

COUNCIL CHAMBER, }  
 Ann Arbor, April 18th, 1898. }  
 Regular Session.  
 Called to order by Pres. Luick.  
 Roll called. Quorum present.  
 Absent Ald. Vandawarker, Cady.

COMMUNICATION FROM THE MAYOR.

Ann Arbor, Mich., April 18, 1898.  
 To the Honorable the Common Council  
 of the City of Ann Arbor:

Gentlemen: It again becomes my  
 duty as well as pleasure to confer with  
 your honorable body in relation to the  
 affairs of our city.

The general expenses of the city for  
 the past year from April 1, '97, to  
 April 1, '98, as taken from the Treasur-  
 er's report are as follows:

Contingent fund.....	\$16793 12
Street fund.....	14891 20
Fire department fund.....	7996 60
Water fund.....	6154 50
Bridge, culvert and crosswalk fund...	4814 31
Police fund.....	3373 55
Poor fund.....	2445 38
Cemetery fund.....	234 00
Dog tax and license.....	58 25

Total .....\$56760 91

The following bonds were redeemed  
 by the city:

Hospital bonds.....	\$ 3000 00
Interest.....	120 00
Main sewer bonds.....	2000 00
Interest.....	1120 00

Total .....\$ 6240 00

In addition sewer district bonds  
 were paid by taxes collected from special  
 assessments.

District No. 1.....	\$ 1000 00
" 2.....	1500 00
" 3.....	6500 00
" 4.....	1000 00
" 5.....	2500 00
" 6.....	3170 92

Interest.....\$15670 92  
 1474 19

Total.....\$17145 11

Leaving the bonded indebtedness as  
 follows:

Main sewer.....	\$22000 00
District No. 3.....	6500 00
" 4.....	1000 00
" 5.....	5000 00
" 6.....	9381 19
" 7.....	1887 48

Total.....\$45768.67

of which \$22,000 is a direct obligation  
 and \$23,768.67 an indirect obligation  
 of the city.

In my communication to the Council  
 of 1897 I recommended the paving of  
 Main st. and am glad to state that the  
 idea was approved by the property  
 owners and adopted by the Council

and the prospect is that the work on  
 this improvement will soon commence,  
 and I believe if a good brick pavement  
 is secured on this street its cleanliness  
 and beauty will so commend it that the  
 property owners on the remaining busi-  
 ness streets will avail themselves of  
 the opportunity to secure this great  
 improvement on the liberal terms offer-  
 ed by the ordinance. Fourth ave.  
 should be paved from Ann st. to Lib-  
 erty, and Ann, Huron, Washington  
 and Liberty from Ashley to Fourth  
 ave. or Huron and Washington could  
 be extended to Fifth ave. This would  
 practically cover the business part of  
 our city and place all business prop-  
 erty on an equal footing. During the  
 past year two streets were macadamiz-  
 ed, S. University ave. and Division st.  
 south of Huron and the condition of  
 these streets in the spring and at the  
 present time leads me to believe that  
 this work is a success, and I desire to  
 recommend that one mile of this mac-  
 adam work be built each year and  
 considerable of the cost can be saved  
 if the crushed stone be purchased and  
 shipped here ready for use. When we  
 get our business streets paved and our  
 residence streets macadamized they  
 will be in perfect condition and we will  
 no longer hear the inquiry, "Are our  
 streets muddy or dusty?" In connec-  
 tion with this permanent class of work  
 more money is needed than can be  
 raised in one year under the charter  
 and steps should be taken to secure  
 the necessary authority to raise the  
 additional amount needed for paving  
 purposes and the sum raised should be  
 placed in a special fund and used only  
 for the extra work made necessary by  
 paving the streets

For a statement in detail of the  
 work done on the streets and cross-  
 walks the past year I beg to refer you  
 to the report of the Board of Public  
 Works.

The Council of 1897 appointed a  
 Committee to consider the advisability  
 of securing land for a park on the  
 North side. Owing to the fact that  
 the electric road between Ann Arbor  
 and Detroit will soon be completed  
 and thousands of visitors coming to  
 our city I believe the time has arrived  
 to secure the land offered. The site  
 selected embraces the 30 acres just  
 north of the river at the point where  
 the island lies and is an ideal spot for  
 the establishment of a park. It is ad-  
 jacent to the beautiful boulevard and

nature has so completed her work that a comparatively small amount of money would be required to give Ann Arbor one of the finest if not one of the largest parks in the country. Properly constructed and with the right kind of police surveillance it would be the most marked addition to the city that has been made in years, would enhance the value of property and what is perhaps more would add largely to the enjoyment of life. During the past year good order has been maintained in the city. There have been some violations of the law and there always will be. We have endeavored to enforce the law and ordinances, and our citizens generally and the great body of students here have been quiet and law abiding and I challenge anyone to name a city where the laws have been so generally observed and good order maintained as in the City of Ann Arbor.

