

Cheektowaga April 8th 1907

Regular meeting of the Town Board of the Town of Cheektowaga New York held at the house of Edward Ryan.

Present - Wildy, Fossett, Forster, Werick, Ryan, and Kless.

Moved and Seconded that Mr. Fossett act as Clerk Protem. Carried.

Petition working for a flagman at the school house crossing of the Mew York Central Railway presented.

Moved by Ryan Seconded by Werick that the petition be received and filed and that a committee be appointed to see the superintendent of the New York Central Railroad in regard to placing a flagman at said crossing. Carried.

Town Clerk, Smith arrived and proceeded to act as Clerk.

The Chairman appointed Ryan and Smith to act as a committee to wait upon the superintendent of the New York Central in regard to receiving a flagman for the school house crossing.

Moved by Smith Seconded by Werick that the petition of the William Street taxpayers regarding the Buffalo Southern Railway be received and laid on the table until our next meeting. Carried.

Moved by Ryan Seconded by Werick that the bills of Bernard Fossett, Justices of the Peace be audited at \$6.45. Carried. Judge Fossett reports the collection of \$5.00 in fines.

Moved by Ryan Seconded by Forster that the bills of Constable Theophil Lougen be audited at the sum of \$125.30. Carried.

Moved by Werick Seconded by Ryan that the bill of William C. L. Sues in the Spahrman case be audited and that we allow him the sum of \$40.00 as payment in full. Carried.

Moved by Forster Seconded by Kless that we adjourn. Carried.

Edward S. Smith
Town Clerk

Before the Board of Railroad Commissioners of the State of New York at the Capital, Albany, April 30, 1907.

Present:

Commissioner George W. Aldridge

Commissioner Frank M. Baker

Commissioner Joseph M. Dickey

Commissioner Henry N. Rockwell

In the matter of the petition of the Terminal Railway of Buffalo, under sections 60 and 62 of the railroad law, as to its railway crossing highways in the Town of Cheektowaga, Erie County

This application by the Terminal Railway of Buffalo, under sections 60 and 62 of the railroad law, was filed with this Board on December 1, 1906. The petition alleges:

1 Under Section 62 of the Railroad Law, that public safety requires changes in the manner in which highways known as the Rowley road, the Lawson Road, the Union Road and the French Road in the Town of Cheektowaga, Erie County cross the Terminal Railway of Buffalo and asks this board to determine what changes in the manner of said crossings shall be made it being proposed that the Rowley Road shall be changed from a grade to and overcrossing of the railroad at the present location of the crossing, that the Union Road and the French Road crossings shall be closed and discontinued and new pieces of highways and an overcrossing of the railroad (to take the place) of these two existing grade crossings to be located near the present Union road grade crossing shall be constructed; and the petition asks this board to so determine; And

2. Under Section 60 of the Railroad Law, the petition asks this Board to determine the manner in which many additional tracks of The Terminal Railway of Buffalo shall cross the Rowley road, the Lawson road, the Union road and the French road highways as they at present exist, it being proposed (be cause of the propositions involved under section 62 as to changing these highway grade crossings to overcrossings) that the additional tracks shall cross these highways at grade, and the petition asks that the Board will immediately determine the manner tracks shall cross said highways.

Public hearings in this matter were held by this Board in New York City on December 12, 1906, in Buffalo on January 3, 23, March 19 and April 10, 1907. The company also filed with this Board on December 1, 1906 a, petition, under sections 60 and 62 of the railroad law, as to crossings in the town of West Seneca, Erie County, and at the hearings before this board these two applications were heard together, and on this date this Board makes a separate determination in relation to the crossings in West Seneca. At the hearings Charles A. Pooley appeared for the applicant; John W. Fisher appeared for the towns of Cheektowaga and West Seneca; W.E. Kisselbarg, Jr. and W.L. Marcy appeared for the Buffalo Southern Railway; Roland Crangle appeared for property owners in the towns of Cheektowaga and West Seneca. At the hearing on January 3 Mr. Pooley stated that the applicant would bear the entire expense of changes under these applications and withdrew those parts of the applications under section 62 Mr. Fosher for the towns of Cheektowaga and West Seneca on December 12 filed with this Board preliminary objections to the applications as follows:

1. That this Board has not jurisdiction to grant the petition.

For reasons stated hereinafter we believe we have jurisdiction

2. That this is not a proceeding instituted under section 62 of the railroad law to compel the separation of the grades at the several crossings but is in fact an attempt to compel the State and town to contribute toward the expense of building iraducts over a portion of the proposed yards of The Terminal Railway and that it is the convenience of the company and not public safety that requires a change in the manner in which the said highways shall be crossed by the tracks of said company

The question of the state and town contributing toward the expense is not now in the case as hereinabove stated.

