

THE ST. JOHNS REVIEW

BY A. W. MARKLE

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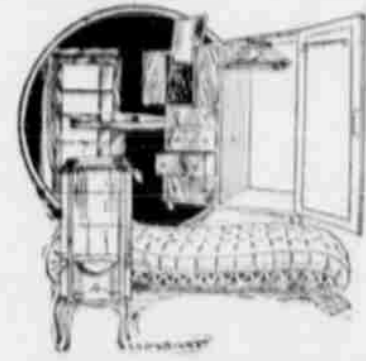
The council has decided to make a test case against the St. Johns Water Co. to ascertain whether or not it is the company's duty to lower the water pipes at its own expense after they have been disrupted through the street improvement, and whether it is incumbent upon the company to furnish water despite street improvement. This has been a much mooted question. Some claim that after the pipes have been laid according to the letter of the franchise, if they are thereafter disrupted by the city or any other organization or individual they must be taken care of by the disturber. Others claim that the water company must look after, repair and relower its pipes when ever disrupted by the city. The city attorney states that this is the law, in his opinion. Former city attorneys have held that when the company has complied with the requirements of its franchise in laying pipes, it cannot be compelled to relower at its own expense; that the city had granted permission to use the streets for laying pipes and had specifically specified how deep these pipes should be laid, and if contractors unearthed and disrupted them, it was up to the contractors or city, and not the water company, to relower and repair same. Former City Attorneys Greene, Collier and Esson have so held, we believe. Back a few years the situation in regard to disrupted pipes was deplorable. When pipes were disrupted by street contractors the water company declined to remedy them without being reimbursed for the extra work. Conditions grew unbearable, and as a solution to the difficulty the city council passed an ordinance providing that property owners should pay the cost of relowering. No difficulty was experienced thereafter along this line until this ordinance was repealed a few weeks ago, and the old trouble again confronts us. Whichever is correct it is high time the matter is settled. If the water company is neglecting its duty or exceeding its franchise it should be corrected. If not, the city should know definitely what its rights are in the matter. A square deal on both sides is all that is wanted, besides a distinct understanding of the rights of both the city and the water company. It is certain that no property owner or citizen should be compelled to do without water for many hours. And it is not right that people should pay for something they do not get. It seems like it is a question for the courts to decide, and the sooner it is decided the better 'twill be.

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ORDINANCE NO. 494

An Ordinance Adopting the Viewers' Report in the Matter of the Opening, Laying Out and Establishing of Dawson Street From the Southeastern Side Line of Columbia Boulevard Easterly to the Center Line of Ida Street, and of Appropriating a Thirty Foot Right of Way of the Portland Railway, Light and Power Co.

The city of St. Johns does ordain as follows:

That Whereas, the Viewers having been appointed by this Council in the matter of the opening, laying out and establishing of Dawson Street from the southeastern side line of Columbia Boulevard to the center line of Ida Street, in the City of St. Johns, and of appropriating a thirty foot right of way of the Portland Railway, Light and Power Company; and Whereas, the said Viewers having met pursuant to a resolution of the Council, and having viewed the said property to be so appropriated, and having assessed the benefits and damages thereon, and having made a written report thereof to this Council, which said report is filed with the City Recorder of the City of St. Johns, and is in words and figures as follows, to-wit:

"VIEWERS' REPORT"

St. Johns, Ore., July 16, 1912.

To the Honorable Mayor and Common Council of the City of St. Johns, Gentlemen: We, the undersigned, having been appointed by the Council by resolution dated July 9, 1912, and having been duly notified of our appointment in the matter of the proposed opening, laying out and establishing of Dawson Street in accordance with Ordinance 490 of the City of St. Johns, do respectfully report as follows, to-wit:

That pursuant to the individual notices to attend by the Recorder of the City of St. Johns, notifying us of our appointment, we met at the office of the Mayor in the City Hall of the City of St. Johns, at 10 o'clock in the forenoon of July 16, 1912, where we first took the oath to faithfully discharge of the duties assigned us, which oath was duly filed with the City Recorder of the City of St. Johns; and after having taken and subscribed to the said oath we were furnished with a copy of the Engineer's report, survey, plat and written description of the hereinafter described property to be appropriated for the purpose of opening, laying out and establishing of said Dawson Street.

