

PROCEEDINGS  
OF THE  
COMMON COUNCIL.

REGULAR SESSION.

CHAMBER OF THE COMMON COUNCIL OF THE }  
CITY OF INDIANAPOLIS, }  
MONDAY, SEPTEMBER 11TH, 1865, 7½ O'CLOCK, P. M. }

The Common Council met in regular session.

Present—His Honor, the Mayor, John Caven, in the chair, and the following members at first roll-call :

Councilmen Allen, Boaz, Brown, Coburn, Colley, Emerson, Fletcher, Glazier, Grosvenor, Kappes, Loomis and MacArthur—12.

Absent—Councilmen Jameson, Lefever, Schmidt, Seidensticker, Staub and Thompson—6.

The proceedings of the regular session, held September 4th, 1865, were read and approved.

By Mr. Kappes—Petition :

INDIANAPOLIS, September 11, 1865.

*To the Mayor and Common Council of the City of Indianapolis :*

GENTLEMEN:—The undersigned, property owner on the southwest corner of Illinois and Georgia streets, would respectfully petition your honorable body to be allowed the privilege of curbing the outer edge of the sidewalk on Illinois street (50 feet front) with curb stone, and paving the whole width of the sidewalk with flag stone.

Respectfully,

HUGO MARMONT.

Which, on motion, was granted, provided the work be done under the direction of the Civil Engineer.

Mr. Brown introduced the following ordinance :

AN ORDINANCE appropriating money to pay accrued interest upon War Fund Orders when the same are presented for exchange for City Bonds.

SECTION 1. *Be it ordained by the Common Council of the City of Indianapolis,* That the sum of two thousand dollars be, and the same is hereby, appropriated to pay accrued interest upon such War Fund Orders as may, from time to time, be presented for exchange for City Bonds.

SEC. 2. That the City Clerk be, and is hereby, directed to issue orders upon the Treasurer of the city, in payment of all such amounts of accrued interest in favor of the holders of such orders, who may exchange the same for City Bonds.

SEC. 3. This ordinance shall be in force from and after its passage. Ordained and established this 11th day of September, 1865.

J. CAVEN, *Mayor.*

Attest:

C. S. BUTTERFIELD, *City Clerk.*

Which, on motion, was read the first time by its title: and, on motion, was read the second time.

Mr. Brown then moved that the rules be suspended and the ordinance read the third time and placed upon its passage.

The question being on the suspension of the rules, those who voted in the affirmative were Councilmen Allen, Boaz, Brown, Coburn, Colley, Emerson, Fletcher, Glazier, Grosvenor, Kappes, Loomis and MacArthur—12. Noes, none.

So the rules were suspended, and the ordinance read the third time.

The question then being, shall the ordinance pass? those who voted in the affirmative were Councilmen Allen, Boaz, Brown, Coburn, Colley, Emerson, Fletcher, Glazier, Grosvenor, Kappes, Loomis and MacArthur—12. Noes, none.

So the ordinance passed.

Mr. Brown introduced the following ordinance :

AN ORDINANCE appropriating the sum of one thousand dollars for additional Detective Policemen.

SECTION 1. *Be it ordained by the Common Council of the City of Indianapolis,* That the sum of one thousand dollars be, and the same is hereby, appropriated, payable to the Mayor, quarterly, to be expended by him in paying the expenses of an additional Detective Police Force, and that the City Clerk be directed to issue orders on the Treasurer accordingly.

SEC. 2. This ordinance shall be in force from and after its passage.

Ordained and established this 11th day of September, 1865.

JOHN CAVEN, *Mayor.*

Attest.

C. S. BUTTERFIELD, *City Clerk.*

Which was read the first time, and, on motion, was read the second time.

Mr. Brown then moved that the rules be suspended and the ordinance read the third time and placed upon its passage.

The question being upon the suspension of the rules, those who voted in the affirmative were Councilmen Allen, Boaz, Brown, Coburn, Colley, Emerson, Fletcher, Glazier, Grosvenor, Kappes, Loomis and MacArthur—12. Noes, none.

