

NO. A10-1628

State of Minnesota
In Court of Appeals

City of East Bethel, a Minnesota municipal corporation,
East Bethel Housing and Redevelopment Authority, a public body,
corporate and politic, and Jill Teetzel, a resident and taxpayer
of the City of East Bethel,

Plaintiffs-Respondents,

v.

Anoka County Housing and Redevelopment Authority,
a public body, corporate and politic,

Defendant-Appellant,

and

Larry Dalien, Division Manager,
Anoka County Property Records & Taxation,

Defendant.

BRIEF AND APPENDIX OF RESPONDENTS

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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).

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STATEMENT OF THE ISSUES

- I. **Whether Anoka County Housing and Redevelopment Authority brought a proper motion for a new trial under Minn. R. Civ. P. 59.01 or for amended findings of fact and conclusions of law under Minn. R. Civ. P. 52.02 such that its appeal rights were preserved and its appeal timely filed.**

The District Court did not rule on the propriety of the motion before it or decide whether it was duly authorized by law. Rather, it simply denied it. See Anoka County HRA's Add. 10.

Most apposite rules:

Minn. R. Civ. P. 59.01 and 52.02

Most apposite cases:

Madson v. Minn. Mining & Mfg. Co., 612 N.W.2d 168 (Minn. 2000)

Coughlin v. Town of Rosemount, 35 N.W.2d 744 (Minn. 1949)

Stockdale Bancorporation v. Kjellberg, 479 N.W.2d 438 (Minn. Ct. App. 1992)

Swartwoudt v. Swartwoudt, 349 N.W.2d 600 (Minn. Ct. App. 1984)

- II. **Whether the Anoka County Housing and Redevelopment Authority may exercise jurisdiction in the City of East Bethel, via collection of taxes from City residents, after the City establishes its own housing and redevelopment authority.**

The District Court held that the City of East Bethel's creation of its own housing and redevelopment authority removed the City from the Anoka County Housing and Redevelopment Authority's taxing district. See Anoka County HRA's Add. 7.

Most apposite statutes:

Minn. Stat. § 383E.17, subd. 2.

Minn. Stat. § 469.012, subd. 11.

Most apposite cases:

Am. Tower, L.P. v. City of Grant, 636 N.W.2d 309 (Minn. 2001)

State by Beaulieu v. RSJ, Inc., 552 N.W.2d 695 (Minn. 1996)
Allen v. Cent. Motors, Inc., 283 N.W. 490 (Minn. 1939)
People's State Bank of Cleveland v. Dickie, 254 N.W. 782 (Minn. 1934)

STATEMENT OF THE CASE

The Respondent City of East Bethel (“City”) sued Appellant Anoka County Housing and Redevelopment Authority (“Anoka County HRA”) in Anoka County District Court in September 2009.¹ The City asserted that the statute which created and defined Anoka County HRA’s powers, Minn. Stat. § 383E.17, prevents it from taxing in the City after the City formed its own municipal housing and redevelopment authority in May, 2009. See Id., subd 2. The District Court agreed with the City’s assertion and granted a temporary injunction on November 17, 2009 prohibiting Anoka County HRA from certifying and levying taxes in the City. Anoka County’s App. 08. After a one-day bench trial on May 3, 2010, the District Court issued a permanent injunction dated July 12, 2010 prohibiting Anoka County HRA from levying any tax in the City. Anoka County HRA’s Add. 02. The District Court further declared that Minn. Stat. § 383E.17 prohibits Anoka County HRA from operating in any municipality with its own housing and redevelopment authority, regardless when such municipal housing and redevelopment authority was created. Id. at 07. Judgment was entered on the District Court’s order on July 14, 2010. Id.

At both the temporary injunction phase and at the trial, Anoka County HRA raised but one defense: that the phrase “[t]he county shall not exercise jurisdiction in any

¹ The East Bethel HRA is also a Plaintiff in the lawsuit. City resident and taxpayer, Jill Teetzel, was added as a Plaintiff by Amended Complaint dated October 12, 2009. Anoka County HRA’s App. 03.

municipality where a municipal housing and redevelopment authority is established” only divests it of the ability to tax in municipalities where a municipal housing and redevelopment authority was created *before* Anoka County HRA was created in 1994. Id. The Anoka County HRA’s argument focused exclusively on the meaning of the word “is” in the applicable statutory language. Consequently, the only issue litigated in this matter was whether the word “is” limits the application of Minn. Stat. § 383E.17 only to those municipal HRAs that were already existing when Anoka County HRA was created. The District Court specifically found that it did not. The District Court applied canons of construction, citing Minn. Stat. § 645.08 (2), and concluded that the statutory language in question is unambiguous in its application to *all* municipal HRAs within the county, whether they were or are created before or after the Anoka County HRA was established in 1994. Anoka County Add. 06. The District Court specifically found that it would be repugnant to the context of the statute as a whole to apply it only to those municipal HRAs that pre-existed the Anoka County HRA. Id. at 07. The District Court’s order explicitly prohibits the Anoka County HRA from exercising jurisdiction, i.e. levying taxes, in the City. Id.

