

other acts and parts of acts inconsistent herewith, are hereby repealed.

Sec. 37. **Effective June 1, 1925.**—This act shall take effect and be in force from and after June 1st, 1925.

Approved April 25, 1925.

CHAPTER 417—S. F. No. 993.

An act amending Sections 1553, 1554, 1555, 1558 and 1563 General Statutes 1923, relating to the acquisition of lands for streets, parks and parkways in cities of the first class and the improvement and government thereof, and the improvement and government of existing streets, parks and parkways.

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

Section 1. **Proceedings for acquisition of land.**—That Section 1, 1553, General Statutes 1923, be and the same is hereby amended so that it shall read as follows:

“1553. After the adoption of the resolution it shall be the duty of the city engineer to make and present to the council a plat and survey of such proposed improvement, showing the character, course and extent of the same and the property necessary to be taken or interfered with thereby, with the name of the owner of each parcel of such property so far as the engineer can readily ascertain the same, and such statement as may in the opinion of the engineer be proper to explain such plat and survey and the character and extent of the proposed improvement.

When such plat and survey shall be finally adopted by the city council, it shall be filed with the city clerk, and it shall be held to show correctly the character and extent of the improvement actually agreed upon and ordered by the city council.

Said plat shall also show the amount of land taken from each owner, so far as the owners may be known, and the lands contiguous to such improvements.

The city council shall then or afterwards appoint five freeholders of said city, no two of whom shall reside in the same ward, as commissioners, to view the premises and to ascertain and award the amount of damages and compensation to be paid to the owners of property which is to be taken or injured by such improvement, and to assess the amount of such damages and compensation and the expense of the improvement upon the lands and property to be benefited by such improvement, and in proportion to the benefits to be received by each parcel and without regard to a cash valuation.

Three or more commissioners shall constitute a quorum and be competent to perform any duty required of such commissioners; and they shall be notified of their appointment, and vacancies in

their number shall be filled by the city council, and they shall be sworn to the faithful discharge of their duties. They shall give notice by two publications in the official paper of said city that such survey and plat is on file in the office of the city clerk, for the examination of all persons interested, and that they will on a day designated in such notice, which shall be at least ten days after the first publication of such notice, meet at a place designated in said notice on or near the proposed improvement, and view the property proposed to be taken or interfered with for the purposes of such improvements, and ascertain and award therefor compensation and damages, and view the premises to be benefited by such improvement, and assess thereon in proportion to benefits, amount necessary to pay such compensation and damage and the cost of making the improvement, and that they will then and there hear such allegations and proofs as interested persons may offer. Any such commissioners shall meet and view the premises pursuant to such notice, and may adjourn from time to time, and, after having viewed the premises, may, for the hearing of evidence and preparation of their award and assessment, adjourn or go to any other convenient place in said city, and may have the aid and advice of the city engineer and of any other officer of the city, and adjourn from time to time. After viewing the premises and hearing the evidence offered, such commissioners shall prepare and make a true and impartial appraisal and award of the compensation and damages to be paid to each person whose property is to be taken or injured by the making of such improvement; but if the remainder of the same property, a part of which only is to be taken or damaged by such improvement, shall be benefited by such improvement, then the commissioners, in considering and awarding compensation and damages, shall also consider, estimate and offset the benefits which will accrue to the same owner, in respect to the remainder of the same property, and award him only the excess of the compensation or damages over and above such benefits.

The said commissioners shall then assess the amount of such compensation and damages so awarded upon the land and property benefited by such proposed improvements, together with the expense and cost of making the improvements as fixed by the city council, and in proportion to such benefits, but in no case shall the amount of such assessment exceed the actual benefit to the lot or parcel of land so assessed, deducting therefrom any damages or injuries to the same parcels which are less than such benefits, and assessing only the excess, and prepare and report to the city council their appraisal and award, and if in the judgment of said commissioners the whole amount of such compensation and damages, together with the cost of making such improvement, shall exceed the actual benefit to the specific property subject to assessment, they shall so indicate in their report and shall state the amount of

such excess. Said commissioners shall also report to the city council an assessment list containing their assessment of such compensation, damages, and costs, or so much thereof as shall not exceed the actual benefits to the property so assessed, which list shall contain a brief description of each tract or parcel of property assessed, the name or names of the owners thereof, if known, and the amount assessed against each parcel of property and the amount of the excess of such compensation, damages and costs as aforesaid, which they shall return unassessed.

