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NO. A11-0067

State of Minnesota
In Supreme Court

City of Oak Park Heights,

Petitioner,

v.

County of Washington,

Respondent.

BRIEF, ADDENDUM, AND APPENDIX OF PETITIONER CITY OF OAK PARK HEIGHTS

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STATEMENT OF THE LEGAL ISSUES

I. Whether the city council's October 13, 2009 decision to deny a refund of sewer and water charges is a quasi-judicial decision reviewable by writ of certiorari alone?

Lower court proceedings: The issue was raised before the district court on a motion for summary judgment. *A.3.* The district court ruled that because the City was operating in its proprietary capacity, the decision was not a quasi-judicial decision, and, therefore not reviewable by writ of certiorari. *A.7.* An interlocutory appeal was filed. *A.1.* The decision of the lower court was affirmed on appeal by the Court of Appeals in a published decision. *A.62.*

Apposite Authority:
Tischer v. Hous. & Redevelopment Auth., 693 N.W.2d 426 (Minn. 2005)
Handicraft Block P'Ship v. City of Minneapolis, 611 N.W.2d 16 (Minn. 2000)
Youngstown Mines Corp. v. Prout, 266 Minn. 450, 124 N.W.2d 328 (1963)
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Minn. Const. art. 3, § 1
Minn. Stat. §§ 412.221, 444.075, 466.02

STATEMENT OF CASE AND FACTS

Brief summary of district court proceedings

On August 27, 2010, the Honorable John C. Hoffman, judge of Washington County District Court, Tenth Judicial District, heard cross-motions for summary judgment filed by the City of Oak Park Heights ("City") and Washington County ("County"). *A.3.* The City sought dismissal of the case on the basis that the County's suit challenged an October 13, 2009 decision of the City Council of Oak Park Heights, the decision was quasi-judicial, and, that as a result, the district court lacked subject matter jurisdiction. *A.6.* The City's motion was denied, the issue was appealed, and that is the issue before this Court. *A.1, .7, Pet. for Review p. 2.*

Summary of facts giving rise to suit

The City provides sewer and water services to the Washington County Law Enforcement Center and charges the County for the services used as determined by meter readings. *A.3-.7; A.27-32.* In 2009, the County submitted an appeal to the City, appealing sewer and water charges invoiced to the County from 2004 through 2008. *A.18.* The County claimed that it had been erroneously overcharged by the City and was entitled to a refund of approximately $114,700.00. *A.18.*

A written City policy provided that persons wishing to challenge their sewer and water bill could do so by appealing the bill to the City's Finance Director. *A.54.* The County submitted an appeal and supporting evidence to the City Finance Director, who after considering the evidence, denied the same. *A.54.* The County then further appealed to the city council pursuant to the City's written appeal process. *A.11-13.*

The city council heard the matter on September 8, 2009, receiving argument and evidence relative to the County's appeal. *A.14-15.* The matter was continued for further review and submissions. *A.15-17.* Consideration of the appeal at a public meeting was reconvened on October 13, 2009. *A.17.* Following consideration of the County's appeal, the city council adopted a resolution, denying the appeal and setting forth numerous findings and conclusions supporting its denial based upon the evidence before it. *A.18-26.* Pursuant to the City's written policy, the city council's October 13, 2009 decision was final and conclusive on the matter. *A.54.*

Lawsuit in Washington County District Court

On or about December 28, 2009, the County commenced suit in Washington County District Court challenging the city council's October 13, 2009 decision on the theory of unjust enrichment. *A.41-53.* Cross-Motions for summary judgment were filed and considered. *A.7.* Among other defenses, the City argued that it was entitled to dismissal of the Complaint because the October 13, 2009 city council decision was a quasi-judicial decision, reviewable only by writ of certiorari to the Minnesota Court of Appeals pursuant to Minn. Stat. § 606.01 and the district court, therefore, lacked subject matter jurisdiction. *A.6.*

By Order dated November 4, 2010, District Court Judge John Hoffman denied both motions for summary judgment. *A.3-7.* The County's motion was denied based upon an issue of fact. *Id.* The City's motion was denied based upon a determination of law with the district court concluding that it had jurisdiction over the County's claim. *Id.* Specifically, the court stated in pertinent part:

> The City is acting in the capacity of a private corporation, not a governmental entity. Its actions are not quasi-judicial, and therefore jurisdiction of this matter lies properly with the Court.

A.7.