3. That this Board has not power to compel the diversion of the highways as proposed in the case of the Union road and the French road crossings in Cheektowaga and the Mineral Springs Road in West Seneca.

We do not agree to this. There is no question of this Board's power under section 62 of the railroad law to determine what alterations or changes shall be made in the location of a highway or crossing, or the closing and discontinuance of a highway crossing and the diversion of the travel thereon to another highway or crossing. We believe also that there is no question under section 60 of the power of the Board to determine changes in location of highways. It seems to us that when the Legislature made it our duty to determine how new steam railroad tracks shall cross highways, it lodged with us the power as well as the duty to determine that changes in highways necessary to properly carry into effect the new policy of the state should be made. The

Legislature undoubtedly considered that there would be cases where it would be impracticable to make the crossing under or over grade without changing the highway, as it considered that there would be cases where it would be impracticable to make the crossing at all otherwise than at grade. There may well be cases where unless the highway be changed it would be impracticable for the crossing to be made otherwise than at grade; but in such a case it would not be contended that we would be justified in allowing a grade crossing where by a change of the highway it could be made under or over grade. A reading of section 11 of the railroad law (in relation to the intersection of highways by steam railroads) confirms us in the belief that the Legislature with that section in mind meant to provide further state superintendence and direction of changes in highways proposed to be crossed by new steam railroads. That this was the intention of the Legislature in regard to new highways crossing existing steam railroads has been determined by the court of appeals (158 N.Y., 410), in its consideration of chapter 62 of the laws of 1853 and section 61 of the railroad law. We think the statement of the court that "The latter act (section 61) radically altered the procedure by which highways are to be carried across railroad tracks, a change of procedure made necessary by the radical change in the public policy of the State looking towards the abolition of the crossings of highways at grade by the tracks of steam railroads, appropriately applies to section 60. The changes in highways which we hereinafter determine shall be made are reasonable, practicable and safe and should be made.

4. That the use of the tracks proposed to be laid is for yard purposes only and that this Board is not vested with the purpose of determining how highways in these towns shall be crossed by railroad tracks intended for use for yard purposes, but that whenever a railroad company desires to construct yards within the limits of a town, the construction of which will require the crossing of highways by a great number of tracks as in this case, then the power to determine the manner of crossing said highways and the matter of alterations and discontinuance of highways and the matter of alterations and discontinuance of highways and the opening of new highways made necessary thereby is vested in the town board and board of highway commissioners.

We do not agree to this. Under section 11 of the railroad law the company does not apply to the town board of highway commissioners for the right to lay additional tracks across these highways, but to the Supreme Court, and the argument above as to section 11 need not be repeated.

We were in some doubt whether the tracks in question are not "additional switches and sidings" as mentioned in section 60, over which we have not jurisdiction, but have concluded they are not. They will extend from Mineral Springs road in the town of West Seneca to Rowley Road in the Town of Cheektowaga; are three (3) miles long; and in fact are additional main tracks of the Terminal Railway of Buffalo. This railway itself only extends from Depew east of Buffalo to Blasdell west of Buffalo and in some aspects may be considered a continuous yard, as all terminal railroads may be considered; but in fact its tracks are main tracks used to transfer freight and on occasion passenger trains from the Central Railroad to the Lake Shore Railroad, and while the freight trains so transferred are stopped at various points and rehandled to a

considerable extent, this is what this railroad is for and thus all of its tracks may properly be called main tracks "Additional switches and sidings" as used in section 60 undoubtedly means the ordinary switch or siding from main lines to manufactories or other business places. Assuming that this company had all the rights necessary, except the consent of this Board, to lay these additional tracks across these highways at grade and attempted to so lay them without application to this Board, we believe that action by this Board would result in the courts determining that they were main tracks and must cross highways in a manner to be determined by this Board.