So the rules were suspended, and the ordinance read the third time, and placed upon its passage.

The question being, shall the ordinance pass? those who voted in the affirmative were Councilmen Allen, Boaz, Brown, Coburn, Colley, Emerson, Fletcher, Glazier, Grosvenor, Kappes, Loomis and MacArthur—12. Noes, none.

So the ordinance passed.

By Mr. Glazier, from the Committee on Markets :

INDIANAPOLIS, September 11, 1865.

To the Mayor and Common Council of the City of Indianapolis :

GENTLEMEN:—The Committee on Markets report the following ordinance and respectfully recommend the passage of the same.

CHAS. GLAZIER,  
J. GROSVENOR, } Committee.  
J. B. MACARTHUR, }

AN ORDINANCE appropriating money for the payment of sundry claims against the City of Indianapolis.

SECTION 1. *Be it ordained by the Common Council of the City of Indianapolis,* That the following named persons be allowed the amounts set opposite their respective names from any moneys in the City Treasury not otherwise appropriated, as follows, to-wit:

Emerson & Thompson, for 53 post, at 30 cents each.....	\$15 90
For 7 days work, at \$3.50 per day.....	24 50
For painting and lettering, 25 cents each.....	13 25
For drayage .....	1 00
For one dozen brooms.....	10 00
Total.....	<u>\$64 65</u>

SEC. 2. The City Clerk is hereby authorized and directed to issue warrants upon the City Treasury to the persons above named, and for the amounts as set forth in section first of this ordinance.

SEC. 3. This ordinance shall take effect and be in force from and after its passage.

Ordained and established this 11th day of September, 1865.

JOHN CAVEN, Mayor.

ATTEST:

C. S. BUTTERFIELD, City Clerk.

Which was read the first time, and, on motion, was read the second time.

Mr. Glazier then moved that the rules be suspended, and the ordinance read the third time and placed upon its passage.

The question being on the suspension of the rules, those who voted in the affirmative were Councilmen Allen, Boaz, Brown, Coburn, Colley, Emerson, Fletcher, Glazier, Grosvenor, Kappes, Loomis and MacArthur—12. Noes, none.

So the rules were suspended, and the ordinance read the third time.

The question being, shall the ordinance pass? those who voted in the affirmative were Councilmen Allen, Boaz, Brown, Coburn, Colley, Emerson, Fletcher, Glazier, Grosvenor, Kappes, Loomis and MacArthur—12. Noes, none.

So the ordinance passed.

From His Honor, the Mayor, John Caven—Report :

INDIANAPOLIS, September 11, 1865.

To the Common Council of the City of Indianapolis :

GENTLEMEN:—I would report that the amount of fines collected by me during the month of August, 1865, was \$944 62, which I have paid to the City Treasurer, as shown by his duplicate receipt herewith attached.

I would further report that I have examined my dockets from the commencement of my first term until the first day of July last, from which the monthly reports commence, and find in my hands as follows, not before paid into the Treasury, viz:

Fines.....	\$1,332 24
Jail fees.....	1,829 51
Total.....	<u>\$3,161 75</u>

This amount I have also paid to the City Treasurer, as per duplicate receipt herewith attached, and is in full of all moneys coming to my hands until the last day of August, 1865, and inclusive of said day.

The convictions by me for high crimes, during the month, were as follows:

Assault and battery, with intent to kill.....	3
Grand Larceny.....	11
Petit Larceny.....	5
Aggravated Assault and Battery.....	1
Bigamy.....	1
Robbery.....	1
Perjury.....	1
Total.....	<u>23</u>

Respectfully submitted,

JOHN CAVEN, Mayor.

Which, on motion, was accepted and approved.

From the City Attorney—Report :

INDIANAPOLIS, Sept. 8, 1865.