At the said time and place of meeting the City of St. Johns was represented by Perry C. Stroud, the City Attorney, and the Portland Railway, Light and Power Company appeared by E. H. Delrower, after which we proceeded to view the proposed opening, laying out and establishing of Dawson Street for the whole length thereof and listened to the evidence introduced and the argument of the counsel, and took into consideration the claim of all parties concerned and we determined and assessed the damages as will be sustained by the taking of the property and the benefits that will be derived by the parties respectively, by reason of the opening, laying out and establishing of the said street aforesaid.

The proposed laying out, opening and establishing of the said street will include and necessitate the appropriation to public use the following described tract of land, and we find and determine that the Portland Railway, Light and Power Company is the owner of the tract of land, described as follows:

A thirty-foot right-of-way situated in Section 7, Township 1 north, Range 1 east of the Willamette meridian, and Section 12, Township 1 north, Range 1 west of the Willamette meridian, and extending along the center line of Dawson Street from the southeastern side line of Columbia Boulevard easterly to the center line of Ida Street, said center line of Ida Street being the easterly boundary of the City of St. Johns, Oregon, the center line of said strip of land thirty feet in width being more particularly described as follows:

Beginning at a point in the southeastern side line of Columbia Boulevard where intersected by the center line of Dawson Street; thence south 71° 14' west along the center line of Dawson Street a sufficient distance to intersect the said center line of Ida Street heretofore described, containing

in all 86,874.3 square feet, more or less.

It is hereby intended to describe a right-of-way thirty feet in width previously conveyed by Nancy Caples to the City & Suburban Railway Company by deed recorded in Book 298, page 96, Records of Deeds, Multnomah County, and also a right-of-way thirty feet in width previously conveyed to the City & Suburban Railway Company by Ruben Weeks, trustee, and Clarissa Weeks, his wife, by deed recorded in Book 307, page 475, Records of Deeds, Multnomah County, on which said strip of land the Portland Railway, Light and Power Company now maintains and operates a street railway.

And we find that all the said thirty-foot strip owned by the Portland Railway, Light and Power Company will have to be appropriated to the public use by the opening, laying out and establishing of said Dawson Street, and that in taking of the said land for public use the said land will be rendered less valuable by the opening and laying out and establishing of the said Dawson Street, and we estimate and assess the damages in the sum of One Thousand Dollars (\$1000).

And we further find and determine that the Portland Railway, Light and Power Company is the owner of all of the said thirty-foot right-of-way above described, and that the said company as owner of the said land will be especially benefited by the said opening, laying out and establishing of Dawson Street, and that the said land so described and so owned will be more valuable by the reason of the laying out and opening and establishing of the said Dawson Street, and we estimate and assess the benefits and advantages thereon in the sum of One Thousand Eight Dollars (\$1800).

And further we find that the assessments of the benefits over the damages, which the said Portland Railway, Light and Power Company will derive by reason of the opening, laying out and establishing of the said Dawson Street in accordance with the survey, plat and written report of the City Engineer and in accordance with ordinance 490 of the City of St. Johns, Oregon, will be in the sum of Six Dollars (\$6).

The total amount of damages allowed \$1000
The total amount of benefits allowed 1806
Respectfully submitted,

C. R. RUSSELL, Viewer.
H. W. DELROWER, Viewer.
K. COULICH, Viewer.

Dated this 16th day of July, 1912.

And Whereas, the Council did further by a resolution dated the 10th day of July, 1912, appoint the 23rd day of July, 1912, at 8 o'clock in the afternoon of the Council chambers in the City Hall of the City of St. Johns, Oregon, as the time and place when and where the Council would receive any objections to the aforesaid report of the Viewers; and

Whereas, F. A. Rice, Recorder of the City of St. Johns, did notify the Portland Railway, Light and Power Company, and all other persons interested in the said property to be appropriated for the opening, laying out and establishing of Dawson Street or against the same, for the opening, laying out and establishing of the said Dawson Street from the southeastern side line of Columbia Boulevard, easterly to the center line of Ida Street; and

Whereas, the Viewers having found that the benefits exceeded the damages in the sum of Six Dollars (\$6) for the taking of the said property and appropriating the same in the opening, laying out and establishing of Dawson Street; and

Whereas, the Portland Railway, Light and Power Company, having notified the excess of benefits over the damages and having notified the City of St. Johns that the report of the Viewers was satisfactory; and

Whereas, the Council of the City of St. Johns has examined the report of the said Viewers and is satisfied with the same; and

Now, therefore the City of St. Johns does ordain as follows: That the report of the Viewers is in all respects reasonable and just and sufficient and the said report of the viewers in the opening, laying out and establishing of Dawson Street from the southeastern side line of Columbia Boulevard easterly to the center line of Ida Street be, and the same is hereby adopted and approved.

