

1936 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1936)
(Superseding Mason's 1931 and 1934 Supplements)

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



Edited by

WILLIAM H. MASON, Editor-in-Chief
W. H. MASON, JR. }
R. O. MASON } Assistant Editors
J. S. O'BRIEN }

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1936

CHAPTER 64

Plats

8236. Platting of land—Donations.

After revocation and abandonment, a conveyance by the platter of blocks or lots abutting the street conveyed the land to the center thereof. *Doyle v. B.*, 182 M556, 235NW18. See Dun. Dig. 1059, 2653.

A statutory dedication is effective without acceptance by public. *Schaffler v. T.*, 193M604, 259NW529. See Dun. Dig. 2628.

Where owner of land by suitable plat dedicates streets, alleys, and other public places to be devoted to public use, and where such dedicated street or other public place is shown by plat to have as a boundary thereto a navigable body of water, there being no indication of a contrary intention, conclusion follows that dedication was intended to enable public to have access to water for all proper public purposes. *Id.* See Dun. Dig. 2641.

8237. Survey and plat—Monument—Rivers, etc.

The finding that the plat of a town site, which contained no designation of a monument from which future surveys could be made, conformed to the statute, is not sustained. *Doyle v. B.*, 183M265, 236NW236. See Dun. Dig. 2634(82).

8238. Dedication—Certification—Approval—Etc.

Even though the plat did not conform to c. 29, Gen. Stat. 1866, it effected a common-law dedication to the public of the streets and alleys thereon designated. *Doyle v. B.*, 182M556, 235NW18. See Dun. Dig. 2646(16), 2652(33).

A reservation by dedicator of streets of exclusive right to lay and operate mains, wires, poles, and pipes, is void and of no effect. *Op. Atty. Gen.*, Nov. 21, 1931.

8239-4. Plats corrected and legalized.—That in all cases where the plats or what purport to be plats of any towns or cities in this state of additions to or subdivisions thereof, and plats or parcels of land situated outside of any incorporated city, town or village, or copies thereof, fail to identify or show correctly, upon their face, the tract of land covered or intended to be covered thereby and the said property so platted was owned by and platted by a municipality, the surveyors, or one of them, who laid out or surveyed the same, may make or execute such certificate or the governing body of said municipality may, by resolution, authorize the Mayor and the City Clerk, together with the engineer or surveyor of said municipality, if there be one, within one year from the passage of this act to make and file in the office of the register of deeds of the county in which said lands are situated, a certificate duly executed and acknowledged by him or them, as deeds are to be executed or acknowledged, wherein shall be set forth a full description of the lands actually covered and intended to be covered by said plat.

And such certificates, so executed, acknowledged and verified, shall be recorded at length by said register of deeds in a book by him provided for the purpose, entitled "Book of Plat Certificates," and said register of deeds shall, thereupon, note upon such plat and the copy thereof filed in his office as aforesaid, such certificate and affidavit, the fact of filing such certificate, and the book and page where recorded; and he shall receive from the person offering said certificate for record, the fee provided by law for similar services. And such certificates, or the record thereof, shall, together with such plat, be prima facie evidence in all cases as to lands covered by said plat. (Act Apr. 26, 1929, c. 395.)

8239-5. Certain plats may be corrected.—That in all cases where the plats, or what purport to be plats, of any portion of the lands contained within any town, village or city of this state of additions or subdivisions thereof, which have been executed and filed in an office of any register of deeds previous to January 1st, 1915, fail to identify or correctly describe the land to be so platted or to show correctly upon their face the tract of land intended or purported to

be platted thereby, or any such plats are defective by reason of the plat and the description of the land purported to be platted thereby being inconsistent or incorrect, or there exists a defect in the execution of said plats on the part of the grantors thereof, the governing board or council of the municipality containing land so platted or purported to be so platted may authorize, within six months from the passage of this act, referring by the record book and page of such plat or plats in the office of the register of deeds to the plat or plats to be correct, the making of one or more plats which shall correctly show on the face thereof and by description the land intended to be platted, which plat or plats may vary from the original plats in description as to lots and blocks to suit the best purpose and secure the best results, and such plat or plats, in a declaration thereon, shall recite such resolution and shall identify each separate tract of land described therein with such tract of land in the purported plat or plats intended to be corrected thereby, and shall be certified by the proper officers of the municipality as to authorization and by an engineer or surveyor as to correctness, and the signatures of such persons shall be acknowledged in like manner as a deed.

