

Regular meeting of the City Council, Austin, Texas, May 20th 1909.

Hon A P Wooldridge, Mayor, presiding: Roll called:

Present Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart and Powell 5

The Minutes of the last regular meeting were read and approved.

Petitions, memorials, etc:

The Mayor laid before the Council a petition of C O Smith & Co, asking the Council to refund to him amount paid for water pipe laid in Glenwood addition, which was read and on motion of Councilman Hart referred to Councilmen Bartholomew & Gracy for investigation and report, by the following vote:

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart and Powell 5

Nays none.

Reports of Councilmen :

Councilman Gracy made a verbal report as to City finances.

Councilman Hart to whom was referred a petition to remit fine assessed in the Recorders Court against H Ferguson, presented a report, stating that he had carefully investigated the case, and recommended that the petition be granted.

The report was adopted by the following vote :

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart and Powell 5

Nays none.

Councilman Hart to whom was referred the petition of Santiago Caruna asking to have fine assessed against him in the Recorders Court remitted, presented a report recommending that the petition be granted.

On motion the report was adopted by the following vote:

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart & Powell 5

Nays none.

Councilman Hart to whom was referred the communication from Marshal Laughlin recommending that a fine and costs assessed against one John Soultz, an afflicted boy, in the Recorders Court, be remitted, presented a report recommending that the request be granted. On motion the report was adopted.

The Mayor laid before the Council the following communication from the City Atty.

May 19th 1909,

To the City Council of the City of Austin.

Gentlemen :

Referring to your inquiry as to the right of the City of Austin to compel abutting property owners to pave the streets in front of their property, I have the honor to advise you as follows:

The case of Hutcheson vs Storie, 51 S W Rep, 848, which is the leading case on the subject in Texas, and which bases the doctrine announced therein largely on the rule laid down in Village of Norwood vs Baker, 172 U S, 269, blazed the way for municipal improvement in Texas. While it is true that the Court in this case held the ordinance of the City of Houston providing for street improvements by assessments against abutting property owners as unconstitutional, because the provisions of the ordinance tended to deprive persons of their property without due process of law, nevertheless this case by suggestion pointed out a possible method of accomplishing street improvement.

This case held that an assessment could not be made by the City Council against abutting property owners for public improvements which failed to base such assessment upon the value of the special benefits to such property owners and also

Petition
C O Smith & Co
to refund amount
paid

Hart on petition
H Ferguson

Hart on petition
Santiago Caruna

Hart on petition
Marshal Laughlin

Simon L. L. L.
Paving Streets

the City Council could not in itself determine the benefits nor that the benefits would be presumed to equal the Assessment.

And if there were no special or peculiar benefits the assessment would be simply an arbitrary exaction which cannot be sustained; but if by due process of law benefits accruing to the abutting property were actually discoverable, then the amount of such benefits and not in excess thereof could an assessment be levied against the property. In *Storey vs Cortez*, 90 Texas, 233, it is affirmatively held that where the charter of a City so authorizes, the cost of local improvements, when responsive to the benefits derived, may be made a personal charge against the owner, as well as a lien against the property itself.

The twenty-ninth Legislature enacted an amendment to the charter to the City of Austin granting it power to fix and determine street and sidewalk improvements. The provisions of this charter amendment followed the doctrine above laid down.

Acting under authority of such amendment the City Council passed an ordinance of May 21, 1906, carrying into effect the provisions of said amendment by providing for the paving of Congress Avenue and East sixth street.

Under the provisions of this ordinance an action was brought by the City of Austin against Joseph Nalle in the County Court of Travis County, Texas, for the purpose of assessing the benefits to his property to be derived on East Sixth street by paving the street in front of said property. Judgment was obtained by the City against said defendant in accordance with the procedure prescribed by said ordinance, which was affirmed by the Court of Civil Appeals in the case of *Nalle vs City of Austin*, 103 S W Rep, 825.

The opinion in this case upheld in every respect the validity of both the charter amendment granting the right to assess for benefits received and the proceedings provided for by the ordinance for determining such benefits and making assessments therefor, and expressly held that the City Council could provide by ordinance for the making of assessments before the improvement is made. After this case was decided, but before the paving was actually done in front of the said premises of Joseph Nalle, suit was brought by the City against him to foreclose the lien provided for in the charter amendment and ordinance. Judgment was rendered against the City in this case by the Dist Court, and was affirmed by the Court of Civil Appeals, on the ground that the suit of the City for foreclosure was premature and that the benefits to the abutting property could not be determined until the paving was actually done.

Some months ago the Supreme Court granted a writ of error in this case, which writ has since been pending, and I am informed by the Clerk, that the Supreme Court this morning did not hand down an opinion in the case. Action from this Court may be expected at any time, and is being watched with interest by all Cities of the State, since it will settle the question whether or not it is necessary for the

.City to pave first in front of the abutting property before it can move to Collect under foreclosure.

The paving amendment above referred to has been read into the new charter of the City, with some additional provisions, and under it there is ample grant of power to compel abutting property owners to pay for paving in front of their premises in proportion to the benefits they receive.

I wish to call the attention of the Council to the fact that in enacting the ordinance above referred to, the paving on west sixth street was not provided for, and I would, therefore, suggest that an ordinance be enacted providing for the pavement of that thoroughfare within certain limits.

By your direction, I shall at some future date prepare a general paving ordinance.

Very Respectfully.

J Bouldin Rector, City Attorney.

