

Grand Junction, Colorado

March 26 1924

The City Council of the City of Grand Junction met in regular adjourned session at 8:00 o'clock P.M. with President Hirons presiding. Those present and answering at roll call were Councilmen Hirons, Marshall, Meders, Miller, Dowrey, Hampson and Murr. City Manager Garrett, City Attorney Jordan and City Treasurer J.G. Mc Kinney. City Clerk Peck was absent.

It was moved by Councilman Marshall, seconded by Councilman Dowrey that J.G. Mc Kinney act as Clerk to the Council in the absence of Fred A. Peck. Motion carried.

The matter of the bids for the construction of Combined Sewer District No. 2 (West Trunk Line) was taken up.

Attorney M.C. Vincent appeared as counsel for the Prendergast Connor Construction Company and asked to withdraw their bid on the grounds that specifications did not contain the same terms as put in the contract and bond, the penalty clause of ten dollars per day written into the contract and bond was given as an example, the same did not appear in the specifications.

It was moved by Councilman Marshall, seconded by Councilman Miller that the contract for the construction of the West Trunk Line of Combined Sewer District No. 2 be awarded to the Prendergast Connor Construction, Company at their bid of \$18,462.60 and that the penalty clause be stricken from the contract. Upon which motion the following vote was cast: Councilmen voting Yea, Hirons, Marshall, Miller, Dowrey and Hampson, Councilmen voting Nay, Murr and Meders. The majority of the Councilmen voting yea, the President declared the motion carried.

A petition to form a paving district of certain portions of Grand Ave., Chipeta Ave and North Seventh Street was presented.

Councilman Dowrey was excused from the meeting at this time.

The following opinion of the City Attorney was presented and read. CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

The petitions for paving Grand Avenue, Chipeta Avenue, and a portion of North Seventh Street have been referred to me as to the sufficiency of the amount of frontage signed for.

Under our ordinances there are two ways in which a paving district may be initiated:

First: The Council may initiate same by resolution.

Second: The owners of one-third of the frontage of the real estate to be assessed may initiate same by petition.

In the present instant the owners have initiated same by petitions.

The ordinance provides: "The petition must be subscribed and acknowledged in the manner provided by law for acknowledgment of Deeds of conveyance of real estate, by the owners or their agents duly thereunto authorized by Power of Attorney, acknowledged in like manner, of one-third of the frontage of the real estate to be assessed for the same."

The last above cited provision of the ordinance is plain and specific, and little or no difficulty will be met if the ordinance is followed.

Under many Charters where the costs of the improvements are to be paid for by special assessments or taxation against private property the consent of the property owners whose property must bear the burden is required, as a condition precedent to proceed with the contemplated improvements. This is usually evidenced by petition, signed by the requisite number of land owners whose property fronts on the proposed improvement or those whose property is in the assessment or taxing district. In construing particular laws many courts have held that the petition is essential to confer jurisdiction, and that the costs of an improvement ordered without the requisite consent of the property owners cannot be collected as a special assessment or tax. All statutory requirements as to the petition must be complied with. Sometimes close questions arise relating to the qualifications specified by law of the signers, and the legal requirements are usually strictly enforced.

It will, therefor, be readily seen that all of the requirements of the ordinance concerning the petition must be strictly followed. GRAND AVENUE: The Grand Avenue petition is signed by V. De Merschman and appears to be acknowledged by Mr. & Mrs. V. De Merschman. Janet De Merschman holds an unrecorded purchase contract for the property which covers Lots 7 and 8 in Block 82. She is considered the owner and would have the right to sign the petition but since she did not sign it, those two Lots should not be counted. The South 84 or 87 1/2 feet of Lots 31 and 32 in Block 76 are owned by Mr. and Mrs. M. A. Wilder. The petition is signed "Mr. & Mrs. M. A. Wilder," such signature was made by either Mr. or Mrs. Wilder and not by both. Mrs. Wilder signed the petition. She owns an undivided one-half interest in the property and one-half of the frontage should be allowed and the other one-half of the frontage should not be allowed; Lots 6 and 7 in Block 81 were owned by John W. Boone and Dorothy Boone. The petition is signed "Mr. & Mrs. J. W. Boone." Mr. Boone signed the petition

but Mrs. Boone did not, consequently only one-half of the frontage should be counted and the other one-half not counted. Lots 3, 4, 5 and 6 in Block 81 are owned by Geo. Wood Eaton and Iva Hopkins Eaton. The petition is signed "G. W. Eaton" Mrs. Eaton signed Mr. Eaton's name. As Mr. Eaton did not sign nor did he acknowledge his signature all of the frontage represented by Lots 3, 4, 5 and 6 in Block 81 should not be counted. In this state a married woman can own property as though she were single, consequently where man and wife own property together it is necessary that both sign if the full percentage is desired. The name "Lyda Dove Cherrington appears on the petition and the acknowledgment is by Charles E. Cherrington Agent, and a Power of Attorney has been filed to show his authority in the matter. However the Power of Attorney is not acknowledged as required by Ordinance and the frontage of the property owned by Mrs. Cherrington should not be counted. Petition also shows the signature of Charles Crawford, as owner of Lots 6, 7 and 8 in Block 85. Lots 7 and 8 in Block 85 are owned by S. M. Crawford, whose name does not appear to have been signed to the petition nor was the petition acknowledged by her, consequently the frontage of Lots 7 and 8 in Block 85 should not be counted; The petition also is signed by Alfred C. King but is not acknowledged by him, so same should not be counted.

The total frontage of Grand Avenue included in said paving petition is 9419.76 feet, the total frontage according to the signatures of the petition is 3648 feet, and after deducting the withdrawals there is left a frontage or percentage of 34.8; deducting the frontage not to be counted owing to improper signatures as above mentioned leaves a net frontage of 2906 feet or 30.8% I have not deducted the frontage represented by Fannie Allison and Mrs. M. S. Rogers, for while there is grave doubt in my mind as to the sufficiency of said signatures, yet the petition does not bear the necessary $33 \frac{1}{3}\%$ required by the ordinance. CHIPETA AVENUE: No objections or complaints have been filed with me concerning Chipeta Avenue.

NORTH SEVENTH STREET: Mrs. Alley White has filed an affidavit stating that she signed up for Lots 17, 18, 19, 20, 21 and 22 in Block 6 on the statement to her that she understood her share of the paving would be \$300.00; deducting her said six lots still leaves a percentage of 38.46 for paving of North Seventh Street. Sarah E. M. Cox and L. A. Sutton have also filed an affidavit that the signature of Sarah E.M. Cox to the petition for paving on North Seventh Street in front of Lots 11 and 12 in Block 6 was secured through misrepresentation, the nature of said misrepresentation not being stated and I do not believe that the said affidavit should be considered for even if the frontage of said two Lots were not considered there would still be more than $33 \frac{1}{3}\%$ left for said paving.

/s/ G.H. Jordan

CITY ATTORNEY

The City Attorney also recommended that a new petition for paving Grand Ave be circulated and presented to the council.

It was moved by Councilman Murr, seconded by Councilman Marshall that the opinion of the City Attorney as read be accepted and placed on file, upon which motion the following vote was cast: Councilmen voting Yea, Hirons, Murr, Marshall and Hampson. Councilmen voting Nay: Miller and Meders. The majority of the Councilmen present voting Yea, the president declared the motion carried.

A petition for a street light on the corner of Second St and White Ave was presented and read. The matter was referred to the City Manager.

There being no further business to come before the meeting the Council adjourned.

Act. Clerk to Council