I desire to renew my recommendation of last year for all night lighting in the business part of the city believing it would be an aid to our police force in protecting the property interests of our citizens.

We are all interested in the growth and welfare of our city and in your labors for its advancement I assure you that you can depend on my active and earnest assistance.

CHAS. E. HISCOCK,  
Mayor.

Ald. Coon moved that the message of the Mayor be referred to a special committee of three for division and reference.

Adopted.

Pres. Luick appointed Ald. Coon, Brown and Koch as such special committee.

Pres. Luick appointed the following Standing Committees of the Common Council for 1898-99.

Finance—Ald. Brown, Hamilton, Coon.

Ordinance—Ald. Cady, Brown, Spathelf.

Sewers—Ald. Sweet, Richards, Dieterle, Vandawarker, Weeks, Howell, Stevens.

Streets — Ald. Koch, Hamilton, Sweet, Vandawarker, Spathelf, Coon, Cady.

Sidewalks—Ald. Hamilton, Dieterle, Exinger, Brown, Weeks, Howell, Stevens.

Fire Department—Ald. Spathelf, Dieterle, Richards.

Water—Ald. Coon, Brown, Koch.

Police—Ald. Dieterle, Cady, Howell.

Lighting—Ald. Stevens, Richards, Spathelf.

Bonds—Ald. Vandawarker, Koch, Exinger.

Licenses—Ald. Richards, Cady, Coon.

Park—Ald. Exinger, Weeks, Vandawarker.

Poor—Ald. Howell, Hamilton, Koch.

Cemetery — Ald. Weeks, Sweet, Stevens.

PETITIONS AND COMMUNICATIONS.

To the Common Council:

The Board of Public Works respectfully submit the following bids for paving that portion of Main st. lying between Catherine and Liberty otherwise known as Paving District No. 1 with brick and asphalt, also for storm sewers:

	Brick.	Sewer.	Total.
W. J. Clancy.....	\$16,409 00	\$4,005 70	\$20,414 70
W. W. Hatch.....	16,767 00	4,026 25	20,793 25
Lephard & Winterhalter .....	16,933 44	4,506 66	21,440 60
Kerlin Bros.....	17,044 00	5,005 60	22,049 60
Talbot Paving Co. ....	19,952 00	7,931 00	27,883 00
W. M. Graham.....	20,159 00	8,213 80	28,372 80
Alcatraz Asphalt Co.....	Asphalt.	6,077 00	22,700 00
Ayres Construction Co.....	21,742 01	4,266 60	26,008 61
F. E. Cole.....	28,263 00	8,715 00	36,978 00
Herman Hutzel .....		4,005 70	
T. C. Brooks & Co.....		4,425 40	
Schneider Bros.....		5,863 75	

The Board would respectfully recommend that the contract be awarded to Wm. J. Clancy the lowest bidder for the work complete.

Respectfully submitted,  
Glen V. Mills,

Clerk of the Board of Public Works.

Ald. Coon moved that when the Council adjourn it adjourn until Thursday, April 21st, 1898, at 7:30 p. m.

Adopted as follows:

Yeas—Ald. Hamilton, Richards,

Koch, Dieterle, Sweet, Exinger, Brown, Spathelf, Weeks, Coon, Howell, Stevens, Pres. Luick—13.

Nays—None.

To the Common Council:

The Board of Public Works respectfully request your honorable body to allow them to purchase ten thousand feet of oak plank for crossings.

Respectfully submitted,

Glen V. Mills,

Clerk of the Board of Public Works.

Ald. Koch moved that the Council concur in the request of the Board.

Adopted as follows:

Yeas—Ald. Hamilton, Richards, Koch, Dieterle, Sweet, Exinger, Brown, Spathelf, Weeks, Coon, Howell, Stevens, Pres. Luick—13.

Nays—None.

A petition signed by August Alber and 5 others asking for a sidewalk on Third st. was read and referred to the Sidewalk Committee.

To the Honorable the Common Council of the City of Ann Arbor:

We, the undersigned, being a majority of all the owners of the Real Estate subject to assessment for the pavement of Main street between Liberty and William streets, respectfully petition your Honorable Body to pave that part of Main street between Liberty and William streets with brick or asphalt and in accordance with the provisions of an ordinance of the City of Ann Arbor, entitled, "An Ordinance Relative to Street Pavements" passed July 7th, 1897.

