

ORIGINAL

Decision No. 47028

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Bay View Memorial Park, )  
Inc., for authority to construct and use ) Application No. 32910,  
a grade crossing in the County of Contra ) as amended.  
Costa, State of California. )

Frisbie and Hoogs by William H. Hoogs, for applicant.  
Robert W. Walker and Matthew H. Witteman by Matthew H.  
Witteman for The Atchison, Topeka and Santa Fe  
Railway Company, protestant.  
B. P. Bongera, for Division of Highways of the State of  
California, interested party.

O P I N I O N

The above-entitled application alleges that applicant is a corporation formed for the purpose of constructing and operating a cemetery upon property described as Lots D, E, F, G, H, I, and J of the Bay Villa Subdivision as it appears upon the map filed in Book E of Maps, page 94, in the Office of the County Recorder of Contra Costa County. At the hearing the application was amended to allege that applicant is the owner of Lot E containing approximately three acres. The other parcels listed above have not yet been acquired.

Public hearings were held before Examiner Rowe at Richmond on February 21, 1952, and at San Francisco on March 18, 1952. Oral and documentary evidence was adduced and after argument the matter was duly submitted for decision.

There is at present a narrow private crossing located at Walter Avenue which is available to applicant. This crossing was constructed for the benefit of the stockholder of applicant who sold it said Block E.

The application states that it is filed pursuant to Section 7537 of the Public Utilities Code. This section provides

that the owners of any land along or through which any railroad is constructed or maintained may have such farm or private crossing as is reasonably necessary or convenient for ingress to or egress from such land or in order to connect such land with other adjacent lands of the owner. The allegations of the application and the evidence of record clearly indicate that a public crossing is sought by applicant in connection with the use by the public of its property for cemetery purposes.

The Board of Supervisors of Contra Costa County is the proper body to establish a public crossing upon authority of this Commission, and applicant herein is not a proper body to institute this proceeding. In view of the conclusion we have reached, the application will be dismissed.

O R D E R

Bay View Memorial Park, Inc., having made application for an order authorizing the construction of a crossing for the use of the public over the tracks of The Atchison, Topeka and Santa Fe Railway Company at Gately, an unincorporated area in Contra Costa County, public hearings having been held, the Commission being apprised of the facts, the matter being under submission and ready for decision, therefore,

IT IS HEREBY ORDERED, that said Application No. 32910 be and it hereby is dismissed.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 22<sup>nd</sup> day of April, 1952.

Justice F. Grauer  
PRESIDENT  
Harold Kube  
Lawrence Patten  
John C. ...  
COMMISSIONERS