To the Mayor and Common Council of the City of Indianapolis :

GENTLEMEN:—I submit the following opinion in accordance with the request contained in the resolution respecting estimates for street improvements upon the line of the street railway.

The fifth section of the ordinance authorizing the construction of the street railway, provides that the company shall improve the portion of the street occupied by the railway track, and two feet on the outside of each rail, and upon a failure to do so, the Council may cause the track to be taken up. The railway company having accepted the terms proposed by the ordinance, it became a contract, and the parties are bound by its terms. The railway company is bound to improve the portion of the street designated by the ordinance, but the remedy for a failure is that provided by the ordinance, the destruction of the track.

The question then arises as to the effect of this contract upon the rights and liabilities of adjacent property owners. Does it relieve them from liability for the expense of improving the portion of the street which the railway company has contracted to improve? The Council cannot order the improvement of a part, in width, of a street, the provisions of the Charter requiring the entire width of the street to be improved (vide sections 66, 68 of City Charter); for the expense of the improvements the owners of lots bordering on the line of the street improved are liable. Are they relieved from liability by this contract made with the street railways? I think that they are not; but the Council may cause the railway company to first improve the street, according to the conditions of the contract, and then order a corresponding improvement of the portion of the street unimproved.

The Council cannot, however, in one general proceeding, proceed against the railway company and the property owners at the same time, because the remedy is different. The property owners are proceeded against by estimate and precept; the remedy against the railway company is by destroying their track, and, as it is impossible to combine the two remedies in one proceeding, the actions must be separate and distinct.

If the preceding propositions are correct, it follows that where a general ordinance is passed, and proceedings had in accordance with the provisions of the Charter, the cost of the entire improvement must be assessed against the adjoining property owners, and estimates issued as in ordinary cases.

Respectfully,

B. K. ELLIOTT, *City Attorney.*

Which, on motion, was accepted and ordered to be spread upon the minutes.

#### From the City Attorney—Report:

INDIANAPOLIS, Sept. 11, 1865.

*To the Mayor and Common Council of the City of Indianapolis:*

GENTLEMEN:—In obedience to the resolution in relation to Railroad Avenue I submit the following:

I have examined the records and find that in May, 1849, the Washington Hall Company caused a plat to be made and recorded in which a space is laid out, as streets generally are, and designated Railroad Avenue. The word Avenue, used in reference to a city, imports a public highway; and by making use of this word I am inclined to think a dedication of the space thus designated was made, and that it is now a public street. But it is impossible to fully determine the matter without being in full possession of the facts, which a judicial examination alone can elicit. It is true, the resolution, in terms, authorizes me to compel the attendance of witnesses; but this power you cannot confer upon me, and I have not attempted its exercise, believing that you did not desire me to attempt a vain and fruitless thing.

The proper course for those who desire to ascertain whether it is a public street, is to cause a prosecution to be instituted under the statute prohibiting the obstruction of highways. A judicial examination and determination can thus be had which will settle the controversy forever.

Respectfully,

B. K. ELLIOTT, *City Attorney.*

Which, on motion, was accepted and ordered to be spread upon the minutes.

## From the Civil Engineer—Report :

INDIANAPOLIS, Sept. 11, 1865.

*To the Mayor and Common Council of the City of Indianapolis :*

The Civil Engineer would respectfully report to the Council :

1st. That John Stumph, the contractor, for grading, paving and curbing the sidewalk on the southeast side of Kentucky Avenue, between Washington and Maryland streets, has completed the same according to contract, and an estimate is herewith reported in his favor for the same for your approval.

2d. That Michael Shea, the contractor, for grading and graveling West street and sidewalks, between South and Merrill streets, has completed the same according to contract, and an estimate is herewith reported in his favor for the same for your approval.

3d. That John Stumph, the contractor, for grading and bouldering Washington street and National Road, and curbing the outer edge of the sidewalk with stone, between the first alley west of West street, and Blake street, has completed the same according to contract, and an estimate is herewith reported in his favor for your approval.