Signed:—Christian Mack, Noah W. Cheever, Edward Treadwell Estate, L. Gruner, Sarah Schumacher, Emil Golz, Fred Schmid, Jacob Laubengayer, Stephen Pratt by F. H. Belsler Agt., Geo. W. Moore, John M. Wagner, Wm. Aprill.

By Ald. Brown.

Resolved, that the petition for paving Main st. between Liberty and Williams sts. be referred to the Board of Public Works to determine if the petitioners are the owners of the greater number of feet of real estate fronting on Main st., the street proposed to be improved, and for an estimate of the cost of grading, paving with brick or asphalt on concrete foundation, curbing and other work on said street within said limits.

Adopted as follows:

Yeas—Ald. Hamilton, Richards,

Koch, Dieterle, Sweet, Exinger, Brown, Spathelf, Weeks, Coon, Howell, Stevens, Pres. Luick—15.

Nays—None.

To the Honorable the Common Council.

GENTLEMEN: In the matter of the liability of the City in the Wetherbee case, the maintainance of the bridge over the Michigan Central railroad and the opening of State street, referred to me, I respectfully submit the following report.

On March 26th 1886, the City entered into a certain contract with the Michigan Central Railroad Company the conditions of which are substantially as follows:

1. The City to vacate and abandon State street between Fuller street and the company's right of way and all of Page street north of Fuller street.

2. To change the grade of Detroit, Pontiac and Broadway streets so as to permit the construction of an overhead bridge, with approaches of a grade not exceeding six feet in a hundred.

3. To close temporarily the crossing of Detroit, Pontiac and Broadway streets across the company's tracks, and stop the use thereof during the progress of the work of the construction of said bridge.

4. To pay said Company five thousand dollars on the first day of February, 1887.

The Railway Company agreed,

1. To erect a passenger building at a cost of twenty thousand dollars, and to begin the construction thereof upon the vacation of the streets aforesaid by the City.

2. To build an iron bridge over its tracks in accordance with the design and details agreed upon between the City Engineer and the Chief Engineer of the company.

3. To build the approaches to said bridge with earth so as to afford a roadway twenty-four feet wide with natural slopes and with a grade not exceeding six feet in a hundred.

4. To build sidewalks along the east side of said approaches with a hand-rail on the east line of said walk.

5. To build a high, close, board fence on both sides of said bridge.

6. To maintain the masonry of said bridge at its own expense.

7. To extend sewer pipes running under its tracks.

8. To save the City harmless during the performance of the work.

9. To deliver the said bridge, and

approaches with sidewalks and fences as aforesaid, into the possession of the City free of all liens.

10. To furnish suitable and convenient access between its station building and State street for foot passengers and teams.

11. To waive any claim for damage, if at any time the City desires to construct an overhead crossing upon the line of State street, over its right of way.

It is my opinion that if the City had the power to make the above contract with the Railroad Company, and if the same was valid and binding as between the city and the company, that the city is not liable in the Wetherbee case.

Detroit street was opened and was a public highway at the time the railroad was constructed across it, and both the common law and the statutes of this state impose upon the company, in crossing a highway, the duty to construct and maintain its crossing in such a manner as to make it reasonably safe for public travel.

The statute declares that the Company must restore the highway to its former state as near as may be, and to construct suitable road crossings for the passage of teams, etc.

Howell Statutes §3323.

In the case of Maltby vs. the Chicago and West Michigan Railroad Company, 52 Michigan 108, the plaintiff was on his way to Muskegon with a load of hay, and on passing over the defendant's track his load was upset and he was injured. He attributed the occurrence to the unsafe condition of the south approach to the rails, and sued the company for damages. The circuit judge directed a verdict for the defendant and the plaintiff appealed to the Supreme Court.

In deciding the case the Court says: "The company contend that it was not subject to any duty to keep the approaches to its tracks in order at the crossing of public roads. That its only duty was to restore the road, when the crossing is made, to its former state as near as may be, leaving it as a duty of the public to keep up and preserve the proper conditions thereafter, and to do whatever else the public safety or convenience may dictate."

"Whether the duty to prevent the defects complained of extended to the city of Muskegon there is no occasion to decide. It is quite sufficient that on the theory of fact affirmed by the plain-

tiff, the suit is well brought against the defendant. If any duty lay upon the city to preserve the approach and crossing in a reasonably safe condition, it was not exclusive. It had no effect to derogate from the duty, or mitigate the responsibility of the defendant, and it could make no difference with the question of liability as between the latter and the plaintiff. Under the state of facts on which the plaintiff relies, the defendant would certainly be liable whether the city would be or not."

