

NO. A08-0767

State of Minnesota
In Supreme Court

Eagan Economic Development Authority,

Appellant,

v.

U-Haul Company of Minnesota
a/k/a U-Haul Co. of Minnesota, et al.;
Randall J. Quam, et al.; and Larson Training Services, Inc.
d/b/a Larson's Automotive Repair Services,

Respondents.

**BRIEF, ADDENDUM AND APPENDIX OF APPELLANT,
EAGAN ECONOMIC DEVELOPMENT AUTHORITY**

Robert B. Bauer (#227365)
Michael G. Dougherty (#134570)
Jessica L. Sanborn (#339532)
SEVERSON, SHELDON, DOUGHERTY
& MOLENDIA, P.A.
7300 West 147th Street, Suite 600
Apple Valley, MN 55124
(952) 432-3136

Attorneys for Appellant

Gary G. Fuchs (#0032566)
Elizabeth E. Rein (#034980X)
GARY G. FUCHS,
ATTORNEY AT LAW, P.A.
3440 Federal Drive, Suite 100
Eagan, MN 55122
(651) 452-1214

*Attorneys for Respondent Larson
Training Services, Inc.*

(Counsel for Amici on following page)

Daniel L. Scott (#0240837)
Anthony J. Novak (#0351106)
Paula Duggan Vraa (#0219137)
LARSON • KING, LLP
2800 Wells Fargo Place
30 East Seventh Street
St. Paul, MN 55101
(651) 312-6500

*Attorneys for Respondent U-Haul Co. of
Minnesota*

Steven J. Quam (#0250673)
FREDRIKSON & BYRON, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402
(612) 492-7000

*Attorneys for Respondents Randall J. Quam
and Sandra K. Quam*

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

Susan L. Naughton (#259743)
LEAGUE OF MINNESOTA CITIES
145 University Avenue West
St. Paul, MN 55103-2044
(651) 281-1232

*Attorneys for Amicus Curiae
League of Minnesota Cities*

Lee U. McGrath (#0341502)
Jason A. Adkins (#0387145)
INSTITUTE FOR JUSTICE –
MINNESOTA CHAPTER
527 Marquette Avenue, #1600
Minneapolis, MN 55402-1330
(612) 435-3451

*Attorneys for Amicus Curiae
Institute for Justice – Minnesota Chapter*

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STATEMENT OF LEGAL ISSUES

1. **Does an economic development authority derive its eminent domain powers from a city or from the Minnesota legislature?**

The Court of Appeals determined that a city transfers power, including the power of eminent domain, to an economic development authority on a project-by-project basis, and that an economic development authority cannot exceed the limited power that a city transfers to it.

Apposite Cases:

Country Joe, Inc. v. City of Eagan, 560 N.W.2d 681 (Minn. 1997)

Thomas v. Western Nat'l Ins. Group, 562 N.W.2d 289 (Minn. 1997)

Benson Hotel Corp. v. City of Minneapolis, 290 Minn. 14, 187 N.W.2d. 610 (1971)

Thomas v. Housing and Redevelopment Authority of Duluth, 48 N.W. 2d 175 (Minn. 1951)

Apposite Statutes:

MINN. STAT. § 469.091 (2008)

MINN. STAT. § 469.101 (2008)

MINN. STAT. § 469.002, subds. 2, 3 (2008)

MINN. STAT. § 469.090, subds. 2, 3 (2008)

2. **Must a city comply with the requirements set forth in MINN. STAT. §§ 469.092 and 469.093 in order to modify the actions of an economic development authority?**

The Court of Appeals found that the City modified the EDA's powers despite the absence of the procedural requirements set forth in MINN. STAT. § 469.093, as required by MINN. STAT. § 469.092.

Apposite Cases:

Martinco v. Hastings, 265 Minn. 490, 122 N.W.2d 631 (1963)

State v. Larivee, 656 N.W.2d 226 (Minn. 2003)

Housing & Redevelopment Auth. of Minneapolis v. Minneapolis Metro. Co., 259 Minn. 1, 104 N.W.2d 864 (1960)

Apposite Statutes:

MINN. STAT. § 469.092 (2008)

MINN. STAT. § 469.093 (2008)

3. **Is MINN. STAT. § 469.094, subd. (2), applicable when an economic development authority establishes a project?**

The Court of Appeals ignored essential language in MINN. STAT. § 469.094, subd. 2, and concluded that the EDA's powers were limited by the scope of the authority that the City transferred to it.

Apposite Cases:

State v. Larivee, 656 N.W.2d 226 (Minn. 2003).

State on behalf of Forslund v. Bronson, 305 N.W.2d 748 (Minn. 1981)

Thomas v. Housing and Redevelopment Authority of Duluth, 48 N.W. 2d 175 (Minn. 1951)

Apposite Statutes:

MINN. STAT. § 469.094 (2008)

MINN. STAT. § 645.08(1) (2008)

4. **Does the Redevelopment Plan limit the EDA's power of eminent domain?**

The Court of Appeals determined that the Redevelopment Plan required the EDA to enter into a development contract prior to the EDA exercising the power of eminent domain.

Apposite Cases:

Crown Cork & Seal Co. v. Lakeville, 313 N.W.2d 196 (Minn. 1981)

Housing & Redevelopment Authority of City of St. Paul v. Greenman, 255 Minn. 396, 96 N.W.2d 673 (1959)

Anderson v. Twin City Rapid Transit Co., 250 Minn. 167, 175, 84 N.W.2d 593, 599 (1957)

Apposite Statutes:

MINN. STAT. § 469.002, subd. 16 (2008)

STATEMENT OF THE CASE

On November 26, 2007, the Eagan Economic Development Authority (“EDA”) filed a petition with the Dakota County District Court to acquire fee title and possession of certain lands located within the City of Eagan, pursuant to Minnesota Statutes Chapter 117. On February 5, 2008, the district court found that the taking is necessary and authorized by law and that the purpose of the taking is for public use. The district court's Order excepted six of the properties identified in the petition from the effect of the Order and scheduled an evidentiary hearing to consider objections raised by the six property owners¹.

On April 16, 2008, by Supplemental Order, the district court granted the EDA's petition to acquire fee title to the five remaining properties and incorporated the terms set forth in its Order of February 6, 2008 are made applicable to the objecting properties. Three of those property owners, the Respondents, appealed.

The Court of Appeals reversed, finding that the EDA exceeded the limited powers transferred to it by the City.

Appellant petitioned for this Court's review on June 17, 2009. Respondents did not conditionally seek review of any issues. This Court granted review on August 26, 2009, and permitted participation by the League of Minnesota Cities as amicus curiae.

¹ At the hearing, one of the objecting landowners withdrew its objection. After the hearing, another objecting landowner withdrew its objection. Respondents U-Haul of Minnesota and AMERCO Real Estate Company were allowed to enter their objection at the February 13 hearing.

STATEMENT OF FACTS

A. EDA Enabling Resolution.

The EDA was established in March 2000, pursuant to MINN. STAT. § 469.091, when the City of Eagan (“City”) adopted an Enabling Resolution (Resolution 00-17). (App. 1-3.)² Resolution 00-17 stated that the EDA shall have all of the powers contained in MINN. STAT. §§ 469.090 to 469.108 and the powers of a housing and development authority under MINN. STAT. §§ 469.001 to 469.047 or other law and the powers of a city under MINN. STAT. §§ 469.124 to 469.134. (Resolution 00-17 § 2.01, App. 2.) However, those statutory powers were subject only to the limits set forth in Resolution 00-17, Section 2.03.³ (Resolution 00-17 §§ 2.01, 2.03, App. 2-3.)

² Resolution 00-17 was not part of the record below. However, this Court may take judicial notice of a matter of public record. *United Power Assoc. v. Commissioner of Revenue*, 483 N.W.2d 74 (Minn. 1992). Since Resolution 00-17 is a matter of public record, Appellant provides a copy of it in the Appendix (App. 1-3). Further, this Court “has inherent power to look beyond the record where the orderly administration of justice commends it.” *Crystal Beach Bay Assoc. Island View Route v. County of Koochiching*, 390 Minn. 52, 57, 243 N.W.2d 40, 43 (1976).

