

PROCEEDINGS
OF THE
COMMON COUNCIL.

REGULAR SESSION.

CHAMBER OF THE COMMON COUNCIL OF THE }
CITY OF INDIANAPOLIS, }
MONDAY, JANUARY 7TH, 1867, 7 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:

Councilmen Allen, Brown, Coburn, Colley, Emerson, Fletcher, Glazier, Grosvenor, Kappes, Loomis, MacArthur, Seidensticker, Staub and Thompson—14.

Absent—Councilmen Jameson, Kemker, McNabb and Schmidt—4.

The proceedings of the called session held December 29th, 1866 were read and approved.

Mr. Brown presented the following petition :

INDIANAPOLIS, Jan. 7, 1867.

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

STATE OF INDIANA, }
MARION COUNTY } ss.

Your petitioner William W. Smith, respectfully asks a reduction of the taxes upon the improvements made upon lot No. one (1) in out-lot No. eleven (11) in the City of Indianapolis to conform to the actual valuation of said improvements, as shown by the attached evidence, hereto, and supported by the affidavit of the petitioner, he being the owner of said premises.

WM. W. SMITH.

Now comes William W. Smith and makes oath, that said improvements were made during the months of August and September, 1865, and that the sums paid for the same are as follows:

To Thomas Torpy for brick work	- - - - -	\$275 00
To John Ebert for wood work	- - - - -	365 00
To Robert Lee for plastering	- - - - -	50 00
To Robert Lee for painting	- - - - -	35 00
Total amount paid being		<u>\$725 00</u>

That the same was done, that is to say, the work above mentioned was all done under contract as made before the work was commenced, that the said improvements are now assessed at the sum of fifteen hundred dollars which is more than their cash valuation by seven hundred and seventy-five dollars, that the sum of seven hundred and seventy-five dollars is the amount of reduction asked for upon said improvements.

WILLIAM W. SMITH.

Sworn to before me, and subscribed in my presence this 31st day of December, 1866.

E. A. PARKER,
Notary Public.

This is to certify that I built the brick front to Wm. W. Smith's house on lot No. one (1) in out block No. eleven (11) in the City of Indianapolis, for the sum of \$275.00. This work was done in the month of August, 1865.

THOS. TORPY.

This is to certify that I done the carpenter work on William W. Smith's house on lot No. one (1) in out block No. eleven (11) in the City of Indianapolis for the sum of three hundred and sixty-five dollars, this work was done in the month of September, 1865.

JOHN EBERT.

Which was referred to the Finance Committee.

Mr. Brown presented the following petition :

INDIANAPOLIS, Jan. 3, 1867.

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

Your petitioners represent their names to be withdrawn from the remonstrance which has been made against straightening of Pogue's Run. If paid the real value of the property and damages also

Patrick G. Hanrahan,	Michael Hanrahan,
her	his
Mrs. X Hanrahan, widow,	Patrick X Hagerty,
mark	mark
Peter Lamb,	Mrs. Monihan,

Which was laid upon the table.

Mr. Brown introduced special ordinance No. 148, entitled:

AN ORDINANCE appropriating money for the payment of damages assessed by the City Commissioners in straightening the bed of Pogue's Run, in the City of Indianapolis,

Which was read the first time by its title and referred to City Auditor with instructions to embrace in same the amount of all damages assessed to each property owner along the line of said work, less the amount of benefits assessed by said Commissioners upon the same property.

Mr. Coburn presented the following communication :

INDIANAPOLIS, Jan. 7, 1866.

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

GENTLEMEN:—I hereby nominate and with your concurrence will appoint H. P. Randall and O. H. Kendrick Assistant City Assessors for the year 1867. Also ask your concurrence to appoint Wm. C. Phipps the Township Assessor elect and his deputies Nelson Hoss and A. M. Strong, Deputy City Assessors.

WM. HADLEY, City Assessor.

The question being on confirming the appointments made by the City Assessor, Mr. Colley demanded the ayes and noes.

Those who voted in the the affirmative were Councilmen Allen, Brown, Coburn, Colley, Emerson, Fletcher, Glazier, Grosvenor, Kappes, Loomis, MacArthur, Seidensticker Staub and Thompson—14.

No councilman voting in the negative.

So the appointment of Deputy City Assessors was confirmed.

Mr. Emerson presented the following account :

City of Indianapolis,	To James Johnson,	Dr.
For 242 square feet of stone flagging at the corner of East and Wash-		
ington streets at 50 cents,	- - - - -	\$121 00

Which was referred to the Committee on Accounts and Claims.

Mr. Glazier, presented the following communication :

INDIANANOLIS, Jan. 7, 1866.

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

GENTLEMEN:—I see by papers, and learn from other sources, that there has been before the City Council a proposition to continue the salary of the Policemen and Firemen of this city, in case of disability, but has been indefinitely postponed. The Policemen and Firemen have (most of them) families depending on them as you may know, and during their disablement have an expense collecting. This can be remedied by the following way, one that is cheaper for the city, at the same time beneficial to them, also will assist the Police and Firemen of the city greatly. My plan is this, to insure each one for the sum of \$3,000. This will pay them a compensation of \$15 per week in case of total disablement for a period of twenty-six weeks, and in case of death within three months of the time of receiving the accident, will pay the full amount of the policy less the compensation. But of course, in case of death, the amount of the policy is for the benefit of the city. The premium on each policy is but \$18.00 per year. In case of disablement according to the proposition that was before the Council, it would cost the city 15 or 20 dollars per week. In this way it will cost 18 dollars per year; the company pay the city in case of death \$3,000, and the company pays in case of disability \$15 per week to each policeman. This, I think, is

a great deal cheaper for the city. Our Company is "The Accident Insurance Company of Columbus," with a capital of \$800,000, paid in, S. A. Fletcher & Co., E. J. Peck, W. N. Jackson and others, of Indianapolis, are some of the stockholders.

Yours respectfully,

WM. HAYS.

Which was laid upon the table.

Mr. Grosvenor presented the following petition :

INDIANAPOLIS, Jan. 7, 1867.

