

PROCEEDINGS

OF THE

COMMON COUNCIL

OF THE

CITY OF ROCHESTER

For 1876--7.

---

ROCHESTER, N. Y.:

UNION AND ADVERTISER COMPANY'S PRINT, WEST MAIN STREET.

1877.

stein, Mc-Graw, Lauer, Smith, Beck, Rickard, Hilbert—19.

Nays—Ald. Tracy, Brown, Peart, Whitcomb, Brinker—5.

Ald Peart presented the assessment rolls for flag walk in Jones st.; plank walk in Channing st., and moved their confirmation. The rolls were severally confirmed by the following vote:

Ayes—Ald. Aldridge, Tracy, Nagle, Brown, Peart, Whitcomb, Palmer, Brinker, Morhardt, Hays, Hadley, Hunn, Redman, J. W. Martin, Kelly, Chace, Huntington, Fleckenstein, McGraw, Lauer, Smith, Beck, Rickard, Hilbert—24.

By Ald. Tracy—Resolved, That the Treasurer be and he is hereby directed to refund the tax assessed against the property of Frank Adelman, amounting to \$4.20, for Platt street outlet, and charge the same to erroneous assessment.—Referred to Assessment Committee.

By Ald. J. W. Martin—Resolved, That the Executive Board examine the sidewalk in Plymouth avenue, in front of the Strong property, which is said to be in a very bad and dangerous condition, and take such action as they shall deem prudent.—Referred to Executive Board.

By Ald. Brinker—Resolved, That the Executive Board be and are hereby requested to have a cross walk laid across North St. Paul street, opposite Vincent Place Bridge.—Referred to Executive Board.

On motion of Ald. Lauer the Board then adjourned.

EDWARD ANGEVINE, City Clerk.

## In Common Council, Nov. 28th, 1876.

### REGULAR MEETING.

Ald. J. W. Martin, President of the Board, presiding.

Present—Ald. Aldridge, Tracy, Nagle, Brown, Westbury, Peart, Whitcomb, Palmer, Brinker, Morhardt, Hays, Hadley, Redman, J. W. Martin, Bennett, Kelly, Chace, Huntington, Weldon, Fleckenstein, Brayer, McGraw, Thomas, Nunnold, Lauer, Smith, Beck, A. H. Martin, Rickard, Baetzel—30.

Absent—Ald. Hunn, Hilbert—2.

### PRESENTATION OF PETITIONS, ACCOUNTS, ETC

By Ald. Brinker—Bills of Fochester Gas Light Company, \$177.80; Citizens' Gas Company, \$8.90; Sherlock & Sloan, \$395; Citizens' Gas Company, \$2,728.12; Rochester Gas Light Company, \$2,479.28. Referred to Lamp Committee.

By Ald. Brinker—Whereas, It is evident to every observing person that unusual destitution prevails among the working classes of our city, and that persons who have heretofore maintained themselves and families are now, and will during the coming winter, apply to the Poor Department for support; and

Whereas, It is the duty of the city authorities to alleviate as far as possible this unfortunate state of affairs, by supplying labor when it can be done; therefore, be it

Resolved, That the Executive Board be and they are hereby requested to at once procure to be broken, at convenient places, such quantities of stone as will supply the streets with Macadam next spring. Adopted.

Ald. Hays, from the Law Committee, submitted the following:

To the Common Council of the City of Rochester:

GENTLEMEN—A judgment of \$1,600 was recovered against the city for a woman being hurt on Keynolds street, in front of premises belonging to Mr. Kalbfleisch. The City Attorney notified Mr. Kalbfleisch of the action, and is about to bring suit to endeavor to recover back this amount.

The Law Committee, however, think that under the circumstances the city should not sue Mr. Kalbfleisch on this claim, and would recommend that the City Attorney be instructed to take no further steps in the matter. Adopted.

To the Hon. the Common Council:

GENTLEMEN:—The Law Committee would report that the claim of Fred Minges is for damages done four acres of land by the overflow of the Court and William street sewer during six years. This subject is too familiar to need any discussion. Mr. Minges claims \$1,200. The committee are unable to see that amount of damages, but would recommend paying \$400 if he will accept that in full. Adopted.

To the Common Council of the City of Rochester:

GENTLEMEN:—The claim of Mr. Smith is for falling on South avenue. He walked off on the corner of Cypress street, where there was rather an ugly place. The damages, however, were not very severe. The doctor's bill was \$20 and there were some aches and bruises besides. If Smith will accept \$65 in full the committee would be in favor of paying that sum and so report. Adopted.