4th. An ordinance is herewith reported for the improvement of North street between Blackford and Minerva streets, as directed by the Board of Public Improvements at their last session.

5th. That John M. Kennedy, the contractor, for grading and graveling Tennessee street, and grading and paving with brick and curbing the outer edge of sidewalks with white oak plank, between Market street and Indiana Avenue, has completed the same according to contract, and an estimate is herewith reported in his favor for your approval.

6th. As directed by your honorable body, I advertised for proposals to grade and pave with brick the sidewalk, on the north side of Michigan street, between Pennsylvania and Meridian streets, but up to this time no proposition has been received by me.

7th. Martin L. Coyner, to whom was awarded the contract for the improvement of Vermont street, promised me to have his bond in for your approval this evening, but he has not come up to time.

JAMES WOOD, *Civil Engineer.*

By Mr. Grosvenor :

*Resolved,* That the first and final estimate, as reported and certified to by the Civil Engineer, in favor of John Stumph, for grading, paving, and curbing the sidewalk on the south-east side of Kentucky Avenue, between Washington and Maryland streets, be and the same is hereby adopted as the estimate of this Council, and the property owners are hereby required to pay the sums set opposite their respective names.

The question being on the passage of the resolution, those who voted in the affirmative were Councilmen Allen, Boaz, Brown, Coburn, Colley, Emerson, Fletcher, Grosvenor, Kappes, Loomis and MacArthur—11. Noes, none.

So the resolution passed.

By Mr. Grosvenor :

*Resolved,* That the first and final estimate allowed Michael Shea for grading and graveling West street and sidewalks, between South and Merrill streets, be and the same is hereby adopted as the estimate of this Council, and the property holders are hereby required to pay the sums set opposite their respective names.

The question being on the passage of the resolution, those who voted in the affirmative were Councilmen Allen, Boaz, Brown, Coburn, Colley, Emerson, Fletcher, Grosvenor, Kappes, Loomis and MacArthur—11. Noes, none.

So the resolution passed.

By Mr. Emerson :

*Resolved*, That the first and final estimate, as reported and certified to by the Civil Engineer, in favor of John Stumph, for grading and bouldering Washington street and National Road, and curbing the outer edge of the sidewalk with stone, between the first alley west of West street and Blake street, be and the same is hereby adopted as the estimate of this Council, and the property owners are hereby required to pay the sums set opposite their respective names.

The question being on the passage of the resolution, those who voted in the affirmative were Councilmen Allen, Boaz, Brown, Coburn, Colley, Emerson, Fletcher, Glazier, Grosvenor, Kappes, Loomis and MacArthur—12. Noes, none.

So the resolution passed.

By Mr. Brown :

*Resolved*, That the first and final estimate, as reported and certified to by the Civil Engineer, in favor of John M. Kennedy, for grading and graveling Tennessee street, and grading and paving, with brick, and curbing the outer edge of the sidewalks with white-oak plank, between Market street and Indiana Avenue, be and the same is hereby adopted as the estimate of this Council, and the property owners are hereby required to pay the sums set opposite their respective names.

The question being on the passage of the resolution, those who voted in the affirmative were Councilmen Allen, Boaz, Brown, Coburn, Colley, Emerson, Fletcher, Glazier, Grosvenor, Kappes, Loomis and MacArthur—12. Noes, none.

So the resolution passed.

On motion, the remainder of the Civil Engineer's report was received.

On motion, the sealed proposal to grade and pave with brick the north sidewalk on Michigan street, between Pennsylvania and Meridian streets, accompanying the Engineer's report, was referred to the Board of Public Improvements.

The Civil Engineer also reported special ordinance No. 70, entitled :

AN ORDINANCE to provide for the grading and graveling of North street, between Blackford and Minerva streets, including the sidewalks,

Which was read the first time, and, on motion, was read the second time and laid over to have notice of pendency given.

## From the Market Master—Report :

INDIANAPOLIS, Sept 11, 1865.