Appeal to the Minnesota Court of Appeals

The City then appealed that portion of the district court's order denying summary judgment dismissal of the Complaint on the basis of subject matter jurisdiction. *A.1-2.* No other issues were raised on appeal. *Id.* By published decision dated July 18, 2011, the

Court of Appeals affirmed the lower court. *A.55-.62.* The Court of Appeals held in pertinent part:

> Because the city's decision to deny the county a refund was proprietary, not governmental, conduct, the district court did not err in concluding that it has subject-matter jurisdiction over the county's unjust-enrichment claim.

A.62, County of Washington v. City of Oak Park Heights, 802 N.W.2d 767, ___ (Minn. App. 2011). Following a petition for review and opposition, this Court granted review. *A. 63-64.*

ARGUMENT

I. Petitioner is entitled to reversal of both lower court decisions in this matter because the test for determining whether a city council's decision is quasi-judicial reviewable by writ of certiorari alone is not determined by whether the city council was acting in its proprietary capacity, nor should it be determined by such criteria.

It is undisputed that this lawsuit challenges the October 13, 2009 decision of the City Council of the City of Oak Park Heights. The question before this Court is what is the proper jurisdiction and method for judicial review of that decision—review in the district court, or, review by writ of certiorari to the Court of Appeals. This Court reviews questions of jurisdiction de novo without deference to the lower courts. *Tischer v. Hous. & Redev. Auth.,* 693 N.W.2d 426, 428 (Minn. 2005).

Historical treatment of decisions of legislative bodies, including city councils

As a general rule, district courts are courts of general jurisdiction and therefore are presumed to have jurisdiction over all matters. *Tischer,* 693 N.W.2d at 429. However, some exception is made to this general rule of jurisdiction in cases involving decisions rendered by legislative bodies, such as decisions made by a city council. *See Handicraft*

Block P'Ship v. City of Minneapolis, 611 N.W.2d 16, 20 (Minn. 2000); *Dietz v. Dodge County,* 487 N.W.2d 237, 239 n.3 (Minn. 1992)(providing a summary of the historical holdings of this Court in this area of the law).

In cases where the decision of a city council is challenged, review by a district court contemplates de novo review of a decision rendered by the city council. *See Tischer,* 693 N.W.2d at 429. The separation of powers clause in the constitution, however, requires the judiciary to exercise its powers in a manner so as to avoid usurpation of the powers exercised by city councils. *See id., see also* Minn. Const. art. 3, § 1. Because of the confines of the separation of powers doctrine, the judiciary cannot supplant a decision of a city council with its own findings. *See State ex. rel. Ging v. Board of Education*, 213 Minn. 550, 571, 7 N.W.2d 544 (1942), *overruled in part on other grounds, Foesch v. Indep. Sch. Dist.*, 300 Minn. 478, 485, 223 N.W.2d 371 (1974) . Rather, the judiciary is obligated to defer to the findings of the city council. *See id.*

Because de novo review of a city council's decision would permit a court to put itself in the place of the legislative body and supplant the findings made by the body with those made by the court, such review runs afoul of the separation of powers doctrine. *See id.* Therefore, this Court has concluded on numerous occasions that certiorari review of a city council's decision, which contemplates deferential review of the challenged decision, is the proper method of review. *See id.*; *accord Tischer,* 693 N.W.2d at 429; *Handicraft*, 611 N.W.2d at 20; *Dietz,* 487 N.W.2d at 239. Furthermore, this Court has noted that certiorari review "protects public resources because it provides an efficient and economical form of judicial review." *Tischer,* 693·N.W.2d at 429.

Not all decisions of city council are subject to certiorari review

It appears that as early as 1884, this Court made the decision to adopt the majority view that only certain decisions of a legislative body are subject to certiorari review—quasi-judicial decisions are, but decisions that are merely legislative or ministerial, are not. *In re Wilson,* 32 Minn. 145, 150 (1884). The stated reason for this distinction was, in pertinent part:

> To hold that any mere legislative act of a municipal corporation could be thus directly reviewed on certiorari would not only be a radical departure from all precedent, but extremely onerous upon the courts, and vexatious to municipal officers.

Id. at 152. This Court, 121 years later, expounded on the reasoning behind the distinction of allowing certiorari review of quasi-judicial decisions, as opposed to legislative decisions in *Dead Lake Ass'n v. Otter Tail County*, 695 N.W.2d 129, 134 (Minn. 2005).