We have thus discussed at length the various questions raised in this matter by the towns as such discussion was necessary; but it is apparent that should the matter of these crossings be determined in accordance with a memorandum filed here by Mr. Fisher on the 17th inst., the towns would be practically satisfied. We substantially do so herein after determine, with the exception of the width of the bridges. The towns ask for 36 feet width exclusive of sidewalks except for a width of 40 feet exclusive of sidewalks for the bridge to carry the Union Road and French road. We believe, from the evidence, that a width of 30 feet roadway and a five feet side walk on brackets is all that the towns can reasonably ask.

We also believe that the reasons stated above that the legislature, under section 60, conferred power on this Board to determine what the height, length, material, etc., of the structures at such crossings should be, and we certainly have such authority for changes made under section 62.

While Mr. Pooley withdrew on January 3 that part of the application under section 62, it seems necessary to determine that the existing tracks shall be changed from grade under said section. This we can do in pursuance of our powers under section 66 of the railroad law, inasmuch as these hearings were held after proper notice to property owners and local authorities under section 62, and practically the only question raised under section 62 was as to whether the expense of changes under that section should be borne in part by the state and the town,- this question being settled by the coming stating that it is to bear all the expense.

This Board hereby determines under section 60 of the railroad law,

1. That six additional tracks of the Terminal Railway of Buffalo shall immediately cross the Rowley road, the Lawson road, the Union road and the French road highways in the Town of Cheektowaga, Erie County, at the grade of said highway and that additional tracks of said railway shall cross the present locations of said highways at grade after the construction of the bridges hereinafter referred to carrying said highways over paid railway above grade.

2. This Board hereby determines under sections 60 and 62 of the railroad law,

- a. That the Rowley road highway grade crossing of the Terminal Railway of Buffalo in the Town of Cheektowaga, Erie county, shall be changed to an

overhead bridge crossing of said railway to be situated at the present location of the crossing; that said overhead bridge shall be of steel, of a width of 30 feet for road way and have a five feet sidewalk on brackets and be of a length to span the entire right of way of said railway; that the floor of said overhead bridge shall be of asphalt; that the approaches to said overhead bridge shall be on a grade not greater than four percent and shall be of a width of thirty-five feet; including roadway and sidewalk; that said approaches shall be macadamized; that said overhead bridge shall be of sufficient strength to carry a street surface railroad car weighing fifty tons loaded; that the Terminal Railway of Buffalo shall maintain the roadway and sidewalk on the said overhead bridge and said approaches thereto, irrespective of the provisions of section 64 of the railroad law, that the Terminal Railway of Buffalo shall pay all damages lawfully due adjoining property owners where the approaches to said overhead bridges are erected in front of private property.

b. That the Lawson road highway grade crossing of the Terminal Railway of Buffalo in the Town of Cheektowaga, Erie county shall be changed to an overhead bridge crossing of said railway to be situated at the present location of the crossing; that said overhead bridge shall be of steel, of a width of thirty feet for roadway and have a five feet sidewalk on brackets and be of a length to span the entire right of way of said railway; that the floor of said overhead bridge shall be of asphalt; that the approaches to said overhead bridge shall be on a grade not greater than four per cent and shall be of a width of thirty-five feet, including roadway and sidewalk; that said approaches shall be macadamized that said overhead bridge shall be of sufficient strength to carry a street surface railroad car weighing fifty tons loaded; that The Terminal Railway of Buffalo shall maintain the roadway and sidewalk on the said overhead bridge and said approaches thereto, irrespective of the provisions of section 64 of the railroad law; that The Terminal Railway of Buffalo shall pay all damages lawfully due adjoining property owners where the approaches to said overhead bridge are erected in front of private property.

c. That the Union road and the French road highway grade crossings of the Terminal Railway of Buffalo in the Town of Cheektowaga Erie county shall be closed and discontinued and that new pieces of highway substantially parallel with the tracks and an overhead bridge crossing of said (to take the place of these two existing grade crossings) shall be constructed the said overhead bridge crossing to be located practically at the intersection of the present Union and French road grade crossings that said overhead bridge shall be of steel, of a width of thirty feet for roadway and have a five feet sidewalk on brackets and be of a length to span the entire right of way of said railway; that the floor of said overhead bridge shall be of asphalt: that the approaches to said overhead bridge shall be on a grade not greater than four percent and shall be of a width of thirty-five feet, including roadway and sidewalk; that said approaches shall be macadamized; that said overhead bridge shall be of sufficient strength to carry a street surface railroad car weighing fifty tons loaded; that The Terminal Railway of Buffalo shall maintain the roadway and sidewalk on the said overhead bridge and said approaches thereto, irrespective of the provisions of section 64

of the railroad law; that The Terminal Railway of Buffalo shall pay all damages lawfully due adjoining property owners where the approaches of said overhead bridge are constructed in front of private property.

