

powers of attorney or other instruments conveying or affecting in any manner any interest in or title to real property situated in newly organized counties have been filed and recorded in the office of the register of deeds for the county in which said real property was situated at the time of the creation of said new county, since the creation and organization of said new county, and before the passage of this act, such record is, in all respects, legalized and made valid and effectual, for the purpose of notice, evidence or otherwise, as though the same had been recorded in the office of the register of deeds for the county where said property was actually situated. *Provided*, that nothing herein contained shall in any manner affect the rights or title of any bona fide purchaser without notice for a valuable consideration of any such real estate prior to the passage of this act, and shall not apply to or affect any action or proceedings now pending in any court of this state.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved April 14, 1903.

H. F. No. 49.

CHAPTER 194.

Enabling municipalities to establish building line easements.

An act to enable municipalities to establish and acquire building line easements along streets, highways, parks and parkways, and defining the nature of such easements.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. The common council of any city may establish along any street or highway within such city a building line upon the land adjoining such street or highway, or any portion thereof, and distant not more than fifty feet from the margin of such street or highway, and may, in behalf of the city, acquire an easement in the land between such line and the exterior street line, such that no buildings or structure shall be erected or maintained upon said land. Such easement shall be known as a building line easement.

By purchase, grant or condemnation.

SEC. 2. Such easement may be acquired by the city council by purchase, or by grant, or by condemnation. It may also be created by dedication by indicating such building line upon any town plat hereafter recorded in the

office of the register of deeds of the county where the land lies; and city council shall have power to refuse to accept or approve plats of lands unless building lines are shown thereon.

SEC. 3. Any board of park commissioners having control of any park or parkway may in like manner acquire building line easements along the same, or any portion thereof.

Board of park commissioners may exercise such right.

SEC. 4. The easement above specified may be acquired by proceedings to be conducted in the following manner by the board of park commissioners, in case of parks and parkways controlled by a board of park commissioners, and by the city council in other cases.

Proceedings.

The term "governing body" is used in this and the following sections to designate the appropriate body in any given case, whether the city council, or board of park commissioners. The governing body shall first designate the easement to be acquired and define the lines by which it is bounded, and shall have power to condemn for the use of the public a building line easement as defined above, and when such condemnation shall have been completed, as in this section provided, the title to such easement shall pass to and be vested in the city for the public use. For the purpose of making said condemnation all the tracts of land required for any improvement may be included in the same proceeding.

Governing body may condemn.

Provided, that no such easement shall include or take in any portion of a private residence existing at the time of the passage of this act excepting by purchase or grant.

Exception.

After making the designation the governing body shall proceed in manner following:

•SEC. 5. First—The governing body shall appoint five appraisers, who shall be disinterested freeholders and qualified voters of said city, and none of whom shall be residents of the ward or wards in which the property so designated is situated, to view the premises and appraise the damages which may be occasioned by the taking of private property or otherwise in making such improvement.

Appraisers.

Said appraisers shall be notified as soon as practicable by the secretary of the board or the city clerk, as the case may be, to attend at a time fixed by him, for the purpose of qualifying and entering upon their duties. Whenever a vacancy may occur among said appraisers by neglect

or refusal of any of them to act or otherwise, such vacancy shall be filled by the governing body.

Oath of office.

Second—The appraisers shall be sworn to discharge their duty as appraisers in the matter with impartiality and fidelity; and to make due return of their acts to the governing body.

To give notice by publication.

Third—The appraisers shall give notice, by publication in the official newspaper of the city, once a week for two consecutive weeks, which last publication shall be at least ten days before the day of such meeting, which notice shall contain a general description of the lands designated by the governing body, and give notice that a plat of the same has been filed in the office of the city clerk or secretary, as the case may be, and that said appraisers will meet at a place and time designated in the notice, and thence proceed to view the premises, and appraise the damages for property to be taken, or which may be damaged by such improvement, and to assess benefits in the manner hereinafter specified.

Notice served on owners by mailing.

Fourth—The secretary or city clerk shall, after the first publication of such notice, and at least six days (Sundays excluded) prior to the meeting specified in said notice, serve upon each person in whose name each tract or parcel of said land is then assessed, a copy of said notice by depositing the same in the postoffice of said city, with postage prepaid, directed to such person at his place of residence, if known to the secretary, or city clerk, but if not known, then to his place of residence as given in the last published city directory of said city, if his name appears therein.

Notice to person in possession.