The commissioners may employ clerical assistance, and the cost thereof, as well as the commissioners' compensation, and the expenses of printing the notices required, including, among others, the notice of consideration by the city council, hereinafter referred to, estimated at the same rate per line as the cost of printing the prior notices, shall be added to the other amounts to be assessed and shall be assessed therewith. The city attorney shall represent the city before the commissioners and produce such evidence as the case may require.

The city council, may, however, provide by the resolution appointing such commissioners that a certain specified percentage, not exceeding thirty-three and one-third (33 1-3%) per cent, of the total damages and cost of improvements, shall in any case be payable out of the city's general funds, and in that case the city's share shall be added to the amount of the certificates to be issued and sold under Section 10, and the city council shall from year to year levy a sufficient tax upon the taxable property of the city to pay the same, with interest. In such case the amount provided to be paid out of the general funds shall not be assessed.

Said commissioners shall, upon the completion of their said report, file the same with the city clerk and thereupon it shall be the duty of said city clerk to give notice to all interested parties by publishing, as soon as possible, in the official paper of said city a notice containing descriptions of the several lots and parcels of land taken for such proposed improvements, the amount awarded for the taking of each such lot or parcel, the names of the owner or owners of the same, descriptions of the several lots or parcels of land upon which benefits have been assessed, the amount assessed against each such lot or parcel and the names of the owner or owners of the same; the names of all owners referred to herein to be obtained from said commissioners, and, so far as may be necessary, from the records in the office of the county treasurer. Said published notice shall also designate and fix a place and time, not earlier than three weeks from date of publication of the same, at which a committee therein designated of the board of park commissioners or of said council will meet to hear and consider, from or on the part of the owner or owners of the several lots or parcels of land taken for such proposed improvement and of the several lots or parcels of

land upon which benefits have been assessed, any and all objections to the making of such improvement, to the amount of damages awarded for the taking of or interference with the property involved, to the amount of the assessment for benefits to any property affected by such proceeding, and any and all claims of irregularities in the proceedings of the city council, board of park commissioners, or the commissioners so appointed by either thereof.

Immediately after the publication of such notice and at least two weeks prior to the time designated for the meeting of the committee specifically designated in said notice, the city clerk shall serve upon each of the owners of the several lots or parcels of land taken for such proposed improvement and of the several lots or parcels of land upon which benefits have been assessed, a copy of said published notice, by depositing the same in the postoffice of said city, postage prepaid in an envelope plainly bearing on its front in type no smaller than ten point the words 'Notice of Tax Assessments for improvements affecting your property' directed to each of said persons at his last known place of residence, if known, to said city clerk, otherwise as obtained from the records in the office of the county treasurer; provided that the failure of any of such owner or owners to receive such notice shall not in anywise operate to invalidate any of the proceedings covered by this act.

Any person whose property is proposed to be taken, interfered with, or assessed for benefits, under any of the provisions of this chapter, and who objects to the making of such improvement, or who deems that there is any irregularity in the proceedings of the city council, or on the part of the commissioners so appointed by it, by reason of which the award of said commissioners 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 with the amount of the assessment for benefits to any property affected by such proceedings, shall file with said city clerk, at least one week before the hearing designated in such published notice, his written objection to the making of such improvement, or his objection to the damages awarded or benefits assessed, or his claim of said irregularities, specifically designating the same, and a description of the property affected by such proceedings.

At the time and place designated by such published notice for said hearing the city clerk shall present to said committee the report of the commissioner so appointed together with all written objections so filed with said city clerk and such committee shall then consider the same and hear said objectors, or their representatives, in person, and shall adjourn said hearing from time to time as may be necessary.

Within ten days from the conclusion of said hearing or hearings said committee shall file with said city clerk its report and recommendation on the matter so submitted, and upon such filing the city

clerk shall give notice that such report and recommendation has been filed and that the same, together with said report of said commissioners, will be considered by said city council at a meeting thereof to be designated in said notice, which notice shall be published in the official newspaper of said city once a week for two consecutive weeks, the last publication thereof being at least two weeks before said meeting of said city council.

