

CHAPTER 430

LAND FOR STREETS AND PARKS
(ELWELL LAW)**430.02 PROCEEDINGS FOR ACQUISITION OF LANDS.**

The application of the "unit rule" in the instant case did not interfere with the exercise of independent judgment by the commissioners; and the fact that the commissioners appointed to reassess benefits on land to be acquired and improved for park purposes arrive at the identical figures previously assessed by a board of commissioners appointed for that purpose is not fatal; nor will the supreme court review the correctness of the instructions or lack of instructions given by the district court to the commissioners who were appointed to reassess the benefits in a proceeding for the acquisition and improvement of property under the Elwell law. *Board v Bremner*, 190 M 534, 252 NW 451, 253 NW 761.

Where a city erected a bridge it had the effect of changing the grade of the central part of a street which abutted plaintiff's property and devoted the bridge exclusively to streetcar traffic, the street railway company was not liable to plaintiff merely because it contributed to the cost of the bridge or because the city excluded other traffic. *Bruer v City of Mpls.* 201 M 40, 275 NW 368.

The just compensation to which the owner of property taken for public purpose is constitutionally entitled is the market value thereof at the time of the taking contemporaneously paid in money. The sum so to be paid is to be arrived at upon just consideration of all the uses for which it is suitable; and the highest and most profitable use for which the property is adaptable and needed, or likely to be needed, in the reasonably near future, is to be considered to the extent that the prospects of demand for such use affect the market value while the property is privately held. But that value does not include, and the owner is not entitled to compensation for, any element resulting subsequently to or because of the taking. The market value of property taken in condemnation is not measured by the benefits to, or needs of, condemnor. The question is, What has the owner lost? not, What has the taker gained? *Mpls. St. Paul Sanitary District v Fitzpatrick*, 201 M 442, 277 NW 394.

The defendant sanitary district who is conducting a condemnation proceeding does so as an arm of the state in the discharge of its sovereign legislative function and is not liable in tort for the alleged malicious prosecution of such proceeding. *Barmel v Mpls.-St. Paul Sanitary District*, 201 M 622, 277 NW 208.

Special assessments for local improvement against property used for railroad purposes. 12 MLR 524, 552, 674.

430.03 OBJECTIONS TO CONFIRMATION; APPEAL TO DISTRICT COURT; REAPPRAISAL; APPEAL TO SUPREME COURT.

Whether or not the public interests will be served by a public improvement is a political and not a judicial question. Special benefits to lands in the locality dedicated to the public as a park may result although the land is left in its natural state. Curbs and gutters along the side of a street upon which a park borders may be included in a special assessment for benefits resulting from the improvement of the park. *Re Lake of the Isles Park*, 152 M 39, 188 NW 59.

430.05 RIGHT OF COUNCIL TO ABANDON; EFFECT OF AWARD; PAYMENT.

In condemnation proceedings by city of Minneapolis under its charter and the state laws adopted therein, award of damages by the commissioners, appointed

by the court on appeal, for the taking or injury of property may be made in gross; the commissioners need not make a specific award to each person interested in the property. The court, retaining jurisdiction of the proceedings, may by proper notice and procedure have a determination made of the portion of the whole amount of damages so awarded to which each of the owners of individual interests is entitled. *Peterson v City of Mpls.* 175 M 300, 221 NW 14.

430.06 SPREADING OF ASSESSMENT INSTALMENTS.

The charter of the city of Minneapolis gives to the city council power to reject plats of land within the city limits. This power must be exercised in recognition of other limitations of the charter. The city council has no power to require, as a condition of its approval of a plat, that all streets and alleys indicated on the plat shall be graded, since this, in effect, imposes the burden of street grading in a manner contrary to the provisions of the charter. *State ex rel v City Council of City of Mpls.* 140 M 433, 168 NW 188.

The commissioners should separately determine and state the amount of damages and the total amount of special benefits to each tract of land involved. The offset may then be made understandingly. The assessment may be paid all at one time or may be paid in instalments over a period of years. *Chgo. Rock Island v City of Mpls.* 164 M 226, 204 NW 934, 205 NW 640.

430.07 METHOD OF IMPROVEMENTS; ASSESSMENTS.

The term "local improvements" in Minnesota Constitution, Article 9, Section 1, comprehends the acquisition of land for a public park, fitting it for open air recreation, and setting out trees and shrubbery. In the instant case the estimate was sufficiently detailed and the probable cost of engineering, engineering equipment, and contingent expenses was properly included. *Improvement of Lake of the Isles*, 152 M 29, 188 NW 54.

The board of park commissioners of the city of Minneapolis has authority to exempt from special assessment for park improvements specific lands in consideration for lands contiguous thereto conveyed to it and the city for park purposes but only to the extent of the value of the land so conveyed. *Improvement of Minnehaha Pkwy.* 167 M 253, 208 NW 998, 209 NW 939.

If trunk sewers or mains approach so near to a tract of land that the market value thereof is increased, it may be assessed even though it does not abut on the improvement but not in excess of such increased market value. *City of St. Paul v Sanborn*, 176 M 62, 222 NW 522.

Plaintiff's grantor conveyed certain lands to the city of Minneapolis for park and parkway purposes. A portion of the consideration was paid by exempting plaintiff's land adjacent to the lands conveyed from assessments to the extent of \$48,000. This exemption is construed as having reference to assessments not only for parkway purposes but also for parks and park improvements. *Horn v City of Minneapolis*, 182 M 172, 234 NW 289.

430.09 TITLE ACQUIRED.

The construction and maintenance by a citizen of a rock garden upon a small triangular tract purchased by a city immediately adjoining one of its streets, the garden being accessible to the public at all times except at night when the gates of an ornamental fence around the tract are locked, is a public use and does not constitute an abandonment of the tract for public purposes. A warranty deed to a municipality from the owners of lands condemned in eminent domain proceedings vests fee simple title in the municipality in trust for the public. *Kendrick v City of St. Paul*, 213 M 283, 6 NW(2d) 449.

430.12 BONDS FOR IMPROVEMENTS.

L. 1907, c. 93, L. 1909, c. 206, and L. 1911, c. 155, each authorizing cities of the first class to issue and sell bonds for park purposes are valid. They are cumulative

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and none of them supersedes or repeals the others; and bonds may be issued and sold by such cities under each of the acts subject to the conditions and limitations therein named, each act providing that the bonds may be sold notwithstanding any limitation contained in the charter of the city or in the laws of the state. *Molyneaux v City of Mpls.* 115 M 188, 131 NW 1015.

430.15 PAYMENT BY CITY; GIFTS.

The provision in the St. Paul city charter to the effect that the council may pay the cost of paving street intersections out of the general funds of the city is permissive not mandatory. *Pittsburgh Coal Co. v City of St. Paul*, 150 M 167, 184 NW 788.