

No. 302, A.]

[Published May 20, 1891.]

CHAPTER 479.

AN ACT to provide for the improvement of marsh and low lands in parts and portions of sections 30 and 31, in what is called and known as the Menomonee valley, in the Eighth and Sixteenth wards in the city of Milwaukee, and the abatement and removal of nuisances therein.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The common council of the city of Milwaukee is hereby authorized and directed within sixty days after the passage and publication of this act, by resolution or ordinance to direct the board of public works of said city to proceed and complete within a time limited to five years, to fill up and improve the low and marsh land upon which there may be stagnant water, in parts and portions of the southwest and southeast quarters of section 30, and the northwest and northeast quarters of section 31, what is called and known as the Menomonee valley, in the Eighth and Sixteenth wards, in the city of Milwaukee, and to abate and remove any nuisance, source of filth or cause of sickness therein, proceeding and completing the filling and improvement of one-fifth thereof as near as may be each year.

Common council may improve low and marsh lands in Menomonee valley.

SECTION 2. Whenever the board of public works of the city of Milwaukee shall be directed by the common council thereof, as herein provided, to fill up or improve the low and marsh land upon which there may be stagnant water in the so-called valley of the Menomonee of said city, hereinbefore designated, and to abate and remove any nuisance, source of filth or cause of sickness therein, said board shall cause to be made an estimate of the cost of said work, and shall put the same on file in its office, and such estimate shall be open to the inspection of any party interested. Thereupon the said board of

Board of public works to recommend work done, when.

public works shall make to the common council such recommendation in relation to the proposed work as it may deem proper; and upon the same being adopted by the common council in whole or in part the said board shall order so much of the work to be done as shall have been adopted; and shall enter into a contract for the doing of the same as other contracts for city work are made. Provided, that the owner of any lot or parcel of land so proposed to be filled or improved, or upon which any nuisance, source of filth or cause of sickness may exist, which said city may order abated or removed, may enter into an agreement with the said city of Milwaukee, to fill up and improve said lot or parcel of land so owned by him, or abate and remove any nuisance, source of filth or cause of sickness thereon, within the time limited in such resolution or ordinance, such work to be so done by such owner under the direction and to the satisfaction of said board of public works.

Duty of board
in ordering
work done.

SECTION 3. Before ordering any work to be done pursuant to such resolution or ordinance, the said board of public works shall view the premises, and consider the amount proposed to be made chargeable against said several lots or pieces of land, and the benefits which, in their opinion, will actually accrue to the owner or owners of the same in consequence of such improvement, and shall assess against the several lots or pieces of land, or parts of lots or pieces of land which they may deem benefited by the proposed improvement, the amount of such benefit which such lots or pieces of land will severally, in the opinion of said board, derive from the improvement when completed in the manner contemplated in the estimate of the cost of said work made and provided in section 2, of this act, taking into consideration in each case any injury which in the opinion of the board, may result to each lot or piece of land from such improvement; and in case the benefits, in their opinion, amount to less than the cost of the improvement, the balance shall be paid out of the ward fund, in which such lot or tract of land is situated, and the said board shall endorse their decision and assessment in every case on the es-

estimate of the cost of such improvement filed in their office. Provided, any owner of any lot or parcel of land, who shall personally, or by his authorized agent, have signed a petition, asking for such improvement, shall not be entitled to compensation, but every such owner shall be deemed thereby to have waived and relinquished all claim to compensation for any injury in consequence thereof, and no damages, costs or charges arising to such owners from such improvement shall be assessed or paid. No action shall lie against any officer, agent, servant or employe of the city of Milwaukee or any contractor or his servants or employes who may enter upon, in or upon any of the premises herein intended to be improved pursuant to the provisions thereof for trespass or otherwise.

SECTION 4. As soon as any assessment of benefits or damages, or both, shall be made, as in the preceding sections of this chapter provided, the said board shall give notice to all parties interested, by advertisement for not less than four days in the official papers of the said city, that such assessment has been made and is ready for inspection in its office, and that the same will be open for review and correction by the said board, at its office, for not less than four days after the first publication of such notice, during certain hours, not less than two hours of each day, and that all persons interested will be heard by said board, in objection to such assessment, and generally in the matter of such review and correction. It shall be sufficient to state in such notice, in brief, that such assessment has been made for, and in what locality, and no further notice or publication of such assessment shall be necessary. During the time mentioned in such notice, the said board shall hear objections and evidence, and they shall have power to review, modify and correct such assessment, in such manner as they shall deem just, at any time during such review, and for three days thereafter; and thereupon said board shall endorse such corrected and completed assessment upon or annex the same to the estimate of the cost of such improvement, made and filed in its office, as provided in section 3, of this act, and

Notice of assessment of benefits and damages, when and how given.

shall file a duplicate of such estimate and assessment in the office of the city clerk, who shall lay the same before the common council at its meeting; and thereupon the common council may confirm or correct said assessments, or any of them, or may refer the same back to the board of public works for revision and correction; and the said common council, and the said board of public works shall respectively have the like powers and perform the like duties in relation to such assessment, and any subsequent assessment made pursuant to such reference by the common council as are prescribed and conferred in relation to the first assessment.