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

GENTLEMEN:—Your petitioners, property holders on Mississippi street, between Garden and Merrill streets, respectfully ask that your honorable body extend the time of J. H. Robinson, contractor, sufficient to complete said work.

James Greer,
John Maloney,
Mrs. Brown,

N. Teal,
McKernan & Pierce,
J. R. Griffith.

Which was granted, provided the consent of the sureties be endorsed upon the bond.

Mr. Kappes offered the following resolution :

WHEREAS, The contractor for lighting the City Lamps has been frequently admonished by this Council that his work is not properly attended to :
AND WHEREAS, the difficulties complained of still exist, viz., a portion of the lamps in various parts of the city not being regularly lighted, and the lamps remaining from time to time without proper care and cleaning :
Therefore be it

Resolved, That the contract of the City Lamp Lighter be, and is hereby, annulled.

Mr. Brown called for the ayes and noes on the passage of the resolution :

Those who voted in the affirmative were Councilmen Allen, Brown, Coburn, Colley, Fletcher, Glazier, Grosvenor, Kappes, Loomis, Seidensticker and Staub—11.

Those who voted in the negative were Councilmen Emerson, MacArthur and Thompson—3.

So the resolution passed.

Mr. Loomis offered the following motion :

That the City Auditor be instructed to re-advertise for proposals to light and extinguish, keep in repair and clean as often as may be necessary, the city lamps for one year from the 16th day of January, 1867; bids to be received January 14th, 1867, and to be received for lighting, &c., by Districts, using Washington street as the dividing line.

Pending which, Mr. MacArthur offered the following as a substitute :

That this Council take into immediate consideration the propriety of appointing a Superintendent of Gas Lamps, he to have the charge of lighting and extinguishing the same.

Mr. Brown called for the ayes and noes on the adoption of the substitute.

Those who voted in the affirmative were Councilmen Emerson, Grósvenor, MacArthur and Thompson—4.

Those who voted in the negative were Councilmen Allen, Brown, Coburn, Colley, Glazier, Kappes, Loomis, Seidensticker and Staub—9.

So Mr. MacArthurs, substitute was not adopted.

The motion offered by Mr. Loomis, was then adopted.

On motion by Mr. Loomis :

The Street Commissioner was directed to remove obstructions on North Pennsylvania street corner of New York street.

Mr. Loomis presented the following petition :

INDIANAPOLIS, Jan. 7, 1867.

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

GENTLEMEN :—We, the undersigned tax payers in the City of Indianapolis, respectfully petition your honorable body to purchase a good, reliable Steam Fire Engine for the use of said city, believing the same to be demanded by the best interests, viz., manufacturing and mercantile. And as in duty bound your petitioners will ever pray.

Lafe Develing, Herald Office	Latta.
John Fishback	Latta.
John C. New	Latta or none.
Street Railway Company	Latta or none.
J. B. Sullivan	Latta or none.
Wm. Wilkinson	Latta or none.
Jacob H. Mull	Latta or none.
Sinker & Co.	Seneca Falls.
Charles Glazier	Seneca Falls.
Jas. C. Ferguson	Latta.
V. Butsch	Latta.
J. W. Canan	Latta.
Jas. D. Pattison	Latta.
Kingan & Co.	Latta.
J. J. Hayden	Latta.
S. M. Douglass	Latta.
John S. Tarkington	Latta.
E. B. Martindale	Latta.
D. W. Grubbs	Latta.
E. W. Pattison	Machine.
J. W. Davis	Latta, and no humbug.
Thomas Cottrell	Seneca Falls.
John Knight	Seneca Falls.
E. M. Dibble	Seneca Falls.

J. P. Evans & Co. -----	Seneca Falls.
B. R. McCord -----	Latta.
F. P. Rush -----	Latta.
Gagg & Co. -----	Latta.
J. C. Yohn -----	Latta.
C. W. Brown -----	Latta.
W. G. Wright -----	Latta.
C. B. Davis -----	Seneca Falls.
John S. Spann -----	Seneca Falls.
J. McLene -----	Seneca Falls.
Thos. B. Elliott -----	Seneca Falls.
Journal Co. -----	Seneca Falls.
John W. Hamilton -----	Seneca Falls.
Joseph White -----	Latta.
W. P. Bingham & Co. -----	Latta.
Wm. Braden -----	Latta.
A. E. Vinton -----	Seneca Falls.
J. H. Vajen & Co. -----	Seneca Falls.
Frank Wright -----	Latta.
Shurtleff & Macauley -----	Latta.
Henry Allen -----	Latta.
James Skillen -----	Latta.
Indianapolis Wagon and Agricultural Works -----	Latta.
J. C. McIver -----	Latta.
J. R. Nickum -----	Latta.
J. Hinckley -----	
S. V. B. Noel -----	Seneca Falls.
James Suitt -----	Seneca Falls.
C. B. Robinson -----	Seneca Falls.
C. E. Geisendorff & Co. -----	Seneca Falls.
Jno. A. Furgason -----	Seneca Falls.
J. B. Cleaveland -----	Seneca Falls.
L. W. Hasselman -----	Seneca Falls.

In relation to which, Mr. Loomis offered the following motion :

That the above petition and all other matters thereto appertaining be referred to the Committee on Fire Department, directing them to instruct Messrs. Haselip, Robinson & Suit to make a selection of an Engine, and when so selected the said committee are hereby empowered to make a purchase of such engine so selected on the best terms proposed, and the Council hereby pledge themselves to concur in such decision and purchase, as also to appropriate the necessary funds with which to pay for such engine.

On motion the petition and motion were both referred to the Committee on Fire Department.

On motion by Mr. Seidensticker :

The City Auditor was instructed to include in his next ordinance of appropriations an amount sufficient to pay Mr. Koster, the former City Engineer, at the rate of \$1,200 per year, from the time he entered upon the duties of his office until his resignation was accepted, deducting any previous allowance made to him.

Mr. Seidensticker presented the following petition :

INDIANAPOLIS, Jan. 7, 1866.

