

CHAPTER 381.

[H. F. No. 983.]

AN ACT TO AUTHORIZE THE COUNTY COMMISSIONERS OF HENNEPIN COUNTY, IN THE STATE OF MINNESOTA, FOR THE IMPROVEMENT OF NAVIGATION ON LAKE MINNETONKA IN SAID COUNTY, FOR THE PRESERVATION OF THE PUBLIC HEALTH, AND FOR THE PUBLIC BENEFIT, ADVANTAGE AND USE, TO ESTABLISH AND MAINTAIN A UNIFORM HEIGHT OF WATER IN SAID LAKE, TO ACQUIRE AND CONDEMN PROPERTY AND TO DO SUCH OTHER ACTS AS MAY BE NECESSARY.

WHEREAS, It is necessary for the improvement of navigation on Lake Minnetonka, in the county of Hennepin, state of Minnesota, and for the preservation of the public health and for the public benefit, advantage and use, that the waters in said lake shall be maintained at a uniform height, sufficient to secure said purposes; and

WHEREAS, The property hereinafter specified is necessary to be acquired to carry out the purposes of this act; therefore

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

SECTION 1. That the county commissioners of the county of Hennepin, in said state, are hereby authorized, immediately after the passage of this act, to determine and establish a uniform height at which the waters of Lake Minnetonka, in said county, shall be maintained, as nearly as practicable; *Provided*, that said height shall not be above the extreme high water mark of the waters in said lake, and shall not be less than three (3) feet above the present level of the waters in said lake, which present level is thirteen (13) feet and three (3) inches below the top of the main piers of the bridge over the narrows between the main lake and that portion of said lake known as Gray's lake.

And said commissioners are further authorized from time to time, after they have established said height as herein provided, to do such things as may be necessary to maintain said waters at the height so established, as nearly as practicable; and whenever the waters in said lake shall exceed the height established by said commissioners pursuant to this act, said commissioners shall draw the said waters down to said height so established, but not below the same.

SEC. 2. To carry out the purposes of this act said commissioners are authorized to acquire, by gift or by purchase or condemnation, the property known as the dam of the Minnetonka Mill Company in said county, together with all rights and easements connected therewith or appurtenant thereto, and the land on which said dam is situated; and also all such land adjacent to the same and such rights or interests in such adjacent land as may be necessary to enable said commissioners to maintain said waters at the height so established, and to discharge the surplus waters of said lake from time to time through said dam.

SEC. 3. In case it shall be necessary to acquire said dam, property, lands or rights, or either of them or any part thereof, by condemnation, said commissioners may proceed, as often as it may be necessary, in manner following:

They shall cause to be made a survey and map of the lands and property which they shall determine to take, or in which they shall determine to acquire such rights, which map shall be certified by a majority of the said commissioners and filed in the office of the clerk of the district court of said county; and the said map shall contain the names of the owners, mortgagees, judgment creditors and other persons interested in, or having a lien upon, each specified tract of land and the property which is to be taken or in which such rights are to be acquired, so far as said names are known to the commissioners or can be ascertained from the records in the office of the register of deeds of said county.

SEC. 4. Upon the filing of said map as above required, the commissioner shall give written or printed notice to each owner, mortgagee, judgment creditor and other person interested in or having a lien upon the several tracts of land and the property which it is proposed so to take, or to acquire such rights in, as far as the same can be ascertained, as hereinbefore provided, declaring that the county commissioners of said Hennepin county intend to take the lands and property or to acquire such rights in the lands described by said survey, as shown by said map, as the case may be; and that the said commissioners intend to apply by petition to the district court of the fourth (4th) judicial district of the state of Minnesota, which is hereby vested with jurisdiction to hear and determine any matter arising under this act, at a general or special term thereof, and on a day in said notice named, for the appointment of three (3) disinterested freeholders, residents of said county, to act as appraisers to ascertain and report the just compensation to be paid to the person or persons or corporation owning or having any interest in or lien upon said lands and property, which said notice shall be served on the said owners and parties in interest in like manner as a summons in a civil action is now provided to be served by the laws of the state of Minnesota, at least ten (10) days previous to the time designated by the said notice for the presentation of such application. In case of non-residents said notice may be served by publication thereof, for ten (10) successive week days, in any newspaper printed and published in said county. The last publication shall be at least ten (10) days prior to the day fixed in said notice for presenting said petition to said court.

SEC. 5. The said commissioners shall present a petition to said court, pursuant to said notice, for the appointment of such appraisers for the purposes aforesaid, at the time and place designated in said notice; and said court, upon the hearing of said petition, if it appears to the court that the notice has been given according to the provisions of this act as above provided, shall appoint three (3) disinterested appraisers, freeholders and residents of said county, for the purposes aforesaid; and in the order appointing said appraisers, said court shall fix the time and place of the first (1st) meeting of said appraisers.