Said city council, upon the day fixed for the consideration of said reports and recommendation or at any subsequent meeting to which the same may stand over or be referred, may by resolution annul and abandon said proceeding, or may confirm such awards and assessments, or any or either thereof, or annul the same, or send the same back to said commissioners for further consideration; and said commissioners may in such case again meet at a time and place to be designated in a notice which shall be published by said city clerk once in the official newspaper of said city and copies of which shall be similarly mailed by said city clerk to all interested persons, at least two weeks prior to said meeting, and hear any further evidence that may be adduced by interested persons, and may adjourn from time to time, and may correct any mistakes in such award and assessment and alter and revise the same as they may deem just, and again report the same to said city council, who may thereupon confirm or annul the same.

Whenever the city council shall confirm any such award and assessment such confirmation shall make such award and assessment final and conclusive upon all parties interested, except as hereinafter provided, and the city council shall proceed, at the same or at any subsequent meeting, to levy such assessment upon the several parcels of land described in the assessment list reported by the commissioners, in accordance with the assessment so confirmed, and cause to be made and adopted an assessment roll of the same, which may be in the following form, or any other form the council may adopt:

"The city council doth hereby assess and levy upon and against the several lots and parcels of land below described the respective sums of money set against each lot or parcel. This assessment is made to defray the compensation and damages awarded for the taking of an injury to private property, and estimated cost of improvement, and in and about the as shown on the plat and survey of the same on file in the office of the city clerk of said city. This levy is made conformably to the report and assessment of commissioners duly appointed to make such assessment and in proportion to benefits from such improvements to accrue to the parcels and not exceeding the benefits to the parcels so assessed.

Name of Owner, if known	Description of land	Lot Block	Amount Dollars Cents	
----------------------------	------------------------	-----------	-------------------------	--

Done at a meeting of the city council this.....day of
....., A. D. 19...

Attest:

City Clerk

.....
Pres't of the Council."

Sec. 2. Objections to confirmation—Appeal to District Court—Re-appraisals—Appeal to Supreme Court.—That Section 2, 1554 General Statutes 1923, be and the same is hereby amended so as to read as follows:

"1554. Any person whose property is proposed to be taken, interfered with or assessed for benefits under any of the provisions of this chapter, and who deems that there is any irregularity in the proceedings of the council or action of the commissioners, by reason of which the award of the commissioners 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 with the amount of the assessment for benefits to any property affected by such proceedings, specifically shall have the right to appeal from such order of confirmation of the city council, to the district court of the county at any time within *twenty* days after such order. Such appeal shall be made by serving a written notice of such appeal upon the city clerk of said city, which shall specify the property of the appellant affected by such award *and assessment*, and refer to the objection filed as aforesaid, and also by delivering to said city clerk a bond to the city, executed by the appellant, or by someone on his behalf, with two sureties, who shall justify in the penal sum of fifty dollars, conditioned to pay all costs that may be awarded against the appellant. Thereupon the city clerk shall make out and transmit to the clerk of said district court a copy of the award of said commissioners, as confirmed by the council, and of the order of the council confirming the same, and of the objection filed by the appellant as aforesaid, all certified by said 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 clerk in appeals subsequent to the first, shall send up anything except a certified copy of the appellant's objections. There shall be no pleading on such 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 said written objections, that as to him the award or assessment of the commissioners ought not to stand and whether said commissioners had jurisdiction to take action in the premises.

The case may be brought on for hearing on eight days' notice, at any general or special term of the court, and shall have precedence of other civil cases, and the judgment of the court shall be either to

confirm or annul the proceedings only as the same affects the property of the appellant proposed to be taken, damaged or assessed for benefits and described in said written objection, from such determination no appeal or writ of error shall lie.

