

City of Cambridge

Informal Council Oct. 27, 1874

^{Joint}
The Special Committee to which ~~were~~
refer^d petitions of Francis W. Brown, Daniel
Kennedy, John J. Fatal and Joseph Rosenberg,
for compensation for damage to their several
estates by laying out and widening Lincoln St.
Report

That it has given the several
petitioners a hearing, and as their claims
have already been twice reported upon adversely,
the Committee has tried to make the investigation
full and thorough. The facts in the
case are these, Lincoln Street was laid ^{out}
forty feet wide from Elm St. to Webster Avenue
by Order of the City Council approved September
16th, 1873. — On the 21st of January 1874
Daniel Kennedy petitioned for compensation for
land taken from him by said laying out and
widening, no award having been made to him
in the Order laying out the street; the Committee
evidently considering it as merely an acceptance
and laying out, and not a widening as claimed
by the petitioner. This petition was duly
refer^d to the Committee on Roads & Bridges.
Joseph Rosenberg for same cause petitioned
February 4th, and his petition was refer^d to the
same Committee. On March 13th said Committee
reported on both petitions, recommending leave

to withdraw." The other petitions now refer^d to us with above named petitions were not presented till subsequently, as the various owners' rights were so nearly identical that these (as stated by the petitioners,) were deemed sufficient as test cases, to call attention to the claims of all the owners to whom no awards had been made. Mr. Kennedy again pressed his claim and May 13th said Committee again reported recommending "leave to withdraw, as no reason exists for granting the prayer of petitioners".

This Report was refer^d by the Common Council to the City Solicitor for his opinion as to Mr. Kennedy's claim, "irrespective of his loss of legal right to appeal," which was the reason given by said Committee in defence of their report. The City Solicitor replied June 15th that "after an inquiry into the facts as well as the law, and after information from the petitioners - from the Committee, and from other sources, he was satisfied that the fence had been maintained on the line from whence it was set back, for more than twenty years; and the petitioners' claim against the City for compensation was a valid legal claim." The report was recommitted to the Committee with this opinion, but June 30th the Committee reported "that it sees no reason for in any way changing the recommendation contained in its report of May 13th viz, "leave

to withdraw." The parties again petitioned, for a hearing before the Board of Aldermen, and their petitions were after the hearing referred to the City Solicitor upon the question "whether the City can lawfully pay them damages", to which the Solicitor replies that "proceeding upon the assumption that the proceedings were regular, and that they might ~~possibly~~ have recovered upon an appeal seasonably made from the award of the City Council, they have lost their right of appeal" and "they have no claim against the City". He further says, "the City Council decide as judges between the rights of the public on the one hand, and the rights of the property owners on the other; and their award allowing compensation to the owners of land taken, takes effect as the decision of a judge, and not as the offer of a party representing the City." He also says, "when the City Council has laid out a street and made the awards, they have in my judgement performed their whole duty in the premises, and any one dissatisfied therewith may within six months make complaint, &c, &c." The points raised are, — Have the petitioners lost all right to claim compensation, — and, Is the City Council debarred from making granting such compensation? The City-Solicitor declares emphatically that they were clearly entitled to compensation up to the close of the legal six months, which was March 16th.

The petition of Mr. Kennedy was presented Jan'y 21st, nearly ~~two~~ two months before, and it was reported upon March 18th or two days after the close of the six months.

Art. 7 of the Joint Rules of the City Council provides that "Every ^{Joint} Committee to whom any subject may be refer^d, shall report thereon within four weeks or ask for further time."

This Committee is aware that this rule is not strictly adhered to, but where delay will work loss of legal rights, it would seem necessary that it should be. The Committee on Roads & Bridges did not ask for further time on these petitions and it is not known that they claim any necessary delay; but on the contrary, it is claimed by petitioners that at least one member of the Committee had, long before the Report, stated the intention of the Committee; and yet Mr. Kennedy states that in answer to repeated inquiries by him, the only information given him officially was that "it will be all right, we are not ready to report yet," and he therefore waited till it was too late. But petitioners'

claim of unnecessary delay may not be a sufficient reason to warrant any revision.

Section 43. General Statutes, provides that when petitions for laying out a highway shall have been presented to the County Commissioners, they

shall
 view the premises, hear the parties, and when they
 have adjudicated upon the common convenience
 and necessity of laying out, they shall as soon as
 may be proceed to lay out the same accordingly.