Anoka County HRA, with new counsel involved, then attempted to move for a new trial or amended findings of fact and conclusions of law under Minn. R. Civ. P 59.01 and 52.02 on August 18, 2010. The motion raised issues the parties did not previously litigate at any hearing or during the trial. Further, Anoka County HRA failed to specifically and explicitly state the grounds on which its new trial motion was based, as is required by Minn. R. Civ. P. 59.01, and neglected to identify an alleged defect in the findings and conclusions

or explain how the challenged findings and conclusions are defective. The City argued that the motion was improper and, in any event, had no merit. The District Court denied the motion, initially from the bench on September 14, 2010 and then in a written order dated September 15, 2010, without comment on the propriety of the motion itself. Anoka County HRA also moved to have the District Court's order stayed pending appeal, which the District Court granted. The City moved for a release of security it posted for the temporary injunction, which the District Court denied.

Anoka County HRA's notice of appeal followed on September 16, 2010.

STATEMENT OF FACTS

The state legislature first authorized municipal housing and redevelopment authorities by statute in 1947. See Minn. Stat. §§ 469.001 to 469.047.² Counties and multi-county entities, excluding Anoka County and other metro area counties, were added in 1971. Id. Metro area counties, excluded from the general provisions of the housing and redevelopment authority statutes, each sought their own special authorizations. The legislature authorized a county housing and redevelopment authority for Anoka County in 1978. See Minn. Stat. §§ 383E.17 and 18.

Minn. Stat. § 383E.17 states:

Subdivision. 1. Housing and redevelopment authority. There is created in the county of Anoka a public body corporate and politic, to be known as the Anoka County Housing and Redevelopment Authority, having all of the powers and duties of a housing and redevelopment authority under the provisions of the Municipal Housing and Redevelopment Act, Minnesota Statutes 1986, sections 462.411 to 462.711. For the purposes of applying

² The original statutory citations, Minn. Stat. §§ 462.111 to 462.711, were subsequently recodified as amended in Minn. Stat. §§ 469.001 to 469.047.

the provisions of the Municipal Housing and Redevelopment Act to Anoka County, the county has all of the powers and duties of a municipality, the county board has all of the powers and duties of a governing body, the chair of the county board has all of the powers and duties of a mayor, and the area of operation includes the area within the territorial boundaries of the county.

Subdivision 2. Municipal authorities. This section shall not limit or restrict any existing housing and redevelopment authority or prevent a municipality from creating an authority. *The county shall not exercise jurisdiction in any municipality where a municipal housing and redevelopment authority is established.* If a municipal housing and redevelopment authority requests the Anoka County Housing and Redevelopment Authority to handle the housing duties of the municipal authority, the Anoka County Housing and Redevelopment Authority shall act and have exclusive jurisdiction for housing in the municipality. A transfer of duties relating to housing shall not transfer any duties relating to redevelopment.

(emphasis added). In 1982, the state legislature clarified the powers and duties of all of the various Minnesota housing and redevelopment authorities within their respective areas of operation. Minn. Stat. § 469.012, subd. 11:

HRAs created by special law. Except as expressly limited by the special law establishing the authority, an authority created pursuant to special law shall have the powers granted by any statute to any authority created pursuant to this chapter.

Anoka County's statutory authorization to exercise housing and redevelop powers lay dormant until the Anoka County Board of Commissioners utilized the statutory authorization found in Minn. Stat. § 383E.17 to commence housing and redevelopment operations as the Anoka County HRA on December 13, 1994. See Anoka County HRA Add. 3. Pursuant to its independent statutory authority to do so, the City commenced housing and redevelopment operations of its own under Minn. Stat. § 469.001 et seq. on May 22, 2009. Once the City did so, it supplanted the Anoka County HRA's jurisdiction

over the City as required by Minn. Stat. § 383E.17, subd. 2: “The county shall not exercise jurisdiction in any municipality where a municipal housing and redevelopment authority is established.” Notwithstanding the City’s statutorily-authorized decision to handle its own housing and redevelopment responsibilities, Anoka County HRA nonetheless attempted to levy a tax on City taxpayers for the 2010 tax year, prompting the lawsuit in this matter.