In case the amount of damages awarded or assessment made for benefits is complained of by such appellant, the court shall, if the proceedings be confirmed in other respects, upon such confirmation, appoint three disinterested freeholders, residents of said city, commissioners to re-appraise such damages or benefits. The parties to such appeal shall be heard by said court upon the appointment of such, and the court shall fix the time and place of the meeting of such commissioners. They shall be sworn to the faithful discharge of their duties as such commissioners, 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 such damages or assessments. Such commissioners shall be governed by the same provisions in respect to the method of arriving at the amount of damages and the offset thereto of benefits to other property of the same owners, and in all other material respects, as are in this chapter made for the government of commissioners appointed by said city council. They shall, after such hearing and view of the premises make report to said court of their appraisal of damages or assessments of benefits in respect to such appellant. The award or assessment of such commissioners shall be final unless set aside by the court for good cause shown. In case such report is set aside, the court may, in its discretion, recommit the same to the same commissioners or appoint a new board as it shall deem best. Said court shall allow a reasonable compensation to such commissioners for their services, and make such award of costs on such appeal, including the compensation of such commissioners as it shall deem just in the premises.

In case the court shall be of opinion that such appeal was frivolous or vexatious, it may adjudge double costs against such appellant.

An appeal may be taken from the court's final order to the supreme court by the city or any party thereto.

In case of proceedings conducted by the city council all reports and other papers shall be filed in the office of the city clerk, and notices of appeal and other notices to the city shall be served upon the city clerk. In case of proceedings conducted by the board of park commissioners, all papers shall be filed in the office of the secretary or other recording officer of the board, and all notices of appeal and other notices to the city shall be served upon the secretary or other recording officer of the board."

Sec. 3. Assessments for parkways to be paid from permanent improvement fund.—That Section 1555, General Statutes 1923 be and the same is hereby amended so as to read as follows:

"1555. Whenever any award or awards of damages made to appellants upon any such appeal or appeals to the district court shall exceed the amount of the award or awards appealed from, and when any assessment or assessments of benefits made in respect to any appellant or appellants upon such appeal or appeals shall be less than the amount of the assessment or assessments of benefits appealed from, the amount of such increase in the amount of said award or awards of damages and the amount of such decrease in such assessment or assessments of benefits may be paid by the city from the permanent improvement fund or any fund of the city available therefor, or the city council may cause the same to be assessed upon and against any property benefited by the proposed improvements in addition and without prejudice to prior assessments made thereon in said proceedings, and may refer the matter to the commissioners theretofore appointed by the council in such proceeding or to new commissioners to be appointed by the city council. Such commissioners, whether new or old, shall have the same qualifications as required of commissioners appointed by Section 1553 hereof and such commissioners shall take oath to faithfully discharge their duties as such commissioners and give notice of the time and place when and where they will meet to hear persons interested and assess the amounts of such increase of awards of damages and decrease of assessments of benefits upon the land and property, *theretofore assessed for such benefits, or assess benefits on lots or parcels of land not theretofore assessed for benefits in said proceeding. Said notice, as to the owner or owners of the lots or parcels of land entitled to increase of awards upon any such appeal or appeals, and as to the owner or owners of any lots or parcels of land to be then assessed for benefits that were not so assessed in the original proceeding by said commissioners, shall be given by said commissioners by depositing the same in the postoffice of said city, postage prepaid, directed to each of said persons at his last known place of residence, if known to said commissioners, otherwise as obtained from the office of the county treasurer; provided that the failure of any such owner or owners to receive such notice shall not in anywise operate to invalidate any of the proceedings covered by this act.* Such commissioners shall meet at the time and place so designated in their notice and hear all persons interested and assess the amount of such increased awards of damages and decreased assessments of benefits, *or new and original assessments of benefits,* upon the property benefited by such proposed improvements, in proportion to such benefits, but in no case shall the amount of such assessment exceed the actual benefit to the lot or parcel of land so assessed, and said commissioners shall prepare and *file with the city clerk* an assessment list of the assessment so made by the commissioners, containing a brief description of each piece of property assessed, the name of the owners thereof