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

The undersigned, desiring to erect and carry on a first class stone yard on lots Nos. 38, 39, 40, 41, 42, 43, 44 and 45, in out-lot No. 91, in Indianapolis, respectfully petition that permission be granted them for laying a switch con-

necting with the Indianapolis and Cincinnati Railroad track through Lord and Louisiana streets.

SMITH, ITTENBACH & CO.

In relation to which Mr. Seidensticker introduced general ordinance No. 76, entitled :

AN ORDINANCE granting Smith, Ittenbach & Co., permission to construct or lay a railway track across certain streets of the City of Indianapolis, and prescribing the terms of such grant,

Which was read the first time by its title and passed to a second reading.

His Honor, the Mayor, presented the following petition :

INDIANAPOLIS, Jan. 7, 1867.

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

Whereas the undersigned wishes to carry on the Auction and Commission Business, they humbly petition your honorable body to grant them a license so to do, at 163 West Washington street,

BERRY & HAMLIN.

Which was granted.

His Honor, the Mayor, presented the following petition :

INDIANAPOLIS, Jan. 7, 1867.

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

The undersigned respectfully petitions your honorable body to grant him an Auctioneer's license, at room No. 55, West Washington street, for three months.

Respectfully,

DAVID MANHEIMER.

Which was granted.

The sealed proposals were opened and read by the City Clerk and referred to the Board of Public Improvements.

REPORTS OF BOARDS.

Mr. Coburn, from the Board of Public Improvements, made the following report :

OFFICE BOARD OF PUBLIC IMPROVEMENTS, }
Indianapolis, Jan. 2, 1867. }

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

GENTLEMEN:—The Board of Public Improvements, to whom the bids were referred, would respectfully report to your honorable body that they find the following persons the lowest bidders, and would recommend that contracts be awarded them :

Feary & Dillon to pave the south-east sidewalk of Circle street, between Market and Meridian streets, for \$1.20 per foot front.

HENRY COBURN, }
J. A. GROSVENOR, } Board.
JNO. B. MACARTHUR, }

Which was concurred in and the contract awarded.

Mr. Coburn, from the Board of Public Improvements, made the following report :

OFFICE BOARD OF PUBLIC IMPROVEMENTS, }
Indianapolis, Jan. 7, 1867.

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

GENTLEMEN:—The Board of Public Improvements would respectfully report to your honorable body that the Board have issued during the year 1866 :

373 permits for new buildings, amounting to - - - - -	\$883,968
739 permits for repairing buildings, additions, stables and shops, amounting to - - - - -	180,954
<hr/>	
Making 1,112 permits, amounting to - - - - -	\$1,064,922

STREET IMPROVEMENTS.

Street improvements have been made as follows :

- 16 miles and 3 squares of sidewalks have been graded and graveled.
- 8 miles and 5 squares of streets have been graded and graveled.
- 3 miles of lamp posts and fixtures have been erected.
- 2 miles of sidewalk have been paved with brick.
- 1 mile and 3 squares of alleys have been graded and graveled.
- 3½ squares of street bowldered.

STREET REPAIRS.

Eighteen thousand dollars have been expended by the Street Commissioner in cleaning and repairing streets, building bridges, culverts, &c. But sixteen thousand dollars have been appropriated since the 20th of March. At that date the Finance Committee reported that twenty-five thousand dollars be set aside for street repairs for the year commencing that date. Four thousand dollars will be sufficient to keep the streets and bridges in repair the balance of the year. Leaving five thousand dollars of the twenty-five thousand to be appropriated to next year's work. We herewith submit the report of the Street Commissioner showing the amount of work done. We can bear cheerful testimony to the industry, faithfulness and ability of this officer.

HENRY COBURN,
J. A. GROSVENOR. } Board
JNO. B. MACARTHUR, }

INDIANAPOLIS, Jan. 7, 1866.

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

The close of the year and the present almost total suspense of public works suggest to me the propriety of presenting to your honorable body and the public a comparative statement of the amount of money expended by me and the work performed by me under your direction during the year 1866.

The total amount of appropriations made to and drawn by me during the year 1866, was - - - - -	\$18,000 00
From this I realised, - - - - -	\$15,730 02
Deducting for discount on orders - - - - -	\$2,270 00

This sum represents the total amount of resources, placed at my disposal, during the year 1866, and from them all the expenses, conected with my department, including the overseers of the chain gang have been paid.

With this amount of money I have during the year 1866 performed the following work :

I have built four entire new bridges across Pogue's Run and Central Canal. I have re-built three other bridges with entire new superstructures and other repairs, making them nearly new. I built one foot bridge across Pogue's Run. I re-built two foot bridges across the Canal, besides I re-floored four bridges across the Canal.

I have built forty-five (45)-new wooden Culverts, differing in length, from 24 feet to 144 feet.

I have built and laid down, during the year, two hundred and forty-one (241) foot bridges.

I bouldered the gutters and set oak curbing for one square.

I laid down one square of brick pavement.

I repaired the bouldering in 44 squares.

I cleaned and scraped 47 squares of bouldered street.

I opened and regraded the gutters in 186 squares.

I filled up, graded and graveled or filled up with cinders 69 crossings.

I have hauled and put upon the streets more than 5,000 yards of gravel, cinders, and spalts for filling up holes in and repairing streets, sidewalks and crossings.

I laid down 225 square feet of stone flagging and set 24 feet of stone curbing.

I filled up and regraded the Western Market space and bouldered the crossings.

I filled up and graded the City Park, between Vermont and New York streets.

I filled up, according to orders of Council, six private lots, on which water had become stagnant so as to create a nuisance in their neighborhood.

I am now engaged in and have nearly finished the double bridge across Pogue's Run at the intersection of Virginia Avenue and Alabama street, which is the largest wooden bridge in the city and will be one of the strongest in the city, when finished.

The above list includes, of course, only the larger items of the work performed by me and set forth in my monthly reports. Innumerable small jobs of repairing culverts, foot and other bridges, streets, gutters, etc., have never been enumerated, but all such work has been promptly attended to when brought to my knowledge.

For all this work I have purchased and paid for all the materials necessary, as well as the work, and at no time have bills against the city been contracted by my Department.