³ Resolution 00-17 § 2.03 places the following limits on the EDA’s actions:

- (a) The sale of bonds or other obligations of the EDA must be approved by the City Council.
- (b) The EDA must follow the budget process for City departments in accordance with City policies, ordinances, and resolutions, and state law.
- (c) Development and redevelopment actions of the EDA must be in conformance with the City comprehensive plan and official controls implementing the comprehensive plan.
- (d) The EDA must submit its plans for development and redevelopment to the City Council for approval in accordance with City planning procedures and laws.
- (e) The EDA shall not hire permanent or temporary employees without prior approval by the City Council.

Resolution 00-17 also established a Board of Commissioners to govern the EDA, consisting of the five members of the City Council. (Resolution 00-17 § 1.02, App. 2.) Resolution 00-17 further authorized the transfer of control, authority, and operation of all projects, as defined in MINN. STAT. § 469.174, subd. 8, and any other projects authorized by MINN. STAT. §§ 469.001 to 469.047 from the City's Housing and Redevelopment Authority to the EDA. (Resolution 00-17 § 2.02, App. 2.)

B. EDA Adoption of Redevelopment Plan and Tax Increment Financing Plan.

On August 7, 2001, the EDA approved a resolution (1) adopting and establishing the Redevelopment Plan for the Cedar Grove Redevelopment Area ("Redevelopment Plan"), and (2) establishing Tax Increment Financing District No. 1, and adopting the Tax Increment Financing Plan ("TIF Plan"), within the Cedar Grove Redevelopment Area, pursuant to and in conformity with MINN. STAT. §§ 469.090 to 469.1081 and §§ 469.174 to 469.179 (collectively the "Plans"). (See Aug. 7, 2001 Resolution No. 3, App. 34-35.)

By its resolution, the EDA found that the creation of Tax Increment Financing District No. 1 was in the public interest and that the adoption of the Plans would help correct conditions allowing designation as a redevelopment district under Minnesota statutes. (Aug. 7, 2001 Resolution No. 1, App. 34.) The EDA's resolution also stated that "[c]onditioned upon the approval thereof by the City Council . . . the **Plans, as presented**

(f) The administrative structure and management practices and policies of the EDA must be approved by the City Council.
(App. 2-3.)

to the EDA on this date, are hereby approved, **established** and adopted[.]” (Aug. 7, 2001 Resolution No. 3, App. 34.) (Emphasis added.)

C. Redevelopment Plan.

The Redevelopment Plan sets forth, among other things, the objectives of the Cedar Grove Redevelopment Project. (Subsection 1-4, App. 67-68.) The Redevelopment Plan refers exclusively to the actions of the City. (App. 63-69.) However, the EDA is mentioned once, in Subsection 1-1’s definition of Tax Increment Bonds, which “means any tax increment bonds or notes **issued by the EDA or the City** to finance the Public Costs as stated in the Redevelopment Plan for the Cedar Grove Redevelopment Project and in the Tax Increment Financing Plans, and any obligations issued to refund such bonds.” (App. 65.) (Emphasis Added.)

According to the Redevelopment Plan, the Cedar Grove Redevelopment Project is to be financed through the proceeds of Tax Increment Bonds. (Subsection 1-6, App. 68.) The Redevelopment Plan, therefore, refers throughout to the TIF Plan, which was established and adopted at the same time. (See Subsections 1-1, 1-2, App. 65-66; App. 34-38.)

At issue in the lower courts, was the language in Subsection 1-8 and Subsection 1-12 of the Redevelopment Plan. Subsection 1-8, which is titled “Proposed Reuse of Property,” reads as follows:

The Redevelopment Plan contemplates that **the City** may acquire property and reconvey the same to another entity. Prior to formal consideration of the acquisition of any property, **the City will require the execution of a**

binding development agreement with respect thereto and evidence that Tax Increments or other funds will be available to repay the Public Costs associated with the proposed acquisition. It is the intent of **the City** to negotiate the acquisition of property whenever possible. Appropriate restrictions regarding the reuse and redevelopment of property shall be incorporated into any development agreement to which **the City** is a party.

(App. 68-69.) (Emphasis Added).

Subsection 1-12 of the Redevelopment Plan is titled “Property Acquisition” and provides: “The City may acquire such property, or appropriate interest therein, within the Redevelopment Project Area as the City may deem necessary or desirable to assist in the implementation of the Redevelopment Plan.” (App. 69.)

D. Tax Increment Financing Plan.

The TIF Plan sets forth the information needed to expedite the establishment of Tax Increment Financing District No. 1, and its purpose is to accomplish the Redevelopment Plan. (Subsection 2-2, App. 91; Subsection 1-2, App. 66.) The TIF Plan goes on to outline and describes in detail how the EDA and City planned to achieve many of the objectives outlined in the Redevelopment Plan. (App. 91-105.)

The following excerpts from the TIF Plan are relevant to the issues on appeal here. Subsection 2-4 of the TIF Plan is entitled “Redevelopment Plan Overview” and provides the following:

1. Property to be acquired - Selected property located within the District may be **acquired by the EDA or City** and is further described in this Plan.

* * *

4. **The EDA or City may perform or provide for some or all necessary acquisition, construction, relocation, demolition and required utilities and public streets work within the District.**

(App. 91-92.) (Emphasis added.)

Subsection 2-5 describes the properties in the district and the properties to be acquired. (App. 92-93.) It states:

The EDA or City may acquire property by gift, dedication, **condemnation** or direct purchase from willing sellers in order to achieve the objectives of this plan. Such acquisitions will be undertaken only when there is assurance of funding to finance the acquisition and related costs.

(App. 93.) (Emphasis added.)

Subsection 2-22 is also relevant to the issues on this appeal. It is titled "Requirements for Agreements with the Developer" and provides:

The EDA or City will review any proposal for private development to determine its conformance with the Redevelopment Plan and with applicable municipal ordinances and codes....

* * *

Pursuant to *M.S., Section 469.175, Subd. 5*, **no more than 25 percent, by acreage, of the property to be acquired** in the District as set forth in the Plan shall at any time be owned **by the EDA or City as a result of acquisition with the proceeds of bonds** issued pursuant to M.S. Section 469.178 to which tax increments from property acquired is pledged, **unless prior to acquisition in excess of 25 percent** of the acreage, **the EDA or City concluded an agreement** for the development or redevelopment of the property acquired and which provides recourse to the EDA or City should the development or redevelopment not be completed.

(App. 103.) (Emphasis added.)

E. Council Approval.

On October 2, 2001, the City approved Resolution No. 01-63 adopting the Redevelopment Plan and the TIF Plan. (App. 36-38.) Resolution 01-63 states that the EDA “has . . . established the Cedar Grove Redevelopment Area and adopted the Redevelopment Plan therefor.” (Sec. 1.01, App. 36.) Resolution 01-63 also states that the EDA and the City proposed that the City adopt the Redevelopment Plan. (*Id.*) Certification of the TIF District was forwarded to the Dakota County Auditor and was certified by the County Treasurer/Auditor of Dakota County, Minnesota on July 22, 2003. (Petitioner’s Exhibit 11 from February 13, 2008 hearing.)

F. Activities Following Council Approval.

After the City approved the Plans, the City undertook public improvement Project 800-R in the redevelopment area. (Tr.⁴ 125.) Project 800-R included street intersection improvements, adding two traffic lanes and providing storm retention ponds. (Tr. 125-26.) Project 800-R cost the City approximately \$9.2 Million, which included approximately \$3.9 Million for acquisition costs. (Tr. 126-27.)

As of the February 13, 2008 evidentiary hearing, the EDA had acquired approximately 93 percent of the property within the Cedar Grove Redevelopment Area by negotiation and condemnation and had invested approximately \$32 Million in the redevelopment. (Tr. 127, 155-56; App. 119-20; see also Petitioner's Exhibits 29-30 for the February 13, 2008 Evidentiary hearing.) The EDA has not issued bonds to fund the redevelopment. (Tr. 142-43.) Rather, the City is financing the EDA's purchase of properties. (Tr. 143.)