Review of quasi-judicial decisions involves review of a binding decision that fixes the rights of parties. *Id.*; *accord Tischer,* 693 N.W.2d at 429. The facts to be reviewed are summarized in a record that was developed before legislative body; and, as a result appellate review, as opposed to the lengthy district court process involving fact discovery, is the most expedient and proper method of review. *Dead Lake Ass'n*, 695 N.W.2d at 134; *accord Tischer,* 693 N.W.2d at 429. Legislative decisions, on the other hand, are "usually reflective of some public policy relating to matters of a permanent or general character, [are] not normally restricted to identifiable persons or groups, and [are] usually prospective in nature." 17 McQuillin Mun. Corp. § 49:72 (3rd Ed. and 2011 Supplement), *see also Dead Lake Ass'n,* 695 N.W.2d at 135 (certiorari review of

legislative decision was not proper because other issues had to be resolved first before decision could be rendered on question presented, thus making the matter better suited for district court review by declaratory judgment action); *Honn v. City of Coon Rapids,* 313 N.W.2d 409, 416 (Minn. 1981)(legislative acts of a city affect the rights of the public generally).

Test for parsing out quasi-judicial decisions

The rule of this Court is that absent a statute vesting district court jurisdiction, quasi-judicial decisions are reviewed by writ of certiorari. *Tischer,* 693 N.W.2d at 428. It is consistent with the nationwide majority to determine subject matter jurisdiction over decisions of a city council by reference to only this distinction—quasi-judicial decisions are reviewable by certiorari; legislative decisions are not. 17 McQuillin Mun. Corp. §§ 49:71 and 72 (3rd Ed. and 2011 Supplement). In fact, this Court has issued a trilogy of decisions that sets forth the test for determining whether a decision is quasi-judicial as opposed to legislative in nature. *Handicraft,* 611 N.W.2d 16 at 20; *Minnesota Center for Environmental Advocacy v. Metropolitan Council,* 587 N.W.2d 838 (Minn. 1999), and *Meath v. Harmful Substance Compensation Board,* 550 N.W.2d 275 (Minn. 1996). The test being that a quasi-judicial decision will be found where there is:

> (1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim.

Handicraft, 611 N.W.2d at 20 *(*quotation and citation omitted*).* The test adopted by this Court in each of the foregoing cases is the same as that adopted by the nationwide majority. 17 McQuillin Mun. Corp. § 49:72.

This Court has never evaluated subject matter jurisdiction on the basis of whether the decision at issue was rendered while the city council was acting in its "proprietary capacity." Nor does it appear that such factor has ever served to influence the decisions of courts nationwide when determining questions of jurisdiction. *See generally*, 17 McQuillin Mun. Corp. § 49:72.

Rise of the proprietary capacity doctrine

The powers that a municipality can exercise are limited to those granted by statute and those incident to its operation. *See e.g.* Minn. Stat. ch. 412 (setting forth some of the powers that may be exercised by municipalities); *Oakman v. City of Eveleth*, 163 Minn. 100, 203 N.W. 514 (Minn. 1925). As set forth above, this Court has summarized the acts of city councils as being quasi-judicial, legislative, administrative, and/or ministerial. *See e.g. Oakman,* 203 N.W. at 517; *In re Wilson,* 32 Minn. at 150. Occasionally, this Court has referred to what amounts to yet another power, the power to act in a so-called proprietary capacity which is claimed to arise in those circumstances where the municipality acts for a pecuniary profit as opposed to for the common good. *See e.g. Heitman v. Lake City*, 225 Minn. 117, 120 (1947).

The proprietary capacity doctrine appears to have been first discussed by this Court in 1891. *St. Paul v. Chicago, M. & S.P.R. Co.*, 45 Minn. 387, 396 (1891). The proprietary capacity doctrine, while recognized by this Court in some areas of the law, is not recognized in others. The doctrine has been used, for example, to determine whether assessments by a governmental entity should be invalidated, whether governmental entities should be held liable in contract, and whether governmental entities should be

liable for costs and disbursements to a prevailing party. *Lund v. Comm'r of Pub. Safety*, 783 N.W.2d 142, 143 (Minn. 2010)(costs and disbursements); *Rose Realty, Inc. v. Roseville*, 272 Minn. 130, 131 (Minn. 1965)(assessments); *City of Crookston v. Crookston Water Works, P. & L. Co.*, 150 Minn. 347, 185 N.W. 380 (1921)(contract). Yet, this Court has specifically rejected the proprietary capacity doctrine in other areas of law such as adverse possession and equitable estoppel. *See e.g. Fischer v. Sauk Rapids,* 325 N.W.2d 816, 819 (Minn. 1982); *Mesaba Aviation Div. v. County of Itasca*, 258 N.W.2d 877, 880 (Minn. 1977).