I hope this report of the work actually performed by me, under your direction, during the last year will be sufficient proof to the public that the money appropriated for my department has been economically expended and that full value therefore has been received by the city.

Respectfully,

AUGUST RICHTER, *Street Commissioner.*

On motion the reports were accepted and approved and ordered to be printed in pamphlet form.

REPORTS FROM COMMITTEES.

Mr. Seidensticker, from the Judiciary Committee, made the following report :

INDIANAPOLIS, Jan. 7, 1867.

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

Your committee, to whom the resolution in reference to the separation of the two offices of Mayor and City Judge was referred, respectfully report, that upon reviewing all the circumstances and getting the best advice we could, your committee came to the conclusion that the interests of the city

would be benefited by a separation of the two offices. If the Common Council is of the same opinion, the following resolutions ought to be adopted, which we recommend.

Resolved, That it is expedient for the interests of the city, that the office of City Judge is established from and after the next city election, under the Charter of the City of Indianapolis.

Resolved, That the City Marshal is hereby instructed to include in his notice to the city electors for the election of city officers a City Judge as one of the officers to be elected by them.

S. A. COLLEY,
AD. SEIDENSTICKER, } *Committee.*
W. H. LOOMIS,

I concur in the foregoing report of the Judiciary Committee. The duties of Police Judge and Mayor are widely different. The person discharging the duties of Police Judge should be a thorough and competent lawyer. Important legal questions are daily presented to him for decision, and important legal papers are to be prepared by him. The duties of Mayor, proper, are executive and ministerial solely, those of Police Judge purely judicial. The judicial office ought never, in my opinion, be connected with the legislative. Under our present system the Mayor takes part in enacting the laws which, as judge, he is called upon to expound. This is, I think, a bad system. The two departments of government should be maintained separate and distinct. Under the present system the Mayor is judge, legislator, and executive.

Respectfully,

B. K. ELLIOTT, *City Attorney.*

Which was laid over until the next regular meeting, and made the special order of business.

Mr. Seidensticker, from Judiciary Committee, made the following report :

INDIANAPOLIS, Jan. 7, 1867.

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

Your committee, to whom was referred the resolution inquiring what ordinances, if any, are necessary for the protection of the city grounds from trespassers hauling away gravel and sand, respectfully report :

That as said grounds to be protected are outside of the Corporation lines, the Council have no right to pass and enforce ordinances on the subject. We find that the statutory protection against trespassers, giving aggrieved parties both civil and criminal redress is ample. Trespassers, under the criminal statute, can be fined five times the value of the article taken or destroyed by them. We recommend the following resolution for adoption :

Resolved, That the Marshal and members of the Police Force be instructed to arrest and bring to justice all trespassers who may take any gravel, stone or sand from the property owned by the city, and that the superintendents of the different pieces of ground be likewise requested to report to the officers all violations of the city's rights.

S. A. COLLEY,
AD. SEIDENSTICKER, } *Committee.*
W. H. LOOMIS,

On motion the report was concurred in and the resolution adopted.

Mr. Seidensticker, from Judiciary Committee, made the following report:

INDIANAPOLIS, Jan. 7, 1867.

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

Your Committee, to whom was referred the petition of Geisel & Enners, claiming damages on account of accumulation and overflow of water in consequence of the work done by order of the city on Massachusetts Avenue, respectfully report:

If the overflow of water and consequent damages to Geisel & Enners was a necessary result of the work of improving Massachusetts Avenue, the city is not liable, for the damages will lie wherever they fall. Where a necessary public improvement causes loss or damage to private property, though this rule may appear a hardship in the present or similar cases, we must strictly adhere to it, for any deviation would become a precedent to innumerable claims upon the city.

If the overflow and consequent damages are to be charged, not to the improvement itself, but to either the unskillfulness, negligence or malfeasance of the City Engineer or contractor, (as is intimated in the petition) then the remedy of the petitioners is against the wrong doer and not against the city, and either the contractor or Engineer would be liable on their official bonds for any wrong committed by them upon the petitioners.

We therefore recommend that the prayer of the petitioners for damages be not granted and that their prayer for relief from continuous overflow be referred to the Civil Engineer.

S. A. COLLEY,
AD. SEIDENSTICKER, } *Committee.*
W. H. LOOMIS,

At the request of the Committee I have examined the above report and fully concur with the conclusions arrived at by the Committee.

B. K. ELLIOTT, *City Attorney.*

Which was concurred in.

Mr. Seidensticker, from the Judiciary Committee, made the following report:

INDIANAPOLIS, Jan. 7, 1867.

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

Your committee, to whom was referred the petition of William Johnson and others, praying for the correction of the estimate granted to the contractor for the improvement of North street, between Blackford and Minerva streets; also, the report of the City Auditor and the second corrected estimate, and other papers connected with them, have carefully considered the subject matter of said papers.

We find there are two questions to be determined in the settlement of this matter, one of fact and one of law:

1. Whether the estimate granted to S. J. & R. H. Patterson on the 12th day of September, A. D. 1866, was erroneous in allowing said contractors the stipulated price of grading, both for cutting and filling; and whether at the time of the letting of said contract it was the established rule and custom to measure the city work of grading by allowing only for cutting or for filling, of whichever the quantity was the highest.

2. Whether, after the Council having passed a final estimate in favor of said contractors, S. J. & R. H. Patterson, and said contractors accepting the same and making collections thereon, it is still within the power and authority of the Common Council to recall said estimate out of the hands of the contractors and to place into their hands a second final estimate?

In answering the first question we found comparatively little difficulty. The official statements of the City Engineer and City Auditor determine the fact, that in computing the gross amount of the work performed by the contractors on North street, allowance was made to them for every yard of cut and every yard of fill made by them in grading said street, and that the difference of this double allowance amounts to \$770.93.