G. EDA Authorizes Use of Eminent Domain.

On August 9, 2007, the EDA adopted Findings of Fact, Conclusions and Resolution regarding the condemnation of certain properties located in the Cedar Grove Development District and Tax Increment Financing District No. 1. (App. 115-23.) The EDA concluded, among other things, that it needed to acquire the properties in the redevelopment district to make the redevelopment district suitable and available for economic development uses and purposes. (App. 122.) The EDA resolved that its

⁴ "Tr." refers to the Transcript of the February 13, 2008 hearing.

advisors and legal counsel were authorized and directed to acquire the properties through the power of eminent domain, including the use of “quick take.” (App. 123.)⁵

H. Petition for Eminent Domain.

On November 26, 2007, the EDA filed with the Dakota County District Court its petition for the condemnation of thirteen properties located in the Cedar Grove Redevelopment Area. (App. 12-31.) The district court granted the EDA’s condemnation petition with respect to the properties whose owners did not oppose the EDA’s petition; however, the district court excluded six properties from the effect of its Order and scheduled an evidentiary hearing for the benefit of those six objecting property owners. (App. 127-128, 131-133.)

This evidentiary hearing was held on February 13, 2008. (Tr. 2.) Testimony and evidence were heard and received as to the public purpose and the necessity for the proposed taking. (See Tr. 22.) The court received over forty exhibits into evidence and allowed the parties additional time to make written submissions to the court. (Tr. 19-20, 22, 259-60.)

On April 16, 2008, the district court issued a Supplemental Order granting the petition in condemnation as it related to the Respondents’ properties and subjecting the Respondents’ properties to the applicable terms and provisions of the February 6, 2008 Order. (ADD. 17-43.) In its Order, the district court found, among other things: that redevelopment of Cedar Grove will serve a public purpose; that the EDA demonstrated

⁵ The EDA amended its Findings, Conclusions, and Resolution on September 7, 2009. (App. 23-31.)

that the acquisition of the subject properties was necessary for a public purpose; that the redevelopment district was already in the process of redevelopment⁶; that the EDA selected Doran Pratt to redevelop the Cedar Grove Redevelopment District; and that a conceptual redevelopment plan was submitted to the City for comment and approval. (ADD. 11, 24-25, 30-32.)

STANDARD OF REVIEW

The Minnesota Court of Appeals based its reversal of the district court's order and judgment in this case on the Court of Appeals' interpretation of and application of MINN. STAT. § 469.094, subd. 2, to the facts here. The interpretation of a statute is a question of law that the Minnesota Supreme Court reviews de novo. *Weston v. McWilliams & Assocs.*, 716 N.W.2d 634, 638 (Minn. 2006). The application of a statute to essentially undisputed facts is also a legal question subject to de novo review. *Varda v. Northwest Airlines Corp.*, 692 N.W.2d 440, 444 (Minn. 2005).

When discerning a statute's meaning, the reviewing court's first task is to determine whether the statute needs interpreting. *Weston*, 716 N.W.2d at 638. If the statute's language is unambiguous, the court's inquiry into the statute's meaning ends there. *In re Application for PERA Police & Fire Plan Line of Duty Disability Benefits of Brittain*, 724 N.W.2d 512, 516 (Minn. 2006). "A court must give a plain reading to any statute it construes, and when the language of the statute is clear, the court must not

⁶ This redevelopment included the following projects: Nicols Ridge Project; CDA Youth Supportive Housing Project; Keystone Senior Housing; McDonald's was demolished and rebuilt; and Silver Bell Shopping Center received a new façade. (ADD 24).

engage in any further construction.” *Id.* (quoting *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004)).

A statute is ambiguous when it is subject to more than one reasonable interpretation. *Id.* “The goal of statutory construction is ‘to ascertain and effectuate the intention of the legislature.’” *In re Estate of Jotham*, 722 N.W.2d 447, 450 (Minn. 2006) (quoting MINN. STAT. § 645.16). When a statute is ambiguous, the reviewing court may discern the legislature’s intent for the statute by considering:

(1) the occasion and necessity for the law; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained; (5) the former law, if any, including other laws upon the same or similar subjects; (6) the consequences of a particular interpretation; (7) the contemporaneous legislative history; and (8) legislative and administrative interpretation of the statute.

In re Application for PERA, 724 N.W.2d at 517 (citing MINN. STAT. § 645.16). A reviewing court reads and construes “a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations.” *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 278 (Minn. 2000).

Whether a condemning authority has been given the power to take private property under the power of eminent domain and whether such purpose is a public purpose are also questions of law. *See State ex rel. Ford Motor Co. v. District Court*, 133 Minn. 221, 223, 158 N.W. 240, 241 (1916). Once it is established that the condemning authority possesses the power of eminent domain and the purpose for which the property is being

taken is a public purpose, “the necessity, propriety, and expediency of taking the property for such purpose is a legislative question over which the courts have no supervision or control.” *Id.*

SUMMARY INTRODUCTION

This case arises out of the City of Eagan's long-term goal to revitalize and redevelop the part of the City known as Cedar Grove. Cedar Grove was once considered Eagan's downtown business district. However, its commercial viability has declined due in part to the relocation of Minnesota State Highway 13. In order to achieve its goals, the City utilized the EDA and the EDA's powers to remove blight, implement redevelopment activity, and to utilize the financing tool of tax increment financing. Since 2001, the EDA has acquired over 90 percent of the properties identified for acquisition in the Redevelopment Plan. Respondents' properties remain the only properties not acquired. While many of these properties have been acquired through direct negotiation and the use of purchase agreements, the EDA has acquired a number of properties by means of eminent domain proceedings. To date, though the EDA has secured the proper procedures to issue bonds to finance its costs, the acquisition expenses have been, and continue to be, paid by the City.

Respondents have challenged the EDA's ability to use its power of eminent domain without first having entered into a development agreement. The district court, after an extensive evidentiary hearing, rejected Respondents' position. Respondents appealed and the Court of Appeals reversed the district court. In its decision, the Court of Appeals inserted language into certain statutes and omitted language in others which,

when cobbled together, changed the statutory economic development system created by the legislature.

ARGUMENT

I. **AN ECONOMIC DEVELOPMENT AUTHORITY DERIVES ITS EMINENT DOMAIN POWERS FROM THE MINNESOTA STATUTES, THESE POWERS ARE NOT TRANSFERRED BY A CITY.**

The Court of Appeals determined that the EDA exceeded the scope of its condemnation authority when it condemned the Respondents' parcels without a binding development agreement in place. (May 19, 2009 Decision at 15.)⁷ The Court of Appeals' determination was based on its analysis of the Redevelopment Plan for the Cedar Grove redevelopment area and on its erroneous conclusion that "an economic development authority's powers are limited by the scope of authority that a city, as the original condemning authority, transfers to it[.]" (May 19, 2009 Decision at 7, 15.) The Court of Appeals analyzed MINN. STAT. § 469.094, subd. 1, and concluded that: (1) a city may by resolution **transfer control and operation** to an economic development authority on a **project-by-project basis**; (2) the economic development authority acquires and may exercise the **powers that a city possesses and transfers** with respect to the project; and (3) "because **the economic development authority acquires its power as transferred from the city, it does not acquire and cannot exercise powers greater than the city could exercise** with respect to the project *or greater than the city chose to transfer.*" (May 19, 2009 Decision at 7.) (Emphasis added.) The Court of

⁷ A copy of the Court of Appeals' decision has been provided in the Addendum at ADD 1-16.

Appeals' decision alters the statutory framework of the relationship between a city and an economic development authority and calls into question the genesis of an economic development authority's power of eminent domain.