Courts nationwide, including this Court, historically recognized the proprietary capacity doctrine primarily in two contexts (1) in determining whether to grant sovereign immunity, and (2) in determining whether to hold governmental entities liable for breaches of contract. *See e.g. Susla v. State,* 311 Minn. 166, 171, 247 N.W.2d 907 (1976)(sovereign immunity); *City of Crookston*, 150 Minn. at 353 (contract); *Hillerby v. Town of Colchester,* 706 A.2d 446 (Vt. 1997)(immunity); *Oyler v. State*, 618 P.2d 1042, 1053 (Wyo. 1980)(immunity); *see generally,* 18 McQuillin Mun. Corp. § 53.02.10 (3rd ed.).

Fall of the proprietary capacity doctrine

It is in these same areas of law (immunity and contract) that the fall of the doctrine may also be observed. *See e.g. Imlay v. Lake Crystal*, 453 N.W.2d 326, 330 (Minn. 1990)(rejecting invitation to revive the proprietary capacity doctrine for purposes of evading statutory caps on liability); *Spanel v. Moundsview School District No. 621*, 264 Minn. 279, 285, 118 N.W.2d 795 (1962)(abandoning the use of the proprietary capacity

doctrine for purposes of determining tort liability of governmental entities); *see generally* 18 McQuillin Mun. Corp. §§ 53.02.10, 53.05, 53.23, 53.24, 53.25, 53.26, 53.27 (3rd ed). The governmental versus proprietary capacity distinction has been described as "elusive" because of the often "dual nature" of local governments—part public or governmental and part "corporate" or "proprietary." 18 McQuillin Mun. Corp. §§ 53.02.10 n. 17, 53.25 (citing to cases nationwide); *see also Mountain States Te. & Tel. Co. v. Public Utilities Com.,* 763 P.2d 1020, 1026 (Col. 1988) (rejecting proprietary capacity doctrine as "analytically unsound"); *Hudson v. Town of E. Montpelier,* 638 A.2d 561 n. 3 (Vt. 1993)(summarizing the history of the proprietary capacity doctrine, noting that it is one of the minority states that continues to use the doctrine, and expressing dissatisfaction with its own decision in that regard because of the "arbitrariness" of the doctrine).

To be clear, there is no bright-line test in Minnesota case law or elsewhere that establishes whether a governmental entity is acting in its proprietary capacity. *See generally,* 18 McQuillin Mun. Corp. § 53.23 ("There is a wide divergence in the decisions as to what functions are governmental or public and what are private or corporate, and functions held to be governmental in some jurisdictions are held to be corporate in others."). Determining whether a governmental entity is acting in a proprietary capacity is a fact-intensive test into whether, under the totality of the circumstances, the entity at issue is operating in manner so as to secure a profit, to compete with private business, and/or to invade an area typically occupied by private corporations. *Stein v. Regent of University of Minn.*, 282 N.W.2d 552, 555 (Minn. 1979); *see also Hudson,* 638 A.2d at n. 3 (discussing test and varying results in Vermont); *Galveston Indep. Sch. Dist. v. Clear Lake Rehab. Hosp. LLC,* 324 S.W.3d 802,

809 (Tex. App. 2010)(discussing varying results under Texas case law, a minority jurisdiction continuing to utilize the proprietary capacity doctrine).

Because an element of the test is whether the governmental operation at issue runs at a profit, the results can vary by profitability of an operation without any correlation to the nature of the operation challenged. For example, a hospital operated by one governmental entity can be declared to be operating in its governmental capacity because it provides services primarily to the indigent and without substantive profit; where as, another might be declared to be operating in its proprietary capacity because it provides services to the public at large and consistently operates at profit. *See Stein,* 282 N.W.2d at 555-557 (discussing the results in several different cases in each of which the court was called to determine whether a hospital was acting in its proprietary capacity versus its governmental capacity).

While the proprietary capacity doctrine may have been useful in alleviating the harsh results of immunity and/or a governmental entity's failure to honor its contracts, the quagmire resulting from the application of the proprietary capacity doctrine has caused courts, including this Court, to abandon the use of the doctrine. *See Spanel,* 264 Minn. at 284-285 (bringing an end to sovereign immunity and any need for any analysis into the proprietary nature of the governmental conduct at issue); *Ketterer v. Ind. Sch. Dist.,* 248 Minn. 212, 221 (Minn. 1956)(abandoning analysis of whether contract was for governmental purpose and simply holding that governmental entity could be held liable for breach of contract); *see generally* 18 McQuillin Mun. Corp. § 53.25. Moreover, the State of Minnesota's legislature further brought an end to any need for the proprietary

capacity analysis in these two primary areas of law by adopting statutes addressing the liability of governmental entities in the case of contract and/or tort liability. *See* Minn. Stat. § 412.221, subd. 2 (power to contract), 466.02 (liability for torts except for specified immunities); *see also Imlay,* 453 N.W.2 at 330 (need for proprietary capacity analysis was brought to end by adoption of tort and immunity statutes), and *Ketterer,* 248 Minn. at 221 (the power to contract renders a governmental entity sueable for breach of contract without regard to proprietary nature).

The proprietary capacity doctrine had not been used in Minnesota to determine jurisdiction.

To the extent that the proprietary capacity doctrine was recognized, and continues to be recognized, in Minnesota, the mere fact that it was, or may be, recognized in one area of the law does not serve as precedential value for its application, or necessitate its adoption, in other areas of the law. *See Lund,* 783 N.W.2d at 143 (refusing to rely on prior Supreme Court decision regarding liability for costs and disbursements that was rendered in area of torts when the issue before the court was liability for costs and disbursements in the context of implied consent).

Even though this Court had not adopted the proprietary capacity doctrine for purposes of determining jurisdiction, the Court of Appeals in this case did. In doing so, the Court of Appeals created a test not recognized by this Court. Furthermore, it expanded the use of a widely rejected doctrine; a doctrine this Court had been given the opportunity to adopt in the context of jurisdiction, but declined to do.

To the extent that this Court has had the opportunity to recognize a proprietary capacity doctrine in the area of jurisdiction, it has chosen not to do so. *See e.g. Tischer v. HRA of Cambridge,* 693 N.W.2d 426 (Minn. 2005 (rejecting argument that certiorari review was improper because entity should be treated like a private corporation); *Youngstown Mines Corp. v. Prout*, 266 Minn. 450, 124 N.W.2d 328 (1963)(rejecting argument that certiorari review was improper because the underlying conduct was proprietary); *Frasch v. City of New Ulm,* 130 Minn. 41, 153 N.W. 121 (1915)(rejecting argument that party did not have to comply with jurisdictional prerequisites because governmental entity was acting in its proprietary capacity). The Court of Appeals, however, ignored that case law.

The case of the greatest instructional value to this case is *Youngstown.* In *Youngstown*, the plaintiff entered into a lease with the State, which allowed the plaintiff to extract minerals from land in exchange for the payment of royalties to the State. *Id.*, 266 Minn. at 454-455. The plaintiff claimed that it was entitled to a refund of certain royalties paid to the State. *Id.* A statute permitted the plaintiff to file a claim for a refund to the Minnesota Commissioner of Conservation, which it did. *Id.* The request for a refund was denied by the commissioner. *Id.* The plaintiff then filed a writ of certiorari. *Id.*

The State challenged whether the matter should be heard via writ of certiorari, arguing that the decision rendered by the commissioner should not be held to be quasi-judicial. *Youngstown*, 266 Minn. at 455, 484-485. This Court found that the underlying conduct which gave rise to the request for a refund (leasing property to a private entity in

exchange for the payment of royalties) was proprietary conduct by the State.[1] *Id.*, 266 Minn. at 473. Given the facts of the *Youngstown* case, the jurisdictional issue presented to this Court at that time, and the fact that the proprietary capacity doctrine was already recognized in by this Court at that time, this Court could have adopted the proprietary capacity doctrine in the context of jurisdiction had it wanted to. Nevertheless, this Court found that the commissioner's decision to deny the request for a refund was quasi-judicial because the commissioner determined the plaintiff's right to a refund based upon the record submitted to him. *Id.*, 266 Minn. at 484-485. The jurisdictional decision was made without relation to whether the government was acting in its proprietary capacity.

Policy and law do not favor use of the proprietary capacity doctrine to determine jurisdiction.

As set forth above, courts nationwide, including this Court, abandoned the proprietary exception in most, if not all, contexts because the doctrine was analytically unsound. Contemplating jurisdiction and judicial review of the decisions of this state's 854 municipalities further highlights the impropriety of adopting the proprietary capacity doctrine.

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[1] To the extent that the provision of sewer and water services to the County is carried out in the City's proprietary capacity, in this case, as in *Youngstown*, such proprietary conduct serves only as the underlying conduct that gave rise to the parties' initial dispute. It does not determine the question of jurisdiction which instead, as in *Youngstown*, is determined by reference only to the decision challenged—the decision to deny the refund. Because there is no logical distinction between the city council decision to deny the refund in this case, and the decision of the commissioner to deny the refund in the *Youngstown* case, the same result is mandated in this case. As in *Youngstown*, the city council decision to deny the refund followed the submission of evidence and was a binding determination of rights, thus, rendering the decision quasi-judicial, reviewable by writ of certiorari alone.

If the provision of sewer and water services is a proprietary act, does this now mean that those few municipal employees working in the sewer and water department come within the proprietary exception such that the termination of their employment is not limited to certiorari review like their counterparts? *Cf. Willis v. County of Sherburne*, 555 N.W.2d 277, 282 (Minn. 1996); *Dokmo v. Independent School District No. 11*, 459 N.W.2d 671, 676 (Minn. 1990). Or, does this mean that when the City is addressing proprietary issues it may, like private business, ignore certain statutory mandates that apply to governmental entities such as the Data Practices Act and Open Meeting Law?

The law does not favor arbitrary results or the use of doctrines that have arbitrary results. *See Spanel*, 264 Minn. at 285 (expressing some dismay over the use of proprietary capacity doctrine in order to avoid the application of sovereign immunity); *Stein*, 282 N.W.2d at 555-556 (same). Therefore, it is contrary to public policy and this Court's own precedent to revive and expand use of the doctrine.

There is no compelling reason to revive and expand the doctrine

The question in this case then becomes whether the Court of Appeals' decision in this matter is supported by a compelling reason to call for the adoption and expansion of the proprietary capacity doctrine into the area of jurisdiction. Although it was argued to the Court of Appeals that it should not adopt the proprietary capacity doctrine in the context of jurisdiction, the Court adopted the doctrine without offering any compelling reason for its adoption. Rather, the Court of Appeals simply stated that the Supreme Court's precedent in the area of jurisdiction lacked instructional value because it was "premised on something absent here: decision-making in the context of governmental

conduct." *A.59, County of Washington v. City of Oak Park Heights,* 802 N.W.2d at _____.

Although the Court of Appeals did not advance any reason for adopting the doctrine in the context of jurisdiction, both the district court and Washington County did. The district court in this matter did not view itself as expanding the doctrine of proprietary capacity into a new area of law, but rather merely cited to a contract case and a tort case for the proposition that the proprietary capacity doctrine should also apply in cases resolving jurisdiction.[2] However, the district court gave some insight into its decision to apply the proprietary capacity doctrine. In footnote 7 of the district order, the district court suggested that requiring review by writ of certiorari in this case would be improper because it would be unnecessarily costly to claimants to proceed as such. *A.7.*

To be clear, Washington County has never argued whether it is good policy to adopt the proprietary capacity doctrine in the context of jurisdiction. Rather the County, in order to avoid having its claim dismissed, argued before the Court of Appeals, in support of the district court's conclusions at footnote 7 of the district court order and further argued that requiring certiorari review of the decision here would deprive the County of a remedy. *Resp. Brief p. 17.*

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[2] At paragraph 11 of its Order, the district court cited to two Minnesota Supreme Court cases, *City of Crookston,* 150 Minn. at 155 (contract) and *Keever v. City of Mankato,* 113 Minn. 55, 29 N.W. 158 (1910)(tort). Because the courts in *Keever* and *Crookston* did not address issues of jurisdiction and whether a challenged municipal decision was a quasi-judicial decision, they are not instructive, nor precedential, in this case. *Lund,* 783 N.W.2d at 143 (case law that does not address the issue at hand has no instructive or precedential value). Accordingly, the district court erroneously relied upon those cases in reaching its decision here.

This Court has already concluded that certiorari review is neither unnecessarily costly, nor does it deprive litigants of a remedy. In *Willis*, this Court specifically rejected the argument that limiting review to writ of certiorari deprived the claimant of a remedy. *Id.,* 555 N.W.2d at 282 fn. 3. Review by writ of certiorari does not deprive a claimant of a remedy, it merely "specifies the appropriate remedy". *Id.* For example, as it pertains to this case, certiorari review would not have prevented the County from securing the demanded refund, if it prevailed on review.

Moreover, this Court has specifically held that proceeding by way of writ of certiorari is a more expeditious and economical manner of proceeding. *Tischer,* 693 N.W.2d at 429. Because review is limited to the record developed before the city council, the costly expenses of discovery and trial are avoided which is in keeping with public policy to protect public resources. *Id.*; *Dietz,* 487 N.W.2d at 240 (certiorari review affords direct review by the Court of Appeals thus ensuring "expedient review of a fresh record").