It is equally certain that for years and years the measurement of city grading had been done upon the principle that the largest number of yards of either cut or fill was allowed to the contractor, but the allowance of one kind of work excluded the other. And further, this mode of measurement was generally understood by contractors. We have the certificate of a number of rival bidders for this same work, who declare that their bids were upon the understanding that in the measurement of the grading only one kind of work, cutting or filling, whichever would be most, was to be allowed to them. If all their rival bidders were cognizant of this mode of measurement, it is but fair to presume that Messrs. S. J. & R. H. Patterson were equally well informed. But, whether they were or not, they were bound to know what was the rule and custom of measurement in the kind of work which they undertook to perform. The conclusion is irresistible that the estimate granted to the Messrs. Pattersons on the 13th day of September, 1866, was erroneous, and that they were allowed \$770.93 more than they were lawfully entitled to.

In answering the question of law arising in this matter, your Committee is not near as positive. When the Common Council, acting upon the proper, and upon their face, correct reports of the officers charged with that duty, passes upon and grants a final estimate, which is accepted and acted upon by the contractors, and part of the property holders, that certainly seems to determine the connection of the Council with that transaction. On the other hand, it seems not reasonable that the Council, which, in street work, acts partly as trustee and umpire for and between the contractor and property holders, should be foreclosed in this capacity from correcting clerical and other errors, which in the complicated arrangement of this work are almost certain to happen. Furthermore, the very language of the Charter in regulating appeals from precepts, makes the correctness of the estimates one of the points to be inquired into in the appeal from the decision of the Council. Now, is it reasonable, that a single property holder, who appeals from the decision of the Council, should have the opportunity and right of attacking and correcting erroneous estimates, while the Council, acting for and binding *all* the property holders, unless they appeal, should be prohibited from correcting their own mistakes committed as trustees and umpires between the contractors and property holders as soon as they discover said mistake? Yet your Committee, not being free from all doubt upon this subject, base the action hereinafter recommended upon other considerations. We are informed, that however we may decide this matter, it will result in litigation. If we refuse to correct our mistake the property holders will appeal from all precepts which we may grant. If we correct the error, the contractors threaten litigation. In all appeals from precepts the city is a party and will have to pay costs if they are decided against us. There will be a number of such cases, and each will be expensive.

If the contractors refuse to accept our corrected estimate they will have to ask for precepts on the old estimate, we refuse them and they will apply for a writ of mandamus against us. In this suit the whole question will come up, all extraneous issues will be excluded, and the matter can be finally and satisfactorily settled with comparative little costs in a single suit. Your committee therefore recommend the adoption of the following preamble and resolutions. And in the conclusion of this report and recommendations we have had the benefit of the advice and assent of his Honor the Mayor.

WHEREAS. Heretofore to-wit: on the 13th day of September, A. D. 1866, an estimate was adopted by this Council in favor of S. J. & R. H. Patterson, contractors for the grading and gravelling of North street and sidewalks between blackford and Minerva streets, requiring the property holders

along the line of said improvement, to pay an aggregate of \$3,504.14 for said work.

AND WHEREAS, It appears from the reports and statements of the City Auditor and City Engineer and from other papers and evidence before this Council that said amount was incorrect and erroneous, from the fact that the Civil Engineer, in making up his computation of the work, allowed said contractors the contract price of grading for every yard cutting and filling done by them in said work, while at the time said work was let, and the contract therefor entered into, and the estimate adopted, and many years before said time, it was the settled rule of custom to allow contractors for city works only for cutting excluding filling, or filling excluding cutting, taking whichever portion of the work amounted to the largest number of yards.

AND WHEREAS, The property holders along the line of said improvement were, in consequence of this erroneous computation against them in said estimate of September 13th, 1866, required to pay \$770.93 more than said work justly amounted to, the true aggregate value of said work being only \$2,713.21 according to the contract price: Therefore, be it

Resolved, That the estimate for grading and graveling North street in favor of S. J. & R. H. Patterson adopted by this Council on the 13th day of September, A. D. 1866, be and the same is hereby rescinded, annulled and cancelled.

Resolved further, That the estimate reported by the City Auditor on the 17th day of December, 1866, for said work be substituted for said erroneous estimate and adopted as the estimate of this Council, and that the property owners are hereby required to pay the sums set opposite their respective names in said estimate, accompanying this resolution.

Resolved, That the City Auditor be instructed to notify said contractors, S. J. and R. H. Patterson of the rescision of their old and the adoption of the present estimate.

S. A. COLLEY,
AD SEIDENSTICKER, } *Committee.*
W. H. LOOMIS.

Upon the legal propositions set forth in the foregoing report I respectfully submit the following opinion:

The question of fact that there is a mistake in the estimate having been decided by the Committee, there can be no doubt of the power of Council to correct an erroneous estimate. The power of the Council over estimates and proceedings in street improvement cases continues until the final determination by the ordering and issuing of a precept. The case is closely analogous to that of an action at law. Before a final determination of the action the Court may correct either the record and proceedings or the papers in the case.

Respectfully,

B. K. ELLIOTT, *City Attorney.*

On motion the report of the Judiciary Committee was concurred in.

The ayes and noes being taken on the passage of the preamble and resolution rescinding, annulling, cancelling the estimate allowed S. J. & R. H. Patterson, September 13th, 1866, those who voted in the affirmative were Councilmen Allen, Brown, Coburn, Colley, Emerson, Glazier, Grosvenor, Kappes, Loomis, MacArthur, Seidensticker, Staub and Thompson—13.

No Councilman voting in the negative.

So the resolution passed.

The ayes and noes then being taken on the passage of the resolution, adopting the estimate reported by the City Auditor in favor of S. J. & R. H. Patterson, December 17, 1866, those who voted in the affirmative were Councilmen Allen, Brown, Coburn, Colley, Emerson, Glazier, Grosvenor, Kappes, Loomis, MacArthur, Seidensticker, Staub and Thompson—13.

No Councilman voting in the negative.

So the resolution passed, and the estimate was adopted.

Mr. Emerson, from the Committee on Public Buildings, made the following report :

INDIANAPOLIS, Jan. 7, 1867.

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

GENTLEMEN:—Your Committee, to whom was referred the matter in relation to moving the Watch Tower from its present location to the Journal Building, would report that the timbers in said Journal Building are too light to afford sufficient strength to support a tower of sufficient height to overlook the city, and in view of these facts would recommend that no change be made, as it would incur considerable additional expense to the city.