This Board also hereby determines under section 65 of the railroad law, that none of the cost of the work or expenses or claims connected therewith under this determination shall be borne by the State or by the Town of Cheektowaga, Erie County.

This Board also hereby determines that whenever any street surface railroad shall be constructed upon any of said bridges and approaches, the company owning or operating such street surface railroad shall thereafter maintain the surface of said bridges and approaches within the rails of said surface railroad and for a width of two feet outside of outer rails.

This Board also hereby determines that said bridges and approaches shall be under the supervision and control of the town authorities of the Town of Cheektowaga, who shall give notice to the said Terminal Railway of Buffalo and its successors of any defects in said roadways or the portions thereof required to be maintained by said Terminal Railway of Buffalo, and such defects shall be repaired within ten days after such notice.

By the Board,
J.S. Kennedy,
Secretary

K.F.C.

I Edward I. Smith, Town Clerk in and for this Town of Cheektowaga, Erie County New York, Thereby certify, that the foregoing is a true and correct copy of the determination of this State Board of Railroad Commissioners upon the application of the Terminal Railway of Buffalo, date April 30, 1907 and filed in my office May 4th 1907

Edward I. Smith,
Town Clerk

The Town Board immediately appealed from the foregoing determination.

Edward I. Smith
Town Clerk

May 6th 1907

Regular meeting of the Town Board and Board of Highway Commissioners held May 6th 1907 present; Wildy, Smith, Fossett, Forster, Werick Ryan and Kless

Minutes of the previous meetings read and approved as read.

Moved by Werrick Seconded by Ryan that the bills of Police Justice Wm Brennen amounting to \$ 98.70 be allowed. Carried

Justice Brennen reported the collection of \$84.00 in fines.

Moved by Werrick Seconded by Ryan that the bill of Martin Brauner for team work amounting to \$12.00 be allowed. Carried

Moved by Werick Seconded by Ryan that the bill of Philip Speiss for team work amounting to \$16.00 be allowed. Carried

Moved by Forster Seconded by Kless that the bill of Bray and Cooper, the diamond fire clay Company amounting to \$46.45 be allowed. Carried

Moved by Ryan Seconded by Werrick that the bill of Frank Wendell for repairs on _____ amounting to \$7.89 be allowed. Carried.

Moved by Werick seconded by Forster that the bill of Metz Jons for lumber amounting to \$91.14 be allowed. Carried.

Moved by Werick seconded by Ryan that the bill of the Barbar asphalt Co. for crushed stone amounting to \$11.84 be allowed. –Carried

Moved by Fossett Seconded by Ryan that our attorney be and he is hereby authorized to appeal from the determination of the State Board of Railroad Commissioners in the matter of the Terminal Railway crossings at the Rowley Road Loosen Road, _____ and French Road. Carried.

Moved by Forster Seconded by Ryan that we do now adjourn. Carried.

Edward S. Smith

To the Town Board and Board of Highway Commissioners of the Town of Cheektowaga, in the County of Erie, State of New York.,

The undersigned, the General Transmission Company, a Corporation duly organized and existing under and by virtue of the laws of the state of New York, respectfully applies to your Honorable Body for consent and permission to enter upon, and go in, along, across, through, over or under the following roads, streets, highways and public places, within the limits of the said Town of Cheektowaga, Erie County, New York to lay its wires, pipes, conducts and conductors, erect its poles and

string its wires and lines, and maintain the _____ for the purpose of conducting, distributing and furnishing electricity, for light, heat and power purposes to Wit: Along the highway known as Genesee Street, from the westerly town line to the highway known as Pine Ridge Road; along the highway known as Pine Ridge Road from the northerly town line to the southerly End of said highway; along the highway known as Walden Avenue, from the westerly line of said town to the Easterly End of said highway.

