

June 5

## Vacation of Alley

To the Honorable, the Common Council:

Gentlemen—To your Committee of the Whole was referred petition of the Gordon Baking Co. (11782), for the vacation of a portion of the alley in the block bounded by Ferry Park, Marquette, Vermont and Wabash Avenues, petitioners offering to deed a new 20 ft. outlet into Wabash Avenue, together with a triangular parcel of land to provide an easy turn into the new alley, also petitions of Frank Rakovan, et al. (12168), and Frank W. Steinback, et al. (12314), protesting the closing of above alley, and the opening of new alley into Wabash Avenue. After consultation with the City Plan Commission, and careful consideration of the entire matter, and in view of the following opinion from the Corporation Counsel, your committee recommends that the protesting petitions be denied, and that the alley be vacated in accordance with the accompanying resolution.

## Corporation Counsel

May 28, 1928.

To the Honorable, the Common Council:

Gentlemen—The petition of the Gordon Baking Company, a Michigan corporation (No. 11782, year 1927) to vacate a portion of the public alley in the block bounded by Ferry Park, Marquette, Vermont and Wabash Avenues in the City, was referred by your honorable body to the Corporation Counsel for an opinion as to the power of your body to vacate the portion of such alley as prayed for by the petitioner in and by its said petition.

The petitioner is the owner of all the lots and parcels of real estate adjacent to and abutting the portion of the alley sought to be vacated by it.

The owners of the remaining lots and parcels of real estate adjacent to and abutting the remaining portion of said alley have filed a protest with your honorable body against the vacation of said alley as prayed for by the petitioner.

The petitioner proposes to dedicate to the use of the public an alley twenty feet in width through its property for ingress and egress of said protesting property owners from the part of said alley not proposed to be vacated by said petitioner into Wabash Avenue.

This will create an "L" shaped alley in the block in place of the one now running straight through the block in a northerly and southerly direction between Ferry Park and Marquette Avenues.

The plant in which the petitioner now conducts its baking business is located on the easterly side of Vermont Avenue and it proposes to erect a new two-story brick building upon its lands fronting on Wabash Avenue in the same block which is to be used

in connection with its said baking plant in enlarging its said baking business in case your honorable body will vacate said alley as prayed for by it to facilitate the erection of said building.

There is a blue print attached to petitioner's said petition outlining the situation as it exists there now on the ground and as it will exist if the prayer of the petitioner is granted by your honorable body.

The law regulating the power of your honorable body to act in the matter of said petition under the foregoing conditions and circumstances is well-settled by recent decisions of our Supreme Court to be as follows:

"It is a well settled rule that a lot owner's right to object to the vacation of a part of a street depends upon whether his lot abuts upon or comes in actual contact with the vacated portion, or access to his lot is entirely or materially cut off by reason of the vacation. That he may be inconvenienced or that he may have to go a more roundabout way to reach certain points does not bring to him any injury different in kind from the general public but only in degree. If means of ingress and egress are not cut off or lessened in the block of the abutting owner, but only rendered less convenient because of being less direct to other points in the city and made so by the vacation of the street in another block, such consequence is *damnum absque injuria*. (Citing cases). When the rule *damnum absque injuria* applies there can exist no such thing as taking private property."

See: Phelps vs. Stott Realty Company, 233 Mich. 486, 488, 493.

To the same effect see: Tomazewski v. Palmer Bee Co., 223 Mich. 565, 569, 570; Roberts v. City of Detroit, 241 Mich. 71, 76, 77, 78, 79.

The Constitution of the State has reserved to the cities, villages and townships therein, the reasonable control of their streets, alleys and public places.

See, Michigan Constitution, Article 8, Section 28; Roberts v. City of Detroit, 241 Mich. 72, 76, 77.

We therefore advise your honorable body that by changing a straight city alley into an "L" shaped one, as prayed for by the petitioner in the instant case, you will not deprive the abutting property owners of any substantial constitutional property rights of which they may complain or protest against.

See, Roberts v. City of Detroit, 241 Mich. 72, 73, 74, 75.

Yours respectfully,

WALTER BARLOW,

Chief Assistant Corporation Counsel.

Approved:

C. E. WILCOX,

Corporation Counsel.

Respectfully submitted,  
JOHN A. KRONK, Chairman.