A. The Powers of an Economic Development Authority are Provided to it by the Minnesota Legislature.

“An economic development authority is a public body corporate and politic and a *political subdivision of the state*[.]” MINN. STAT. § 469.091, subd. 2 (2008) (emphasis added). An economic development authority is, therefore, not a mere representative or agent of the city that organizes it. *See I McQuillan Mun. Corp.* § 2.29.10 (1999). An economic development authority is a creation of the legislature and is established by a city adopting an enabling resolution pursuant to MINN. STAT. §§ 469.091 and 469.093. The powers possessed by an economic development authority arise with its creation and are found in sections 469.090 to 469.108. *See* MINN. STAT. § 469.091, subd. 1; *compare with Asch v. Housing and Redevelopment Auth. of City of St. Paul*, 256 Minn. 146, 148, 97 N.W.2d 656, 660 (1959) (noting that the Authority was given the **right to exercise its powers under the act** by a resolution passed by the city council); *Thomas v. Housing & Redevelopment Auth. of Duluth*, 234 Minn. 221, 250, 48 N.W.2d 175, 192 (1951) (stating, “The legislature, through the housing act, has given broad powers to a functioning authority, itself a . . . public body corporate and politic . . .”); *and Benson Hotel Corp. v. City of Minneapolis*, 290 Minn. 14, 17, 187 N.W.2d. 610, 612 (1971) (noting that the HRA act confers broad authority on entities such as the Minneapolis

Housing and Redevelopment Authority but noting that its powers must be expressed explicitly or implicitly in the statutes).

The legislature has provided specific powers to economic development authorities, which include, *inter alia*: (1) the power to establish—“create and define”—the boundaries of economic development districts; MINN. STAT. § 469.101, subd. 1; (2) the power to “acquire by lease, purchase, gift, devise, or condemnation proceedings the needed right, title, and interest in property to create economic development districts; MINN. STAT. § 469.101, subd. 2; and (3) the power to exercise eminent domain under chapter 117. MINN. STAT. § 469.101, subd. 4.

The legislature also provided economic development authorities with the powers of a housing and redevelopment authority contained in sections 469.001 to 469.047 or other law. MINN. STAT. § 469.091, subd. 1. The powers of a housing and redevelopment authority include, *inter alia*: (1) the power to undertake, prepare, and operate projects; MINN. STAT. § 469.012, subd. 1d; and (2) the power to acquire property—including by the use of eminent domain—necessary to carry out a redevelopment project; MINN. STAT. § 469.012, subd. 1g.

Resolution 00-17 enabled the establishment of the EDA and recognized the EDA as having the powers of an economic development authority contained in MINN. STAT. §§ 469.090 to 469.108, as well as the powers of a housing and redevelopment authority under MINN. STAT. §§ 469.001 to 469.047 or other law, and of a city under MINN. STAT. §§ 469.124 to 469.134. (App. 1-3.) Therefore, upon its establishment, the EDA

possessed the power to establish and create redevelopment projects and to exercise eminent domain.

In prescribing the method and procedure for establishing an economic development authority, the legislature clearly stated that: “A city may, by adopting an enabling resolution in compliance with the procedural requirements of section 469.093, **establish an economic development authority that**, subject to section 469.092, **has the powers** contained in sections 469.090 to 469.108...” MINN. STAT. § 469.091, subd. 1 (emphasis added). The word “has” is the present tense of “have,” which means “to possess as a characteristic, quality, or function.” AMERICAN HERITAGE DICTIONARY 826, 828 (3d. ed. 1992). Because the words of the statute are to be construed according to their common usage, it is axiomatic that the legislature, not the City, provided the EDA with its powers. *See* MINN. STAT. § 645.08 (1); *Thomas v. Western Nat’l Ins. Group*, 562 N.W.2d 289, 291 (Minn. 1997).

There are no words or phrases in Chapter 469 to suggest that an economic development authority’s powers are provided to it by a city. Like an economic development authority, a city is also a statutory creation and “has no inherent powers beyond those expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred.” *Country Joe, Inc. v. City of Eagan*, 560 N.W.2d 681, 683 (Minn. 1997) (quotation omitted). If the legislature intended that cities are to determine the powers of an economic development authority, it could have so provided. (*See* MINN. STAT. § 412.111, wherein the city council may prescribe the duties of officers and employees.) When the words of a statute are free of ambiguity, the court

cannot disregard the letter of the law. MINN. STAT. § 645.16; *Weinberger v. Maplewood Review*, 668 N.W.2d 667, 672 (Minn. 2003).

There is no ambiguity to the language found in Section 469.091. A city may establish an economic development authority, but the powers of the authority have been established by the legislature. This conclusion is also supported by the legislative history of the Economic Development Authority Act.

In 1986, the Minnesota legislature authorized the creation of economic development authorities. 1986 Minn. Laws ch. 400 (S.F. No. 1725).⁸ The 1986 law is titled: “An act relating to public administration; authorizing home ruled charter or statutory cities to establish economic development districts; **granting powers to cities and authorities; . . .**”⁹ See 1986 Minn. Laws ch. 400, §§ 13 to 33 (Emphasis added). While a law’s title is not intended to be an index of the law, it should provide a fair suggestion of the subject matter. *Thomas*, 234 Minn. at 245, 48 N.W. 2d at 190. The title to 1986 Minn. Law ch. 400 clearly indicates that one of the express purposes of this particular legislation was to grant **powers** to economic development authorities. It is the legislature’s prerogative to entrust powers to cities and authorities. “Absent constitutional restriction, the legislature may at its pleasure modify or withdraw any

⁸ The laws incorporating the creation of economic development authorities were codified in Minnesota Statutes Chapter 458C. In 1987, the Minnesota legislature repealed MINN. STAT. ch. 458C, as well as a variety of other statutes dealing with the exercise of economic and redevelopment powers, and re-codified local economic development into MINN. STAT. ch. 469. (Laws of Minnesota 1987, Chapter 291-S.F. No. 170.) The provisions previously set forth in MINN. STAT. §§ 458C.01 to 458C.23 are now found in MINN. STAT. §§ 469.090 to 469.108.

⁹ “Authority” is defined to mean an economic development authority, unless specified otherwise. 1986 Minn. Law ch. 400, § 13.

powers so entrusted to a city, hold such powers itself, or vest them in other agencies.” *Thomas*, 234 Minn. at 249, 48 N.W.2d at 192. The EDA’s powers were established by the legislature within MINN. STAT. ch. 469 and are not created or transferred to it by the City.

B. The EDA Possesses Distinct Statutory Powers Relating to Redevelopment Districts.

In its decision, the Court of Appeals ignored the fact that cities, housing and redevelopment authorities, and economic development authorities are granted separate and distinct powers under Chapter 469.

Cities, economic development authorities, and housing and redevelopment authorities are all individually defined in Chapter 469 and recognized as separate entities. *See* MINN. STAT. §§ 469.002, subs. 2, 3, and 469.090, subs. 2, 3 (defining the terms “city” and “authority”). The powers granted to authorities in Chapter 469 are not necessarily the same powers granted to a city, unless specifically designated as such. *Compare e.g.* MINN. STAT. § 469.101 (listing the powers of an economic development authority) *with* MINN. STAT. § 469.089 (providing powers to the City of Winona in conjunction with the powers granted to a Port Authority). Within chapter 469, the eminent domain powers of a city and of an economic development authority are distinct. An economic development authority, acting under the authority granted to a housing redevelopment authority, is authorized to exercise eminent domain to acquire real property to carry out a redevelopment project under MINN. STAT. § 469.012, subd. 1g (a)(2). *See generally*, MINN. STAT. § 469.012, subd. 1g (outlining when an authority may

exercise its power to acquire property and the process it must follow). In contrast, an economic development authority, acting under the authority granted to a housing redevelopment authority, may recommend to the city the initiation of **its municipal powers relating to repair, closing, condemnation or demolition of unsafe, unsanitary, hazardous and unfit buildings**. MINN. STAT. § 469.012, subd. 2e (emphasis added). In the area of economic development, when the legislature authorized cities to use eminent domain powers, it clearly provided for such. *See e.g.* MINN. STAT. §§ 469.041 (5), (6) and 469.126, subd. 2.

Contrary to the Court of Appeals' decision, Chapter 469 does not provide a hierarchal scheme of eminent domain wherein the EDA acquires its power of eminent domain from the City.¹⁰ The EDA is exercising the powers of eminent domain conferred upon it by the Minnesota legislature.

II. THE ACTIONS OF AN ECONOMIC DEVELOPMENT AUTHORITY MAY ONLY BE LIMITED BY THE CITY IN COMPLIANCE WITH MINN. STAT. §§ 469.092 AND 469.093.