STANDARD OF REVIEW

Reviewing courts do not set aside a district court’s findings of fact, whether based on oral or documentary evidence, unless they are clearly erroneous. Minn. R. Civ. P. 52.01; Fletcher v. St. Paul Pioneer Press, 589 N.W.2d 96, 101 (Minn. 1999). Appellate courts will not reverse a district court's denial of motion for a new trial or amended findings absent a clear abuse of discretion. Preferred Fin. Corp. v. Quality Homes, Inc., 439 N.W.2d 741, 743 (Minn. Ct. App. 1989). Issues of statutory construction, and legal conclusions based thereon, are reviewed *de novo*. In re Kleven, 736 N.W.2d 707, 709 (Minn. Ct. App. 2007) (citing Brookfield Trade Ctr., Inc. v. County of Ramsey, 584 N.W.2d 390, 393 (Minn. 1998)).

ARGUMENT

- I. **Anoka County HRA’s post-trial motion had no proper basis and failed to preserve its appeal rights. Thus, this appeal is time-barred and should be dismissed.**

Following the bench trial in this matter and the subsequent order, Anoka County HRA submitted a request for post-trial relief to the District Court. That request was couched as a motion for a new trial or for amended findings and conclusions. Anoka

County HRA's App. 38-41. In either event, the motion was both procedurally and substantively defective, as set forth below, and thus did not toll the time period for filing an appeal in this case. Judgment on the District Court's order was entered July 14, 2010. Pursuant to Minn. R. Civ. App. P. 104.01, the parties had sixty days to appeal from the judgment entry, or until September 13, 2010.³ Anoka County HRA filed its Notice of Appeal on September 16, 2010. That too-late appeal should be dismissed.

Minn. R. Civ. P. 59.01 contains the list of permissible grounds for bringing a motion for a new trial:

- (a) Irregularity in the proceedings of the court, referee, jury, or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair trial;
- (b) Misconduct of the jury or prevailing party;
- (c) Accident or surprise which could not have been prevented by ordinary prudence;
- (d) Material evidence newly discovered, which with reasonable diligence could not have been found and produced at the trial;
- (e) Excessive or insufficient damages, appearing to have been given under the influence of passion or prejudice;
- (f) Errors of law occurring at the trial, and objected to at the time or, if no objection need have been made pursuant to Rules 46 and 51, plainly assigned in the notice of motion;
- (g) The verdict, decision, or report is not justified by the evidence, or is contrary to law; but, unless it be so expressly stated in the order granting a new trial, it shall not be presumed, on appeal, to have been made on the ground that the verdict, decision, or report was not justified by the evidence.

³ Sixty days fell on September 12, 2010, a Sunday. Anoka County HRA had until the next business day, September 13, 2010, to file its appeal under Minn. R. Civ. P. 6.

Id. A proper motion for a new trial, because such motions “often are made solely for purposes of preserving an appeal,” must state the grounds on which a new trial is sought “explicitly and with specificity.” Swartwoudt v. Swartwoudt, 349 N.W.2d 600, 602 (Minn. Ct. App. 1984). In Stockdale Bancorporation v. Kjellberg, 479 N.W.2d 438, 439 (Minn. Ct. App. 1992), this Court held that a motion for a new trial *must* include an explicit statement of the Minn. R. Civ. P. 59.01 basis for the new trial. Because it lacked that essential preservation of any issue for appellate review, the appeal was dismissed on procedural grounds. Id. A motion without the explicit identification of grounds for appeal, whatever its character, is “not sufficient to constitute one for a new trial, the denial of which allows an appeal under Minn. R. Civ. App. P. 103.03(d).” Swartwoudt, 349 N.W.2d at 602. See also Coughlin v. Town of Rosemount, 35 N.W.2d 744, 745 (Minn. 1949) (“Plaintiff states no grounds for a new trial in his motion. Consequently, there is nothing for us to consider . . .”).

Anoka County HRA’s motion falls far short of the mark. As to the supposed justification and basis for its Minn. R. Civ. P. 59.03 motion, it stated that it was seeking “a new trial on the issue of whether Anoka County HRA may assess its special benefit tax on property within the City of East Bethel.” Anoka County HRA App. 40. Anoka County HRA offers only a restatement of the issue the parties litigated in trial. It identifies no grounds under Minn. R. Civ. P. 59.01 and offers no basis on which a new trial should or could be ordered, much less an explicit or specific basis. See Swartwoudt, 349 N.W.2d at 602. Thus, it cannot be considered a proper new trial motion and its

denial does not fit the criteria of Minn. R. Civ. App. P. 103.03. As the Minnesota Supreme Court put it, “there is nothing for [this Court] to consider.” Coughlin, 35 N.W.2d at 745. In essence, in its “new trial” motion, Anoka County HRA made an unauthorized motion for reconsideration.