It afterwards provides, that, if damage shall
 be sustained by any person in their property by
 the laying out, the Commissioners shall estimate
 the amount, and in their return state the
 share of each separately; but they shall
 not order such damages to be paid nor shall
 a person claiming damage have a right to demand
 the same until the land over which the highway
 is located has been entered upon and possession
 taken for the purpose of constructing it.

Sect. 62 of same Chapter provides, in the
 case of Town Ways, that, if ~~any~~ damage is
 sustained by any person in his property by the
 laying out of a town way, he shall receive
 such compensation as the Selectmen may deter-
 mine, to be ^{awarded} ~~assessed~~ in the manner provided
 for award of damages by County Commissioners
 in laying out highways.

Sect. 73 provides that, a person aggrieved
 by the laying out or by the assessment of his
 damages or compensation by way of indemnity,
 may have the matter of his complaint determined
 by a jury which may be applied for at any
 time within one year after such laying out
or assessment of indemnity -

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Sect. 91 provides, that the provisions of the foregoing sections of this Chapter so far as applicable, shall apply to the several cities, except as may be otherwise provided by City Charters.

The Charter of the City of Cambridge provides that the City Council shall have exclusive authority and power to lay out new streets and ways within said city and to estimate the damage which any person shall sustain thereby; And any person dissatisfied with the decision of the City Council in the Estimate of damages, may within six months thereafter make complaint, &c, &c,

We rehearse these well known facts, merely to show that laying out streets, and awarding damages are two separate and distinct authorities and powers, and can unquestionably be used at different times. The street may be laid out by one order, and the damages awarded by another, ^{at} within any reasonable time thereafter within the time allowed by law to maintain valid an order of laying-out.

And we are led to ask, when was the "decision of the City Council" in the matter of damages? either of the petitioners? The order of Sept. 16th only awards damages to Mary Ann Sweet for

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land east of Winsor Street, which was a practical extension of Lincoln St, and does not mention the owners of land bordering on Lincoln St, as previously used; And yet the City-Solicitor says they owned the land taken from them and were entitled to compensation.

Orders laying out streets and making no awards are almost invariably worded (and this Order may be the only variation from the rule,) "Order, That no damages be awarded for the land so taken as aforesaid." The Order laying out Lincoln St, does not say "Order, That damages be awarded to Mary Ann Sweet, and no damages to any body else" - If it implies that by omitting the names, it seems to be contrary to the law as laid down for a jury "acting as judges between the public and the owners", in relation to parties whose land has been taken, wherein it is stated that they ~~expressly authorize~~ shall make returns for compensating any individual who may suffer damage by the laying out of any Highway, "and if they find anyone or more of said parties not to have sustained damage they shall set forth in their return that they award no damages to such party"; but it still leaves the right of appeal after the "decision of the City Council" in regard to damages. When was that "decision"? Does it mean the first or the final "decision"? The last decision as yet was an award to M. A. Lewis of \$300, by Order

reported by said Committee May 20th and approved June 11th 1874,

We further deem it unquestionable that if the Committee and City Council erroneously supposed that petitioners did not own the land taken from them, then the implied decision of "no damages" is liable to be set aside as erroneous and contrary to fact. That an error cannot be corrected, would certainly be considered arbitrary and unjust.

The Committee felt that not only the law but the custom of the City Council in dealing with the citizens whom it represents, should be taken into account, and for that purpose the Clerk was instructed to examine the records ^{to see} if any precedents existed for such an award, even allowing the original order to be full and valid, and entailing the six months restriction. Out of those on record we have selected only some occurring in 1873 and 1874, and it is but fair to state that two of the Committee on Roads & Bridges for 1874 were upon that of 1873 and ^{four fifths} ~~a majority~~ of ^{were in the Common Council for 1873.} the Committee for 1874, and would be supposed to be knowing to the precedents established by that Committee, if they were not, as we suppose they were, in turn based upon other precedents of previous years.

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Portland St. from Main St. to Hampshire St.
was laid out July 10, 1872.

July 1, 1873, nearly 12 months thereafter,
awards were made of \$300. to Freeman C.
Waith and \$600. to Pettingill and Pear,

and Dec^r 5, 1873 or nearly 17 months
thereafter an award of \$500. was made to
Edward McHugh and T. J. McCarty on said
street. These were all additional to
previous awards to same parties.

Portland St. from Hampshire St. to Cambridge St.
was laid out Dec^r 7, 1872, and it was
then ordered "that no damages be allowed
for the land so taken as aforesaid."