P S It has been held that the assessment for public improvements is not a tax, and therefore, a lien to secure same will not attach to a homestead; but in such cases the Municipality may proceed against the abutting property owners and obtain personal judgement against such persons for such improvements.

Rector.

On motion the report was ordered filed.

Unfinished business:

*Amendment to
Paving Ordinance*

The Mayor laid before the Council an ordinance to amend Articles 9 & 10, Title 2 of the Revised ordinances of the City. The ordinance was read the second time.

Councilman Hart offered a substitute for the ordinance, and moved to adopt the substitute in lieu of the original ordinance, which motion prevailed by the following vote:

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart and Powell 5
Nays none.

The ordinance was then passed by the following vote :

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart and Powell 5
Nays none.

New business :

The Mayor laid before the Council the following communication from Auditor Morris.

Austin, Texas, May 20, 1909.

To the Honorable City Council of the City of Austin, Austin, Texas.

Gentlemen:

Referring to the discrepancies existing between the Cash books and Customers Ledgers of the Water & Light Office for the year 1908, I beg leave to advise that, as directed, I have made a brief investigation for the purpose of ascertaining the cause. The Power accounts being involved and fewer in number, were selected for the examination. To go directly to the cause of the discrepancies I have to report that I found that cash posted to the credit of Customers Power Accounts, amounting to \$ 208.10 had not been entered on the cash books as required. This led to an examination of the water & Light accounts of the customers, who paid the power accounts above mentioned, with a view to ascertaining whether or not the books showed that such persons paid their water and light accounts at the same time that they paid their power accounts.

I found that the customers ledgers showed that they had, but the cash so posted did not appear on the cash book.

*W. Morris
Auditor*

This brief examination investigation points directly to the cause of at least a portion of the discrepancy.

Nothing short of a thorough and complete examination in detail of the records involved can give a correct and satisfactory result.

By doing this, the facts as to the entire amount of the discrepancy can be ascertained.

Respectfully submitted.

Milton Morris, Auditor.

On motion the report was ordered filed.

By Councilman Powell an ordinance to provide a means for fixing and determining the assessment of benefits, and of the proportion and amount of costs to be paid by abutting property owners for street paving to be done on west sixth street in the City of Austin, Texas,.

The ordinance was read the first time and on motion the rule was suspended and the ordinance placed on its second reading, by the following vote :

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart and Powell 5
Nays none.

The ordinance was read the second time, and the rule further suspended and the ordinance read the third time, by the following vote :
Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart and Powell 5
Nays none. The ordinance was then laid over until the next regular meeting of the Council.

By Councilman Powell an ordinance appropriating the sum of \$ 500.00 for the purpose of paying weekly pay rolls street dept. The ordinance was read the first time and passed under suspension of the rules by the following vote :

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart and Powell 5
Nays none.

By Councilman Hart an ordinance creating the Office of Bridge Keeper. The ordinance was read the first time and passed under suspension of the rules by the following vote :

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart and Powell 5
Nays none.

By Councilman Hart an ordinance amending Article 25, Chapter 3, of the revised ordinances of the City. The ordinance was read the first time and passed under suspension of the rules by the following vote: Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart and Powell 5 Nays none.

By Councilman Bartholomew an ordinance appropriating the sum of \$ 10,000.00 for the purpose of paying salaries of Officers and Employees Water & Light Dept. The ordinance was read the first time and on motion the rule was suspended and the ordinance placed on its second reading by the following vote :

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart and Powell 5
Nays none.

Paving, etc.

*\$500 Adams Street
Labor*

*Office of Bridge Keeper
Bridges*

*Amending Article 25
Finance*

*Salaries
Water & Light*

The ordinance was read the second time, and laid over until the next regular meeting.

*affro approved yes
with Dept*

By Councilman Bartholomew an ordinance appropriating the sum of \$7181.45 for the purpose of paying approved accounts Water & Light Dept; The ordinance was read the first time, and on motion the rule was suspended and the ordinance placed on its second reading by the following vote:

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hatrand Powell 5

Nays none.

The ordinance was read the second time and laid over until the next regular meeting of the Council.

*affro approved yes
with Dept*

By Councilman Bartholomew an ordinance appropriating the sum of \$ 15,000.00 for the purpose of paying approved accounts Water & Light Dept .

The ordinance was read the first time and on motion the rule was suspended and the ordinance placed on its second reading by the following vote :

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart and Powell 5

Nays none.

The ordinance was read the second time and laid over until the next regular meeting of the Council.

*Ordinance creating
the office of
Auditor*

By the Mayor an ordinance creating the office of Auditor, which was read the first time and laid on the table subject to call.

Councilman Hart presented a communication from W H Richardson & Co in regard to Fire Hose , which was read and ordered filed.

Mayor Wooldridge offered the following resolution, viz:

Resolved that J Bouldin Rector, Jno H Robinson Jr, Nelson Davis, L C Paige, A J Seiders, Jas Breen & Mrs J M Young, J S Taylor, J D Claybrook, Mrs C L Condit and Mrs Fred Scott be and they are hereby appointed a co-operative Committee to act with the City Council in the matter of procuring funds and otherwise assisting in the permanent improvement of Wooldridge Park.

The resolution was adopted by the following vote:

Yeas Mayor Wooldridge, Councilmen Bartholomew, Gracy, Hart and Powell 5

Nays none .

On motion the Council adjourned .

K. C. Johnson
City Clerk.

Pass Committee