Such plat or plats when so certified and acknowledged may be filed in the office of the register of deeds and the declaration thereon may be recorded at length in a "Book of Plat Certificates;" and when so filed and recorded such plat or plats and declaration together with the record thereof be prima facie evidence in all matters shown or stated therein as to the lands covered thereby.

This act shall not apply to a city whose charter provides for official supervision of plats by municipal officers, commission or board. (Act Apr. 24, 1931, c. 319.)

8239-6. Correction of errors in recorded plats.—

That in all cases where the plats, or what purports to be plats, of any portion of the lands contained within any town, village or city of this state of additions or subdivisions thereof, which have been executed and filed in an office of any register of deeds previous to January 1st, 1915, fail to identify or correctly describe the land to be so platted or to show correctly upon their face the tract of land intended or purported to be platted thereby, or any such plats are defective by reason of the plat and the description of the land purported to be platted thereby being inconsistent or incorrect, or there exists a defect in the execution of said plats on the part of the grantors thereof, the governing board or council of the municipality containing land so platted or purported to be so platted may authorize within six months from the passage of this Act, referring by the record book and page of such plat or plats in the office of the register of deeds to the plat or plats to be correct, the making of one or more plats which shall correctly show on the face thereof and by description the land intended to be platted, which plat or plats may vary from the original plats in description as to lots and blocks to suit the best purpose and secure the best results, and such plat or plats, in a declaration thereon, shall recite such resolution and shall identify each separate tract of land described therein with such tract of land in the purported plat or plats intended to be corrected thereby, and shall be certified by the proper officers of the municipality as to authorization and by an engineer or surveyor as to correctness, and the signatures of such persons shall be acknowledged in like manner as a deed.

Such plat or plats when so certified and acknowledged may be filed in the office of the register of deeds and the declaration thereon may be recorded at length in a "Book of Plat Certificates;" and when so filed and recorded such plat or plats and declaration together with the record thereof shall be prima facie evidence in all matters shown or stated therein as to the lands covered thereby.

This act shall not apply to a city whose charter provides for official supervision of plats by municipal officers, commission or board. (Act Apr. 10, 1933, c. 188.)

8243-1. County Board to control platting of land.—The Board of County Commissioners of any county containing land adjoining a city of the first class but not included within the corporate limits of any city of the first class shall have power to control and regulate the platting of subdivisions of land and the laying out of streets and other public ways. In counties which do not contain a city of the first class the power herein granted shall not extend to lands more than five miles from the boundary of a city of the first class. (Act Apr. 18, 1929, c. 225, §1.)

8243-2. Comprehensive Plan.—In order to exercise the power conferred under this act, the Board of County Commissioners shall prepare a comprehensive Major Street Plan of the district involved, which plan shall be designated and adopted as the official Major Street Plan of the areas adjoining the City of Such plan may from time to time be amended, extended or amplified. In the preparation of the Major Street Plan and in the administration of the powers herein conferred, the Board of County Commissioners may avail itself of the assistance of the City Planning Commission of the city of the first class adjoining the areas involved. (Act Apr. 18, 1929, c. 225, §2.)

8243-3. Board to make regulations.—In exercising the powers herein conferred the Board of County Commissioners shall adopt regulations governing the platting of subdivision of lands within the areas designated. Such regulations may provide for the reasonable co-ordination of location and dimension of streets and boulevards and the location of utilities to be contained therein, the minimum width, depth and area of lots and the distance of the front building line from the streets in residence neighborhoods, the extent of the grading and drainage of streets to be required as a condition precedent to the approval of plats of subdivisions. No grades shall be established or required by such regulations which would cause a material damage to the land within the area sought to be subdivided. (Act Apr. 18, 1929, c. 225, §3.)

8243-4. To be construed as additional powers.—The powers herein conferred upon the Board of County Commissioners shall be construed as an addition to existing powers and not as an amendment to or a repeal thereof and shall be supplemental to and shall not set aside the jurisdiction over plats of subdivisions now exercised by the governing bodies of villages and municipalities located in areas within the scope of this act, provided that upon the failure of the governing body of such village or municipality and the Board of County Commissioners to concurrently approve and adopt a plat of subdivision within sixty days of the time or presentation to each respective authority the approval of the Board of County Commissioners shall be final. The Board of County Commissioners may extend the time for concurrent approval with respect to individual plats of subdivisions. (Act Apr. 18, 1929, c. 225, §4.)