The Court of Appeals determined that the EDA exceeded the limited eminent domain powers transferred to it by the City. There was little discussion regarding

¹⁰ The Court of Appeals cites *State v. Christopher*, 284 Minn. 233, 170 N.W.2d 95 (1969), for the proposition that the hierarchal scheme of eminent domain power is well established. (May 19, 2009 Decision at 14.) This case is inapposite here. *Christopher* notes that "not all condemners in the hierarchy of entities having the power of eminent domain enjoy the same rights and powers. **The powers of the state are preeminent** because of the state's sovereign authority." 284 Minn. at 238, 170 N.W.2d at 99 (emphasis added). However, *Christopher* stands for the fact that the State's interests in eminent domain trump those interests of "lesser subdivisions of the government." *Id.* The States's powers over the City's powers or the EDA's powers is not at issue in this case.

whether a city may limit an economic development authority's powers, let alone any analysis of the statutory requirements for limiting or modifying an economic development authority's actions. There was no analysis whether such requirements were followed in this case. The Court of Appeals simply ignored the framework established in Chapter 469 for limiting the actions of the EDA.

A. Any Limitations to an Economic Development Authority's Actions must be set Forth in the Enabling Resolution.

MINN. STAT. §§ 469.090 to 469.108 contain no language that even implies that an economic development authority's powers are created or transferred by a city. Rather, the legislature provided that upon establishment, the economic development authority has the powers set forth in sections 469.090 to 469.108. MINN. STAT. § 469.091, subd. 1 (emphasis added.) Nevertheless, the legislature did provide cities with authority over the actions of economic development authorities in MINN. STAT. § 469.092. Section 469.092 expressly addresses a city's ability to impose limits on an economic development authority's actions, but requires that such limitations be set forth in the enabling resolution.¹¹ MINN. STAT. § 469.092, subd. 1.

¹¹ The fact that the legislature granted cities power to limit an economic development authority's actions demonstrates that an economic development authority's powers are not *derived* from a city. Had the legislature intended otherwise, it could have simply provided in Section 469.091 that the enabling resolution must state or otherwise identify the economic development authority's powers. No such provision exists. Rather, the legislature provided a city with the ability to limit an economic development authority's actions. See MINN. STAT. § 469.092. A city would not need to establish a limit to an economic development authority's power if the city were the genesis and transferor of the power. It strains logic and tortures the language used by the legislature to hold that an economic development authority's power is transferred by a city. See MINN. STAT.

MINN. STAT. § 469.092, subd. 1, begins: “1. Resolution. The enabling resolution **may** impose the following limits upon the **actions** of the authority: . . .” (Emphasis added.) Section 469.092, subd. 1, goes on to identify eight explicit limitations that a city may impose in its enabling resolution upon the actions of the economic development authority. The last identified limitation is a catch-all that allows a city to impose “any other limitation or control established by the city council by the **enabling resolution.**” MINN. STAT. § 469.092, subd. 1(8) (emphasis added).

In the instant matter, Resolution 00-17 includes four of the eight statutory limitations, plus two other limitations, namely: (1) the EDA must submit its plans for development and redevelopment to the city council for approval in accordance with city planning procedures and laws; and (2) the EDA shall not hire permanent or temporary employees without prior approval by the city council. (App. 1-3.)

Noticeably absent from Resolution 00-17 is any limitation upon the EDA’s use of the power of eminent domain. Also absent from Resolution 00-17 is the permissive limitation found in § 469.092, subd. 1 (1) that permits a city to limit an authority’s exercise of any specified power contained in §§ 469.001 to 469.047, 469.090 to 469.108, and 469.124 to 469.134, or any power, without the prior approval of the city council. Upon review of the language used by the City in the Resolution 00-17, it is clear that the EDA possesses the power of eminent domain without limits imposed by the City.

§ 645.17(1) (“the legislature does not intend a result that is absurd, impossible of execution, or unreasonable”).

Within the four corners of Resolution 00-17, the City acknowledges the powers that the legislature granted to economic development authorities in MINN. STAT. §§ 469.090 to 469.108. Moreover, the City knew it possessed certain rights to limit the EDA's actions and expressly chose to place six such limitations upon the EDA, pursuant to MINN. STAT. § 469.092. In its decision to impose some but not all of the statutory limitations, it is apparent that the City chose not to impose any limitation on the EDA's exercise of the power of eminent domain. *See Anderson v. Twin City Rapid Transit Co.*, 250 Minn. 167, 84 N.W.2d 593 (1957) (noting the rule of law that the expression of one thing in a contract or statute "of one or more things of a class implies the exclusion of all not expressed").

B. A City may Modify an Enabling Resolution, but Must do so Only in Accordance with the Procedures set forth in MINN. STAT. §§ 469.092 and 469.093.

The Court of Appeals determined that even if the original enabling resolution did not limit the EDA's condemnation powers, the City's resolution that approved the Cedar Grove Project limited that power expressly. (May 19, 2009 Decision at 13-14.) The Court of Appeals determined that the City's "broad discretion to restrict a development authority's power is not limited to the development authority's moment of origin because the legislature also allows cities to modify enabling resolutions 'at any time.'" (May 19, 2009 Decision at 13, (quoting MINN. STAT. § 469.092, subd. 2)).

However, Section 469.092, subd. 2, states that, "The enabling resolution may be modified at any time, subject to subdivision 5, and **provided that any modification is made in accordance with this section.**" (Emphasis added.) The Court of Appeals

ignored the latter portion of this provision. By so doing, the Court of Appeals failed to recognize the statutory requirements for any modification. According to Section 469.092, subd. 3, modifications of an enabling resolution “must be in accordance with the procedural requirements of section 469.093.”

MINN. STAT. § 469.093, subd. 2, provides: “All modifications to the enabling resolution must be by written resolution and must be adopted after notice is given and a public hearing conducted as required for the original adoption of the enabling resolution.”

MINN. STAT. § 469.093, subd. 1, provides that, in addition to the public hearing, the requirements for adoption of the enabling resolution include publication of: (1) the notice of the time and place of hearing, (2) a statement of the purpose of the hearing, and (3) a summary of the resolution.

Notwithstanding the requirements found in MINN. STAT. § 469.093, the Court of Appeals found that by adopting Resolution 01-63, which references the Redevelopment Plan, the City imposed a limitation on the EDA’s eminent domain power for this project—requiring the execution of a binding development agreement before condemning properties. However, there is simply no evidence that the City sought to or did modify the enabling resolution. There was no evidence that any of the requirements found in MINN. STAT. § 469.093 were met: no publication of a notice of hearing to modify the enabling resolution; no publication of a summary of any modification to the enabling resolution; no hearing regarding the modification of the enabling resolution. In fact, Resolution 01-63 makes no mention of Resolution 00-17 or any modification to it. Despite this lack of evidence, the Court of Appeals found that the City Council modified

the enabling resolution. Ignoring the requirements of MINN. STAT. § 469.093, the Court of Appeals essentially modified the enabling resolution of its own accord.

A court is not free to ignore the requirements of a statute or to rewrite the statute. Changes in statutes must come from the legislature. *Martinco v. Hastings*, 265 Minn. 490, 497, 122 N.W.2d 631, 638 (1963). When interpreting a statute, a court should “whenever possible . . . give effect to all of its provisions, and no word, phrase, or sentence should be deemed superfluous, void, or insignificant.” *State v. Larivee*, 656 N.W.2d 226, 229 (Minn. 2003) (internal quotation omitted). Here, the Court of Appeals failed to give effect to all of the provisions in sections 469.092 and 469.093 regarding the modification of the enabling resolution. There simply was no modification here.

There is no evidence of any modification to the enabling resolution because the City never intended to modify it. Moreover, the Court of Appeals lacked the authority to even determine whether the EDA complied with the limits imposed by the City in the enabling resolution. MINN. STAT. § 469.092, subd. 4 provides: “The city council’s determination that the authority has complied with the limitations imposed under this section is **conclusive**.” (Emphasis added). In the instant case, the City has approved and funded all of the EDA’s acquisitions, including those acquired in accordance with the district court’s Orders. (Tr. 142-43.) This Court can therefore assume that the City has determined that the EDA complied with the limits imposed by the enabling resolution. *See Housing & Redevelopment Auth. of Minneapolis v. Minneapolis Metro. Co.*, 259 Minn. 1, 13, 104 N.W.2d 864, 873 (1960) (noting that because the Federal Housing Administrations’ advanced to the Minneapolis Authority loans and grants in excess of

\$10 million, the court could assume that the standards of compliance established under Federal procedures were met).