SEC. 6. The said appraisers shall meet at the time and place specified in the order appointing them, and shall severally take and subscribe an oath, to be administered by some person authorized to administer oaths, faithfully and impartially to discharge the duties of their appointment according to the best of their ability. A majority of them may adjourn the proceedings before them from time to time

in their discretion. They shall together view said lands and property and shall hear the proofs and allegations of all persons interested; and they, or a majority of them, all being present, shall, without any unnecessary delay, proceed to [award] to the respective owners of said lands and property such compensation therefor, in each case separately, as in their judgment shall be just, for the damages that will result by reason of the taking of their said lands, property or estate or acquiring such rights therein, for the purposes of this act; and in fixing the amount of such compensation said appraisers shall not make any allowance or reduction on account of any real or supposed benefits which the parties interested may derive from the improvement caused by the establishment and maintenance of said waters at the uniform height determined by said commissioners, for the purposes aforesaid. The report of said appraisers, signed by them, shall be filed in the office of the clerk of said district court as soon as they have completed their said award; and said report shall be made and filed within one (1) month from the time of their appointment.

SEC. 7. After the report of the said appraisers shall be so filed, the said commissioners shall give notice, by publication for ten (10) successive week days, in some newspaper designated by said court and printed and published in said county, that said report of said appraisers has been so filed, and that said commissioners, on a day specified in said notice, which day shall be at least ten (10) days after the last publication of said notice, will apply to said court for an order confirming said report; and on the day so appointed the said court, on being furnished with due proof of the publication of said notice as above provided, shall hear the application of said commissioners and shall make such order in the premises as may be just; and, in case of confirmation of said report, shall make an order containing a recital of the substance of the proceedings in the matter of the appraisement of the land and property for which compensation shall be paid, and shall also direct to whom the compensation shall be paid. A certified copy of such order of confirmation shall be recorded in the office of the register of deeds of said county.

SEC. 8. Any person whose property is proposed to be taken or interfered with, under any of the provisions of this act, and who deems that there is any irregularity in the action of the appraisers by reason of which the award of said appraisers ought not to be confirmed, or who is dissatisfied with the amount awarded to him for the taking of or interference with his property under this act, may file with the clerk of said court, in writing, his objection to such confirmation, setting forth therein specifically the particular irregularities complained of, and containing a description of the property in respect to which objection is made; and said written objection shall be filed with the clerk of said court at least two (2) days before the time fixed in said notice for the application for the confirmation of said report. There shall be no pleading on such objection, but the court shall determine, in the first instance, whether there was any such irregularity or omission of duty prejudicial to the objector and specified in said written objection that as to him the award or appraisement of the appraisers ought not to stand. The judgment of the court shall be either to confirm or annul the proceedings, only as the same affects the property of the objector proposed to be taken or affected and described in said written objection. From

such determination no appeal or writ of error shall lie. In case the amount of damages awarded is complained of by said objector, the court shall, if the proceedings shall be confirmed in other respects, upon such confirmation appoint three (3) disinterested freeholders, residents of said county, appraisers to reappraise said damages. The parties to such objection may be heard by said court upon the appointment of such appraisers, and the court shall fix the time and place of the first meeting of such appraisers. They shall be sworn and shall proceed in all respects as is in this act provided for the government of the first set of appraisers appointed by said court. The award of such new appraisers shall be final, unless the same shall be set aside by the court for good cause shown; and in case it 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; but no appeal or writ of error shall be allowed from any order of the court in the premises.

SEC. 9. Said court shall have the power at any time to amend any defects or any informalities in any of the proceedings to acquire said land, property and rights, and also to appoint other appraisers in place of any who for any reason may not serve after notice has been given, in like manner as hereinbefore provided for giving notice of the application of said commissioners for the appointment of appraisers originally. Said court shall allow a reasonable compensation to all appraisers for their services, and shall make such award of costs on the hearing of objections as it shall deem just in the premises.

SEC. 10. The land and property required to be taken, or with respect to which said rights are necessary to be acquired for the purposes aforesaid, shall not be appropriated to such purposes until the amount awarded for the same shall have been paid or tendered to the persons entitled thereto, or paid into court as provided herein. In case the said commissioners shall be unable to determine to whom the compensation so awarded should in any particular case be paid, or be unable to make tender in any case, or in case of disputed claims in relation thereto, or in case any person to whom compensation has been awarded shall not be a resident of the state of Minnesota, or if for any reason it shall seem best to do so, the amount of such compensation in any case may be deposited by said commissioners in said court. All of said payments shall be made out of moneys derived from the assessments for benefits as hereinafter provided in this act. Said court, upon the proper application of any person claiming the moneys so paid into court, or any part thereof, shall determine to whom the same shall be paid. And when said payment has been made or tendered or paid into court, as hereinbefore provided, the title to the lands which in said petition said commissioners have declared their intention to take, with all rights, easements, hereditaments and appurtenances whatsoever thereunto appertaining or in anywise belonging, and all rights acquired for the purposes of this act in any other lands, shall be and remain absolutely and forever vested in the said commissioners and their successors in office; *Provided*, that the county of Hennepin shall in no case be held liable for any costs or damages whatever by reason of any act or proceeding taken or attempted under the provisions of this act; nor are the proper authorities of said county authorized to advance any of the funds of said county to carry out the provisions of the same. But said commis-

sioners are hereby authorized to issue to parties entitled to same certificates of indebtedness due two (2) years after date of confirmation of assessments herein provided, without interest; said certificate to state distinctly upon its face that it is not an obligation of the county, but is secured upon property assessed for the purpose of raising funds with which to make payment of said certificate.