By Councilman Kronk:

Resolved, That "all of the public alley, 17.08 ft. wide, adjoining the easterly line of lots 15 to 21, both inclusive, of Wm. Y. Hamlin & Thos. N. Fordyce's Sub. of lot 7 of Leavitt's Sub. of the eastern part of Frac. Sec. 36, T. 1 S. R. 11 E., and eastern part of Frac. Sec. 1, T. 2 S. R. 11 E., as recorded in Liber 11, page 29, of Plats of Wayne County Records," also "all of public alley, 17.08 ft. wide, adjoining the easterly line of lot 122 of Corliss & Andrus' Boulevard Park Sub. of part of Frac. Sec. 1, T. 2 S. R. 11 E. and Frac. Sec. 36, T. 1 S. R. 11 E. as recorded in Liber 23, page 57 of Plats of Wayne County Records," be and the same is hereby vacated to become a part and parcel of the adjoining property.

Provided, Petitioner deeds to the City of Detroit for alley purposes "all that part of lot 123 of last mentioned subdivision described as follows: beginning at the southwesterly corner of said lot 123; thence along the southerly line of said lot on a course N. 63 deg. 41 min. E. 114 ft. to the southeasterly corner of said lot; thence along the easterly line of said lot N. 26 deg. 52 min. W. 31 ft. to a point; thence along a line S. 18 deg. 24 min. 30 sec. W. 15.48 ft. to a point; thence along a line S. 63 deg. 41 min. W. 103 ft. to a point on the westerly line of said lot 123; thence along said line S. 26 deg. 52 min. E. 20 ft. to the place of beginning."

Provided, That if at any time in the future the alley herein dedicated to the City of Detroit is ordered graded and paved, the entire expense of such grading and paving shall be borne by petitioner, and further

Provided, Petitioners reimburse the owners to the extent of the value of their utilities now installed in said alley which it may be necessary to abandon, due to the closing of same, or bears the entire expense of relocating or rerouting any public utilities now installed in said alley which it may be necessary to relocate or reroute due to the closing of same, and further

Provided, Petitioners agree to pay into the City Treasury whatever expense may have been incurred by the City in the matter of paving, curbing, crosswalks, sidewalks, etc., within the lines of alley herein vacated as may be certified by the City Engineer, and further

Provided, That by reason of the vacation of the above described alley the City of Detroit does not waive any rights in the lateral sewer located in alley aforesaid and shall at all times have the right to enter upon the premises if found necessary on

account of said sewer to repair same, and provided further that petitioners shall not build over the above described alley without first securing the approval of the City Engineer and the Board of Health, and further

Resolved, That the City Controller be and is hereby directed to execute quit claim deed covering the property herein vacated.

Adopted as follows:

Yeas—Councilmen Bradley, Callahan, Castator, Dingeman, Ewald, Kronk, Littlefield, Walters and the President—9.

Nays—None.

#### Vacation of Alley

To the Honorable, the Common Council:

Gentlemen—To your Committee of the Whole was referred petition of J. I. Mason, et al. (1769), for the vacation of a portion of the alley in the block north of Linden Avenue, between Roosevelt Avenue and Twenty-fifth Street. After consultation with the City Plan Commission, and careful consideration of the matter, and in view of the following opinion from the Corporation Counsel, your committee recommends that the petition be granted in accordance with the accompanying resolution.

#### Corporation Counsel

May 28, 1928.

To the Honorable, the Common Council:

Gentlemen—In re: the petition of J. I. Mason, et al., No. 1769. This is a petition asking for the vacation of a portion of the alley in the block north of Linden Avenue, between Roosevelt Avenue and 25th Street.

The petitioners have not secured the consent of all of the property owners abutting this alley and you ask an opinion as to the closing of said alley.

It appears that the alley in question is a so-called blind alley, being closed by a wall on 25th Street and open on Linden Avenue. The objecting party is owner of Lot No. 426, said lot being on the corner of Linden Avenue and 25th Street. The closing of this alley, so far as we have been able to determine, will not interfere with the ingress or egress of the owner of said Lot No. 426. So far as he is concerned the situation will remain unchanged. It was held in the case of Phelps v. Stott Realty Company, 233 Mich. 486:

"It is a well settled rule that a lot owner's right to object to the vacation of a part of the street depends upon whether his lot abuts upon or comes in actual contact with the vacated portion, or access to his lot is entirely or materially cut off by reason of the vacation. \* \* \*"