Anoka County HRA’s supposed motion for amended findings, like its attempted motion for a new trial, failed to toll the timeline for its appeal for the same reason. While the determination whether a particular motion tolls the appeal period is not dependent on its merits (see Madson v. Minn. Mining & Mfg. Co., 612 N.W.2d 168, 171 (Minn. 2000)), a party cannot simply caption a motion deliberately to bring it within the scope of Minn. R. Civ. App. P. 104.01, subd. 2 when the motion actually seeks relief outside those parameters. Such a motion is improper and unauthorized and cannot toll the appeal period. This Court’s rules were amended in 1998 “to avoid the erroneous assumption that an improper or *unauthorized* motion would prevent the running of an appeal period.” Madson, 612 N.W.2d at 172 (citing Minn. R. Civ. App. P. 104.01, Advisory Comm. Cmt.—1998 Amendment) (emphasis added). Additionally,

[t]he absence of motions for reconsideration or rehearing in the list of motions given tolling effect in Rule 104.01, subd. 2, is intentional. . . . A party seeking to proceed with a motion for reconsideration should pay attention to the appellate calendar and must perfect the appeal regardless what progress has occurred with the reconsideration motion.

Minn. R. Civ. App. P. 104.01, Advisory Comm. Cmt.—2008 Amendments.

Anoka County HRA failed to heed the Advisory Committee’s admonitions. Instead, it moved for reconsideration without authorization under the guise of a misleading caption. Anoka County HRA did not suggest any grounds, much less explicit

or specific grounds, on which the District Court could have ordered a new trial. See Minn. R. Civ. P. 59.01. And Anoka County HRA did not ask the District Court to clean up particular factual findings or address an omission in the findings or conform certain findings to undisputed evidence as an actual motion to amend findings would have. See 2 David F. Herr & Roger S. Haydock, Minnesota Practice § 52.15 (discussing grounds for motions to amend findings under Minn. R. Civ. P. 52.02). Instead, Anoka County HRA asked the court to turn the trial's outcome on its head, submitting new proposed findings that deleted the District Court's conclusions of law wholesale and replaced them with conclusions favorable to Anoka County HRA's desired outcome, and doing so without submitting any rule-supported basis on which the District Court should convene a second trial. Anoka County HRA simply voiced its disagreement with the trial outcome and complained that the District Court got it wrong. Anoka County HRA's wishes cannot convert a plea for the District Court to reverse the outcome of the trial into a proper motion for a new trial or to amend findings. Such a motion—however the party bringing the motion may have identified it—is a motion for reconsideration.

The only way a motion for reconsideration is allowed is after a district court specifically grants permission to file one. See Minn. Gen. R. Prac. 115.11 (noting that “[m]otions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances”). Anoka County HRA never sought and was not granted permission to move the District Court for reconsideration. Its motion in this case was unauthorized and, thus, did not toll the time

period set by Minn. R. Civ. App. P. 104.01. See Madson, 612 N.W.2d at 172 (holding that an *unauthorized* motion does not prevent the running of an appeal period).

No motion for a new trial or motion to amend findings is permissible now, since the time period for such a motion ran thirty days from July 14, 2010—expiring months ago. See Minn. R. Civ. P. 59.03. The July 14, 2010 entry of judgment is the only final appealable order under Minn. R. Civ. App. P. 103.03 in this case. Anoka County HRA’s Notice of Appeal came too late. See Langer v. Comm’r of Revenue, 773 N.W.2d 77, 81 (Minn. 2009) (holding that appellate deadlines are peculiarly within the legislative domain and cannot be extended by the courts).

The sixty-day period set by Minn. R. Civ. App. P. 104.01 expired three days before Anoka County HRA’s Notice of Appeal was served and filed. See Anoka County HRA App. 54. Anoka County HRA missed the appeal deadline in this matter. Its appeal is untimely and should be dismissed.

II. Minnesota law plainly prohibits Anoka County HRA from taxing City residents when the City has its own entity for undertaking housing and redevelopment functions.

While this Court should dismiss this untimely appeal on procedural grounds, if it does reach the merits in this matter, the District Court properly dismissed Anoka County HRA’s claim. This Court should affirm that decision.

Anoka County HRA sets forth what it calls “Relevant Statutory Text” at the outset of its brief. Based on those statutes, Anoka County HRA argues that it has a county-wide “area of operation” (Minn. Stat. § 383E.17, subd. 1) and that its “area of operation” constitutes its “taxing district” (Minn. Stat. § 469.033, subd. 6), ergo, it now believes it

must tax county-wide.⁴ However, even though Anoka County HRA includes Minn. Stat. § 469.012, subd. 11 among its litany of relevant statutory authority, it fails to recognize that statute's import in this case. As set forth above, that statute reads:

HRAs created by special law. Except as expressly limited by the special law establishing the authority, an authority created pursuant to special law shall have the powers granted by any statute to any authority created pursuant to this chapter.

