

For Trial Balance see communication from the City Treasurer of this date.

Accepted and placed on file.

From the Corporation Counsel

May 8, 1929.

To the Honorable, the Common Council:

Gentlemen—As per your request, I am forwarding proposed ordinance to change the name of Wetherby Avenue, between Warren Avenue and Sarena Avenue, to Braden Avenue.

Very truly yours,
CLARENCE E. WILCOX,
Corporation Counsel.

By Councilman Kronk:

AN ORDINANCE changing the name of Wetherby Avenue, between Warren Avenue and Sarena Avenue, to Braden Avenue.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT:

Section 1. That the name of the 2 street and highway known as Wetherby Avenue, between Warren Avenue and Sarena Avenue, be and the same is hereby changed to and shall hereafter be known as Braden Avenue.

Read twice by title, ordered printed and laid on the table.

From the Corporation Counsel

May 11, 1929.

To the Honorable, the Common Council:

Gentlemen—At your request, I am enclosing herewith proposed ordinance changing the name of Dexter Avenue, between the Six Mile Road and the Seven Mile Road, to Birchcrest Drive.

Very truly yours,
CLARENCE E. WILCOX,
Corporation Counsel.

By Councilman Dingeman:

AN ORDINANCE changing the name of Dexter Avenue, between the Six Mile and the Seven-Mile Road, to Birchcrest Drive.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT:

Section 1. That the name of the 2 public street and highway known as Dexter Avenue, between the Six Mile Road and the Seven Mile Road, be and the same is hereby changed to and shall hereafter be known as Birchcrest Drive.

Read twice by title, ordered printed and laid on the table.

From the Corporation Counsel

May 4, 1929.

To the Honorable, the Common Council:

Re Detroit Municipal Airport

Gentlemen—You have asked me for an opinion as to the right and authority of the City to close that part of French Road between the two parcels of land on either side of French Road constituting the Detroit Municipal Airport, or, to tunnel the same, in order that the airport properties may be consolidated. The Commissioner of Public Works in a letter to me dated April 3rd stated that part proposed to be closed or tunnelled extends from the northern end of Gethsemane Cemetery to the westerly line of the property which the City proposes to acquire from the Detroit City Gas Company.

The Commissioner further stated that he has been advised by the Chief of the Aeronautics Division of the United States Department of Commerce that French Road must be closed or routed through an underpass in order to develop the airport for an A-1 rating. I am informed by the Commissioner that he estimates such an underground passage would cost approximately \$1,000,000.00, for the entire width and as the width of the subway might be reduced.

I have gone over the grounds and studied the vicinity of the airport carefully and taken the added distance that property owners would be required to travel between two points if French Road was closed. Some of these figures may be of interest to you.

(1) The distance from the Detroit City Gas Company tower on French Road to Gratiot Avenue is approximately 3,300 feet. With French Road closed a person desiring to travel between the same two points could travel north on French Road to Six Mile Road, to Connors Road, thence to Gratiot Avenue and would travel 11,302 feet or 12,002 feet further (approximately 2 1/4 miles). There are no cross-streets from French Road to Connors Avenue between Gratiot Avenue and the Six Mile Road. The Commissioner estimates that the cost of tunnelling under Connors Road Park to afford a more direct route would be approximately \$1,000,000.00. Another route between the same two points would be via Lynch Road to Van Dyke Avenue, thence by Connell Street to French Road, to Gratiot Avenue. He would travel 11,800 feet or 8,052 feet further than the present direct route (1.52 miles).

This last route could be reduced by extending Erwin Avenue from Connell Street to Lynch Road along the westerly end of the airport. This

would reduce the distance by approximately 2,500 feet and divert traffic from Van Dyke Avenue. There are a large number of cross streets between French Road and Van Dyke Avenue between Lynch Road and the Six Mile Road which persons living south of the gas tower could also traverse Erwin Avenue if extended.

These figures represent the extreme case that a person would have to travel between the two given points. These distances would be reduced in proportion to the distance the objection point is removed from the intersection of Gratiot Avenue and French Road.

In 1925 French Road was ordered widened from 66 feet to 86 feet between Gratiot Avenue and the Six Mile Road and opened and widened from Gratiot Avenue south to Erwin Avenue from 60 feet to 86 feet and the verdict of the jury contained in the report of the jury dated September 23rd, 1925, in the case of \$56,251.03 for property contained north of Gratiot Avenue and south of French Road, a total of \$215,242.64. A special assessment of 75 per cent of the total value was imposed on a special assessment district extending 100 feet on each side of French Road from Mack Avenue to the Six Mile Road in the sum of \$164,432.00. The lot owners and 25 per cent of the sum \$94,355.52 was assessed against property north of Gratiot Avenue. The sum \$50,622.14 was assessed against property (the airport property mostly) and \$43,693.40 against individual property north of French Avenue and \$67,076.48 south of Gratiot Avenue. Property owners were given four years to pay. The greater part has been paid, but not all.

Statement of Law

In this case were one of first importance and without precedent in the law. In the opinion that the equities of the situation would be against the exercise of the authority of the city to close an important street such as French Road and thus compelling property owners to use a circuitous route between two given points for an additional 8,052 feet unless compensated by proceedings under the doctrine of eminent domain or by the construction of a tunnel under that part of French Road vacated; that it would be considerable injustice to grant a vacation especially where the city has but lately imposed a special assessment against the same district of \$113,809.86 (\$164,432.00—\$50,622.14 assumed by city property) on the theory that the widening of this street was a public necessity and actually benefited the property

by that sum; that if the widening was a benefit in such a sum then conversely the entire closing would result in damage at least equal to the special assessments plus additional damages for the entire closing.

However, the question you ask of me does not involve my opinion as to the equities but merely the city's legal rights and authority.

My examination of the cases decided convinces me that the City has this legal right to close French Road. A reference to some of the cases will indicate my reasons.

Article 8, Section 28 of the State Constitution of 1908 provides that the right of all cities, villages and townships to the reasonable control of their streets, alleys and public places is reserved in such cities, villages and townships.

Acting under this provision, the Home Rule Act, Section 4, subdivision (g) provides for the use, regulation, improvement and control of the surface of the streets and of the space above and beneath them.

Chapter I, Title III, Section 12, subdivision (g) of the Charter of the City of Detroit provides for the management and control of all property, including streets, alleys and other public places belonging to the City, dedicated to its use or under its jurisdiction.

In the case of Roberts vs. City of Detroit, 241 Mich. 76 the validity of these three provisions of law was before the Court in connection with the closing of an alley and the Court held that these provisions reserved to the city full control and authority over the closing of streets, alleys and public places. The rule stated in that opinion is as follows:

"If the vacating or changing is of such a character that it deprives any abutting owner of a substantial right appurtenant to his property, resort must be had to due process of law incident to the exercise of eminent domain; but if it clearly appears that the proposed change in vacating a portion of an alley is to be brought about in such a manner that it does not deprive an owner of any substantial right appurtenant to his property, such change can be made as a matter of right by the municipality, because the control of the streets and alleys is vested in the municipality by the Constitution, and, in this instance, also by the city charter."

The case of Tomazewski vs. Palmer Bee Co., 223 Mich. 565 involving the closing of a portion of a street in the city of Hamtramck, under similar charter provisions as our own. The Court found in that case that abutting property owners upon the street proposed to be vacated would be obliged to travel 436 feet additional to reach a given point necessitated by the closing of the street and held: