

CHAPTER 92. election may be held at any time hereafter by order of the supervisors of the town of Omro, otherwise by the trustees of said village, of which time ten days public notice shall be given.

Vacancies, how filled. § 31. It shall be lawful to fill any vacancy that may occur during the year, of any of the following officers:— clerk, marshal, assessor, treasurer or trustees: *Provided*, That not more than one trustee shall be appointed, at any one meeting of the trustees: *Provided, further*, That if there is not a quorum of the trustees, then it shall be the duty of the clerk to call a special meeting or election to fill such vacancy.

Repealing section. § 32. All acts or parts of acts that conflict with this act, are hereby repealed.

Effect. § 33. This act shall be in force on and after its passage.

Approved March 7, 1860.

[Published March 12, 1860.]

CHAPTER 92.

AN ACT to amend chapter 131, of the Private and Local Laws of 1857, entitled "An act to incorporate the city of Mineral Point."

The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

Power conferred upon City Council in respect to streets. SECTION 1. The city council shall, within the city limits, have full power and authority to lay out, alter or discontinue any highway, street, alley or public walk therein, and to grade, pave, or otherwise improve the same as it shall deem necessary or advisable: *Provided*, That no street, lane, or alley, shall be laid out by said council, except as hereinafter provided, unless the owner or owners of lots, through which the proposed alley, lane or street is proposed to be laid out, consent thereto in writing.

Proviso, requiring consent of owners. § 2. No highway, street, lane or alley, or public walk, shall be laid out or altered, unless a petition, signed by at least six resident freeholders of the city, shall be presented to said council asking therefor, and accompanied by a proper plan, or diagram and survey, of the premises proposed to be taken; and if the same requires the taking of private property for public use, against the consent of the owners, not until the neces-

Regulating the laying out or alteration of streets, alleys, &c.

sity thereof shall be first established by the verdict of CHAPTER 92.
a jury.

§ 3. On presenting such petition, if it shall appear that private property is required to be taken, against the consent of the owners, the city council shall cause a notice of such application to be given to the owner or owners of plots through, or upon which, the proposed street, highway, alley or lane is to be laid out, which said notice shall be by publication or otherwise, as the council shall order, and shall state that on a certain day, therein to be named, a jury will be summoned, by any constable, to hear and decide upon such application and the necessity of taking such property.

Provides for calling a jury when private property is required to be taken against consent of the owner.

§ 4. On or before the day named in such notice, the mayor, or in his absence, the acting mayor of the city, shall issue a venire, directed to the sheriff or any constable of the city, requiring him to summon a jury of twelve disinterested residents of said city, qualified to serve as jurors in courts of record, who have no interest in the premises proposed to be taken, and are in no wise of kin to any person interested therein, whose duty it shall be to view the property proposed to be taken, and hear such proof as may be offered, by any person, in relation to the same; such witnesses may be sworn by any one of the jurors, and the jurors themselves shall be sworn.

Directions for empanneling a jury.

§ 5. If any of the jurors, so appointed, shall be disqualified from acting, or shall refuse to act, the mayor shall appoint others in their places, and a memorandum of such substitution shall be endorsed on the venire.

Substitution of jurors.

§ 6. If such jury does not agree, new venires may be issued, until a jury is found that does agree. When the jury agrees, it shall make out the verdict in writing, sign the same and deliver, to the constable or sheriff, who shall deliver the same to the city clerk, to be filed.

In case of disagreement. Verdict.

§ 7. If the jury shall have returned a verdict, that it is necessary to take private property for public use, as required by said petition, the city council may thereupon cause said highway, street, lane, alley or walk, to be laid out or altered, if the council shall deem it advisable, and thereupon shall cause the same to be recorded, and an order to be entered, confirming said verdict.

Proceedings upon verdict.

§ 8. The city council shall, thereupon, by an order, appoint three disinterested freeholders, of the city,

Appointment of commissioners.

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commissioners to view and examine the proposed highway, street, alley, lane or walk, or alteration thereof, and ascertain and appraise the just value of the property of the individuals necessary to be taken therefor. They shall also ascertain and appraise the necessary cost and expenses and damages for laying out, opening or altering the same, and make report thereof, under oath, to the city council, within such time as may be limited by such order. If any of said commissioners refuse or neglect to act as such, or if any commissioners do not agree as to the amount of damages or benefits done to any person, then the said council shall appoint other commissioners in their places.

They shall appraise damages.

In case of refusal to act.

Commissioners shall assess benefits.

§ 9. The commissioners shall also view, ascertain, assess, determine, and report to the city council, what property, lots and parcels of land are, or will be, benefited by the laying out, opening or alteration of any such highway, street, lane, alley or public walk, and assess, designate, and apportion and determine the costs, expenses and damages of laying out, taking, opening or altering of the same, on the property, lots and parcels of land so benefitted, in just proportion, making out a list thereof, as they shall assess and apportion the same.

Shall report balance between benefits and damages.