Thus, only an express limitation contained in the special law creating the Anoka County HRA curtails whatever authority may be granted under the general housing and redevelopment authority statutes. The outcome in this case—whether considering Anoka County HRA's narrow trial theory or its new, wider-ranging post-trial ones—turns entirely on statutory interpretation of just such an express limitation⁵ contained in that special law at Minn. Stat. § 383E.17, subd. 2. Again, that statute reads:

Municipal authorities. This section shall not limit or restrict any existing housing and redevelopment authority or prevent a municipality from creating an authority. *The county shall not exercise jurisdiction in any municipality where a municipal housing and redevelopment authority is established.* If a municipal housing and redevelopment authority requests the Anoka County Housing and Redevelopment Authority to handle the housing duties of the municipal authority, the Anoka County Housing and Redevelopment Authority shall act and have exclusive jurisdiction for

⁴ In its brief to this Court, Anoka County HRA admits that it has not previously levied special benefit taxes for housing and redevelopment functions uniformly across the county, but now claims it is obligated to do so going forward. See Anoka County HRA's Brief, p. 9, n. 1.

⁵ Anoka County HRA argues that its power to tax is not *expressly limited* by the statutory language because "it does not mention taxing." Anoka County HRA Brief, p. 10. But the statutory language does expressly limit Anoka County HRA's jurisdiction. If, as the City contends herein and the District Court found, "jurisdiction" in this statute carries its plain and commonly understood meaning (i.e. authoritative and territorial reach), no additional statutory elucidation about everything contained within that term was required.

housing in the municipality. A transfer of duties relating to housing shall not transfer any duties relating to redevelopment.

(emphasis added). Because of language in this portion of the special law expressly limiting Anoka County HRA's jurisdictional reach (encompassing its "area of operation" and its contemporaneous "taxing district"), the City contends and the District Court found that Anoka County HRA has no power to levy taxes in any municipality, like the City in this case, that establishes its own housing and redevelopment authority to handle those functions on its own.

When interpreting the meaning of a statute "[t]he court's role is to discover and effectuate the legislature's intent." State by Beaulieu v. RSJ, Inc., 552 N.W.2d 695, 701 (Minn. 1996); see also Minn. Stat. § 645.16. "Where the legislature's intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute's plain meaning." Am. Tower, L.P. v. City of Grant, 636 N.W.2d 309, 312 (Minn. 2001). Simply, this Court need not look beyond the text enacted in the relevant statutes.⁶ When determining a statute's plain meaning, courts construe words according to the provisions of the canons of construction and their "common and approved usage." Minn. Stat. § 645.08; State by Beaulieu, 552 N.W.2d at 701. In light of the statute's plain and unambiguous meaning, the District Court's dismissal of Anoka County HRA's claim should be affirmed.

⁶ Anoka County HRA references language that was a part of earlier versions of the bill that became Minn. Stat. § 383E.17 and argues that legislative history compels a particular outcome in this matter. Anoka County HRA's Brief, p. 10. When a statute is clear on its face, resort to such materials is neither necessary nor permitted. Am. Tower, L.P., 636 N.W.2d at 312.

A. *Anoka County HRA cannot operate where a municipal housing and redevelopment authority is established—regardless when that municipal entity is established.*

At trial in this case, Anoka County HRA presented a single defense to the City's claims based on a narrow interpretation of the word "is" in the statute: that the statute eliminating its jurisdiction in municipalities with their own housing and redevelopment authorities only applied to those municipal authorities that existed *prior to* the inception of the Anoka County HRA on December 13, 1994. The relevant statutory text from Minn. Stat. § 383E.17, subd. 2, reads: "The county shall not exercise jurisdiction in any municipality where a municipal housing and redevelopment authority *is* established" (emphasis added). Anoka County HRA argued at trial that this language was ambiguous as to whether the county was prohibited from exercising jurisdiction where municipal housing and redevelopment authorities existed (1) at the time the statute was passed; or (2) before Anoka County HRA was established; or (3) at any time before or after passage of the statute. Anoka County HRA App. 26-27. Anoka County HRA submitted that testimony proved the state legislature never intended to address municipal housing and redevelopment authorities created after passage of the statute. Therefore, Anoka County HRA argued it could continue to collect taxes in the City even after the City opted to handle its own housing and redevelopment operations.

The District Court rejected that argument in every respect. In its decision, the District Court set forth findings of fact based on evidence adduced at trial, including historical evidence of how Minnesota law on localized housing and redevelopment authorities—the Anoka County HRA and City housing and redevelopment authority

among them—emerged. See Anoka County HRA Add. 02-05. The Court quoted Minn. Stat. § 645.08, “Canons of construction,” noting paragraph (2) of that statute: “(2) the singular includes the plural; and the plural, the singular; words of one gender include the other genders; **words used in the past or present tense include the future**” (emphasis in original). Id. at 05. As noted herein, this Court accepts the District Court’s findings of fact unless they are clearly erroneous. Fletcher, 589 N.W.2d at 101. Anoka County HRA presents no argument that the historical information is inaccurate or that appropriate canons of construction should not apply.

While this Court need not give deference to the District Court’s legal conclusions, they too are sound and should be affirmed. The outcome of this matter turns on the interpretation of a single sentence in Minn. Stat. § 383E.17, subd. 2: “The county shall not exercise jurisdiction in any municipality where a municipal housing and redevelopment authority is established.” Anoka County HRA argued that this must apply only to those municipal housing and redevelopment authorities in existence at that the time the law was passed. However, an application of Minn. Stat. § 645.08 (2), dictating that words used in the past or present tense also include the future, renders the operative language in Minn. Stat. § 383E.17, subd. 2 unambiguous: it includes municipal housing and redevelopment authorities *whenever* established. Thus, Anoka County HRA cannot exercise jurisdiction in the City and the District Court’s order should be affirmed.

- B. *Even if this Court considers Anoka County HRA's post-trial theories in this matter, the District Court's decision should be affirmed.*

The Minnesota Supreme Court has long held that a party cannot raise new theories and defenses for the first time in a motion to amend findings or for a new trial. See Allen v. Cent. Motors, Inc., 283 N.W. 490, 492 (Minn. 1939) (holding that the defendant could not raise a new defense that it did not raise at trial in its post-trial motion for amended findings) and People's State Bank of Cleveland v. Dickie, 254 N.W. 782, 783 (Minn. 1934) (holding that the plaintiff could not raise a new theory that it did not raise at trial in its post-trial motion for a new trial). This Court, too, has declined to consider new theories not first presented to the District Court. See Minn. Mut. Fire & Cas. Co. v. Retrum, 456 N.W.2d 719, 723 (Minn. Ct. App. 1990) (upholding District Court's denial of a motion for a new trial which raised a new theory for the first time).

All of Anoka County HRA's new arguments—raised for the first time in post-trial motions or even later—should be rejected by this Court on that basis alone. But in any event, the contentions are basic misreadings of an unambiguous statute. Moreover, Anoka County HRA's desired outcome would result in inappropriate and discriminatory double taxation in portions of Anoka County, including the City.

1. The statute's general reference to "jurisdiction" covers all Anoka County HRA operations, including its authority to tax.

Anoka County HRA conceded in its trial submissions that the concept of "jurisdiction" as set forth in the statute includes the power to tax. See Anoka County HRA App. 18 (contending that the ACHRA intended to exclude taxing only in those cities which an HRA *before the time of the ACHRA's creation*" (emphasis in original);

App. 26 (arguing that the “clear intent of the legislature was to restrict the ACHRA from taxing in those cities which had established an HRA before the ACHRA was established”). During trial, Anoka County HRA drew no distinction between its jurisdiction and its power to tax. Rather, its argument at trial focused entirely on *where* that power applied.

After trial, Anoka County HRA adopted an entirely new theory reversing its prior position, bifurcating the concept of “jurisdiction” in the statute, and suggesting that the statute bars Anoka County HRA from undertaking projects in a municipality with its own housing and redevelopment authority, but leaves its ability to tax those same municipalities intact. In fact, Anoka County HRA concluded following the trial, for the first time, that it is statutorily *required* to tax county-wide whether it can undertake projects in particular locations or not. Neither Anoka County HRA’s new, post-trial argument nor its epiphany regarding a broader stream of tax revenue is properly before this Court.

With its failed trial theory relegated to a few paragraphs at the end of its brief, Anoka County HRA shifts its focus and contends that this matter turns on the statutory meaning of the word “jurisdiction” in Minn. Stat. § 383E.17, subd. 2. Again, that section of the statute reads as follows:

Municipal authorities. This section shall not limit or restrict any existing housing and redevelopment authority or prevent a municipality from creating an authority. The county shall not exercise *jurisdiction* in any municipality where a municipal housing and redevelopment authority is established. If a municipal housing and redevelopment authority requests the Anoka County Housing and Redevelopment Authority to handle the housing duties of the municipal authority, the Anoka County Housing and

Redevelopment Authority shall act and have exclusive *jurisdiction* for housing in the municipality. A transfer of duties relating to housing shall not transfer any duties relating to redevelopment.

(emphasis added). Anoka County HRA now argues, without citation or support, that “the term ‘jurisdiction’ defines an HRA’s project authority, not its taxing power.” Anoka County HRA’s Brief, p. 12. Even if this Court decides to consider a new theory of the case not presented to the District Court, the argument has no merit.

As noted herein, when determining a statute’s plain meaning, courts construe words according to the provisions of the canons of construction and their “common and approved usage.” Minn. Stat. § 645.08. Dictionaries—both those for laymen and for lawyers—define “jurisdiction” in a manner contrary to Anoka County HRA’s contention that the concept of jurisdiction is somehow bifurcated in this instance. “Jurisdiction,” in general terms, means “authority or power in general,” “a sphere of authority,” “the territorial range of authority.” Webster’s New World College Dictionary (4th ed. 2004), p. 777. In legal terms, “jurisdiction” means “a government’s general power to exercise authority over all persons and things within its territory” or “a geographic area within which political or judicial authority may be exercised.” Black’s Law Dictionary (7th ed. 1999), p. 855. The Minnesota Supreme Court utilizes the concept of “jurisdiction” in the same way. See, e.g., Seehus v. Bor-Son Const., Inc., 783 N.W.2d 144, 147 (Minn. 2010) (“Subject-matter jurisdiction is the court’s authority to hear the type of dispute at issue and to grant the type of relief sought”); State v. Simion, 745 N.W.2d 830, 837 (Minn. 2008) (“Jurisdiction is the court’s power to hear and decide disputes”). Nothing in the

common and approved usage of the term would suggest that Anoka County HRA could be correct.

Anoka County HRA suggests that because the statute section's next sentence creates a subset of jurisdiction, i.e. "jurisdiction for housing," the statute must not have intended for "jurisdiction" to include the power to tax. See Anoka County HRA's Brief, pp. 12-13. On the contrary, by further defining "jurisdiction" in terms of one of its component parts ("jurisdiction *for housing*"), the statute plainly indicates that the term "jurisdiction" in general as utilized elsewhere in the statute is broader. In other words, it necessarily includes *more* than just "jurisdiction for housing." "Jurisdiction" circumscribes an entities' authoritative and territorial reach. The statute plainly states: "The county shall not exercise jurisdiction in any municipality where a municipal housing and redevelopment authority is established." Minn. Stat. § 383E.17, subd. 2. This language is precisely the express limitation needed under Minn. Stat. § 469.012, subd. 11 to curtail the Anoka County HRA's powers—in this case, its claim of power to tax county-wide, even in municipalities where it lacks the authority to undertake any housing-related projects.

The state legislature authorized another metro area county, Dakota County, to operate a "community development agency" ("CDA") with all of the powers and duties of a housing and redevelopment authority in Minn. Stat. § 383D.41. That statute contains nearly identical operative language in its subdivision 2 as is contained in the Anoka County HRA's parallel authorization, with a notable exception: the emphasized language as quoted herein ("The county shall not exercise jurisdiction in any municipality where a

municipal housing and redevelopment authority is established”) was *removed* from the Dakota County statute by legislative amendment in 1999. See Session Laws, 1999, c. 248, § 26. As a result, Dakota County CDA’s jurisdiction (including its power to tax county-wide) is not “expressly limited” in the way Anoka County HRA’s is. This change allowed the Dakota County CDA to maintain an appropriate statutory basis for its levying of taxes for its services in municipalities that have their own housing and redevelopment authorities. In short, Dakota County obtained a legislative fix. If the Anoka County HRA wants the same power to tax, it should seek the same change to its legislation.⁷

Anoka County HRA’s “jurisdiction” argument runs contrary to the plain language of the statute and should be dismissed. Moreover, if, as Anoka County HRA suggests, “jurisdiction” defines its “project authority” but not its “taxing power,” the result would be double taxation of county residents in municipalities with their own housing and redevelopment authorities. Those Anoka County residents who happen to reside in a municipality with its own housing and redevelopment authority would be taxed for those

⁷ While this Court need not go beyond the face of the statute to resolve this case, Anoka County HRA suggests that a change in the bill’s language prior to its adoption reflects a “legislative choice” that supports its theory. See Anoka County HRA Brief, pp. 10-11. It does not. Anoka County HRA’s argument relies on this Court’s willingness to attempt to divine legislative motives for an amendment that occurred in 1977. That process is dicey at best and underscores why courts should and do resolve statutory construction questions on the basis of the plain language of the statute as enacted whenever possible. See Mut. Serv. Cas. Ins. Co. v. League of Minn. Cities Ins. Trust, 659 N.W.2d 755, 760 (Minn. 2003) (noting that where statutory language is plain, courts have “neither the need nor the permission to engage in statutory interpretation”). Moreover, equally plausible alternative reasons for the language change abound. For example, legislators may have deleted the language to clearly eliminate the possibility of double taxation of Anoka County residents that Anoka County HRA is now proposing. See Anoka County HRA’s Add. 14.

same government services twice. Such double taxation would result in exactly the lack of tax uniformity⁸ that Anoka County HRA decries: Anoka County residents would be taxed at different levels (some once, some twice) for housing and redevelopment services.⁹ Anoka County HRA could not undertake a project in a municipality with its own housing and redevelopment authority, because it has no “project authority” in those cities, but under its theory it could—it now says it *must*—tax those residents anyway. While Anoka County HRA points to non-project-related activities it undertakes (e.g. county-wide housing studies and market analyses), it does not explain how and whether those activities would benefit a municipality in which no Anoka County HRA housing or redevelopment project could be undertaken. There simply is no basis to bifurcate the concept of jurisdiction in the statute in a manner that is not only contrary to the common and accepted usage of the term, but also in a way that would result in unfair discrepancies in taxes levied on Anoka County tax-payers.