After the first publication of such notice, and at least six days (Sundays excluded) prior to the meeting specified in said notice, a copy of the same shall also be served upon the person in possession of each of said tracts or parcels of land, or some part thereof, if the same be actually occupied, in the same manner as provided for the service of summons in a civil action in the district court. A copy of all subsequent notices relating to said proceedings which are required to be published, shall be mailed by said clerk or secretary in the manner above specified, immediately after the first publication thereof, to such persons as shall have appeared in said proceedings and requested in writing that such notice be mailed to them.

Fifth—At the time and place mentioned in the notice, the said appraisers shall meet and thence proceed to view the premises, and may hear any evidence or proof offered by the parties interested, and may adjourn from time to time for the purposes aforesaid. When their view and hearing shall be concluded they shall determine the amount of damages, if any, suffered by each piece or parcel of land of which that taken is a part. They shall also determine the amount of benefits, if any, to each piece or parcel of land of which that taken is a part. If the damages exceed the benefits to any particular piece, the excess shall be awarded as damages. If the benefits exceed the damages to any particular piece, the difference shall be assessed as benefits, but the total assessment for benefits shall not be greater than the aggregate net award of damages; and in every case the benefits assessed upon the several parcels shall be in proportion to the actual benefits received, and no assessment upon any particular piece shall exceed the amount of actual benefits after deducting the damages, of any.

Meeting of appraisers. Hear and determine damages and benefits.

Sixth—If there be any buildings standing, in whole or in part, upon any parcel of the land to be taken, the said appraisers shall, in such case, determine the amount of damages which should be paid to the owner or owners thereof, in case such building, or so much as may be necessary, should be taken, and shall also appraise and determine the amount of damages to be paid such owner or owners in case he, or they, shall elect to remove such buildings.

In case of buildings on lands.

Seventh—If the land and buildings belong to different persons, or if the land be subject to lease, mortgage or judgment, or if there be any estate less than an estate in fee, the injury or damage done to such person or interests respectively may be awarded to them separately by the appraisers. *Provided*, that neither such award of the appraisers, nor the confirmation thereof by the governing body, shall be deemed to require the payment of such damages to the person or persons named in such award in case it shall transpire that such person or persons are not entitled to receive the same.

Land and building owned by different persons, etc.

Eighth—The said appraisers having ascertained and appraised the damages and benefits as aforesaid, shall make and file with the secretary or city clerk, as the case may be, a written report of their action in the premises,

Report.

embracing a schedule and appraisalment of the damages awarded and benefits assessed, with descriptions of the lands, and the names of the owners, if known to them, and also a statement of the costs of the proceeding.

Notice.
Governing
board to
meet and
consider re-
port.

Ninth—Upon such report being filed, the secretary of the board or city clerk shall give notice that such appraisalment has been returned, and that the same will be considered by the governing body at a meeting thereof, to be named in the notice, which notice shall be published in the official newspaper of said city, once a week for two consecutive weeks, and the last publication shall be at least 10 days before such meeting. Any person interested in any building standing in whole or in part upon any land required to be taken by such improvement, shall on or before the time specified for said meeting in such notice, notify the governing body in writing of his election to remove such building, if he so elect. The governing body upon the day fixed for the consideration of such report, or at any subsequent meeting to which the same may stand over or be referred, shall have power in their discretion to confirm, revise or annul the appraisalment and assessment, giving due consideration to any objections interposed by parties interested in the manner hereinafter specified, provided that said governing body shall not have the power to reduce the amount of any award, nor increase any assessment. In case the appraisalment and assessment is annulled, the governing body may thereupon appoint new appraisers, who shall proceed, in like manner, as in case of the first appraisalment, and upon the coming in of their report, the governing body shall proceed in a like manner and with the same powers as in the case of the first appraisalment. In case any owner or owners shall elect to remove any building or buildings, and thereby reduce the amount of damages to be paid, the amount of reduction shall be deducted from the benefits assessed to each parcel proportionately before confirmation thereof.

New ap-
praisers.

Awards.