All of which is respectfully submitted.

R. B. EMERSON,
JOSEPH STAUB,
J. A. GROSVENOR, } *Committee.*

Which was concurred in.

Mr. Emerson, from the Committee on Public Buildings, made the following report :

INDIANAPOLIS, Jan. 7, 1867.

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

GENTLEMEN:—Your Committee, to whom was referred the proposal of A. Wallace and J. C. Yohn for the sale of the lot of ground on the north-west corner of Delaware and Market streets to the city for the purpose of building a block of stores, also City Hall and Offices and Mayor's Court Room, would report that to carry out the plan suggested by the proprietors would cost the sum of sixty thousand dollars at least; that together with the purchase money would amount to nearly or quite one hundred thousand dollars. Your committee do not think it proper and right for this Council to incur a debt of such magnitude at this time, and would recommend that the proposition be laid on the table.

All of which is respectfully submitted.

R. B. EMERSON,
JOSEPH STAUB,
J. A. GROSVENOR, } *Committee.*

Which was concurred in.

Councilmen Colley moved to adjourn, and called for the ayes and noes.

Those who voted in the affirmative were Councilmen Emerson and Glazier—2.

Those who voted in the negative were Councilmen Allen, Coburn, Colley, Grosvenor, Kappes, Loomis, MacArthur, Seidensticker, Staub and Thompson—10.

So the motion to adjourn did not pass.

Mr. Kappes, from the Committee on Benevolence and City Hospital, made the following report :

INDIANAPOLIS, Jan. 7, 1867.

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

GENTLEMEN:—Your Committee beg leave to present the Weekly, Monthly and Annual Reports of the Superintendent and Officers of the City Hospital :

Number of patients for the year.....	74
Number of patients born for the year.....	1
Number of patients discharged.....	56
Number of deaths.....	7
Number of patients remaining.....	12
Total expense for the year.....	\$2,516 71
Aggregate number of days for which subsistence was furnished.....	2,039
Aggregate expense per capita per diem.....	\$1 23
Total expense for outfit, &c.....	\$2,422 20

The monthly report of the Superintendent shows the following :

Number of patients in the Hospital at last report.....	13
Number of patients received in the Hospital since last report.....	13
Number of patients discharged from Hospital since last report.....	12
Number of patients died in the Hospital since last report.....	2
Number of patients remaining in the Hospital at present.....	12

We present an ordinance appropriating \$452.31 for the payment of sundry claims on account of Hospital.

The amount collected from patients by the Superintendent and paid into the City Treasury, is \$38.10 cents.

Your Committee are of the opinion that the Superintendent, Dr. Woolen, and other officers connected with the Hospital, are entitled to the thanks of our citizens for the efficient and systematic manner in which the affairs of this Institution have been conducted.

J. H. KAPPES,
W. C. THOMPSON, } Committee.
W. H. LOOMIS,

Mr. Kappes, from same Committee also submitted the weekly reports of the Superintendent of the City Hospital, for the two weeks ending January 5th, 1867; also, the monthly report of the Superintendent for the month ending December 31st, 1866, the recapitulations of which are as follows :

RECAPITULATION FOR WEEK ENDING DECEMBER 29, 1866.

Number of patients in Hospital at last report.....	10
Number of patients received in Hospital since last report.....	4
Number of patients born in Hospital since last report.....	0
Number of patients discharged from Hospital since last report.....	1
Number of patients died in Hospital since last report.....	1
Number of patients remaining in Hospital at present report.....	12

RECAPITULATION FOR WEEK ENDING JANUARY 5, 1867.

Number of patients in Hospital at last report.....	12
Number of patients received in Hospital since last report.....	3
Number of patients born in Hospital since last report.....	0
Number of patients discharged from Hospital since last report.....	0

Number of patients died in Hospital since last report	3
Number of patients remaining in Hospital at present report	15

RECAPITULATION FOR WEEK ENDING DECEMBER 31, 1866.

Number of patients in Hospital at last report	13
Number of patients received in Hospital since last report	13
Number of patients born in Hospital since last report	0
Number of patients discharged from Hospital since last report	12
Number of patients died in Hospital since last report	2
Number of patients remaining in Hospital at present report	12

Which were accepted and approved.

Mr. Kappes, from same Committee, submitted the following report of the Superintendent of the City Hospital, of the amounts received from pay patients, for the year ending Dec. 31st, 1866, to-wit:

Statement of amount received from pay patients received during year ending December 31st, 1866:

George Ermond	\$2 85
Richard McDamont	5 72
W. S. Wolkins	3 57
Irwin Dickson	7 20
R. J. Lee	10 00
Peter Reynolds	2 88
Joseph Oval	6 48

Total receipts

\$38 70

Amount paid in to City Treasurer and receipts taken therefor.

G. V. WOOLEN, M. D, Sup't.

Which was accepted and approved.

Mr. Kappes, from same Committee, presented the monthly report of expenditures of the City Hospital ending December 31st, 1866; also, annual reports of expenditures for outfit of City Hospital, and current expenses of same, for year ending December 31st, 1866; and also annual report of contents of register of City Hospital for year ending December 31st, 1866.

Which were severally accepted and approved, and ordered to be printed in pamphlet form, together with the annual reports of the Board of Public Improvements and the Street Commissioner.

Mr. Kappes, from same Committee, introduced special appropriation ordinance No 2—1867, entitled:

AN ORDINANCE appropriating moneys for the payment of sundry claims on account of City Hospital for the month of December, 1866,

Which was read the first time by its title and passed to a second reading.

REPORTS FROM CITY OFFICERS.

The City Civil Engineer made the following report:

INDIANAPOLIS, Jan. 7, 1867.

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

The Civil Engineer would respectfully report the work of grading and graveling Massachusetts Avenue and sidewalks, between Chatham street and the Corporation line east, as instructed by the Common Council December 29th, 1866.