This Court need not look further than the enabling resolution to reverse the Court of Appeals' decision. The absence from the enabling resolution of any limitation upon the EDA's exercise of eminent domain power provides the EDA the full statutory authority to proceed—without city imposed limits—with the use of eminent domain.

III. THE COURT OF APPEALS MISINTERPRETED AND MISAPPLIED MINN. STAT. § 469.094, SUBD. 2, WHEN IT CONCLUDED THAT “AN ECONOMIC DEVELOPMENT AUTHORITY’S POWERS ARE LIMITED BY THE SCOPE OF AUTHORITY THAT A CITY, AS THE ORIGINAL CONDEMNING AUTHORITY, TRANSFERS TO IT[.]”

The Court of Appeals' analysis of this case and of the EDA's eminent domain power centers on its interpretation of MINN. STAT. § 469.094, subd. 2. However, Section 469.094 is inapplicable to this case. In its decision, the Court of Appeals essentially rewrote Section 469.094, subd. 2. Its interpretation leads to a conclusion that is inconsistent with the statutory framework for economic development authorities and cities established by the Minnesota legislature. MINN. STAT. § 469.094, subd. 2, provides, in part:

The city may, by resolution, transfer the control, authority, and operation of any project as defined in section 469.174, subdivision 8, or any other program or project authorized by sections 469.001 to 469.047 or 469.124 to 469.134 located within the city, from the governmental agency or subdivision that established the project to the economic development authority. The city council may also require acceptance of

control, authority, and operation of the project by the economic development authority. The economic development authority may exercise all of the powers that the governmental unit establishing the project could exercise with respect to the project.

(Emphasis added). The Court of Appeals' interpretation of this statute fails in two significant respects. First, the Court of Appeals omitted the phrase "from the governmental agency or subdivision that established the project" in its discussion and analysis of the statute. Therefore, its interpretation of the statute lacks credibility. Second, the Court of Appeals also determined that a city transfers **powers** to an EDA, when the statute only states that a city may transfer a **project or program**.

A. The Court of Appeals Violated the Meaning of Section 469.094, subd. 2, by Omitting and Ignoring the Phrase "from the governmental agency or subdivision that established the project" in its Analysis of that Statute.

When construing Minnesota statutes, courts are to construe words and phrases according to rules of grammar and according to their common and approved usage. MINN. STAT. § 645.08(1). As noted above, a court should, whenever possible, give effect to all of a statute's provisions. *Larivee*, 656 N.W.2d at 229. No word, phrase, or sentence in a statute should be deemed superfluous, void, or insignificant. *Id.* The Court of Appeals failed to follow this basic rule of statutory interpretation here. The phrase "**from the governmental agency or subdivision that established the project**" is absent from the Court of Appeals' recitation, discussion, and analysis of Section 496.094, subd. 2. Its omission of this phrase made it impossible for the Court of Appeals to give effect

to all of the statute's provisions and rendered the omitted phrase void or insignificant, at the least.

The Court of Appeals quoted Section 469.094, subd. 2, in part, as follows: "The City may, by resolution, transfer the control, authority, and operation of any project . . . located within the city . . . to the economic development authority. . . ." (Ellipses in the original.) The Court of Appeals uses this reading of the statute to conclude that "the EDA's powers are conferred by the city on a project-by-project basis under section 469.094, subdivision 2." (May 19, 2009 Decision, at 12.) However, the omission of the phrase "from the governmental agency or subdivision that established the project" entirely changes the meaning and application of the statute.

The plain reading of MINN. STAT § 469.094, subdivision 2, reveals that this subdivision applies to projects, as defined by the statute, that already exist and **were established by an entity other than the economic development authority.**¹² Something established by another governmental agency must exist in order for it to be transferred to the EDA. MINN. STAT § 469.094, subdivision 2, cannot possibly be meant to apply to projects that are established by an economic development authority. In the instant case,

¹² This interpretation is supported by a review of section 469.094 in its entirety. Subdivision 1 provides cities the ability, by ordinance, to "divide the economic development, housing, and redevelopment powers . . . between the economic development authority and any other authority or commission established under statute or city charter for economic development, housing, or redevelopment[.]" Subdivision 2 allows the city, by resolution, to transfer the authority, control, and operation of projects that are already established by the governmental agency or subdivision to the economic development authority. Subdivision 3 allows the city council to place any employees of the housing and redevelopment authority under the direction, supervision, or control of the economic development authority.

both the EDA and the City acknowledge by resolution that the Redevelopment Plan and TIF Plan were established by the EDA. (See e.g. App. 36-38, 115.) The Court of Appeals' statutory interpretation leads to the illogical requirement for a city to transfer a project established by an economic development authority from the economic development authority to the economic development authority. When interpreting statutes, courts are to "avoid the result which would be absurd or would do violence to the language of the statute." *State on behalf of Forslund v. Bronson*, 305 N.W.2d 748, 751 (Minn. 1981); see also MINN. STAT. § 645.17. By ignoring the phrase "from the governmental agency or subdivision that established the project," the Court of Appeals mutilates this statute—changing its meaning and application.

B. The Court of Appeals Failed to Apply the Plain Meaning of Section 469.094, subd. 2 when it Determined that an Economic Development Authority Acquires and may Exercise the Powers that a City Possesses and Transfers with Respect to a Project.

The Court of Appeals does further violence to Section 469.094, subd. 2, when it concludes that, "the economic development authority acquires and may exercise the **powers that a city possesses and transfers** with respect to the project." (May 19, 2009 Decision at 7 (emphasis added).) However, this section of the statute authorizes a city to transfer the control of **a project or a program**, not any powers.¹³ MINN. STAT. § 469.094, subd. 2 expressly states: "The city may, by resolution, **transfer the control**,

¹³ The word "Project" as used in section 469.094, subd. 2, has the same meaning as the term is used in § 469.174, subd. 8; and includes the term "program" as in § 469.001 to § 469.047 or § 469.124 to § 469.134. Within these latter sections, project is distinctly defined (see § 469.002, subd. 12) and so is program (see § 469.125, subd. 3).

authority, and operation of any project. . . .” (Emphasis added.) The statute makes no mention of a transfer of powers. In fact, a city “may not delegate its governmental power without authority from the state legislature.” *Thomas*, 48 N.W.2d at 192 (citing *State v. St. Paul City Ry. Co.*, 78 Minn. 331, 339, 81 N.W. 2d. 200, 201 (1899)). There is no statutory authority that permits a city to delegate or transfer its powers of eminent domain to an economic development authority.

Under Chapter 469, a project may include an economic development district or a redevelopment district, which are also identified as tax increment financing districts. MINN. STAT. §§ 469.174, subd. 8, 10, 12; 469.101, subd. 1; 469.002, subd. 12. Such projects are established by economic development authorities or housing and redevelopment authorities. *See* MINN. STAT. § 469.101, subd. 1; 469.028 (a housing authority determining that a redevelopment plan should be undertaken prepares, *inter alia*, a redevelopment plan and proposed financing and then seeks approval from the municipality’s governing body). Section 469.094, subd. 2, also provides: “The economic development authority may exercise all of the powers that the governmental unit **establishing** the project could exercise with respect to the project.” (Emphasis added.) As discussed above, the legislature has provided distinct powers to authorities in the area of economic development, and these powers are not necessarily the same powers that the legislature provided to cities. When a city transfers a program or project to an economic development authority, it does not transfer its power, or any power for that matter. Rather, the legislature allows the economic development authority to exercise the same

power as the governmental unit that established the project. This power may differ significantly from a city's power regarding the same project.

A city is authorized by § 469.094, subd. 2, to transfer a project or program located within a city to an economic development authority. There is nothing either expressed or implied by the legislature that a city has the ability, let alone the authority, to **transfer any power** to an economic development authority. There is no requisite act of transfer of power that must be performed by the city for an economic development authority to exercise its power, particularly when as herein the EDA established the project or program.

MINN. STAT. § 469.094 simply does not implicate the statutory powers endowed on economic development authorities. The statute does not and did not limit the EDA's eminent domain power to those possessed by the City. Neither did the statute authorize or require the City to confer powers upon the EDA for each new project.