SEC. 11. As soon as the amount required for the purchase and condemnation of said lands, property and rights shall have been ascertained by said commissioners with reasonable certainty, they shall apply to the said court for the appointment of three (3) disinterested freeholders, residents of said county, as assessors of benefits. Notice of such application, and of the time when the same will be made, shall be given, by publication, for at least ten (10) successive week days, in a newspaper designated by said court, and printed and published in said county, the last of which publications shall be at least three (3) days prior to the date fixed for such application; and all parties interested may appear and be heard by said court touching said appointment. After being furnished with due proof of the publication of said notice as herein provided, the said court shall hear said application and shall appoint three (3) disinterested freeholders, residents of said county, as assessors, who shall proceed to assess upon such tracts and parcels of land in said county as they shall deem to be specially benefited by the proceedings herein provided for, whether such lands shall adjoin and abut upon said lake or not, such sum as they shall deem a just proportion, respectively, of the total cost of said purchase and condemnation; and the determination of said assessors as to what tracts and parcels of land are specially benefited shall be deemed to include all the lands so specially benefited.

The said court, in the order appointing said assessors, shall fix the time and place of their first meeting. The said assessors shall meet at the time and place fixed in the order appointing them, and shall severally, before proceeding to act under said appointment, make oath, before any person authorized to administer an oath, faithfully and impartially to discharge their duties as assessors under the provisions of this act.

All persons interested may appear before said assessors and be heard touching any matter connected with the assessment. Said assessors shall hear and consider any pertinent testimony offered; and they may adjourn their meetings from time to time until the assessment is completed. When completed, the assessment shall be signed by the assessors, or a majority of them who shall concur therein, and shall be returned to and filed in the office of the clerk of said district court.

SEC. 12. Said commissioners shall cause to be published, for at least ten (10) successive week days, in a newspaper designated by said court and printed and published in said county, a notice that said assessment has been filed in said clerk's office, and that they will, on a day specified in said notice, apply to said court for the confirmation of said assessment. The last publication shall be at least ten (10) days prior to the date fixed in said notice for such application. Said notice shall set forth the boundaries of the district in which the said assessments have been made. Upon due proof that said publication as above provided has been made, said court shall proceed to hear said application for confirmation of said assessment; and the confirmation

of said assessment by said court shall bind all persons interested in said lands in all respects as though personal service had been made upon each.

SEC. 13. Said district court shall have power to revise, correct, amend or confirm said assessment, in whole or in part, and may make or order a new assessment, in whole or in part, and the same revise, correct, amend or confirm on like notice. All persons interested may appear before said court at the time of said application and object to said assessment, in whole or in part; but all objections shall be in writing, specifying the tracts or parcels of land in respect to which objection is made, and shall be filed in the office of the said clerk, at least two (2) days before the time fixed for the application. Objections that relate simply to the amount assessed upon the premises specified shall not be availing, unless the court shall be satisfied that the appraisers in fixing such amount were governed by improper motives or proceeded on erroneous principles or under an obvious mistake of facts.

SEC. 14. After the confirmation of said assessment, the said commissioners shall cause a copy thereof, as amended and confirmed, to be filed in the office of the auditor of said county. The appraisal shall be a lien upon the several tracts or parcels of land so assessed for benefits as aforesaid. The auditor of said county shall include the said assessment in the next general tax list for the collection of state, county and city taxes made after said copy shall be filed in his office, setting opposite the several tracts or parcels of land assessed the amount of such assessment for benefits in a proper column to be headed "Minnetonka Improvement Assessment," and like proceedings in all respects shall be had for the collection of the same as is now provided by law for the collection of state, county and city taxes in said county.

SEC. 15. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 16. This act shall take effect and be in force from and after its passage.

Approved April 18, 1891.

CHAPTER 382.

[H. F. No. 1110.]

AN ACT TO PROVIDE FOR THE OPENING OF HIGHWAYS IN THE UNPLATTED PORTIONS OF INCORPORATED VILLAGES IN HENNEPIN COUNTY.

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

SECTION 1. Whenever the board of county commissioners of Hennepin county are petitioned in the manner provided by section forty-nine (49) of Chapter thirteen (13) of the General Statutes of Minnesota for the year eighteen hundred and seventy-eight (1878), for the purposes specified in said section, they shall have power, in addition to those powers now authorized by said section, to locate, establish,