

Nos. A07-1763, A07-1764, A07-1765, A07-1766 and A07-1767

State of Minnesota  
**In Court of Appeals**

The State of Minnesota Department of Revenue and  
Ward Einess, in his capacity as the Commissioner of  
the Department of Revenue,

*Appellant,*

vs.

City of St. Paul,

*Respondent.*

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**RESPONDENT'S BRIEF AND APPENDIX, VOLUME I**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iii

INDEX TO THE APPENDIX ..... v

LEGAL ISSUES ..... 1

STATEMENT OF THE CASE AND FACTS ..... 1

    I.    TAX FORFEITED LAND PROCESS ..... 2

    II.   GRANT OF USE DEEDS ..... 3

        A.    “Snow Removal And Street Cleaning Disposal” Property .. 3

        B.    “Park Purposes” Properties ..... 4

    III.  COMPLIANCE WITH USE DEEDS ..... 5

        A.    “Snow Removal And Street Cleaning Disposal” Property .. 5

        B.    “Park Purposes” Properties ..... 6

    IV.  DECLARATION OF REVERSION ..... 7

STANDARD OF REVIEW ..... 8

ARGUMENT ..... 8

    I.    “SNOW REMOVAL AND STREET CLEANING DISPOSAL”  
        PROPERTY ..... 9

        A.    “Street Cleaning Disposal” Defined ..... 9

        B.    Compliance With Use Deed ..... 11

        C.    Change In Use Investigated ..... 12

        D.    No Supportable Reason For Reversion ..... 12

II.	“PARK PURPOSES” PROPERTIES .....	13
A.	“Park Purposes” Defined .....	13
1.	City Charter and Code .....	13
2.	State’s Arbitrary Approach .....	16
3.	Decisions in Other Jurisdictions .....	17
B.	Compliance With Use Deeds .....	18
C.	No Supportable Reason For Reversion .....	20
	CONCLUSION .....	21

## TABLE OF AUTHORITIES

### Minnesota Statutes

Minn. Stat. § 282 .....	13
Minn. Stat. § 282.01 .....	1-3, 8, 9, 17
Minn. Stat. § 282.01, subd. 1e (2000) .....	5

### Minnesota Decisions

<u>Brookfield Trade Ctr., Inc. v. County of Ramsey</u> , 584 N.W.2d 390 (Minn. 1998) .....	8
<u>Constr. &amp; Gen. Laborers Union v. St. Paul</u> , 270 Minn. 427, 134 N.W.2d 26 (1965) ...	15
<u>Int'l Lumber Co. v. Staude</u> , 144 Minn. 356, 175 N.W. 909 (1919) .....	9
<u>John Wright and Asscs., Inc. v. Red Wing</u> , 295 Minn. 111, 106 N.W.2d 205 (1960) ..	1, 11
<u>Scheeler v. Sartell Water Controls, Inc.</u> , 730 N.W.2d 285 (Minn. Ct. App. 2007) .....	8
<u>State v. Ritschel</u> , 220 Minn. 578, 20 N.W.2d 673 (1945) .....	15
<u>State v. Simonsen</u> , 252 Minn. 315, 89 N.W.2d 910 (1958) .....	15
<u>State v. Thomas</u> , 279 Minn. 326, 156 N.W.2d 745 (1968) .....	14
<u>Thul v. State</u> , 657 N.W.2d 611 (Minn. Ct. App. 2003) .....	8
<u>Wisconsin Town Lot Co. v. Astleford</u> , 301 Minn. 331, 222 N.W.2d 285 (1974) .....	9

### Other Decisions

<u>Burnam v. City of Jackson</u> , 379 S.2d 931 (Miss. 1980) .....	17, 18
<u>City of Lincoln v. Townhouses, Inc.</u> , 534 N.W.2d 756 (Neb. 1995) .....	18
<u>Cohen v. City of Lynn</u> , 598 N.E.2d 682 (Mass. App. 1992) .....	18

Siegel, et al. v. City of Branson, 952 S.W.2d 294 (Mo. 1997) ..... 17

**Other Authorities**

2001 Minn. Laws, ch. 5, art. 3, § 62 ..... 5, 12, 20

ST. PAUL, MINN., CHARTER § 13.01.1 ..... 1, 14, 15

ST. PAUL, MINN., LEGISLATIVE CODE § 60.216 ..... 1, 14

ST. PAUL, MINN., LEGISLATIVE CODE §170.01 ..... 14

## INDEX TO THE APPENDIX

District Court Hearing Transcript, Court File No. 62-C8-06-006657 .....	RA 1
April 12, 2007, Deposition Transcript of Kristine Kujala, Ramsey County Tax Forfeited Land Division Supervisor .....	RA 39
April 12, 2007, Deposition Transcript of James Carroll, Ramsey County Tax Forfeited Land Division Inspector .....	RA 71
January 21, 1993, City of St. Paul Resolution .....	RA 92
December 21, 1992, Letter from Wirka to McCann .....	RA 95
Application for Use Deed for PIN 0123 (No. A07-1767) .....	RA 96
May 8, 2007, Affidavit of Gary L. Erichson .....	RA 99
Use Deed Review (No. A07-1766) .....	RA 101
Minn. Stat. § 282.01 (2000) .....	RA 102
2001 Minn. Laws, ch. 5, art. 3, §§ 59-63 .....	RA 105
April 18, 2007, Deposition Transcript of Derrick Hodge, Minnesota Department of Revenue Liason with the City .....	RA 108
April 7, 2004, Internal City E-mail .....	RA 132
March 19, 2007, City's Answers to Defendant's Interrogatories (No. A07-1766)	RA 133
Property Tax Valuation Information for PIN 0133 (No. A07-1766) .....	RA 144
Record of James Carroll's Visits to PIN 0133 (No. A07-1766) .....	RA 158
December 15, 2003, E-mail from James Carroll to City .....	RA 160
April 13, 2005, E-mail from James Carroll to City .....	RA 161
July 20, 2005, Letter from Ramsey County to State .....	RA 162

St. Paul City Charter Chapter 13 .....	RA 164
City of St. Paul Legislative Code Chapter 60 .....	RA 168
City of St. Paul Legislative Code Chapter 170 .....	RA 183
May 2, 1991, St. Paul City Ordinance Adopting City Charter § 13.01.1 .....	RA 190
August 3, 1994, St. Paul City Council Resolution and October 12, 1994, St. Paul City Ordinance Amending City Charter § 13.01.1 .....	RA 192
City's Memorandum of Law in Support of its Motion for Summary Judgment (No. A07-1765) .....	RA 196
City's Memorandum of Law in Support of its Motion for Summary Judgment (No. A07-1764) .....	RA 217
City's Memorandum of Law in Support of its Motion for Summary Judgment (No. A07-1763) .....	RA 238
City's Memorandum of Law in Support of its Motion for Summary Judgment (No. A07-1767) .....	RA 259
City's Memorandum of Law in Support of it Motion for Summary Judgment (No. A07-1766) .....	RA 280
State's Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Summary Judgment for Defendants (No. A07- 1765) .....	RA 299
State's Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Summary Judgment for Defendants (No. A07- 1764) .....	RA 310
State's Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment and in Support of Summary Judgment for Defendants (No. A07- 1763) .....	RA 321

State’s Memorandum of Law in Opposition to Plaintiff’s Motion for Summary Judgment and in Support of Summary Judgment for Defendants (No. A07-1767) .....	RA 332
State’s Memorandum of Law in Opposition to Plaintiff’s Motion for Summary Judgment and in Support of Summary Judgment for Defendants (No. A07-1766) .....	RA 344
City’s Memorandum of Law in Reply to Defendants’ Opposition to Plaintiff’s Motion for Summary Judgment (No. A07-1765) .....	RA 355
City’s Memorandum of Law in Reply to Defendants’ Opposition to Plaintiff’s Motion for Summary Judgment (No. A07-1764) .....	RA 362
City’s Memorandum of Law in Reply to Defendants’ Opposition to Plaintiff’s Motion for Summary Judgment (No. A07-1763) .....	RA 370
City’s Memorandum of Law in Reply to Defendants’ Opposition to Plaintiff’s Motion for Summary Judgment (No. A07-1767) .....	RA 377
City’s Memorandum of Law in Reply to Defendants’ Opposition to Plaintiff’s Motion for Summary Judgment (No. A07-1766) .....	RA 384

## LEGAL ISSUES

**1. IS THE CITY'S USE OF PROPERTY FOR STORAGE OF STREET CLEANING DEPOSITS COMPLIANT WITH A PUBLIC USE DEED FOR "SNOW REMOVAL AND STREET CLEANING DISPOSAL"?**

The trial court properly held that the use was compliant and there was no basis for a declaration of reversion to be issued.

Minn. Stat. § 282.01, subd. 1

John Wright and Asscs., Inc. v. Red Wing, 295 Minn. 111, 106 N.W.2d 205 (1960)

**2. IS THE CITY'S USE OF PROPERTY AS OPEN SPACE AND RESOURCE PROTECTION IN COMPLIANCE WITH A PUBLIC USE DEED FOR "PARK PURPOSES"?**

The trial court properly held that the use was in compliance and there was no basis for a declaration of reversion to be issued against these properties.