Tenth—If not annulled or set aside, such awards shall be final, and shall be a charge upon the city, for the payment of which the credit of the city shall be pledged. Such assessments shall be and remain a lien and charge upon the respective lands until paid. The awards shall be paid to the persons entitled thereto, or shall be deposited and set apart in the treasury of the city for the use of

the parties entitled thereto, within six months after the confirmation of the appraisal and award. But in case any appeal or appeals shall be taken from the order confirming said appraisal and assessment, as hereinafter provided, then the time for payment of said awards shall be extended until and including sixty days after the final determination of all appeals taken in the proceeding, and in case of any change in the awards or assessment upon appeal, the governing body may, by resolution duly adopted, at any time within sixty days after the determination of all appeals, set aside the entire proceeding. Any awards so set aside shall not be paid, and the proceedings as to the tracts for which the awards are so set aside shall be deemed abandoned. Any awards not so set aside shall be a charge upon the city, for the payment of which the credit of the city shall be pledged. All awards shall bear interest at the rate of six per centum per annum from the time of the filing of the original appraisers' report, and all subsequent awards and awards upon appeals shall be made as of the day and date of filing of such original reports.

Eleventh—Upon the conclusion of the proceedings and the payment of the awards, the several tracts of land shall be deemed to be taken and appropriated for the purpose of this act, and the easement above specified shall vest absolutely in the city in which the lands are situate. In case the governing body shall in any case be unable to determine to whom the damages should in any particular case be paid, or in case of adverse claim in relation thereto, or in case of the legal disability of any person interested, the governing body shall, and in any and every case, the governing body may in its discretion deposit the amount of damages with the district court of the county in which such lands are situate, for the use of the parties entitled thereto, and the court shall, upon the application of any person interested and upon such notice as the court shall prescribe, determine who is entitled to the award, and shall order the same paid accordingly. Any such deposit shall have the same effect as the payment to the proper persons.

Twelfth—In case any owner or owners of buildings, as aforesaid, shall have elected to remove his or their buildings, he or they shall remove them within thirty days from the confirmation of said report, or within such

Conclusion
and payment
of awards.

In case of
removal of
buildings.

further time as the governing body may allow for the purpose, and shall be entitled to the payment of the amount of damages awarded in such case, in case of removal. When such person or persons shall not have elected to remove such buildings, or shall have neglected (after having elected) to remove the same within the time above specified, such buildings, or so much thereof as may be necessary, upon paying or depositing the damages awarded for such taking in manner aforesaid, may be taken and appropriated, sold or disposed of as the said governing body shall direct.

Appeal
from
order of
govern-
ing body.

Thirteenth—Any person whose property is proposed to be taken or interfered with or assessed under any provision of this chapter, and who deems that there is any irregularity in the proceedings of said governing body, or action of the appraisers, by reason of which the award of the appraisers ought not to be confirmed, or who is dissatisfied with the amount of damages awarded to him for the taking of, or interference with his property, or the assessment thereon, may at any time before the time specified for the consideration of the award and assessment by the governing body, file with the secretary of the board or the city clerk, as the case may be, in writing, his objections to such confirmation, setting forth therein specifically the particular irregularities complained of, and the particular objection to the award or assessment, and continuing a description of the property in which he is interested, affected by such proceedings and his interest therein, and if, notwithstanding such objections the said governing body shall confirm the award, or assessment, such person so objecting shall have the right to appeal from such order of confirmation of the governing body to the district court of the county where such land is situate, within twenty days after such order. Such appeal shall be made by serving a written notice of appeal upon the secretary of the board, or the city clerk, as the case may be, which shall specify the property of the appellant affected by such award and refer to the objection filed as aforesaid, thereupon said secretary or city clerk, at the expense of the appellant, shall make out and transmit to the clerk of the district court a copy of the record of the entire proceedings, and of the award of the appraisers as confirmed by the governing body and of the order of the governing body confirming the same, and of the objections filed by

the appellant, as aforesaid, and of the notice of appeal, all certified by said secretary or city clerk to be true copies, within ten days after the taking of such appeal. But if more than one appeal be taken from any award, it shall not be necessary that the secretary or city clerk in appeals subsequent to the first, shall send up anything but a certified copy of the appellant's objections. There shall be no pleading on any appeal, but the court shall determine in the first instance whether there was in the proceedings any such irregularity or omission of duty prejudicial to the appellant and specified in his written objection that as to him the award or assessment of the appraisers ought not to stand, and whether said appraisers had jurisdiction to take action in the premises.