This case is cited and sustained in the following cases:

Thayer vs. the Flint and Pere Marquette Railroad Company 93 Mich. 150.

Tobias vs. Railroad Company 103 Michigan 338.

Jeffry vs. Railroad Co. 65 N. W. R. 755.

I hold that the company cannot relieve itself of the duty imposed upon it both by common law and statute by making the contract aforesaid with the city.

I claim also that the contract is ultra vires.

In the case of Grand Rapids vs. the Grand Rapids and Indiana Railway Company, reported in the 66 of Michigan at page 42, upon the petition of certain property owners, and a resolution of the council, a part of Seward street was vacated and the defendant was permitted to use that part so vacated on condition that it build and maintain a certain passenger station, on condition that First street should not be continued across its railroad.

The city subsequently filed a petition to open First street, across the railroad laid on Seward street, at the time the latter was vacated by the city, and the defendant set up the contract made with the city whereby the city agreed never to open First street across the right of way granted it on Seward street. The trial judge held the contract invalid and the company appealed the case to the Supreme Court. In discussing the rights of the company under the contract the court says: "The powers of a municipal corporation in respect to opening, improving, and controlling its streets are held in trust for the public benefit, and cannot be surrendered by contract to private persons or to a corporation, by resolution of the common council, or in any other manner. If this could be done,

there is no reason why the common council of any year may not, by contract, preclude the city for all future time from opening, widening, or extending any of its streets, or laying out new streets, no matter how great the public necessity may be therefor."

In the case of the Wabash Railroad Company vs. the city of Defiance, reported in volume 7 General Digest at page 774, the company crossed two streets at a grade eighteen feet below the grade of the street, where the same crossed the railway. The city council passed an ordinance permitting the railway to erect two bridges across its track, where the same crossed the two highways. The ordinance described in a general way the bridges to be constructed by the company, and provided for a side walk on each side of said bridges. The work to be done to the satisfaction of the city and the bridges were to be kept in repair by the company. The terms and conditions imposed by the ordinance were well and faithfully kept by the company.

The city subsequently changed the grade of the streets aforesaid, where they crossed the railway track, to the level of the railway, and so changing the approaches as to cause them to descend to the level of the road.

The railroad company filed a petition in the court of common pleas for Defiance county, Ohio, to enjoin the city of Defiance from proceeding with the improvement of the streets aforesaid, by which they would be so graded as to necessitate the removal of the bridges aforesaid and the approaches to the same. The court dismissed plaintiff's petition and it appealed to the Supreme court of the state of Ohio, where the decision of the lower court was affirmed. Plaintiff then appealed to the United States Supreme court and the case was affirmed by that court.

In delivering the opinion of the United States court Mr. Justice Brown says: "It (the city) does not agree that the bridges and their approaches shall remain any particular length of time, or that it shall not make new requirements as the growth of the city may seem to suggest. The only contract as to time which could possibly be extracted from this ordinance would be that the railway company, on building the bridges and approaches, should be entitled to maintain them in perpetuity. The result would be that, if the city should, in growth of its population, be-

come thickly settled in the neighborhood of these bridges, they would stand forever in the way of any improvement of the streets. This proposition is clearly untenable. It is incredible, in view of the language of this ordinance, that the city should have intended, or the railroad company expected, that the former thereby relinquished forever the right to improve or change the grade of the streets."

"If it were possible that the city could make such a contract at all, it could only be done by express authority of the legislature and in language that would admit of no other interpretation. It is claimed that the construction of the sidewalks by the railroad company was a consideration, since it had been the duty of the city up to that time to keep them in repair; but it surely could not be a consideration for the perpetual maintenance of the bridges. If it were a permission for anything it would simply be for the permission given the railway company to build the bridges—a permission obtained upon a special application of the railway company. Properly construed, this ordinance was simply a license to the company to build these bridges, and to continue them until the city council should conclude that it was for the public interest to so change the grade of the street as to make it a level crossing."

That the city in the absence of a statute permitting it, would have no authority to enter into such a contract with the railroad company is admitted?.....

"Indeed, the general principle that the legislative power of a city may control and improve its streets, and that such power, when duly exercised by ordinances, will override any license previously given by which the control of a certain street has been surrendered to any individual or corporation, is so well established, both by the cases in this court and in the courts of the several states, that a reference to the leading authorities upon the subject is sufficient. Indeed, the right of the city to improve its streets by regrading or otherwise is something so essential to its growth and prosperity that the common council can no more denude itself of that right than it can of its power to legislate for the health, safety and morals of its inhabitants."