In sum, to the extent that any reason for the adoption of the proprietary capacity doctrine in the context of jurisdiction was advanced below, those reasons are without merit. Absent a compelling reason to adopt and expand the proprietary capacity doctrine into the area of jurisdiction, this Court should reverse the decision of the Court of Appeals.

Applying the Handicraft test here, it is clear that the city council's October 13, 2009 decision was quasi-judicial.

Here, there is no dispute that the City has been granted the specific authority to provide sewer and water services. Minn. Stat. §§ 412.321, 444.075. Further, there is no dispute that the City's ordinance and written appeal policy provided a process for seeking

a refund, that the County proceeded through the designated process, that the city council took in evidence and argument, and that the city council issued written findings and conclusions. Finally, there is no dispute that there is no statute providing for district court review of a municipal decision to deny an appeal seeking refund of sewer and water charges. *See* Minn. Stat. Ch. 444, 412, 465, 471 (enumerating municipal powers, including the provision of sewer and water services and ability to charge for the same, but failing to provide any statutory authority for district court review and jurisdiction over a billing dispute).

Based upon all of the foregoing undisputed facts, the City has consistently argued that the October 13, 2009 city council decision was a quasi-judicial decision, as determined by the *Handicraft* test, reviewable by writ of certiorari alone. Washington County has never disputed that application of the *Handicraft* test to the facts of this case dictates that the October 13, 2009 decision by the city council is quasi-judicial; nor can it.

Investigation into disputed claim and weighing of evidentiary facts

"Quasi-judicial proceedings involve determining facts for the purpose of reaching a legal conclusion in resolution of adversarial claims." *Handicraft*, 611 N.W.2d at 20 (quotations and citations omitted). There is no dispute in this case that there was a dispute between the City and the County regarding the proper amount of sewer and water fees invoiced to the County.

In reaching its October 13, 2009 decision on the dispute, the city council took in facts and evidence on the issue. By letter dated August 26, 2009 to the city council, the County "submit[ed] [an] appeal of the administrative determination to deny its request for

a refund of overcharges for water and sewer use at the Washington County Law Enforcement Center (LEC) and is making a claim for the overcharges." *A.11.*

In support of its appeal, the County stated, "[i]n addition to the complete detailed documentation previously provided to the city staff, the county offers the following exhibits to summarize the justification for the refund claim." *Id.* The County then went on in its letter, making argument with citation to evidence and law as to why the County should be refunded for amounts it claims to have been overcharged. *A. 11-13.*

The city council, much like an administrative law judge, took in the evidence from both the City and the County, entertained a presentation by the County, and entertained a presentation by city staff on the issue of whether there had been overcharges. *A.14-15.* At the heart of the issue, were specific property issues—for example, whether the water meters serving the LEC were properly functioning, whether the amount of water used by the County was properly calculated, whether there were errors in reporting, whether the County actually used the services provided to it, and whether the County timely made its refund claim. *A.18-.26.*

The County's appeal was taken under advisement in order to allow for further consideration, during which time the County submitted further argument in favor of its position. *A. 16.* A second meeting was held, following which the city council issued a Resolution denying the County's appeal. *A.17-26.* The Resolution issued by the city council in this matter strongly resembles an order issued by an Administrative Law Judge following a contested case hearing - it summarizes the evidence presented to it, makes findings of fact, weighs the evidence, assigns credibility, and reaches conclusions based

upon review and consideration of the weight of the credible evidence. Therefore, under these circumstances, the October 13, 2009 decision of the city council clearly reflected an investigation into a disputed claim and the weighing of evidentiary facts. *See Handicraft,* 611 N.W.2d at 20 (finding a quasi-judicial decision where the challenged decision related to a specific piece of property and criteria unique to the property); *Dokmo v*, 459 N.W.2d at 676 (finding quasi-judicial decision where, although there was no formal hearing, evidence was considered and a record was prepared regarding a particular employee's employment); *Youngstown*, 266 Minn. at 485 (finding that decision to deny request for refund was quasi-judicial where there was a process to appeal amounts invoiced). Accordingly, this factor weighs in favor of holding that the October 13, 2009 city council decision was a quasi-judicial decision.