8243-5. Application.—Nothing herein shall amend, repeal or affect Chapter 178, Special Laws of Minnesota, for the year 1889. (Act Apr. 18, 1929, c. 225, §5.)

8244. Notice by publication and service upon mayor, village president, etc.

Determining test as to whether property dedicated to public use is to be vacated is whether public interests will be best served thereby. *Schaller v. T.*, 193M604, 259 NW529. See Dun. Dig. 2642.

A proceeding to vacate public grounds against a town is a special proceeding, but costs and disbursements may be taxed against unsuccessful plaintiff. *Id.* See Dun. Dig. 2198, 2239.

8246-2. Definitions.—For the purpose of this act, certain terms are defined as follows:

"Subdivision" means the division of a lot, tract, or parcel of land into three or more lots, plats, sites or other divisions of land of one acre or less in area, for the purpose, whether immediate or future, of sale or of building development. It also means the division of a lot, tract, or parcel of land into two or more lots, plats, sites or other divisions of land of more than one acre and less than ten acres in area, if such subdivision provides or there is shown on a plat thereof a new street or highway. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

The term "street" includes street, avenue, boulevard, road, lane, alley, viaduct, and other ways. (Act Mar. 20, 1933, c. 93, §1.)

8246-3. City planning commissions to control platting.—The governing body of any city of the first class, having more than 35 per cent of the land area of said city unplatted land may, by ordinance, authorize and empower its city planning commission to control the platting of land. (Act Mar. 20, 1933, c. 93, §2.)

8246-4. Jurisdiction.—The territorial jurisdiction of such planning commission over the subdivision of land shall include all land located in the municipality and all land lying within 3 miles of the corporate limits of the municipality and not located in any other municipality, except that, in case of any such nonmunicipal land lying within 3 miles of more than one municipality having a planning commission, the jurisdiction of such planning commission shall terminate at a boundary line equidistant from the respective corporate limits of such municipalities. (Act Mar. 20, 1933, c. 93, §3.)

8246-5. Plats must be approved by commission.—Whenever such planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction or part thereof, and shall have filed a certified copy of such plan in the office of the register of deeds of the county in which such territory or part is located; no plat of a subdivision of land within such territory or part shall be filed or recorded until it shall have been approved by such planning commission and such approval entered in writing on the plat by the chairman or secretary of the commission. (Act Mar. 20, 1933, c. 93, §4.)

8246-6. May adopt regulations.—Before exercising the powers referred to in Section 2, the planning commission shall adopt regulations governing the subdivision of land within its jurisdiction, so as to secure a harmonious development and to provide for the co-ordination of streets with other streets and with the city plan and to provide for open spaces for traffic, utilities, access of fire-fighting apparatus, recreation, light and air, and for the avoidance of congestion of population, including minimum width and area of lots. Such regulations may include reasonable provisions as to the extent to which streets and other ways shall be graded and improved and to which water and sewer and other utility mains, piping or other facilities shall be installed as a condition precedent to the approval of the plat. In lieu of the completion of such improvements and utilities prior to the final approval of the plat, the city may accept a bond with surety to secure to the municipality the actual construction and installation of such improvements or utilities at a time and according to specifications fixed by the municipality. The municipality is hereby granted the power to enforce such bond by all appropriate legal and equitable remedies.

All such regulations shall be published as provided by law for the publication of ordinances, and, before adoption, a public hearing shall be held thereon. A

copy thereof shall be certified by the planning commission to the register of deeds of the county or counties in which the municipality and territory are located. (Act Mar. 20, 1933, c. 93, §5.)