By Ald. Hays—

To the Honorable the Common Council of the City of Rochester:

GENTLEMEN: In the matter of George D. Lord the Law Committee would report as follows: The amount of the bill presented by the water works contractor and the general interest felt in the matter, render it proper for the committee to report at some length, in order that the Council and the citizens may fully understand the various questions which arise. It is deemed best, therefore, to discuss each item of the bill separately, and then to present the conclusions which your committee have reached. In order that the Committee might fully understand the nature of the different claims, we invited all persons whom we thought had any connection with the construction of the work and all others whom we deemed advisable to meet us and carefully investigated the matter. The first claim is an item of \$40,000, for 200,000 yards embankment not paid for. Although the engineer is of the opinion that, according to the specifications, Mr. Lord has no claim, still it depends upon the construction which the courts may give to the contract. The contractor excavated 200,000 yards of earth, for which he was paid 25 cents per yard, the contract price for excavation.—This earth he used in making the banks of the reservoir. By the contract he was to receive 20 cents per yard for embankment. He claims he should also be paid for the earth used in the reservoir banks as embankment. The water commissioners claim that as the contractor had been paid for excavating he was not entitled to be paid for embankment also. Your Committee do not think that the contractor is legally entitled to anything on this claim. Still, different construction may be given to the language of the contract.

The second item is for the pipe inspection charged the contractor—\$11 80.

The contract states specifically that the inspection should be made at the expense of the contractor, and your committee is therefore of the opinion that this was a proper charge against the contractor, and that he is not entitled to this item.

The third item is \$75.00 additional expense caused by the Commissioners not obtaining the right of way in time and the work being delayed until the winter months of 1875-6. The commissioners did not obtain the right of way until after the time in which the work was

to be performed. The committee, however, think that the contractor suffered no delay from this cause, and are of the opinion that he is not entitled to anything under this item.

The fourth item is \$50,000 for extra work in digging pipe trench for the Holly system. The Commissioners claim that Mr. Lord was paid \$35,000 in full settlement of this claim. The engineer is of the opinion that \$2,900 is still due, in which he and the Commissioners do not agree. The committee think that this amount is as much as could be recovered under this item, and if the settlement was in full of all claims for extra work up to that time, then the contractor could not recover anything.

The fifth, ninth and eleventh items all depend upon one question. The contractor laid pipes with bells of a shape and thickness directed by the engineer of the Water Commissioners. A large number of these broke. The ground had to be dug up and the pipes repaired and relaid. The contractor claims to have been put to an expense of something over \$40,000 on this account, including the amount paid out by the Commissioners and charged to him. Mr. Lord claims that the bells broke because they were not of proper shape and thickness and could not bear the pressure. On the other hand, the engineer claims that he can show beyond question that such is not the fact, and that the breaking of the bells was caused by carelessness in unloading and by improperly laying the pipes. It is the opinion of the Committee that Mr. Lord is not entitled to anything on this item.

The sixth item is for a deduction of \$1,474.18, paid by the Commissioners for repairing Mount Hope reservoir and charged to the contractor. This is an item which the engineer and Commissioners now admit should be paid to the contractor. Some trenches were dug left open and the repairs were made necessary by defective work. Further examination, however, shows that this was not the case. Both the Commissioners and the engineer now regard this as an improper charge. The Committee accordingly report that Mr. Lord is entitled to this item of \$1,474.18.

The seventh item of \$20,000 loss of profits on the iron and the eighth item of \$50,000 claimed on the theory that the trenching should have been estimated in a different manner, the committee do not regard as legal claims.

The tenth item of \$11,208.23 is for money paid by the Commissioners in refilling trenches and charged by them to the contractor. Some trenches were dug left unlined. The Commissioners obtained Mr. Lord's consent, refilled them and charged him the expense which was several thousand dollars larger than the amount allowed for this portion of the work at the rates fixed by the contract.

Mr. Lord claims he was not requested to do the work in the manner required by the contract and that he could not be charged for the refilling at any higher rates than the contract allowed him. This would make a difference of several thousand dollars in his favor. The committee, however, doubts the validity of this claim.

The twelfth item is \$1,692.50 paid for rent of lands for storing pipe. The committee has not been informed of any reason or authority for charging this item to the city.

The deductions under the thirteenth item were properly made. The contractor had been overpaid on previous estimates, and these amounts were properly deducted from the final estimate. Mr. Lord is entitled to nothing under this item.