Length of west side	2,642 feet
Length of east side.....	2,642 "
<hr/>	
Total number of feet both sides	5,284 "
At 148 cents per lineal foot each side.....	148
<hr/>	
Total.....	\$7,820 32
1-10th retained.....	782 03
<hr/>	
Amount due Contractors.....	\$7,038 29

Respectfully submitted,

JOSHUA STAPLES, JR., *Civil Engineer.*

Which, on motion of Mr. Seidensticker, was laid over.

The City Attorney made the following report:

INDIANAPOLIS, Dec. 23, 1866.

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

GENTLEMEN:—I have examined the petition of Thomas Wren, and respectfully submit the following:

If the estimates were allowed before the amended Charter became a law, and the grounds mentioned are public alleys of the city, the city should pay the amounts assessed.

The owners of the lots adjoining Pogue's Run own the fee, and are liable for street improvement of streets upon which their real estate borders. The remedy of the contractor is against the property. Nor can he, in case the property is of insufficient value, recover the assessment from the city. This has been expressly decided by our Supreme Court in the cases of *Smith v. City of New Albany*, and *Johnson v. City of Indianapolis*.

I therefore recommend that the claim for improvement of the ground alleged to be occupied by public alleys be referred to the Civil Engineer to ascertain whether the ground is occupied as a public alley, and that the claim for improving the real estate of private individuals be not allowed.

Respectfully,

B. K. ELLIOTT, *City Attorney.*

Which was referred back to City Attorney and the Judiciary Committee.

The City Attorney also, made the following report:

INDIANAPOLIS, Dec. 31, 1866.

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

GENTLEMEN:—I have examined the matter relating to Blackford street and respectfully report:

That in 1854 Isaac Blackford sub-divided certain out-lots, and in 1856 amended this sub-division by dedicating thirty feet off of west side of lots

fronting on Blackford street, except lot number sixty-five. Lot number sixty-five is situated on the corner of New York and Blackford streets, and the failure to dedicate thirty feet off of this lot leaves the street adjacent to it thirty feet narrower than at any other point.

I have been unable to find any record showing a condemnation of any part of lot number sixty-five above mentioned. The City records, prior to 1863, are in a confused state, and I may, perhaps, have overlooked some portion of the proceedings, as the time allowed me was too limited to admit of an examination of every page of the records, but I am of opinion that there is no record showing a condemnation of the aforesaid lot.

I would respectfully suggest that the record of proceedings in opening and vacating streets and alleys should be kept in a separate record carefully indexed, as the matter is one of importance, and the record should be full and complete.

Respectfully,

B. K. ELLIOTT, *City Attorney.*

Which was accepted and approved.

The City Attorney also, made the following report :

INDIANAPOLIS, Jan. 7, 1867.

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

GENTLEMEN:—I have made diligent inquiry respecting the claim presented by August Richter, and, so far as I can ascertain, the facts are substantially as follows :

During the time the lot was owned by Mr. Richter's grantor the city authorities entered upon it and constructed thereon a culvert for the purpose of conveying the water from what is known as Virginia River. Mr. Richter, after he became the owner, notified the city authorities that he desired to erect a building on his lot over the culvert, the culvert was not secure and must be made so by the city. The city ordered the culvert to be repaired, and Mr. Richter, in his official capacity of Street Commissioner, superintended the repairs. The late freshet injured the building, and the cause of the injury was the improper construction of the culvert. It is proper to add that no steps were ever taken by the city to appropriate the real estate to public purposes. The repairs upon the culvert were necessary and proper.

Mr. Richter's claim is for damages to the building and for the cost of making the repairs. This presents two distinct questions.

The first question is: Was the city bound to maintain the culvert in proper repair, and can Mr. Richter recover for the money expended by him in making such repairs?

There is but little difficulty in answering this question, and I answer—

That if the repairs were necessary to maintain the culvert in proper condition, and were duly made by Mr. Richter after notice to the city, he is entitled to recover the reasonable cost of such repairs.

The second question is: As Mr. Richter superintended the repairing of the culvert himself, was it not his own fault if he failed to make the culvert entirely secure, and built without having done so?

This question has occasioned me considerable perplexity. The only answer I can give is embodied in the two following propositions:

First. If Mr. Richter exercised his own skill and judgment in making the repairs, and was not governed, directed, or restrained by other city authorities, and after making the repairs built without further complaint, the city is *not* liable.

Second. If, after notice to repair, the city authorities directed the manner, extent and cost of the repairs, and Mr. Richter acting simply as an agent in direct obedience to the orders of his principal, made the repairs, and the defective construction of the culvert occasioned the injury, I think the city is liable.

There are important questions of fact to be determined in this case, and I think all such questions ought to be determined by members of your body.

and I therefore take the liberty of respectfully suggesting its reference to a committee of your honorable body.

Respectfully,

B. K. ELLIOTT, *City Attorney.*

Which was referred to the Judiciary Committee and City Attorney.

The City Auditor made the following report:

INDIANAPOLIS, Jan. 7, 1867.

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

GENTLEMEN:—The City Auditor respectfully reports the following:

1st. First and final estimate allowed James and John Huffer for grading and graveling New York street, exclusive of sidewalks, between the west side of West street and the west side of Blackford street.

2d. Second and partial estimate allowed Thomas Wren for grading and graveling Tennessee street and sidewalks, between Garden and McCarty streets.

3d. Contract and bond of Deloss Root for erecting lamp posts, lamps and fixtures on New Jersey street, between New York street and Fort Wayne Avenue.

4th. J. Bernauer & John Bly, for grading and graveling the alley running east and west through square 95.

5th. An ordinance appropriating \$81.90 to refund taxes paid by Charles Sturdevant, under protest.

6th. At your last meeting you directed me to draw the sum of eighteen hundred dollars, in favor of Patrick G. Hanrahan, for damages sustained in streightening Pogue's Run. You will see by referring to section 6 of your rules, that I am prohibited from drawing warrants upon the City Treasury except in pursuance of regular appropriations authorized by an ordinance of the Common Council. I herewith present you an ordinance making the appropriation, if your honorable body wish to do so.