*To the Mayor and Common Council of the City of Indianapolis :*

GENTLEMEN :—I have collected, for term ending August 1, 1865, market rents to the amount of \$119.50, and have paid the same to the City Treasurer.  
 CHARLES JOHN, *Market Master.*

Which, on motion, was accepted and approved.

Mr. Allen moved—

That the City Marshal be instructed to remove, forthwith, the shanty that is in the first alley east of Noble street and fronting on Bates street.

Which was adopted.

Mr. Loomis moved—

That the Street Commissioner be and is hereby directed to cause the gutters on Illinois, Alabama, and Pennsylvania streets, to be cleaned without delay.

Which motion prevailed.

Mr. Kappes moved—

That the Market Master be instructed to enforce more rigidly sections 33, 34, and 35, of the ordinance regulating the markets within the City of Indianapolis, in order to protect the interests of the citizens at large.

Which, on motion, was referred to the Committee on Markets.

Mr. Emerson moved—

That the Street Commissioner be directed to bridge Mississippi street, on the south side of Washington street, the whole width of the street.

Which was referred to the Board of Public Improvments.

Mr. Boaz moved—

That the petition of William Myer and others, relative to vacating a portion of Union street, be taken from the table and referred to the Committee on Streets and Alleys.

Which motion prevailed.

Mr. Coburn moved—

That J. S. Carey and Hervey Bates, jr., be allowed to pave the sidewalk in front of their property on Delaware street, and the Engineer be instructed to set the stakes.

Which motion prevailed.

Mr. Coburn moved—

That A. L. Wright, D. B. McDonough, and others, owning property on the alley running north through square 23, from Massachusetts Avenue to Ver-



mont street, be allowed to gravel their alley, under the direction of the Engineer, and that he be instructed to set the stakes.

Which motion prevailed.

Mr. Colley moved—

That the Civil Engineer be directed to prepare an ordinance providing for the lighting of the east and west ends and south side of the East Market House, and report at next meeting of Council.

Referred to Civil Engineer, with instructions to report an ordinance.

Mr. Brown moved—

That S. T. Gillett be allowed the privilege of re-paving, with brick, the full width of the sidewalk on Maryland street, in front of lot number ten (10,) in square seventy-five (75,) at his own expense—the same to be done under the direction and to the satisfaction of the City Engineer.

Which motion prevailed.

Mr. Glazier moved—

That the Market Master be allowed to sell the stands just erected for one year from date.

Which motion prevailed.

Mr. Loomis moved that the rules be suspended and Capt. James Wilson be permitted to address the Council in behalf of the Cincinnati, Indianapolis and Danville Railroad Company, who have petitioned the Council for the right of way over certain streets in the City of Indianapolis.

The question being, on the suspension of the rules those who voted in the affirmative were Councilmen Allen, Boaz, Brown, Coburn, Colley, Emerson, Fletcher, Glazier, Grosvenor, Jameson, Kappes, Loomis and MacArthur—13. Noes, none.

So the rules were suspended.

Capt. Wilson then addressed the Council on the subject.

Mr. Loomis asked and obtained leave to introduce General Ordinance No. 16, entitled :

AN ORDINANCE to repeal an ordinance establishing a Board of Public Improvements for the City of Indianapolis, defining its powers and duties, and regulating the construction of buildings within the city limits,

Which was read the first time, and, on motion, was read the second time and laid over.

On motion of Mr. Colley, the Council adjourned to meet on Tuesday, the 12th inst., at 7½ o'clock P. M. to consider the petition of John Lingeran, and others, for the right of way to lay a Railroad track in certain streets in the City of Indianapolis.

Present at roll-call on adjournment: Councilmen Allen, Boaz, Brown, Coburn, Colley Emerson, Fletcher, Glazier, Grosvenor, Jameson, Kappes, Loomis and MacArthur—13.

JOHN CAVEN, *Mayor*.

ATTEST:

C. S. BUTTERFIELD, *City Clerk*.