn to a ramp down to Third Street. The record shows that the original Mount Vernon Avenue viaduct was constructed in 1907 in order to enable the Railroad Company to extend and improve its yards in San Bernardino. The viaduct was originally constructed between Fourth Street and Third Street with a ramp down Third Street. During 1916 the Railroad Company's station and shop facilities were destroyed by fire and when these facilities were rebuilt, provision was made for enlargement which required the vacation of the then existing Third Street and the opening of a new Third Street. The extension and enlargement of the railroad

company's facilities required the extension of the Mount Vernon Avenue viaduct for a distance of approximately 285 feet southerly and the moving of the Third Street ramp to its present location.

The cost of constructing the original viaduct in 1907 was \$59,302 and the cost of extending said viaduct together with the moving of the Third Street ramp was \$69,945, all of which was borne by the railroad company.

In the instant application, the City of San Bernardino requests that this Commission order the reconstruction of said viaduct, determine the location, size and character of construction together with the approaches thereto, order and direct the preparation of plans and specifications for the construction thereof; the manner in which said viaduct shall be constructed and the manner in which the cost of the construction thereof shall be paid.

Subsequent to the filing of the application, the Commission's Engineering Department arranged an informal conference with the interested parties for the purpose of considering the engineering features in connection with the reconstruction of said viaduct. As a result of this conference, a joint engineering committee, consisting of representatives of the City of San Bernardino, County of San Bernardino, State Highway Commission, The Atchison, Topeka and Santa Fe Railway Company, Pacific Electric Railway Company and the Commission's Engineering Department, was organized for the purpose of preparing engineering studies of the problems of reconstructing said viaduct. The engineering committee submitted a report based upon its studies, outlining a plan for the reconstruction of said viaduct. The conclusions shown in the report were unanimously adopted by the members of the Committee, with the exception of The Atchison, Topeka & Santa Fe Railway Company's representatives, who did not concur relative to the suggested width for the viaduct,

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taking the position that the question of width of the viaduct was one for the Commission to determine. The City of San Bernardino, by Resolution No. 200, adopted and approved the recommendations set forth in said report.

The plan outlined in said report, which was introduced in this proceeding as City's Exhibit No. 1, provides for a viaduct forty feet in width with a five-foot sidewalk, between Fourth Street and Second Street; the elimination of the Third Street ramp; the construction of a new street connection between the viaduct and Third Street on the ground level, and the improvement of the turn approach at Fourth Street. The cost of this reconstruction is estimated at \$266,000.

The roadway of Mount Vernon Avenue, both north and south of the viaduct, is 52.5 feet wide between curbs. Fourth Street (Foothill Boulevard) is planned to be widened in the near future to forty feet in width so as to provide four traffic lanes. Third Street, east of the viaduct, is 52.5 feet wide. A traffic check taken during the period September 18-24, 1931, shows an average daily traffic of approximately 5,000 vehicles using said viaduct.

The record shows that during the past four or five years, seven deaths have resulted from accidents occurring on said viaduct. From the evidence adduced at the hearing, it is evident that there are certain serious hazards on this viaduct which should be immediately corrected.

Inasmuch as the adjacent highways, of which this viaduct is a part, are considerably wider than the roadway width over the present viaduct, there appears to be justification for the reconstruction of the viaduct to provide for four traffic lanes, as a narrower viaduct of this length would present a serious interference to traffic.

The representative of The Atchison, Topeka and Santa Fe

Railway Company testified that the expense of widening and reconstructing the viaduct was not economically justified at this time and that the railroad company should not be assessed with any part of the cost inasmuch as the railroad company would not be benefited by such widening and reconstruction. We cannot subscribe to this opinion since it has been clearly shown that certain hazards now exist on this viaduct which should be eliminated and that while certain reconstruction work is necessary in connection with the removal of these hazards, it is only reasonable to redesign the structure so as to adequately accommodate present and reasonably anticipated future traffic. The matter of direct financial benefits is not the sole test in the determination of the respective portions which the railroad and the public should contribute toward the cost of such improvement. In apportioning the cost of reconstructing this viaduct between the applicant and the railroad company, due consideration should be given to the obligation of each party, as well as to the benefits to be derived. It should be recognized that the railroad has a continual obligation to participate in the matter of constructing and maintaining reasonable and adequate crossings over its tracks, both at grade and at separated grades. This obligation is inherent, notwithstanding the fact that the traffic on the railroad may increase or decrease.