C. MINN. STAT. § 469.094, subd. 2 is Inapplicable in this Case because (1) the City did not Transfer a Project to the EDA, and (2) the EDA Established the Project at Issue.

As noted, the Court of Appeals' interpretation of section 469.094, subd. 2, formed the basis of its analysis of the EDA's eminent domain powers. (May 19, 2009 Decision at 7.) This analysis pervaded the entirety of the Court of Appeal's opinion. (*Id.* at 12, 14, 15.) Not only did the Court of Appeals rewrite and misinterpret the plain language of section 469.094, subd. 2, but this statute is simply inapplicable in this case.

MINN. STAT. § 469.094, subd. 2, requires that a city transfer the control, authority, and operation of a project or program "by resolution." Here, other than the transfer

mentioned in the 2000 enabling resolution, there is no evidence of any **transfer** by the City to the EDA of any project or program. (See App. 1-3.) The Court of Appeals does not even make an effort to determine whether a City resolution transferring a project to the EDA ever existed. Resolution 01-63 makes no mention of the transfer of any project to the EDA—neither does the Redevelopment Plan nor the TIF Plan. There is no mention of any transfer to the EDA because nothing was in fact transferred. Since the City did not transfer anything to the EDA, MINN. STAT. § 469.094 is wholly inapplicable. The EDA possessed the full powers granted to it by the Minnesota legislature as recognized in the enabling resolution. These powers included the powers of eminent domain in furtherance of a redevelopment project or economic development district.

As argued above, section 469.094, subd. 2, applies only to projects that are established by an entity other than an economic development authority. This section is inapplicable to projects, such as the Cedar Grove Redevelopment Project that are established by an economic development authority.

The EDA is the entity that established the project at issue here. Resolution 01-63 notes that the “Eagan Economic Development Authority . . . has heretofore established the Cedar Grove Redevelopment Area.”¹⁴ (App. 36.) The TIF Plan notes in subsection 2-28 that the EDA “is establishing the District.” (App. 105.) Neither the Redevelopment Plan nor the TIF Plan mention a **transfer** of the district or project to the EDA.

¹⁴ The actual Redevelopment Plan refers only to the City, except for noting in subsection 1-1’s definition of tax increment bonds that such bonds are “issued by the EDA or the City” for financing purposes. (App. 65.)

The EDA's powers related to the TIF district and the redevelopment district are conferred by the Minnesota legislature in MINN. STAT. §§ 469.090 to 469.108. They are not conferred by the City. Because the EDA established the district and because there was no transfer of any project or program by the City, MINN. STAT. § 469.094, subd. 2, is inapplicable in this case. The Court of Appeal's entire analysis of the EDA's authority to exercise eminent domain is, therefore, mistaken.

IV. THE CEDAR GROVE REDEVELOPMENT PLAN DID NOT LIMIT THE EDA'S POWER OF EMINENT DOMAIN FOR THIS PROJECT.

A. The Redevelopment Plan did not Limit the EDA's Eminent Domain Powers.

Based on its interpretation of MINN. STAT. § 469.094, subd. 2, the Court of Appeals determined that the Redevelopment Plan limited the EDA's power of eminent domain. However as demonstrated above, Section 469.094 is inapplicable to the facts of this case because the EDA established the project, and there is no mention of a transfer of the project to the EDA anywhere in the record. An economic development authority's actions may be limited only in accordance with MINN. STAT. §§ 469.092 and 469.093. The procedures required therein were not present in this case. Therefore, the City did not limit the EDA's eminent domain authority by adopting the Redevelopment Plan, and the EDA did not exceed its statutorily granted authority to exercise eminent domain.

B. The Redevelopment Plan applies to the City.

A "Redevelopment Plan" is

a plan approved by the governing body, or by an agency designated by the governing body for the purpose of approving such plans or authorized by

law to do so, of each city in which any of a redevelopment project is to be carried out, which plan provides an outline for the development or redevelopment of the area and is sufficiently complete (1) to indicate its relationship to definite local objectives as to appropriate land uses; and (2) to indicate general land uses and general standards of development or redevelopment.

MINN. STAT. § 469.002, subd. 16. The Cedar Grove Redevelopment Plan outlines the objectives for redevelopment of the area, which include eliminating blight, providing employment opportunities, improving the local tax base, and improving the general economy of the City. (Subs. 1-3, 1-4, App. 66-67.) The Redevelopment Plan anticipated that the City would undertake “[t]he acquisition of property, or interests in property, by purchase or condemnation, which acquisition is consistent with the objectives of the Redevelopment Plan” and “[t]he resale of property to private parties.” (Subs. 1-5(d), (f), App. 68.) The Redevelopment Plan also provides in Subsection 1-12, titled “Property Acquisition”: “The City may acquire such property, or appropriate interest therein, within the Redevelopment Project Area as the City may deem to be necessary or desirable to assist in the implementation of the Redevelopment Plan.” (App. 69.)

Disregarding the language noted above, the Court of Appeals focused on Subsection 1-8 of the Redevelopment Plan. Subsection 1-8 of the Redevelopment Plan, which is titled “Proposed Reuse of Property” states:

The Redevelopment Plan contemplates that the City may acquire property and reconvey the same to another entity. Prior to formal consideration of

the acquisition of any property, the City will require the execution of a binding development agreement with respect thereto and evidence that Tax Increments or other funds will be available to repay the Public Costs associated with the proposed acquisition. It is the intent of the City to negotiate the acquisition of property whenever possible. Appropriate restrictions regarding the reuse and redevelopment of property shall be incorporated into any development agreement to which the City is a party.

(App. 68-69.) According to a plain reading of this subsection, any limitation imposed by this subsection is applicable to the City—not to the EDA.

The EDA is not mentioned in Subsection 1-8. According to the Definitions in Subsection 1-1 of the Redevelopment Plan, “City” means the City of Eagan. (App. 65.) The definition of city clearly excludes the Economic Development Authority or any other body. *See Anderson v. Twin City Rapid Transit Co.*, 250 Minn. 167, 175, 84 N.W.2d 593, 599 (1957) (noting the “well-recognized rule in the law which holds that the expression of one thing is the exclusion of another” and “the mention of one person is the exclusion of another”). It is telling that the EDA is identified in the definition of “Tax Increment Bonds” but is not mentioned anywhere else in the Redevelopment Plan. Had any limitations in Subsection 1-8 been intended to apply to the EDA, the Redevelopment Plan would have so indicated. *See Id.* Because any condition imposed by Subsection 1-8 applies only to the City, the EDA’s power of eminent domain was not limited by the Redevelopment Plan.

The EDA believes that Subsection 1-8 was not intended to impose a blanket restriction on either the City or the EDA's powers to acquire property in furtherance of the redevelopment project. However, if this Court determines that Subsection 1-8 does in fact limit the City's ability to acquire property—this limitation can be explained as follows. As discussed above, economic development authorities are statutorily empowered to create and establish redevelopment districts (MINN. STAT. §§ 469.101; 469.174, subd. 10) and tax increment financing districts (MINN. STAT. §§ 469.102; 469.103; 469.174, subd. 9). Before implementing either the Redevelopment plan or TIF Plan, the EDA was required to obtain the approval of the City. MINN. STAT. §§ 469.028, subd. 1; 469.175, subd. 3. In the instant case, the EDA established both Plans. Two months later, the City Council, in Resolution 01-63, approved those Plans.

Within the Redevelopment Plan, the EDA suggested and the City accepted the alleged limitation on the City's ability to acquire property within the redevelopment district without the execution of a binding development agreement. (See Resolution 01-63, § 1.01, App. 36.) By its acceptance of this limitation, the City safeguarded subsection 2-22 of the TIF Plan, which limited the amount of acreage that could be owned by the EDA and City as a result of acquisition with the proceeds of bonds. (App.103.) The TIF Plan required that no more than 25% of the acreage could be owned by the EDA or City from the use of bond proceeds, unless a concluded agreement for the development or redevelopment of the property acquired was obtained. (*Id.*) Since the Plans allowed the City to acquire property (as permitted pursuant to MINN. STAT. § 469.012, subd. 2e) it is

logical and reasonable that the EDA sought the City's consent to limit the City's acquisition of property.