Minn. Stat. § 282.01, subd. 1

St. Paul City Charter § 13.01.1

St. Paul Legislative Code § 60.216

## STATEMENT OF THE CASE AND FACTS

The five appeals before the Court arise out of a dispute between the Department of Revenue of the State of Minnesota (hereinafter "State") and the City of St. Paul (hereinafter "City") over the use of five properties conveyed to the City by use deeds. In 1980, the State conveyed one property for "snow removal and street cleaning disposal" and in 1993 and 1995, the State conveyed four properties for "park purposes." Despite the City's longstanding, continued, and consistent use of the properties for the required purposes, the State sought to regain possession of all five properties by filing declarations

of reversion. The City sought to prevent this reversion by appealing to the District Court. See Minn. Stat. § 282.01, subd. 1e (providing appeal procedures).

There are no material facts in dispute and, therefore, the District Court actions culminated in cross motions for summary judgment. App. Br. p. 3.<sup>1</sup> The Honorable David C. Higgs of the Ramsey County District Court, Second Judicial District, heard the motions. The District Court held that the City was using all five properties in accordance with the use required in the use deeds. A 6, 15, 24, 33, 42. Based on this finding, the Court ordered that none of the properties revert to the State. A 6, 15, 24, 33, 42. The State appeals the judgments of the District Court.

#### **I. TAX FORFEITED LAND PROCESS.**

The City obtained all of the properties at issue in these appeals through the tax forfeited land process. When a property owner fails to pay property taxes, the property is forfeited to the county in which it is located. The county administers tax forfeited properties. Minn. Stat. § 282.01, subd. 1. The county may sell tax forfeited property at public auction. Id. However, if the city in which the property is located wishes to acquire the property, it can file an application requiring the county to withhold the property from public sale. Minn. Stat. § 282.01, subd. 1a-1c. The property can then be conveyed free of charge to the city for an authorized public use pursuant to a “use deed.” Minn. Stat. § 282.01, subd. 1a. The State may reclaim this property only if the city fails to put the land

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<sup>1</sup> Appellant’s Brief is referred to as “App. Br. p. #.”

to the use specified in the use deed or that use is abandoned. Minn. Stat. § 282.01, subd. 1e. If this occurs, the State must file a notice and declaration of reversion. Id. If a declaration of reversion is not successfully appealed, then the property reverts back to the State to be held in trust for the county. Minn. Stat. § 282.01, subd. 1d-1e. The county can then sell the property at public auction. Minn. Stat. § 282.01, subd. 1.

In Ramsey County the proceeds from these sales are first used to cover the operating budget of the County's Tax Forfeited Land Department. RA 47-48, 79. In fact, the Tax Forfeited Land Department's entire budget is funded by the sale of tax forfeited properties. RA 47-48, 79.

## **II. GRANT OF USE DEEDS.**

### **A. "Snow Removal And Street Cleaning Disposal" Property.**

In 1980, the City applied to obtain a property to be used for the authorized public purpose of "snow removal and street cleaning disposal."<sup>2</sup> On May 2, 1980, the State conveyed this property to the City for this use. A 97. The property has been described as a large parcel with a chain-link gate at the entrance. RA 80, 99-101. It is undisputed the property is currently filled to capacity with fifty feet of the City's street cleaning debris. RA 80, 99-101.

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<sup>2</sup> This parcel is identified as PIN 32-29-22-22-0133 (hereinafter "0133") from Appeal No. A07-1766.

**B. "Park Purposes" Properties.**

In 1993, the City was granted use deeds for three properties forfeited to Ramsey County.<sup>3</sup> See A 57, 65, 73. The 0080 and 0081 properties are adjacent to each other and have been described as low, partially wooded parcels. A 51-52, 58-60; RA 89. The City sought these properties with the intent of using them for the authorized public purpose of "wet land preservation." RA 92-95. The 0053 property has been described as a natural bluff adjacent to a parkway. A 65-68; RA 80. The City submitted its application with the intent to use this property to preserve the slope of the land next to the parkway. RA 92-94. All three of these applications were approved and on June 18, 1993, the State conveyed these properties to the City to be used for "park purposes." A 57, 65, 73.

In 1995, the City submitted an application to obtain another property for public use.<sup>4</sup> RA 96-98. The application requested the property be used for "Open Space - Natural prairie remnant." RA 96-98. There is no public access to this property because it is completely surrounded by railroad tracks and privately owned property. A 74-76; RA 85. It has some wetland areas and is otherwise rolling, prairie-like property. A 74-76.