In this particular case there are two very important conditions which must be given full consideration: one, the elimination of existing hazards on this viaduct, and the other, the adequacy of the structure to carry traffic. There is no question but that the railroad has a direct obligation to assist in the elimination of hazards. The widening of the structure becomes necessary to meet the increased traffic conditions on the highway and not as a result of a changed character or volume of the railroad situation, consequently the benefits from such widening accrue

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largely to the vehicular public.

The proposed plan of reconstruction provides for the use of a substantial portion of the existing structure, the cost of which was borne entirely by the railroad company. The plan also provides for the extension of the viaduct southerly to Second Street, principally for the purpose of providing a direct route along Mount Vernon Avenue and the elimination of the hazardous turn at the Third Street ramp. This extension also requires the construction of a new connecting street between Second and Third Streets. This extension will be largely beneficial to the vehicular public.

After carefully considering all of the evidence in this proceeding, it appears reasonable to assess The Atchison, Topeka and Santa Fe Railway Company with \$75,000 as its portion of the cost of reconstructing and improving said viaduct and the balance of the cost to the city.

The matter of maintenance of the existing structure, as appears from the records, was assessed in part to the city and ~~in part to the railroad;~~ The Commission's Decision No. 9691, dated November 4, 1921, on Application No. 5825, assessed the maintenance cost of certain portions of the viaduct to the railroad company and certain portions to the city. It appears from the records that there has been some difficulty in satisfactorily carrying out these provisions. It now appears reasonable to assess the entire cost of maintenance of the superstructure and lighting to the city and to assess all other maintenance costs to the railroad company, since conditions will have changed when the viaduct is reconstructed.

The representatives of both the Department of Public Works, Division of Highways, of the State of California, and the County

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of San Bernardino testified that each is willing to assist the city in defraying a part of the public's portion of this reconstruction, but that neither was in a position to state to what extent. It should be clearly understood that this order will in no way prevent the City from negotiating with the State and San Bernardino County for the purpose of securing such assistance in defraying the public's portion.

After carefully considering all the evidence in this proceeding, it is concluded that the Mount Vernon Avenue viaduct should be reconstructed substantially in accordance with plan outlined in joint engineering committee report, introduced as applicant's Exhibit No. 1, and that the cost of reconstruction should be apportioned as hereinbefore outlined.

O R D E R

The City of San Bernardino having filed the above entitled application, a public hearing having been held and the Commission being fully apprised of the facts,

It is hereby found as a fact that public safety, convenience and necessity require the reconstruction and improvement of the viaduct over the tracks of The Atchison, Topeka and Santa Fe Railway Company at Mount Vernon Avenue, in the City of San Bernardino.

IT IS HEREBY ORDERED that the City of San Bernardino is hereby authorized to reconstruct and improve the viaduct over the tracks of The Atchison, Topeka and Santa Fe Railway Company at Mount Vernon Avenue, in the City of San Bernardino, County of San Bernardino, State of California, substantially in accordance with

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plan attached to the report of the joint engineering committee, introduced in evidence in this proceeding and marked Applicant's Exhibit No. 1, subject to the following conditions:

- (1) Applicant shall file with this Commission, prior to commencement of reconstruction, a set of detailed plans for the reconstruction of said viaduct, which plans shall have been approved by the other interested parties, or a statement why the party or parties refuse to sign.
- (2) The Atchison, Topeka and Santa Fe Railway Company shall bear Seventy-five Thousand Dollars (\$75,000) of the expense of reconstructing said viaduct and the remaining expense shall be borne by applicant.
- (3) The expense of maintaining the substructure shall be borne by The Atchison, Topeka and Santa Fe Railway Company. The expense of maintaining the superstructure, pavement and lights, together with any other expense incident to the maintenance of this viaduct, shall be borne by applicant.
- (4) Said viaduct shall be constructed with clearances conforming to the provisions of General Order No. 26-C of this Commission.
- (5) Applicant shall, within thirty (30) days thereafter, notify this Commission, in writing, of the completion of the reconstruction of said viaduct and of its compliance with the conditions hereof.
- (6) The authorization herein granted shall lapse and become void if not exercised within eighteen (18) months from the date hereof, unless further time is granted by subsequent order.
- (7) Nothing contained herein shall be construed as preventing the State, through its Department of Public Works, Division of Highways, and/or the County of San Bernardino from contributing such amounts as may be agreed to toward that portion of the assessment allocated herein to the City of San Bernardino.

IT IS HEREBY FURTHER ORDERED that Decision No. 9691, dated November 4, 1921, on Application No. 5825, be, and the same is hereby revoked and of no further force and effect.

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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 23rd day of May, 1932.

W. C. Jewey
Leon Owhim
W. A. Carr
M. B. Harris
Fred G. Cleveland
(Commissioners)