⁸ Anoka County HRA references a Minnesota state constitutional principle that taxes must be assessed uniformly across the same class of subjects. See Anoka County HRA’s Brief, p. 9. While correct (that principle is embodied in the Minnesota constitution at art. 10, § 1), in this case that truism simply begs the question who that “class of subjects” contains. Here, individuals outside the jurisdictional reach of the Anoka County HRA (those outside the county and those inside the county but within municipalities operating their own housing and redevelopment authorities) are not within the class to whom uniform taxation must apply.

⁹ Notwithstanding the concern about uniform taxation it raises in its brief to this Court, Anoka County HRA acknowledged during the argument on its post-trial motion at the District Court that double taxation of City residents would result if Anoka County HRA prevailed in the case: “We have expressly, in our papers and repeatedly said, that Anoka [County HRA]’s ability to exercise taxing authority there can be *exercised alongside* [the City]’s, and has no affect on each other.” See R 33 (emphasis added).

HRA's argument should be rejected and the District Court decision in this matter should be affirmed.

2. The timing of when a municipal housing and redevelopment authority is established is irrelevant for purposes of Minn. Stat. § 383E.17, subd. 2.

In its brief to this Court, Anoka County HRA submits a new argument based on another attempt at statutory interpretation related to the timing of when a municipal HRA is established. See Anoka County HRA Brief, pp. 17-18. This time, Anoka County HRA utilizes two sentences from Minn. Stat. § 383E.17, subd. 2 in conjunction: "This section shall not limit or restrict any existing housing and redevelopment authority or prevent a municipality from creating an authority. The county shall not exercise jurisdiction in any municipality where a municipal housing and redevelopment authority is established."

Anoka County HRA submits that because the legislature did not replicate what it calls the "dual structure" of the first sentence (separately addressing existing authorities and those created later) in the second sentence, that somehow proves legislative intent to oust jurisdiction only in those municipalities that already had an active housing and redevelopment authority at the time the law was passed. See Anoka County HRA Brief, p. 17. The logic does not hold up to scrutiny. The first sentence reaffirms that the statute places no limits *on municipalities* to maintain or create their own housing and redevelopment authorities. The second sentence addresses a limitation *on the county* as to where it can exercise jurisdiction. Anoka County HRA attempts to equate the municipal apple of unfettered housing and redevelopment authorization with the county orange of jurisdictional limitations. Moreover, applying Minn. Stat. § 645.08 (2), the

legislature had no need to clutter the statute with additional words to make clear that “*is established*” means “*is established presently or to be established in the future.*” That the sentences are not parallel enough for Anoka County HRA’s liking is immaterial to their independent express meaning.

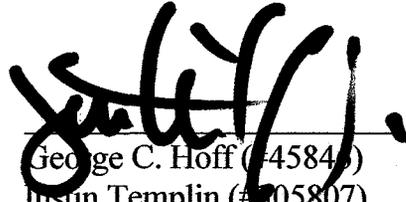
The statute’s meaning is unambiguous precisely as written. The District Court’s decision in this matter should be affirmed.

CONCLUSION

Anoka County HRA attempts to present in this Court arguments it did not present to the District Court, resulting in its appeal being untimely and procedurally barred. But even if this Court considers the merits of the dispute, Anoka County HRA’s claim must fail. Anoka County HRA argues that the scope of its taxing power is not expressly limited by statutory language that explicitly eliminates its jurisdiction in municipalities that establish their own housing and redevelopment authorities. But that statutory language—“[t]he county shall not exercise jurisdiction in any municipality where a municipal housing and redevelopment authority is established”—is unambiguous. “Jurisdiction” means an entity’s territorial and authoritative reach, including its power to levy taxes. Under accepted canons of construction, “is established” refers not just to the past or present tense, but to the future as well. Once the City took on the duty of operating its own municipal housing and redevelopment authority, Anoka County HRA could no longer operate in the City or collect taxes there.

The District Court decision in this matter should be affirmed.

Dated: Nov 19 2010

A handwritten signature in black ink, appearing to read "George C. Hoff", written over a horizontal line.

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**CERTIFICATE OF COMPLIANCE
PURSUANT TO MINN. R. CIV. APP. P. 132.01, SUBD. 3(a)**

This brief complies with the type-volume limitation of Minn. R. Civ. App. P. 132.01, subd. 3(a). It contains 6,819 words, excluding those parts of the brief exempted by Minn. R. Civ. App. P. 132.01, subd. 3. This brief has been prepared in a proportionally spaced typeface using Word 97 in Times New Roman, 13-point font.

Dated: Nov 19 2010



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