And your petitioners hereby agrees in case such consent and permission shall be granted to do said work in such manner be not to in commode the public use of said public highways or places, and that the same shall be done under the Supervision of you Honorable Body, and that your petitioner, will plated and save harmless your Honorable Body from any and all damage due from the doing of such work or any part thereof.

Dated this 10th, day of May, 1907.

Company
By

General Transmission

Jos D Ferris
Secretary & Treasurer

May 20th 1907

Special meeting of the Town Board and Board of Highway Commissioners duly called and held at the house of Peter Fix May 20th 1907 at 8 pm present; Smith, Fossett, Forster, Werrick, Ryan, Kless.

Moved by Ryan seconded by Forster that Mr. Fossett, act as chairman in the absence of Supervisor Wildy. Carried.

Moved by Ryan seconded by Kless that the petition of the General Transmission Company be granted. Carried.

Supervisor Wildy arrived after the meeting was called.

The following is a true and correct copy of the petition granted the General Transmission Company.

At a meeting of the Town Board and Board of Highway Commissioners, held in the Town of Cheektowaga on the 20th day of May, 1907.

Present; Frank Wildy, Supervisor

Edward S. Smith, Town Clerk

Joseph Forster, Justice of the Peace

Bernard Fossett, Justice of the Peace

Edward Ryan, Justice of the Peace

Jacob Kless, Commissioner of Highways

The petition of the General Transmission Company for consent and permission to enter upon and go in, along, across, through, over or under the following roads, streets, highways and public places within the limits of the said Town of Cheektowaga, Erie County, New York, to lay its wires, pipes, conduits and conductors, erect its poles and string its wires and lines, and to maintain the same, for the purpose of conducting, distributing and furnishing electricity for light, heat and power purposes, to wit; along the highway known as Genesee Street, from the westerly town line to the highway known as Pine Ridge Road; along the highway known as Pine Ridge Road, from the northerly town line to the southerly end of said highway; along the highway known as Walden Avenue from the westerly line of said town to the end of said highway; - as therein stated, was duly presented and filed, and the following resolution was offered by Mr. Ryan, and seconded by Mr. Kless and its adaption being moved and seconded by was pasted put to vote and unanimously carried.

Resolved that consent and permission be, and the same hereby is granted to the General Transmission Company its successors and assigns to enter upon and go in, along, across, through, over or under the following roads, streets, highways, and public places within the limits of the Town of Cheektowaga, Erie County, New York, To lay its wire, pipes, conduits, and conductors , erect its poles and string its wires and lines and to maintain the same, for the purpose of conducting, distributing and furnishing electricity for light heat and power purposes, to wit; along the highway known as Genesee Street, from the westerly townline to the highway known as Pine Ridge Road; along the highway known as Pine Ridge Road from the northerly town line to the southerly end of said highway; along the highway known as Walden Avenue, from the westerly line of said town to the easterly end of said highway upon the following terms and conditions;

1. That such work shall not be done so as to interfere with the public use of said roads, streets, highways and public places, and shall be done under the Supervision and inspection of the Town Board of Cheektowaga, with the expense however, to the said Town; the expenses of said supervision and inspection to be paid by the general Transmission Company.
2. The said poles shall be erected in such places on such streets or highways and public places as may be directed by said Town Board, and the wires strung thereon shall be properly insulated so as to prevent the escape of electricity, and shall be maintained in such manner as will keep the same properly insulated during the time they are in use.

3. The General Transmission Company shall furnish Electricity or gas to those desiring the same along any of its lines in the streets, highways and public places, as soon as its poles and wires have been erected and strung. Or its conduit and pipes laid and constructed. The price charged for electricity for domestic purposes shall not be greater than that charged by the General Electric Company in the city of Buffalo.

4. The General Transmission Company shall protect and save the Town of Cheektowaga harmless from any and all damages and claims for damages arising out of the manner in which said work shall be done, and from any and all damages and claims for damages arising out of the manner in which the same shall be maintained.