§ 10. The commissioners, in all cases where property, lots, or parts of lots, shall be taken, shall assess the benefits thereof to the other parts of said property or lots, and make out a list thereof, and shall strike the balance between the damages and benefits so assessed, and make out a list of the same, and report the same to the city council.

Commissioners shall give notice of time and place of meeting.

§ 11. The commissioners shall, immediately after their appointment, and before proceeding to discharge their duties as aforesaid, give notice in one or more newspapers of the city, of at least one week, of the time and place in which they will meet, to hear any proofs or allegations of any person interested therein, and at the time and place so mentioned, they shall meet for that purpose, and may adjourn from time to time, as they may regard reasonable, but not beyond the time limited in the order for making their report, and either of said commissioners shall have power to administer an oath to any witness offered.

May administer oaths to witnesses.

§ 12. Any person whose property is taken, or against whom any assessment is made, may, within ten days from the return of such commissioners to the

council, appeal from said assessment of damages or benefits, to the circuit court of Iowa county: *Provided*, Such person, or some one in his behalf, makes affidavit that he believes himself injured by the award of said commissioners, and that the appeal is made in good faith, and not for the purpose of delay. The appellant shall give security for costs, and the appeal shall be tried by the court and jury, as in ordinary cases. The council shall have the same right of appeal.

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Appeals from commissioners. Affidavit.

Security for costs, and mode of trial.

§ 13. If no appeal is taken, or if taken, and the report of the commissioners affirmed or modified, the council may order the proceedings of the commissioners, as reported, or as modified, by the court, confirmed.

Council may appeal.

Concluding proceedings.

§ 14. No such highway, street, lane, or alley, or walk, or alteration thereof, shall be laid out, opened or made, until the owners of property which has been taken, against their consent, shall be paid the amount or balance so assessed or awarded in their favor.

Payment of damages.

§ 15. All sums so assessed and confirmed, shall be a lien upon property so assessed and apportioned, and for the payment of which, such property, lots or parcels of land, shall be liable, and the same may be collected with and as other taxes are collected in said city.

Of collection of assessments.

§ 16. In all other cases the council may lay out, alter or discontinue any highway, street, lane, alley or walk, whenever it deems the same proper and advisable, by an order entered in their proceedings, specifying and describing the same: *Provided*, The same is applied for by petition, as mentioned in the second section of this act, and two weeks notice of the same shall have previously been published in a newspaper in said city.

Proceedings in cases where no contest.

§ 17. If there should be any buildings standing whole or in part upon the lands to be taken, the commissioners, before proceeding to make their assessment, shall first estimate and determine the whole value of such building to such owner or owners, aside from the value of the lands and the injury to such owner or owners, in having such building taken from him or them, and secondly, the value of such building to remove.

Where buildings are in the way.

§ 18. At least ten days notice of such determination shall be given to such owner, or his agent, if known, and a resident or the city, or left at his usual place of abode. If not known, or a non-resident, notice to all persons interested shall be given by publication.

Notice to resident owners of buildings.

To non-resident owners.

CHAPTER 92. cation in the official paper, three successive weeks. Such notice shall specify the building, and the award or determination of the commissioners; said notice shall also require the parties interested to appear by a day, to be therein named, or give notice of their acceptance of the award of the commissioners, and allow such building, with the land appropriated, to be taken, or their intention to remove such building at the rate set thereon by the commissioners. If the owner elects to remove such building, he shall have such time for that purpose as the council shall allow.

Time given for removal. § 19. If the owner refuses to remove the building, or to take the same at the valuation, or fails to give notice of his election, as aforesaid, within the time prescribed, the council shall have power to direct the sale of such building, at public auction, giving ten days notice of sale. The proceeds shall be paid to the owner, or deposited to his use, after deducting costs of removal and sale.

Where owner refuses to remove building. § 20. The damages assessed as aforesaid, together with the costs and expenses of opening, altering or laying out such highway, alley, street, lane or walk, shall be paid by the owners or holders of property benefitted thereby, and if not paid within six months from the confirmation of such assessments and reports, all the proceedings in such case shall be void.

Damages and costs, how paid. § 21. Section 1, of chapter 2, of the Private and Local Laws of 1857, entitled "an act to incorporate the city of Mineral Point," is hereby amended, so that hereafter the election for all officers required by any law to be elected in and for said city, in any year, shall be held on the first Monday of April, of each year.

Annual election fixed on first Monday in April. § 22. Section 4, of chapter 103, of the Private and Local Laws of 1858, entitled "an act to amend an act to incorporate the city of Mineral Point," approved March 2, 1857, is hereby repealed, and all of the powers and duties (by said section) conferred by said section upon the chief of police, are hereby conferred upon the ward constables of said city.

Repeal of act of 1858. § 23. All provisions of any act or law of this State, contravening any of the provisions of this act, are hereby repealed.

General repealing section. § 24. This act shall be in force and take effect from and after its passage.

Effect. Approved March 9, 1860.