

File No. 11,698 Continued.

OPINION.

a communication from the City Engineer, attached to a letter from R.B. Tippet, in connection with laying a sidewalk on Tenth street, I have the following to report:

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My information from Mr. Fendall is, that Tenth street is sixty-six feet wide and is paved, under Ordinance 149, approved May 8, 1903, to the total width of thirty-two feet, including gutters, leaving a balance of seventeen feet on each side for sidewalks.

Mr. Fendall does not think that it is necessary to have these sidewalks paved to the building line, but is of the opinion that a four foot sidewalk is sufficient. Mr. Fendall further says that this neighborhood is rapidly growing and the sidewalk, as at present built, is a menace to the public safety. For that reason he has enforced the building of an improved sidewalk by all the abutting lot owners, except Mr.

Tippet, who has, up to this time, refused to bring his lot to grade. Mr. Tippet's lot is in the bed of a stream about twenty feet below the level of the street, and his contention is that the City must bring the street, for its entire width, to grade, before he is forced to build a sidewalk.

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Analyzing this contention, I do not think it can be sustained; the whole policy of the law is to put the entire expense of building sidewalks upon the abutting property owners, as is evidenced by Sections 21, 22, and 28, of Article 35 of the City Code, and also by Section 841F of Article 4, page 534, of the City Code.

While these ordinances, which require property owners to bear the expense of bringing their footways to the grade of the adjoining street, are founded on the police power and not upon the taxing power, yet, in this case, the great hardship which would be worked upon this particular lot owner, by requiring him to fill up his ravine, might induce the Court to rule that this was an unreasonable exercise of the power. Still the fact remains that the City has already forced the other lot owners, along this street, to bring their footways to grade and pave them, and that if this particular section is left as it is, it will be a great menace to life and limb. Under these circumstances, it is hard to see an alternative in the matter.