8246-7. Must approve plat within forty-five days.—The planning commission shall approve or disapprove a plat within 45 days after the submission thereof; otherwise such plat shall be deemed to have been approved, and a certificate to that effect shall be issued by the commission on demand: Provided, however, that the applicant for the planning commission's approval may waive this requirement and consent to an extension of such period. The ground of disapproval of any plat shall be stated upon the records of the commission. Any plat submitted to the planning commission shall contain the name and address of a person to whom notice of a hearing shall be sent; and no plat shall be acted on by the planning commission without affording a hearing thereon. Notice shall be sent to the said address by registered mail of the time and place of such hearing not less than five days before the date fixed therefor. Every plat approved by the commission shall, by virtue of such approval, be deemed to be an amendment of or an addition to or a detail of the city plan and a part thereof. Approval of a plat by the planning commission shall be deemed the acceptance by the public of any street or other open space offered therein for dedication, but shall not impose any duty upon the governing body to maintain or improve such dedicated areas until the governing body shall have authorized maintenance or improvement of the same, in accordance with charter or other local provisions governing public expenditures for such purposes. (Act Mar. 20, 1933, c. 93, §6.)

8246-8. Not to sell until plat is approved.—Whoever, being the owner or agent of the owner of any land located within a subdivision transfers or sells or agrees to sell or negotiates to sell any land by reference to or exhibition of or by other use of a plat of a subdivision, before such plat has been approved by the planning commission and recorded or filed in the office of the county register of deeds, shall forfeit and pay a penalty of \$100 for each lot or parcel so transferred or sold or agreed or negotiated to be sold; and the description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies herein provided. The municipal corporation may enjoin such transfer or sale or agreement by action for injunction brought in any court of equity jurisdiction or may recover the said penalty by a civil action in any court of competent jurisdiction. (Act Mar. 20, 1933, c. 93, §7.)

8246-9. Plats must be approved before filing.—The county register of deeds shall not file or record a plat of a subdivision unless such plat has the approval of the planning commission as required by law. (Act Mar. 20, 1933, c. 93, §8.)

8246-10. Street improvements.—The municipality shall not accept, lay out, open, improve, grade, pave, curb, or light any street, or lay or authorize water mains or sewers or connections to be laid in any street, within any portion of territory for which the planning commission shall have adopted a major street plan, unless such street (a) shall have been accepted or opened as or shall otherwise have received the legal status of a public street prior to the adoption of such plan, or unless such street (b) is a street on a subdivision plat approved by the planning commission or a street on a street plat made by and adopted by the commission. The city council may, however, accept any street not shown on or not corresponding with a street on an approved subdivision plat or an approved street plat, provided the ordinance accepting such street be first submitted to the planning commission for its approval and, if approved by the commission,

be enacted or passed by not less than a majority of the entire membership of the council, or, if disapproved by the commission, be enacted or passed by not less than two-thirds of the entire membership of the city council. (Act Mar. 20, 1933, c. 93, §9.)

8246-11. Building restrictions.—From and after the time when the planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction or part thereof, no building shall be erected on any lot within such territory or part, nor shall a building permit be issued therefor unless the street giving access to the lot upon which such building is proposed to be placed (a) shall have been accepted or opened as or shall otherwise have received the legal status of a public street prior to that time, or unless such street (b) corresponds with a street shown on the city plan or with a street on a subdivision plat approved by the planning commission or with a street accepted by the city council, after submission to the planning commission, by the favorable vote required in Section 9 of this act. Any building erected in violation of this section shall be deemed an unlawful structure, and the building inspector or other appropriate official may cause it to be vacated and have it removed. (Act Mar. 20, 1933, c. 93, §10.)

8246-12. Inconsistent acts repealed.—Platting control by the planning commission, as provided in this act, shall be exclusive within the territory under its jurisdiction, and all statutory control over plats or subdivision of land granted by other statutes, insofar as inconsistent with the provision of this act, are hereby repealed. (Act Mar. 20, 1933, c. 93, §11.)

8246-13. May appeal to District Court.—Any person or persons, jointly or severally aggrieved by any decision of the planning commission concerning such plat, or any officer, department, board or bureau of the municipality, may present to the district court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented to the court within thirty days after the filing of the decision in the office of the planning commission.

Upon the presentation of such petition, the court may allow a writ of certiorari directed to the planning commission to review such decision of the planning commission and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall stay proceedings upon the decision appealed from.

The planning commission shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return must concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and must be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the commission, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings. (Act Mar. 20, 1933, c. 93, §12.)

Sec. 13 of Act Mar. 20, 1933, cited, provides that the act shall take effect from its passage.