C. When Read in Light of Surrounding Sections of the Redevelopment Plan and Tax Increment Financing Plan, it is Apparent that Subsection 1-8 does not Place any Limits on the EDA's use of Eminent Domain.

Should this Court determine that the Redevelopment Plan is ambiguous, the intent of the City should guide its interpretation of Subsection 1-8. The adoption of and determinations made in Resolutions, Redevelopment Plans and other such plans are part of the legislative function delegated to Cities or Authorities. *See Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 181 (Minn. 2006) (noting that a city's resolution is a legislative decision). When interpreting a city's resolution, this Court seeks to determine and effectuate the city's intended meaning in drafting the resolution. *See Crown Cork & Seal Co. v. Lakeville*, 313 N.W.2d 196, 200-01 (Minn. 1981).

Nearly the entirety of Respondents' argument to the Court of Appeals rested on their assertion that the condemnation proceedings in this case were unauthorized because the EDA allegedly violated the Redevelopment Plan (i.e. acquiring property before a binding development agreement was in place). The Court of Appeals focuses on the fact that the Redevelopment Plan was incorporated by the City into its Resolution 01-63. (May 19, 2009 Decision at 8-9.) The Court of Appeals did not address the fact that Resolution 01-63 incorporated the "Plans"—which include the Cedar Grove Redevelopment Plan **and** the TIF Plan. (Resolution 01-63, §§ 1.01, 2.01, App. 36-37.) The provisions of the Redevelopment Plan and the TIF Plan should be interpreted in light

of the surrounding sections to avoid conflicting interpretations and should be interpreted to avoid absurd results. *See Am. Family Ins. Group*, 616 N.W.2d at 278; *Bronson*, 305 N.W.2d at 751. Both Plans were incorporated into Resolution 01-63, and both Plans addressed the acquisition of property. The Redevelopment Plan and TIF Plan should, therefore, be read together to interpret the intent of the City and EDA in adopting Subsection 1-8 of the Redevelopment Plan. According to the TIF Plan, the EDA's right to acquire property is unrestricted except to make sure that financing is in place to cover the public costs associated with the acquisition. (Subsection 2-5, App.93.)

Even if this Court determines that Subsection 1-8 of the Redevelopment Plan applies to both the City and the EDA, when read in light of the other provisions of the Plans, it is apparent that Subsection 1-8 was not meant to limit the EDA's right to acquire property in furtherance of the project. The TIF Plan provides both the City and the EDA with the authority to acquire property in accordance with the objectives of the Redevelopment Plan. They may, but are not required to, reconvey property to private parties. (Subsection 1-5 (f), App. 68.)

This Court has noted that the purpose of acts allowing redevelopment projects is "not only to remove . . . blighted areas but also to prevent the redevelopment areas from reverting to their former status. * * * This is accomplished by requiring as a condition of sales and leases of portions of the area to private persons that the property * * * [be developed or redeveloped for the purposes specified in such plan.]" *Housing & Redevelopment Authority of City of St. Paul v. Greenman*, 255 Minn. 396, 406, 96 N.W.2d 673, 681 (1959) (modified in original) (quoting *Gohld Realty Co. v. City of*

Hartford, 104 A.2d 365, 369 (1954)). This understanding is also codified in MINN. STAT. § 469.105, subd. 7, which requires that before an authority sells property that it owns in a city or economic development district, the authority must approve plans and specifications for the development of the property provided to it by the purchaser. It is important that before an authority reconveys property to another entity, that the authority ensure that the entity will use the property in a way that conforms to the redevelopment objectives. *See Greenman*, 255 Minn. at 406-07, 96 N.W.2d at 681. This understanding can inform this Court's interpretation of Subsection 1-8.

In fact, Subsection 2-4 (3) of the TIF Plan also supports a finding that Subsection 1-8 was meant to apply to the reuse of property, not to its initial acquisition. Subsection 2-4 is titled "Redevelopment Plan Overview." It states: "Upon approval of a developer's plan relating to the project and completion of the necessary legal requirements, the EDA or City may sell to a developer selected properties that they may acquire within the District or may lease land or facilities to a developer." (Subs. 2-4(3), App. 91.) This statement is not addressed by other subsections of the Redevelopment Plan but implicates Subsection 1-8 which discusses the reuse of the property. It demonstrates that the EDA contemplated that a binding development agreement would be necessary before the EDA or City could resell the property to another entity.

This understanding is also supported by the testimony of the EDA's consultant, Sid Inman, a drafter of the Redevelopment Plan. (Tr. 36, 76.) Mr. Inman testified that Subsection 1-8 deals with the proposed reuse of property and explained that Subsection

1-8 of the Redevelopment Plan is not applicable here where the condemning authority, rather than the developer, has taken the lead in acquiring property. (Tr. 111-12.)

The TIF Plan refers to both the City and to the EDA and makes no mention of any limits on the EDA's authority to acquire property until a binding development agreement is in place. Subsection 2-5 of the TIF Plan provides:

The EDA or City may acquire any parcel within the District including interior and adjacent street rights of way. Any properties identified for acquisition will be acquired by the EDA or City only in order to accomplish one or more of the following: storm sewer improvements; provide land for needed public streets, utilities and facilities; carry out land acquisition, site improvements, clearance and/or development to accomplish the uses and objectives set forth in this plan. The EDA or City may acquire property by gift, dedication, condemnation, or direct purchase from willing sellers in order to achieve the objectives of this Plan. Such acquisitions will be undertaken only when there is assurance of funding to finance the acquisition and related costs.

(App. 93.) The only limits placed on the EDA's ability to acquire property are that the acquisitions relate to the accomplishment of the uses and objectives set forth in the Plan and that necessary funding be available to finance the acquisition. The TIF Plan acknowledges that contracts for the redevelopment were not yet entered into (Subsection 2-3), but it places no limitations on *when* the EDA could acquire property. (See App. 91.)

Requiring the EDA to wait until a binding development agreement is in place before even considering acquiring property frustrates an essential purpose of the redevelopment project—the removal of blight. Property need not be reconveyed in order for the EDA to remove blight, and a binding development agreement is not necessary in order to remove blight. Further, placing such a limit on the EDA’s ability to acquire property for the Redevelopment Project actually prohibits the actualization of a binding developer agreement because developers want to be certain that the property is available to them before binding themselves to any agreement with the City or EDA. Neither the City nor the EDA meant to limit themselves in such a way.

The Redevelopment Plan is not a barrier to the EDA’s right to exercise eminent domain in this case. The Redevelopment Plan is not a proper modification of the EDA’s eminent domain powers as required by Sections 469.092 and 469.093. By its plain language, any limit in Subsection 1-8 applies only to the City and not to the EDA. Finally, when the Redevelopment Plan is examined together with the TIF Plan, it becomes clear that the City did not intend to limit the EDA’s authority to acquire property until a binding development agreement was in place.

CONCLUSION

The Court of Appeals incorrectly determined that the EDA possessed only the powers transferred to it by the City on a project-by-project basis. This conclusion was based on its erroneous and incomplete interpretations of MINN. STAT. §§ 469.091, 469.02, and 469.094, and it permeated every aspect of the court’s analysis. The EDA respectfully requests that this Court reverse the Court of Appeals’ decision.

Dated: September 24, 2009

SEVERSON, SHELDON, DOUGHERTY
& MOLEND, P.A.



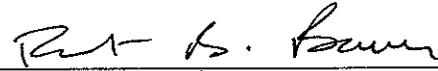
By: Robert B. Bauer, I.D. 227365
Michael G. Dougherty, I.D. 134570
Jessica L. Sanborn, I.D. 339532
7300 West 147th Street, Suite 600
Apple Valley, Minnesota 55124
(952) 432-3136
*Attorneys for Eagan Economic Development
Authority*

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SEVERSON, SHELDON, DOUGHERTY
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Dated this 24th day of September 2009.



By: Robert B. Bauer, I.D. 227365
Michael G. Dougherty, I.D. 134570
Jessica L. Sanborn, I.D. 339532
7300 West 147th Street, Suite 600
Apple Valley, Minnesota 55124
(952) 432-3136
*Attorneys for Eagan Economic
Development Authority*