if known, and the amount assessed against the same, *and said city clerk* shall present such list to the city council for consideration. A brief minute of the presentation of such assessment list to the city council shall be made and published in the record of the proceedings of the city council, which shall be held to be sufficient notice to all persons concerned. Such assessment list shall lie over without action thereon by the city council until the next regular meeting of the council which will occur at least one week thereafter, at which time or *at* any meeting thereafter the city council may confirm such assessments and assessment roll, or send the same back to the commissioners for further consideration and report thereon. Any person interested who is dissatisfied with the amount of any such assessment may appeal from the confirmation of such assessment by the city council to the district court, in like manner and with like proceedings as provided in Section 1554 hereof in respect to filing objections and taking appeals from original appeals made in such proceedings *from such order of confirmation*. Any decrease made in any such assessments upon any such appeals may be paid by the city from the permanent improvement fund or *from* any fund of the city available therefor, or *said city council may* cause the same to be re-assessed as hereinabove provided."

Sec. 4. **Method of improvement—Assessments.**—That Section 1558 General Statutes 1923 be and the same is hereby amended so as to read as follows:

The City Council and park commissioners may by such concurrent resolution, or by separate resolution when acting separately specify the method of improving any such street, park or parkway, including grading, drainage, planting, paving, curb, gutter and sidewalk, as well as sewer and water mains where necessary, and in the case of parks, the necessary structures and apparatus for playgrounds and general park uses. The city engineer shall estimate the cost of each item in such improvement separately and submit the estimate with the plat. Such estimates shall be for not to exceed six-inch water mains and not to exceed twenty-four inch sewers. The city council shall examine such estimates and after modifying, if necessary, find and adopt an estimate of such cost. The city council, in appointing commissioners, shall recite said estimate, and the commissioners shall assess the amount thereof or so much thereof as shall be directed by the city council, upon such lots and parcels of land in the city as they shall deem specifically benefited in proportion to such benefits, and not exceeding the actual benefit to any parcel, and add the same to the benefits assessed under section 1553 of this act and report the net result of damages or benefits as required by said section 1553, and with like proceedings thereafter. Provided that if *in* any proceedings under this act the actual cost of the improvement of any such street, park or parkway in the manner herein designated is less than the estimated cost thereof as found

and adopted by the city council, the city council shall immediately *cancel and annul the assessments made in any such proceedings to an amount which in the aggregate shall not exceed such fractional part of the total amount of such excess of estimated cost over actual cost as shall be equivalent to the fraction obtained by dividing the total amount of such assessments by the total amount of such estimated cost.* In case the assessments in any such proceeding have not been entirely collected, or in case the city council deem that any such assessments can not be fully collected, the city council may direct the city comptroller to retain in the fund in such proceeding a sum sufficient, in the judgment of said city council, to cover the deficiencies in the collection of such assessments, and the city council shall direct that the balance of such excess of estimated cost shall be disposed of in the manner hereinafter provided. The city council shall direct the city comptroller to certify the amount of such balance to the county auditor. The county auditor shall thereupon deduct such amount from the first installment of the assessment to be collected after the receipt of such certificate. Such deduction shall be made from the assessment against each piece or parcel of property in the proportion that such excess as certified by the city comptroller bears to the total of such installment of the assessment. If such balance as certified exceeds one installment, it shall also be deducted in like manner from succeeding installments until the same is fully deducted. Provided further that if any portion of the damages and cost of such improvement has been paid by the city, the city council shall direct the city comptroller to certify to the county auditor only such percentage of such balance or excess of estimated cost as shall be equal to the percentage of the total estimated cost of the improvement and damages which has been or is assessed against benefited property. No such certificate shall be directed by the council or issued to the county auditor until after a report from the city engineer that the work under any such proceeding has been completed and each item of damage or cost in said proceeding has been paid, and such report by the city engineer shall be made to the city council immediately upon the completion of the work in any such proceeding. In any such proceeding where there is or may be such an excess of estimated cost, and there is or shall be a balance in the fund in such proceeding over and above the actual cost, the city council shall be entitled to withdraw from such fund a percentage of such fund equal to the percentage of the cost of such improvement paid by the city, and cause such percentage to be deposited in the fund from which it was originally drawn or taken by such city council. Any existing street, park or parkway may be improved and the expense thereof assessed and raised in the manner provided by this act for acquiring and opening streets, parks and parkways and improving the same, including any or all of the following improvements, to-wit, widening, grading, drainage, planting,

pavement, sidewalks, curb and gutter, sewers and water mains, and in the case of parks, the necessary structures and apparatus for playgrounds and general park uses. In case of streets or parkways exceeding eighty (80) feet in width, the resolution may, for the purpose of facilitating connections with private property and obviating the necessity of cutting or breaking into the improvements, order a double water main or a double sewer, one on either side of the street or parkway, or adopt such other arrangement or device as may seem most feasible.

