

ORIGINAL

Decision No. 7874

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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In the Matter of the Application
of Board of Supervisors of Merced
County for permission to construct
South Orchard Drive in Road District
No. 2, Merced County, at grade across
the tracks of The Atchison, Topeka
and Santa Fe Railway Company, near
Tuttle.

}
} Application No. 7028.
}

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

By The Commission:

OPINION ON RE-HEARING

This is an application on the part of the County of Merced for permission to construct South Orchard Drive over the tracks of The Atchison, Topeka and Santa Fe Railway Company, a corporation, filed under Section 2694 of the Political Code. A public hearing was held at Merced on August 23, 1921, before Examiner Satterwhite, at which time testimony was introduced showing that the South Orchard Drive crossing was a public necessity to serve the Tuttle Colony comprising a well developed fruit district of approximately 3000 acres located south of the railroad at this location. It appeared that this same territory was served by the Calimyrna Avenue crossing which was constructed across the Atchison, Topeka and Santa Fe Railway under authority granted in Decision No. 8687, at a location approximately three-quarters (3/4) of a mile westerly from South Orchard Drive, and the Tuttle Road crossing at Tuttle located approximately three

quarters (3/4) of a mile easterly from the proposed crossing. The testimony at that time indicated that the South Orchard Drive crossing would serve a greater public necessity and convenience than is served by the Calimyrna Avenue crossing and the Commission made its order in Decision 9554 granting permission to construct South Orchard Drive across the railroad on the condition, among others, that the Calimyrna Avenue crossing be closed and abandoned to public use and travel. Subsequently the County of Merced filed a petition for re-hearing on the ground that as the hearing upon which this decision was made was not called for the purpose of determining whether the Calimyrna Avenue crossing should be abolished, no witnesses were summoned by, nor were there any present on behalf of, applicant to establish the necessity for continuing the use and maintenance of the Calimyrna Avenue crossing.

Accordingly a re-hearing was held before Examiner Satterwhite at Merced on November 29, 1921. The evidence introduced at this re-hearing indicated that the Calimyrna Avenue and South Orchard Drive crossings at the present time would about equally serve the public convenience, but that the trend of growth in the Tuttle Colony was westerly and that, therefore, the Calimyrna Avenue crossing would become relatively more and more important. It was further shown by the Atchison, Topeka and Santa Fe Railway Company, who at the re-hearing entered an appearance for the first time in this matter, that the South Orchard Drive crossing would be more hazardous than the Calimyrna Avenue crossing, due to the fact that the latter is over one track only, whereas the former crosses both the main line and an important passing track of the railroad, with the result that long freight trains, when diverted to the passing track, would sometimes obscure the view of approaching high speed trains in one or more directions.

Inasmuch as the Tuttle road crossing serves the easterly side of the Tuttle Colony and the Calimyrna Avenue crossing serves the

westerly portion of the Colony, and these two crossings are approximately one and one-half ($1\frac{1}{2}$) miles apart, the South Orchard Drive crossing would give additional access to the Colony midway between these two existing crossings. The territory that would be served by the South Orchard Drive crossing can now be reached by means of the existing crossings and Childs Avenue, which parallels the railroad and lies one-half ($\frac{1}{2}$) mile to the south. It was frankly admitted by various witnesses that the chief purpose of the proposed crossing of South Orchard Drive would be to enable persons from the central portion of the Tuttle Colony to have the benefit of three-quarters ($\frac{3}{4}$) of a mile more use of the State Highway paralleling the railroad on the north instead of travelling this distance on Childs Avenue, only an unpaved graded road, which it was claimed was often in poor condition. The Commission has not been convinced by testimony at either hearing that sufficient public necessity and convenience exists to justify the hazard of these three (3) grade crossings within a distance of one and one-half ($1\frac{1}{2}$) miles and since from testimony now presented it appears that the Calimyrna Avenue crossing will ultimately serve a greater public necessity and convenience at a less public hazard than the South Orchard Drive crossing, it seems proper that the Calimyrna Avenue crossing should be continued and permission to construct South Orchard Drive across the railroad denied.

ORDER ON PETITION FOR RE-HEARING

A public hearing having been held upon the above petition for re-hearing, the Commission being apprised of the facts, and the matter being under submission and ready for decision,

IT IS HEREBY ORDERED, that Decision No. 9554, dated September

23, 1921, in the above entitled matter be and it is hereby vacated,
and

IT IS HEREBY FURTHER ORDERED, that the above entitled application
be and it is hereby denied.

Dated at San Francisco, California, this 16th day of December,
1921.

H. B. Brundage
H. D. Lovland
Chas. H. Cowell
J. J. ...
Commissioners.