I hereby certify, that the foregoing is a true and correct copy of the petition of the General Transmission Company, duly presented to the Town Board and Board of Highway Commissioners, of the Town of Cheektowaga, Erie County, New York, and of the consent and permission duly granted to said company by resolution of said Town Board and Board of Highway Commissioners, duly passed on the 20th day of May, 1907, duly filed with the Town Clerk of said Town of Cheektowaga on the 20th day of May, 1907.

Edward S. Smith
Town Clerk

To Edward S. Smith, Town Clerk, and to the Town Board and Board of Highway Commissioners of the Town of Cheektowaga, Erie County, New York;

Gentlemen:

The undersigned hereby accepts the consent and permission granted to it, its successors and assigns, to enter upon and go in, along, across, through, over or under the following roads, streets, highways and public places within the limits of the said Town of Cheektowaga, Erie County, New York. To lay its wires and lines, and to maintain the same, for the purpose of Conducting, distributing and furnishing Electricity for the light, heat and power purposes, to wit: along the highway known as Genesee street, from the westerly town line to the highway known as Pine Ridge Road; along the highway known as Pine Ridge Road, from the westerly town line to the southerly end of said highway; along the highway known as Walden Avenue, from the westerly line of said town to the easterly end of said highway, by resolution of your Honorable Body, passed on the 20th day of May, 1907 and agrees to observe all the terms and conditions there in continued.

Dated, May 20th, 1907

By

General Transmission
Company
Jos D. Ferris
Secretary & Treasurer

Thereby certify, that the foregoing acceptance is a true and
correctes
copy of the original, duly filed in my office May, 20th 1907.

Edward S. Smith
Town Clerk

June 3, 1907

Regular meeting of the Town Board and Board of Highway
Commissioners of the Town of Cheektowaga; Present; Wildy, Smith, Fossett, Forster,
Werrick,
Ryan & Kless.

Minutes of the previous meetings read and approved as read.

Moved by Fossett seconded by Werrick that the bill of Puthria and
Diehl, Civil Engineers for services in the Cochrane Street and Walden Avenue Sewer
Distirct amounting to \$ 75.00 be allowed. Carried.

Moved by Fossett seconded by Werick that the bill of US Cast Iron
Pipe and _____ Company amounting to \$11.51 ne allowed. Carried.

Moved by Fossett seconded by Kless that the bill of William Lartz
for stone amounting to \$ 11.00 be allowed. Carried.

Moved by Forster seconded by Fossett that the bills of Theophil
Seuger for constable fees amounting to \$36.35 be allowed. Carried.

Moved by Werick seconded by Fossett that the bills of Joseph
Prestuie for constable fees amounting to \$4.90 be allowed. Carried.

Moved by Werick seconded by Ryan that the bills of Bernard
Fossett Jr. for Justices fees amounting to \$23.95 be allowed. Carried.

Justice Fossett, reaprts the collection of \$50 in fines.

Moved by Fossett seconded by Ryan that the communication from
Mr. Jarome H. Ryan be received and filed. Carried.

Moved by Ryan seconded by Fossett that the Supervisor be
directed to appoint a comutter to hay the matter of the blocking of the Harlem Avenue
crossing before the Superintendent of the Lackawanna railroad and to insist that the cause
of such complaints be abated. Carried.

_____ Wildy Ryan & Fossett together with the attorney of this Board named for such committee.

The following bids were received for painting of the Rowley Road, Creek Road and Spiasz Road Bridges

Mr. Char. Nelson's bid was as follows; Rowley Road Bridge for surfacing and two coats of paint as selected by the Board \$ 39.00;
Spiasz Road Bridge; \$33.00.
Creek Road Bridge; \$33.00.

John St. Stock and Sons bid is as follows;

The Rowley Road Bridge, one coat of high grade protective Hydro Carbonite paint \$53.00 and for 2 coats \$89.30 the Spiasz Road Bridge, one Coat \$41.30 two coats \$70.50; the Creek Road Brodge, one coat \$41.30 or 2 coats at \$70.50

Moved by Fossett seconded by Ryan that the contract for painting the 3 bridges be awarded tp Mr. Char Nelson, as the lowest bidder and that each bridge be painted with one coat of High grade protective hydro Carbonite paint after being thoroughly scraped and that the work be completed on or before September first 1907. Carried.

Moved by Fossett seconded by Ryan that we adjourn. Carried.

Edward S. Smith
Town Clerk