Sec. 5. Bonds for improvements.—That Section 1563, General Statutes 1923 be and the same is hereby amended so as to read as follows:

"1563. The city council, for the purpose of realizing the funds for making such improvement and paying such damages may, *from time to time as may be needed*, issue and sell special certificates of indebtedness, or special street or parkway improvement bonds, as they may decide, which shall entitle the holder thereof to all sums realized upon any such assessment, or if deemed advisable, a series of two or more certificates or bonds against any one assessment, or against the assessments in two or more different proceedings, the principal and interest being payable at fixed dates out of the funds collected from such assessments, including interest and penalties, and the whole of such fund or funds is hereby pledged for the pro-rata payment of such certificates or bonds and the interest thereon, as they severally become due. Such certificates or bonds may be made payable to the bearer, with interest coupons attached, and the city council may bind the city to make good deficiencies in the collection up to, but not exceeding, the principal and interest at the rate fixed as hereinafter provided and for the time specified in section 1557. If the city, because of any such guaranty, shall redeem any certificate or bond, it shall thereupon be subrogated to the holder's rights. For the purpose of such guaranty, penalties collected shall be credited upon deficiencies of principal and interest before the city shall be liable. Such certificates or bonds shall be sold at public sale or by sealed proposals at a meeting of which at least two weeks' published notice shall be given, to the purchaser who will pay the par value thereof at the lowest interest rate, and the certificates or bonds shall be drawn accordingly, but the rate of interest shall in no case exceed five per cent per annum, payable annually or semi-annually. The city clerk shall certify to the county auditor the rate of interest so determined *at the first bond sale held for any such improvement*, and interest shall be computed upon the assessments at such annual rate, in accordance with the terms of section 1557. *In case the rate of interest so determined at any subsequent bond sale for the same improvement is greater than the rate so determined at the first bond sale therefor, the dif-*

ference between such rates of interest shall be a general city charge.

In case the proceeds of any such special certificates of indebtedness or special street or parkway improvement bonds are in excess of the amount actually necessary to make the improvements for which the same were issued, or in case such proceeds are not immediately required for the prosecution or completion of such improvement, such proceeds may meanwhile be used by the City Council for the making of other improvements authorized under the provisions of this law, and the amount of such proceeds so used shall be replaced and made good so far as may be necessary from the proceeds of special certificates of indebtedness or special bonds issued for the purpose of making such other improvements.

Approved April 25, 1925.

CHAPTER 418—S. F. No. 924.

An act to amend Section 4371, General Statutes, 1923, relating to the placing of headstones at the graves of soldiers, sailors and marines and persons not soldiers who actually served in this state in the Indian War of 1862, to the placing of inscriptions on such headstones, and to the payment of the cost thereof.

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

Section 1. Monuments for soldiers and sailors.—That Section 4371, General Statutes, 1923, be and the same hereby is amended so to read as follows:

"4371. A headstone shall be placed at the grave of every such person, bearing his name, and, if ascertainable, the date of his birth and death, and the designation of the organization to which he belonged or in which he served. The cost of such headstone shall not exceed fifteen dollars, finished and in place. It shall not be furnished by the state until the county board shall have applied unsuccessfully to the general government therefor. When the government furnishes such stone, without a base, the board, at a cost to the state of not more than seven dollars and fifty cents, shall cause the same to be properly placed. *When such headstone heretofore has been furnished and erected other than by the state or the federal government and does not bear the designation of the organization to which such person belonged or in which he served, upon written request of the next of kin of such person or of the state commander of the Grand Army of the Republic, the board, at a cost to the state of not more than seven dollars and fifty cents, shall cause to be graven thereon the designation of the organization to which such person belonged or in which he served.*"

Approved April 25, 1925.