Dec^r 24, 1873, more than 12 months
thereafter an award of \$500. was made to
Edward T. Pinnett on said street.

Lincoln St. from Elm St. to Webster Avenue
was laid out Sept. 16, 1873 and an
award made as previously stated, to
one party, Mrs. Mary Ann Sweet.

May 20, 1874 eight months thereafter,
and two months after the Committee on
Roads & Bridges had recommended that Daniel
Kennedy have "leave to withdraw" because
~~his~~ six months had expired and he had
thus lost his right to claim compensation,

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recommendation of the
on the same Committee ~~was~~ an award of \$300,
was made to Miss M. A. Lewis on said
street, without any explanation as to how
it was she had not lost her's also.

This was a first award, but was
in response to her petition presented
January 14th, seven days before Mr. Kennedy
presented his petition.

It was subsequent
to this that the opinion of the City Solicitor
was obtained in relation to the six
months limitation; but that the Com-
mittee did not ^{themselves} fully appreciate the
force of the point which they had repeatedly
urged, may perhaps be inferred, from
the fact that on Oct. 5th 1874. they
recommended, ^{a comprehensive order} ~~an order~~ for additional
awards on several streets in the locality
known as the Cambridge St. District, which
streets had been laid out some eight months
before, viz. Feb'y 10, 1874. This order

comprised 4 parties on Hunting Street

2 " " Porter St.

6 " " Warren St.

2 " " Jefferson St.

And 7 " " Harding St.

these awards ranging from \$6.00 to \$125.00
but making a total of only \$401.10; but
if it is right and just ~~it makes an~~

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(and we presume it was) to make an award of \$6.00 eight months afterwards, it must be for \$600.00.

2 We admit that these precedents may rightly be considered action open to criticism, even though the Committee and Council acted justly; for the City Solicitor says, "After the petitioners have lost their right to appeal, the rights of both parties are fixed, and if the tribunal laying out the street can, at the expiration of one year after the rights of the parties are thus fixed, change those rights by a new award, why may they not do the same thing at the expiration of ten years"? But we claim that having made new awards the City Council itself has "changed those rights".

This Committee is not knowing to the fact that any ~~was~~ of above named parties preserved their rights by appealing. If any did, such action was made useless by the action of the City Council in making awards as quoted.

These precedents therefore apply to the present petitioners.

In conclusion, we submit the following legal opinions or decisions ~~having~~ bearing upon the questions presented.

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1st After the laying out of any street,
 "To estimate the damage which any person shall sustain thereby, constitutes another distinct clause and substantive and independent power, and is practically unlimited until the damage which any and all persons shall sustain is estimated and a final decision is reached; after which there may be an appeal for the individual or separate owner.

2^d "It is competent for the City Council to defer the matter of awarding damages to such time as may be deemed proper."

3^d "The City Council may pass upon the question of damages at any reasonable time after the order taking the land and laying out the street."
~~with said award is in force but unexecuted.~~

4th "One award may be made for damages and the other defer."

5th "The 'decision of the City Council in matter of damages', does not mean the 1st award, the 2^d award, or all of the several awards, but after a final award that shall be final."

6th "If the record shows that the question of damages to the abutters has not been passed upon completely, the City Council may pass upon it."

7th "The City Council may correct its own error, if one has been made affecting rights."

We incidentally suggest ~~that~~ whether an economical change of policy may not be made in the matter of awards, if these opinions are tenable, as we presume they are,

The Committee has gone thus fully into this investigation of the claims presented, for the reason that a great difference of opinion evidently existed; and also because some of the points alluded to are either new ~~&~~ or have been overlooked and may form the basis for future decisions of the City Council.

It is, ^{said} ~~suggested~~ that kindred claims are in abeyance and the report of this Committee may open the gate to a large number of like claims. We know of none, and must submit that the gate has already been pretty well opened, but we presume they have all been treated as will all others to come, ^{and as we} ~~know~~ know we have tried, and believe we have treated these, upon their own merits,

Believing then, that justice and equity demand it, and that the law as well as the custom of the City Council allows it, we respectfully recommend the adoption of the accompanying Order making awards to the petitioners.

Respectfully submitted,

A. P. Clarm
J. H. Whitman
John J. Henderson
Thomas Graham
Joseph J. Kelley

Committee

Report
Jt. Spec. Committee on
Lincoln St.
Oct. 27, 1874.

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