The fourteenth and fifteenth items are \$7,450 for steam excavator and flat scow. The contractor bought these for his own use, and cannot charge them to the city.

The sixteenth item is \$1,500 for tools used by the Water Commissioners which belonged to the contractor. These were used in the trenches filled by the Commissioners. It was the work which the contractor should have done. Using his tools lessened the expense and was for his benefit. The committee does not think there is any liability under this item.

The seventeenth item is \$15,122.43, amount due as per final estimate of Engineer. This item is correct and must be paid. The Commissioners accepted the work, and this was the amount paid the contractor by Mr. Tubbs's estimate. It was not paid because the Commissioners required a receipt in full before paying it, and thus the contractor would not give. There was also a deficiency in the fund, and after paying other bills there was not enough left to pay this in full. It is due by the city's own accounts for work accepted by its officers, and must be paid.

The committee, after due consideration, report adversely to the claims made by Mr. Lord, with the exception of the amounts admitted to be justly due, all of which have been specifically mentioned in this report, as follows: \$2,900 balance due on Holly system, \$1,474.18 for deduction for repairs made by Commissioners on Mt. Hope reservoir, and \$15,122.43 balance due as per final estimate, amounting in all to the sum of \$19,396.66.

We would, however, call attention to the fact that several sections of the contract might be made to bear a construction different from that adopted by the committee, in which case Mr. Lord would recover certain further amounts from the city. If the city offers Mr. Lord as much as he finally recovers, it will throw the costs on him instead of the city. In a suit of this magnitude they will probably amount to several thousand dollars. If no offer were made, he would recover costs, although he only collected the undisputed items. It is probable that the contractor will accept no sum in settlement except a much larger one than the Council would pay, unless under the judgment of the court.

The city's own expenses in such a suit as this would also be several thousand dollars. The amount admitted to be due, with interest, is already about \$30,000. Interest and expenses of a suit will largely increase the amount, even if the city is successful as to all other items. The committee, therefore, is of the opinion, under all the circumstances, that it would be judicious to direct the City Attorney to offer judgment, if suit is brought, for the sum of \$30,000 in full settlement of the amounts admitted to be due on the contract, and all other claims of every sort.

SIMON HAYS,  
JOHN MCGRAW, 2d.,  
E. HUNTINGTON,  
Com.

Ald. Hays moved that the report be accepted, adopted, received, filed and published. Adopted.

By Ald. Hays—  
*To the Hon., the Common Council of the City of Rochester:*

GENTLEMEN:—I have the honor to state that in the fall of 1874 I constructed a walk on Childs street under a contract with the Board of Public Works.

Owing to certain circumstances connected with the case I have never received payment for a certain portion of the work.

I desire to have this matter investigated by your Board to the end that I may obtain whatever relief is just and proper.

Yours, respectfully, &c.,  
E. R. FOX.

ROCHESTER, N. Y., Nov. 28, 1876.

Referred to Executive Board.

By Ald. Hadley—Bills of Sherlock & Sloan, \$12.57; Bingham, Bemis & Rogers, \$5.03; Howe & Rogers, \$67.56; John H. Dana, \$27.43; Jas. R. Chamberlain, \$14.50; which he moved to refer to the City Property Committee. Bill of S. A. Millington, \$23.00; which he moved to refer to the Laup Committee. Bills of 54th Reg't Band, \$80.00; Express Printing Company, \$5.00; Rochester Printing Co. \$24.50; Union & Advertiser Co., \$22.60; which he moved to refer to the Police Committee.

Ald. Thomas moved to refer all presented to the Police Committee. Adopted.

By Ald. Hadley—Petition of Henry Dance'll for permission to erect a wood building in Hudson street. Referred to Wood Building Committee and Fire Marshal with power to act.

Ald. Hays moved to reconsider the motion referring the claim of E. R. Fox to the Executive Board. Adopted. He moved that it be referred to the Law Committee. Adopted.

By Ald. Redman—Petition of J. M. Thayer to erect a wood building on James street. Referred to Wood Building Committee and Fire Marshal with power to act. Also petition of Chauncey Perry for the remission of a tax. Referred to Law Committee.

By Ald. Bennett—Bills of M. Huntington, \$74.00; James Baker, \$71.61; C. V. Jeffreys, \$12.00; G. Herzberger, \$99.92. Referred to Committee on Truant House.

By Ald. Kelly—Petition of Henry P. Gates to erect a wood building in Smith st. Referred to Wood Building Committee and Fire Marsh-