Application of those facts to a prescribed standard

The city council had a clear, specific, and definite standard that it applied in this case. By ordinance, persons who receive sewer and water services from the City are obligated to pay for those services. *A.27, .31-33, .54.* The question before the city council on October 13, 2009 was whether the evidence, when all things were taken into consideration, allowed for reasonable cause to believe that the County had used sewer and water services such that the County was properly charged approximately $114,000.00. *A.25.*

The reasonable cause standard is a standard recognized and used in judicial contexts. *See e.g.* Minn. Stat. § 245A.07, subd 2a (reasonable cause is standard used in cases of alleged daycare maltreatment); *Wall v. Fairview Hosp. & Healthcare Servs.,* 584

N.W.2d 395, 406 (Minn. 1998)(holding that "reasonable cause" standard in licensing context was similar in nature to "probable cause" standard in criminal context). Because the city council applied a specific standard for determining the usage and payment of sewer and water services, and that standard was applied to specific facts related to a specific piece of property, this factor weighs in favor of finding a quasi-judicial decision. *See Handicraft*, 611 N.W.2d at 22-23 (holding that decision was quasi-judicial where the city relied upon specific guidelines in determining the land use status of a particular property).

Binding decision regarding the disputed claim

A decision is final where it vests both rights and responsibilities in the challenging party. *Handicraft*, 611 N.W.2d at 22-23. By terms of the City's written policy, the city council's October 13, 2009 decision with regard to the County's appeal was final and binding. *A.54.* Absent judicial challenge of the city council's October 13, 2009 decision, the County is obligated to pay the City for sewer and water services used between 2004 and 2008 and it is not entitled to a refund. *A.27-40.* Evidence of the finality of the decision is further confirmed by the fact that after the County's appeal was denied, the County filed suit, seeking a refund. Accordingly, this factor weighs in favor of finding the City's decision to be quasi-judicial in nature.

All of the factors weigh in favor of finding quasi-judicial decision

Taking all of the foregoing factors into consideration, it is clear that the city council's October 13, 2009 decision was quasi-judicial in nature. There is no statutory authority specifically providing for district court review of a city council's decision with

regard to water and sewer charges and requests for refunds. Absent specific statutory authority providing for district court review and remedy, judicial review of the city council's October 13, 2009 quasi-judicial decision should have been invoked by writ of certiorari. *Handicraft,* 611 N.W.2d at 624. Therefore, the district court and the Court of Appeals erred when they both concluded that this matter could proceed by a method other than certiorari review.

If this Court affirms the use of the proprietary capacity doctrine, then a remand with instructions is merited.

For all of the reasons set forth above, this Court should not adopt the Court of Appeals jurisdictional test which now requires courts to determine whether a city council was acting in its proprietary capacity at the time that it rendered a challenged decision. However, if this Court chooses to adopt such a test, then this Court should set forth the test that courts should employ for purposes of determining when a city council is acting in its proprietary capacity. For example, should the test set forth in *Stein* serve as the proprietary capacity test or does this Court desire some other test?

Furthermore, this Court should then remand the matter to the district court to allow the parties to conduct the extensive fact discovery that would be necessary for such analysis. *See e.g. Stein,* 282 N.W.2d at 555-557 (reviewing the many facts relevant to whether a hospital was operating in a proprietary capacity). Following discovery, the parties should then be entitled to have the matter heard by way of motion again under the new pronouncements of this Court, because the ultimate issue challenged still remains a

jurisdictional issue which is a question of law, decided by the court and is immediately appealable.

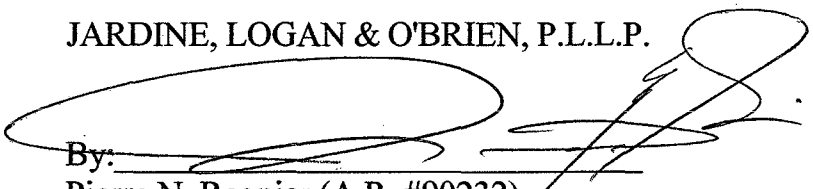
CONCLUSION

The Court of Appeal decision, which held that a decision of city council rendered while the city council was operating in its proprietary capacity, is not a quasi-judicial decision, must be reversed. The statement of law represents the expansion of an analytically unsound doctrine that has been generally rejected by this Court and the nationwide majority.

Furthermore, as it pertains to these specific parties, the correct application of the law calls for the application of the *Handicraft* test and reversal under that test because it is undisputed that under *Handicraft*, the October 13, 2009 decision of the City of Oak Park Heights' City Council was quasi-judicial.

DATED: 10/27/11

JARDINE, LOGAN & O'BRIEN, P.L.L.P.



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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this Brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a Brief produced with a proportional font. The length of the Brief is 6,418 words. This Brief was prepared using Microsoft Word 2003.

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