Passed by the Council this 23rd day of July, 1912.

Approved by the Mayor this 23rd day of July, 1912.

A. A. MUCK, Mayor.

F. A. RICE, Recorder.

Published in the St. Johns Review on July 26, 1912.

PROPOSED ORDINANCE NO.

An Ordinance Granting to the Portland Railway, Light and Power Company, its Successors or Assigns, the Right to Construct, Acquire and Own and to Maintain, Operate and Use Poles, Wires and Underground Conduits, Cables and Conductors in the City of St. Johns, Oregon.

The city of St. Johns does ordain as follows:

Section 1. That there shall be and hereby is granted, subject to the terms, restrictions and provisions in this ordinance contained, to Portland Railway, Light and Power Company, a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Oregon, and having its principal office at the City of Portland, County of Multnomah and State of Oregon (hereinafter called "the Railway Company"), and its successors or assigns, the franchise, right and privilege to put up, erect, maintain and use poles in the sidewalks, along the curb lines thereof, of Dawson Street in the City of St. Johns, from the place in said Dawson Street, where the same is intersected by the southeastern side line of Columbia Boulevard to the easterly boundary line of the City of St. Johns, together with such cross arms, brackets and other appliances and appurtenances as may be necessary or convenient, and also to stretch over, and across said part of said Dawson Street and upon said poles, appliances or ap-

purtenances all such wires and cables as may be necessary, desirable or convenient to be used by the Railway Company, its successors or assigns, in connection with its or their railway, light, power and heating business, or any other business connected with its or their corporate purposes, and to transmit electrical energy on and over such wires and cables and any thereof, and the further franchise, right and privilege to stretch over, along and across said part of said Dawson Street all such guy wires, span wires, feed wires and other wires and cables as may be necessary and convenient to be used by the Railway Company, its successors or assigns, in connection with its or their line of railway or street railway, said part of said Dawson Street and in connection with its or their light, power and heating business or any other business connected with its or their corporate purposes; and all of said wires and cables may be stretched along said poles and from or to said poles as may be desirable and convenient for the corporate purposes of the Railway Company, its successors or assigns, both in the operation of public utilities carried on by it or them and in the supply of electrical energy to private consumers, and the further franchise, right and privilege to transmit electrical energy on and over such wires and cables and any thereof.

Section 2. In case any street or portion of any street is abandoned by the Railway Company, its successors or assigns, during the life of this franchise, then that portion of the franchise under which said street or part of the street so abandoned was used by the Railway Company, its successors or assigns, shall thereafter be null and void and shall be forfeited without any further action on the part of the city.

Section 3. The Railway Company, its successors or assigns, shall (subject to the other provisions of this franchise, and to the rights and privileges hereunto granted to the Railway Company, its successors or assigns), maintain its poles and wires, in continuous good order and repair throughout the entire term of the franchise granted by this ordinance, and shall render efficient service during the entire term of this franchise, and if said Railway Company shall fail to so maintain its poles and wires, or to render efficient service, after reasonable notice from the Council, the Council may forfeit this franchise and all rights and privileges granted hereunder.

Section 4. The Railway Company agrees and promises for itself, its successors and assigns, to pay to the City of St. Johns as compensation for this grant or franchise by said City of St. Johns, the following sums of money in time and manner as follows: One dollar (\$1.00) per annum, payable on the first day of July of each and every year during the continuance of this franchise.

Section 5. At the expiration of the term or period for which this franchise is granted, the City of St. Johns at its election and upon the payment thereof of a fair valuation thereof, as in this section provided, may purchase and take over to itself the property and plant in its entirety of the Railway Company, its successors or assigns, which may be constructed by it or them under authority of this ordinance, and which may be situated in, above or under the streets and public places particularly mentioned in Section 1 of this ordinance, but in no case shall the value of the franchise of the Railway Company, its successors or assigns, be considered or taken into account in fixing such valuation.