The learned Judge then discusses at great length a large number of cases sustaining the above both by the Su-

preme Court and the courts of the several states, and among them, the Grand Rapids case, referred to above, in the 66 of Michigan, and continuing says:

"While, in 1887, overhead bridges might have seemed a better and safer plan of crossing the railway, than crossing at grade, the subsequent growth of the city may have demanded a different policy in 1893. It is hardly possible that the approaches required to reach an overhead bridge, which was 10 or 12 feet above the general level of the ground, should not have affected, to a certain extent, the value of the adjoining property as city lots; but whether this is true or not, it was purely within the discretion of the common council to determine whether the public exigencies required that the grade of the street be so changed as to cross the railroad at a level."

"Upon the whole, we think it clear that the common council acted within its powers in changing the grade of the street in question, and that the plaintiff has no legal right to complain of its action."

I have quoted from the above case at such length because I deem it conclusive on the right of the city to change the grade of Detroit street and remove the bridge, and its approaches, across the tracks of the Michigan Central, and also to open up State street. I do not claim that the city can compel the Company to keep the bridge in repair, but I do claim that the Company is liable to any one who may be injured in crossing the bridge, by reason of its being out of repair, and that the city can change the grade of the street and remove the bridge.

Respectfully submitted,  
Thos. D. Kearney,  
City Attorney.

By Alderman Brown.

Whereas, the bridge over the tracks of the Michigan Central Railroad Company connecting Detroit street and Beakes street with Broadway street, is now maintained in a condition working serious delay and hardship to the large proportion of our population resident of the Fifth ward, and dangerous in general to public travel thereon, and

Whereas, said Company denies its liability to maintain and keep in repair said bridge and its approaches, and has permitted said bridge to be and remain in an unsafe condition, and has failed to build and maintain a railing be-

tween the sidewalk and the traveled portion of said bridge and its approaches, and

Whereas, It would further facilitate greatly the convenience, comfort and general good of the citizens of Ann Arbor to provide a highway by opening State street across the tracks of said Company, and thereby restore to the use of the public the rights and privileges heretofore therein enjoyed, Therefore,

Resolved, That the street committee cause to have made, fixed and established a grade on Detroit, Beakes, Broadway and State streets where said streets cross the tracks of the Michigan Central Railroad Company, changing the grade of said streets where they cross the tracks of said railway, to the level of said railway, and the approaches so as to cause them to descend to the level of the road, and report same to this council without delay.

Adopted as follows:

Yeas—Ald. Hamilton, Richards, Koch, Dieterle, Sweet, Exinger, Brown, Spathelf, Weeks, Coon, Howell, Stevens, Pres. Luick—13.

Nays—None.

To the Hon. the Common Council:

Gentlemen:—In accordance with a resolution passed at your last meeting directing me to prepare a contract with A.J. Mummery for land for a city dumping ground, I respectfully report that I have prepared said contract in duplicate and have had the same executed by Mr. Mummery and suggest that you pass a resolution directing the Mayor and City Clerk to execute the same in behalf of the City.

Respectfully submitted,  
Thos. D. Kearney,  
City Attorney.

Ald. Brown moved that the council direct the Mayor and City Clerk to sign the contract on the part of the City of Ann Arbor.

Adopted as follows:

Yeas—Ald. Hamilton, Richards, Koch, Dieterle, Sweet, Exinger, Brown, Spathelf, Weeks, Coon, Howell, Stevens, Pres. Luick—13.

Nays—None.

#### RESOLUTIONS.

By Ald. Coon.

Resolved, That the rules of the former council be and are hereby adopted for the government of the common council for the ensuing year.

Adopted as follows:

Yeas—Ald. Hamilton, Richards, Koch, Dieterle, Sweet, Exinger, Brown, Spathelf, Weeks, Coon, Howell, Stevens, Pres. Luick—13.

Nays—None.

By Ald. Coon.

Resolved, That the bonds of the liquor dealers and druggists be placed at \$3000 and \$2000 respectively.

Adopted as follows:

Yeas—Ald. Hamilton, Richards, Koch, Dieterle, Sweet, Exinger, Brown, Spathelf, Weeks, Coon, Howell, Stevens, Pres. Luick—13.

Nays—None.

By Ald. Coon.

Resolved, That a new sidewalk be and the same is hereby ordered built on the north side of South University Avenue from Forest Avenue to Wash-tenaw Avenue along the property of the Ford estate, and that the sidewalk committee be respectfully requested to report a suitable grade for the same at the next regular meeting of the council.

Referred to sidewalk committee.

Ald. Sweet called the attention of the council to naming a street in the third ward.

Referred to the ordinance committee.

On motion the council adjourned.

GLEN V. MILLS. City Clerk.