Respectfully,

JOHN G. WATERS, *City Auditor.*

Resolved, That the first and final estimate allowed James and John Huffer, for grading and graveling New York street, between the west side of West street and the west side of Blackford 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, Brown, Coburn, Colley Emerson, Glazier, Grosvenor, Kappes, Loomis, MacArthur, Seidensticker, Staub and Thompson—13.

No Councilman voting in the negative.

So the resolution passed.

Resolved, That the second and partial estimate allowed Thomas Wren for grading and graveling Tennessee street and sidewalks, between Garden and McCarty streets, be, and the same is hereby adopted as the estimate of this Council, and that 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, Brown, Coburn,

Colley, Emerson, Glazier, Grosvenor, Kappes, Loomis, MacArthur, Seidensticker, Staub and Thompson—13.

No Councilman voting in the negative.

So the resolution passed.

On motion the Contracts and Bonds of D. Root, for erecting lamp-posts, &c., and of J. Bernauer and John Bly for grading and graveling alley, were accepted and approved.

On motion the remainder of the City Auditor's report was accepted and approved.

The City Auditor, also, reported special appropriation ordinance No. 3—1867, entitled:

AN ORDINANCE appropriating money to refund taxes to Charles Sturdevant,

Which was read the first time by its title and passed to a second reading.

The City Clerk made the following report :

OFFICE OF CITY CLERK, }
Indianapolis, Jan. 7, 1867. }

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

GENTLEMEN:—The City Clerk respectfully reports that affidavits have been filed for the collection of street assessments by precept as follows, to-wit:

Thomas Dorsey, for O'Conner & Dorsey, against McKernan & Pierce,	
for	\$25 20
Thomas Dorsey, for O'Conner & Dorsey, against Peter Earley, for	43 23
Thomas Dorsey, for O'Connor & Dorsey, against James Barrett, for	65 73
Daniel Mahoney against Emma M. Goore, for	109 00

And would respectfully request that you order the precepts to issue.

Respectfully,

C. S. BUTTERFIELD, *City Clerk.*

On motion by Mr. Loomis, so much of the report as relates to the precept against the property of Peter Early was laid upon the table.

On motion the remainder of the report was concurred in and the precepts ordered.

The City Sexton made the following report:

Report of the Sexton for the month ending December 31, 1866:

NO. OF INTERMENTS.

Under 1 year old.....	12
1 to 5 years.....	10
5 to 10 years.....	1
10 to 20 years.....	4
20 to 30 years.....	6
30 to 40 years.....	1
40 to 50 years.....	3
Total.....	37
Whole number for 1866	586
Whole number for 1865.....	1,063
Whole number for 1864.....	1,071

This is good for the people, but hard on the grave digger.

G. W. ALLRED, *Sexton*.

Which was accepted and approved.

ORDINANCES ON SECOND READING.

On motion by Mr. Seidensticker general ordinance No. 77, was read the second time, considered as engrossed and passed to its third reading.

On motion by Mr. Kappes special appropriation ordinance No. 2—1867, was read the second time, considered as engrossed and passed to a third reading.

On motion by Mr. Coburn special ordinance No. 147 was taken up read the second time and considered as engrossed, and passed to its third reading.

On motion by Mr. Loomis special appropriation ordinance No. 3—1867, was read the second time and ordered to be engrossed.

ORDINANCES ON THIRD READING.

On motion by Mr. Coburn special ordinance No. 147, entitled:

AN ORDINANCE appropriating money to the Street Commissioner for the cleaning of streets, repairing bridges, &c.,

Was taken up 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, Brown, Coburn, Emerson, Glazier, Grosvenor, Kappes, Loomis, MacArthur, Seidensticker, Staub and Thompson—12.

No Councilman voting in the negative.

So the ordinance passed.

Mr. Kappes moved that the rules be suspended and special appropriation ordinance No. 2—1867, be taken up on third reading.

The question being on the suspension of the rules, those who voted in the affirmative were Councilmen Allen, Brown, Coburn, Emerson, Glazier, Grosvenor, Kappes, Loomis, MacArthur, Seidensticker, Staub and Thompson—12.

No Councilmen voting in the negative.

So the rules were suspended.

Special appropriation ordinance No. 2—1867, entitled :

AN ORDINANCE appropriating moneys for the payment of sundry claims on account of City Hospital for month of December, 1866,

Was then taken up, 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, Brown, Coburn, Emerson, Glazier, Grosvenor, Kappes, Loomis, MacArthur, Seidensticker, Staub and Thompson—12.

No Councilman voting in the negative.

So the ordinance passed.

Mr. Seidensticker moved that the rules be suspended and general ordinance No. 77, be taken up on third reading.

The question being on the suspension of the rules, those who voted in the affirmative were Councilmen Allen, Brown, Coburn, Emerson, Glazier, Grosvenor, Kappes, Loomis, MacArthur, Seidensticker, Staub and Thompson—12.

No Councilman voting in the negative.

So the rules were suspended.

General ordinance No. 77 entitled :

AN ORDINANCE granting Smith, Ittenbach & Co., permission to construct or lay a railway track across certain streets of the City of Indianapolis, and prescribing the terms of such grant.

Was then 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, Brown, Coburn, Emerson, Glazier, Grosvenor, Kappes, Loomis, MacArthur, Seidensticker, Staub and Thompson—12.

No Councilman voting in the negative.

So the ordinance passed.

UNFINISHED BUSINESS.

Mr. Allen introduced special appropriation ordinance No. 4—1867, entitled :

AN ORDINANCE appropriating money for the use of the Fire Department.

Which was read the first time by its title, and, on motion by Mr. Allen, was read the second time and considered as engrossed.

Mr. Allen 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, Brown, Coburn, Emerson, Glazier, Grosvenor, Kappes, Loomis, MacArthur, Seidensticker, Staub and Thompson—12.

No Councilman voting in the negative.

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, Brown, Coburn, Emerson, Glazier, Grosvenor, Kappes, Loomis, MacArthur, Seidensticker, Staub and Thompson—12.

No Councilman voting in the negative.

So the ordinance passed.

On motion by Mr. Seidensticker, the Council adjourned.

JOHN CAVEN, *Mayor.*

ATTEST :

C. S. BUTTERFIELD, *City Clerk.*