Contracts,
what to re-
quire.

SECTION 5. Such contract shall require the contractor to receive certificates upon or against the several lots, parts of lots, or pieces of land which may be assessed with benefits on account of such improvement, such certificates to apply in payment of the contract price for the doing of said work, and they shall be a lien upon said lot or tract of land; provided, that in any case, if the contract price of the work shall exceed the benefits assessed, such excess shall be paid out of the ward fund in which such lot or tract of land is situated in the city of Milwaukee.

Owner may
appeal from
assessment.

SECTION 6. The owner of any lot or tract of land, or tenement, who feels himself aggrieved by such assessment, as confirmed by the common council, as to the amount of benefits thereby adjudged to him by reason of any improvement charged against his lot or parcel of land more than twenty days after such confirmation by the common council, may appeal therefrom to the circuit court of Milwaukee county, and such appeal shall be taken, tried and determined, and bonds for costs shall be given, and costs awarded therein, in like manner as in cases of appeals to the circuit court in chapter 6, of the charter of said city. Such appeal shall not affect the rights of the contractor, or the proceedings in reference to his contract, but the certificate against the lot or parcel of land in question, shall be given as if no appeal had been taken; and in case the appellant shall succeed, the difference between the amount charged in the certificate and the amount of the benefit finally adjudged, shall be paid by

the city out of the proper ward fund to the appellant, but not until he shall have done the work in question or have paid the certificate issued for doing the same. The amount assessed by the board of public works or finally adjudged on appeal for damages, costs and charges arising from such improvement in excess of the charges against property deemed benefited, shall be paid by the city out of the proper ward fund to the person or persons thereto entitled, within one year after the confirmation of the assessment by the common council or after final judgment therefor by the court on appeal as aforesaid; provided, that the time during which an appeal from said confirmation may be pending shall not be deemed part of the year so limited.

SECTION 7. The appeal given by the last preceding section from the assessment of the board of public works, as confirmed by the common council to the said circuit court, shall be the only remedy for the recovery of any damages, costs and charges arising from any works done by virtue of this act by the said city or sustained by reason of any proceedings or acts of said city, or its officers, in the matter to which such assessment of damages or benefits relates; and no action at law shall be maintained for such damages or injuries arising, whether arising from the filling of said lot or parcel of land or the abatement of any nuisance in any manner which may be caused by stagnant water or otherwise.

Appeal, the only remedy.

SECTION 8. After the completion and performance of any contract entered into by the board of public works for work done pursuant to the provisions of this act, they shall give to the contractor or contractors a certificate signed by the board of public works or the president thereof, countersigned by the comptroller, stating the amount of work done by such contractor, the nature thereof, and the description of the lots and parcels of land upon which the same is chargeable; which said certificate shall be a lien upon said lot, part of lot or tract of land; it shall be the duty of the comptroller to keep a register of all certificates issued by the board of public works against lots, and countersigned by him, which said certificate may be paid by the owner or owners of such lots at any time

Certificates, how issued.

before the sale of such lots for the non-payment of taxes, and the city treasurer who shall receive the amount paid on such certificates and hold the same for the benefit of the owners of such certificates, and such owner shall be entitled thereto on producing and surrendering such certificates to be cancelled.

Assessments to
be a lien.

SECTION 9. In all cases where, by the provisions of this act, any special charge or assessment is made a lien upon land, the amount of such charge or assessment shall be carried out on the tax roll in a separate column or columns, opposite the lot or tract upon which the same may be a lien; and the treasurer may collect and sell, and do all other acts in relation thereto, in the same manner as if the amount of such lien was a general tax.

Amends chap-
ter 184, laws of
1874.

SECTION 10. This act shall be amendatory of the charter of the city of Milwaukee, being chapter 184, of the laws of 1874, entitled, "an act to revise, consolidate and amend the charter of the city of Milwaukee, approved February 20, 1852, and the several acts amendatory thereof," and the several acts amendatory thereof.

SECTION 11. This act shall take effect and be in force from and after its passage and publication.
Approved April 25, 1891.