Fourteenth—The case may be brought on for hearing on eight days' notice, at any general or special term of the court, and the judgment of the court shall be to confirm or annul the proceedings, only so far as the said proceedings affect the property of the appellant proposed to be taken or damaged or assessed, and described in said written objection. In case the amount of damages or benefits assessed is complained of by such appellant, the court shall, if the proceedings be confirmed in other respects, appoint three disinterested freeholders, residents of said city, appraisers, to reappraise said damages, and reassess benefits as to the property of appellant. The parties to such appeal shall be heard by said court upon the appointment of such appraisers, and the court shall fix the time and place of meeting of such appraisers, they shall be sworn to the faithful discharge of their duties as such appraisers, and shall proceed to view the premises and to hear the parties interested, with their allegations and proofs pertinent to the question of the amount of damages or benefits; such appraisers shall be governed by the same provisions in respect to the method of arriving at the amount of damages or benefits and in all other material respects as are in this chapter made for the government of appraisers appointed by said governing body. They shall, after the hearing and view of the premises, make a report to said court of their award of damages and assessment of benefits in respect to the property of such appellant. The appellant shall within five days of the notice of filing the award file his written election to remove the building if he so elect. Such election

Hearing.
etc.

shall not affect his right to a review. The award shall be final unless set aside by the court. The motion to set aside shall be made within fifteen days. In case such report is set aside, the court may, in its discretion, recommit the same to the same appraisers, or appoint new appraisers, as it shall deem best; said court shall allow to said appraisers a reasonable compensation for their services, and make such award of costs on such appeal, including the compensation of such appraisers as it shall deem just in the premises, and enforce the same by execution. In case the court shall be of the opinion that such appeal was frivolous or vexatious, it may adjudge double costs against such appellant. An appeal may be taken to the supreme court of the state from any final decision of the district court in said proceedings.

Frivolous
or vexa-
tious ap-
peals.

Maps and
plats to
be made,
filing.

SEC. 6. As soon as such condemnation proceedings have been completed, it shall be the duty of such governing body to cause maps or plats of such improvement to be made, with a list of the parcels of land taken and the amount paid on account of each parcel, and to file one of such maps and list duly certified by the president of the governing body and the clerk or secretary, as the case may be, in each of the following offices, to-wit: the office of the city engineer, the office of the register of deeds of the county, and the office of the city clerk or secretary of the park board, as the case may be; and the same shall be prima facie evidence of the full and complete condemnation and appropriation of such easement for the public use. As soon as the assessments are confirmed, the secretary of the board of park commissioners or the city clerk, or the clerk of the district court, as the case may be, shall transmit a copy thereof duly certified, to the county auditor of the county in which the lands lie. The county auditor shall include the same in the next general tax list for the collection of state, county and city taxes, against the several tracts or parcels of land, and said assessments shall be collected with and as a part of, and shall be subject to the same penalties, costs and interest, as the general taxes. Such assessments shall be set down in the tax books in an appropriate column to be headed, "Building Line Assessments," and when collected a separate account thereof shall be kept by the county auditor, and the same shall

Assess-
ments con-
firmed to
be included
in general
tax lists.

Building
line as-
sessments.

be transmitted to the treasurer of the city, and placed to the credit of the proper fund.

SEC. 7. The governing body shall have power at any time to vacate such building line easement or any portion thereof.

Easements
vacated.

SEC. 8. This act shall take effect and be in force from and after its passage.

Approved April 14, 1903.

CHAPTER 195.

H. F. No. 533.

An act to provide for the release and discharge of executors, administrators and guardians, and for the depositing with the county treasurer of funds belonging to absent heirs, legatees, wards or creditors, or other persons whose whereabouts cannot be ascertained.

Release of
executors,
administrators,
and
guardians.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. That whenever an executor or administrator shall have fully complied with all the terms and conditions of the final decree of distribution and of all other decrees and orders of the probate court appointing him, and shall have paid over to the distributees named in such final decree of distribution of the said court, all moneys and funds and property to them awarded by such final decree, and when such executor shall have in all other respects fully complied with the terms and conditions of said final decree, and have fully complied with all the orders and decrees of the said court, the court may, upon due notice given, and after full hearing and examination, find such facts, and if it shall appear to the court that the executor or administrator has paid over all moneys to the proper parties, and that he has in all things complied with the orders of the court and the terms of the final decree in the said estate, and that he has in all things, well, faithfully and fully administered his trust as such executor or administrator, the court may enter an order and decree fully discharging the said executor or administrator and the sureties on his bond from all further liability, and from all liability by reason of said trust and by reason of said administration.

On full
compliance
with all
orders of
probate
court, said
court may
order discharge
of executor
or administrator.

SEC. 2. That whenever any guardian shall have fully complied with all the terms and conditions of the orders

Same as to
guardians.