The price or valuation to be paid by the City of St. Johns for said plant and property shall be fixed and determined by three arbitrators, one appointed by the Council of the city, another appointed by the Railway Company, its successors or assigns, and the third appointed by the two so chosen, and the decision in writing of said arbitrators, or a majority of them, made in duplicate and signed by them, one delivered to the Mayor of the City and the other to the Railway Company, its successors or assigns, shall be final and binding upon the parties, and said price or valuation shall be paid to the Railway Company, its successors or assigns, before the Railway Company, its successors or assigns, shall be deprived of the possession of said plant and property, and upon the payment by the City to the Railway Company, its successors or assigns, of such price and valuation so determined as aforesaid, said plant and property so valued, purchased and paid for shall become the property of the City of St. Johns by virtue hereof and payment therefor, as aforesaid, and without the execution of any instrument of conveyance.

Should the Railway Company, its successors or assigns, fail, neglect or refuse for a reasonable time, after the City is so authorized to and before it shall purchase and take over said plant and property and after notice to that effect from the City to select an arbitrator, or should said Council so fail to select an arbitrator, or in case the two arbitrators chosen by the Council and Railway Company, its successors or assigns, neglect for a reasonable time to select a third arbitrator, or should a third arbitrator then and in either of said cases the Governor of the State of Oregon shall appoint arbitrators to fill the vacancies caused by the failure of the Railway Company or by the neglect of the two arbitrators first chosen to select a third arbitrator as above provided, and the decision of said three arbitrators or a majority of them so chosen by the Railway Company, the Council or appointed by the Governor made in writing in duplicate shall be final and binding upon the parties.

Section 6. The franchises, rights and privileges herein granted shall take effect immediately upon the valid passage of this ordinance and franchise as provided by the charter of the City of St. Johns, and upon the acceptance of this franchise by the Railway Company as is hereinafter provided in Section 9 hereof.

The Railway Company, its successors and assigns, shall begin the construction of the pole line to be constructed on Dawson Street, mentioned in Section 1 of this ordinance, within four months from and after the time this ordinance becomes a law, and shall complete the construction thereof and commence the operation thereof within one year thereafter. The estimated total cost of such construction work in connection with the pole line men-

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tioned in Section 1 of this ordinance is Twelve Hundred Dollars (\$1200.00); the estimated yearly sum of money to be expended under this franchise and ordinance is Twenty-five Dollars (\$25.00).

Section 7. All rights, privileges and franchises granted to or conferred upon the Railway Company, its successors or assigns, by this ordinance shall continue, exist and remain in force until and including the first day of July, 1937.

Section 8. The power and right at all times to reasonably regulate in the public interest the exercise of the rights and privileges granted by this franchise shall be and remain in the Council of the City of St. Johns.

Section 9. The Railway Company shall within thirty days after this ordinance shall be in force as provided by sub-division 5 of Section 11 of the present charter of the City of St. Johns, file in the office of the Recorder of said City of St. Johns an unqualified written acceptance of the same, and a failure on the part of the Railway Company to file such written acceptance within said period of time shall be deemed an abandonment and rejection of all the rights, privileges and franchises granted by this ordinance, and this ordinance shall thereupon be null and void.

Passed first reading July 23, 1912.
Passed second reading July 23, 1912.

Attest: Mayor.
Recorder.

Published in the St. Johns Review on July 26 and August 2, 1912.

RESOLUTION

It is resolved by the city of St. Johns: That it deems it expedient and necessary to improve Hartman street from the easterly line of Seneca street to the westerly line of Myers street in the city of St. Johns in the following manner, to-wit:

By grading said portion of said street to grade by establishment.

Said work to be done according to the plans and specifications of the city engineer on file in the office of the city recorder relative thereto, which said plans and specifications and estimates are satisfactory and are hereby approved.

Said plans and specifications and estimates are satisfactory and are hereby approved. Said improvements to be made in accordance with the charter and ordinances of the city of St. Johns, and under the supervision and direction of the city engineer.

That the cost of said improvement to be assessed as provided by the city charter upon the property especially and particularly benefited thereby, and which is hereby declared to be all lots, parts of lots, blocks and parcels of land between the termini of such improvements abutting upon, adjacent or proximate to the said Hartman street from the marginal line of said street back to the center of the block or blocks or tracts of land abutting thereon or proximate thereto.

That all the property included in said improvement district aforesaid is hereby declared to be Local Improvement District No. 91.

That the city engineer's assessment of the probable total cost of said improvement of said street is \$461.13.

That the cost of said improvement is to be assessed against the property in said local assessment district as provided by the city charter of the city of St. Johns, excepting that the said cost of improvement shall be apportioned pro-rata to each abutting front foot on said Hartman street.

Adopted the sixteenth day of July, 1912.

F. A. RICE, City Recorder.

Published in the St. Johns Review on July 19 and 26, 1912.

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