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<sup>3</sup> These parcels are identified by property identification numbers and include PIN 26-29-22-41-0080 (hereinafter "0080") from Appeal No. A07-1764; PIN 26-29-22-41-0081 (hereinafter "0081") from Appeal No. A07-1763; and PIN 24-29-23-12-0053 (hereinafter "0053") from Appeal No. A07-1765.

<sup>4</sup> This parcel is identified as PIN 23-29-22-43-0123 (hereinafter "0123") from Appeal No. A07-1767.

On October 27, 1995, the City's application was approved and the State conveyed the parcel to the City to be used for "park purposes." A 81.

### **III. COMPLIANCE WITH USE DEEDS.**

Under the tax forfeited land statute, municipalities are given five years to put properties to the use specified in the use deed. Minn. Stat. § 282.01, subd. 1e (2000) (amended effective August 1, 2001),<sup>5</sup> at RA 102-104. At the termination of this grace period, the State verifies that properties are being put to the use specified in the deed. RA 113-114. Ramsey County has also independently instituted an inspection process where these properties are inspected for compliance every five years. RA 76-77.

#### **A. "Snow Removal And Street Cleaning Disposal" Property.**

It is undisputed that from 1980 until 1995, the City deposited debris from its street cleaning operations on the property. RA 99-100, 134. In 1985, the State should have reviewed the property to determine if the use of the property was in compliance. RA 113-114. Although there are no records of this review, it can be assumed that the property was found to be in compliance because no action was taken at that time. RA 113-114. By 1995, the City had deposited at least fifty feet of street cleaning debris on the property. RA 99-100, 134. It is undisputed that this filled the site to capacity and the City cannot

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<sup>5</sup> Act effective August 1, 2001, 2001 Minn. Laws, ch. 5, art. 3, § 62, reduced the grace period from five years to three years for use deeds granted on or after August 1, 2001, at RA 106.

add any more debris. RA 134. Since that time, the City has continued to store all fifty feet of street cleaning debris on the property. RA 99-100, 134.

In 2001, Kristine Kujala, the Ramsey County Tax Forfeited Land Supervisor, took an interest in the property. RA 49-50. Kujala utilizes her previous experience as an assessor for Ramsey County to set the prices for land sold at public auction that thereby funds the Division she supervises. RA 43, 48, 53. In 2000, just prior to Kujala's interest, Ramsey County valued this property at \$86,400. RA 144-153. From 2001 on, Kujala visited this property two or more times a year. RA 49-50. None of these visits were documented or part of Ramsey County's five year review. RA 50. The property was not actually inspected by Ramsey County until the five year review was conducted in May of 2003. RA 76-77, 101.

In 2004, Ramsey County increased its valuation of this property to \$259,200. RA 154-155. Then in 2006, Kujala directed James Carroll, the Division's Inspector, to go by the property frequently and make a record of how it was being used. RA 46, 158-159. Carroll made nineteen visits to this property between February 2006 and November 2006. RA 158-159. In the tax year 2006-2007, Ramsey County again increased the value of this property to \$518,400. RA 156-157.

**B. "Park Purposes" Properties.**

The City immediately put the park purposes properties to the use for which they were conveyed. A 5, 14, 23, 41. In 1998, the use of the park purposes properties

conveyed in 1993 should have been verified by the State. RA 113-114. The park purposes property conveyed in 1995 also should have been reviewed sometime in 2000. RA 113-114. Although there are no records of these verifications, it can be assumed that the property was found to be in compliance with the use deeds because the State took no action at that time. RA 113-114. It is undisputed that the City continued to use all of these properties for the park purposes of preservation, resource protection and open space. A 5, 14, 23, 41; RA 132. From 2001 to 2003, Ramsey County inspected each of these properties to determine compliance with the use deeds.<sup>6</sup> A 51, 58, 66, 74. These inspections revealed that the City was using the properties in the same manner as when they were originally granted. A 51, 58, 66, 74.

#### **IV. DECLARATION OF REVERSION.**

Despite the fact that the City's use of all five properties has remained the same since they were deeded, Ramsey County notified the City on December 15, 2003, that they believed the five properties at issue were not being used for the purposes stated in the use deeds. RA 160. Ramsey County informed the City that they could either purchase these five properties or convey them back to the State.<sup>7</sup> RA 160.

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<sup>6</sup> Property 0053 was inspected in 2001. A 66. Properties 0080 and 0081 were inspected in 2002. A 51, 58. Property 0123 was inspected in 2003. A 74.

<sup>7</sup> Under either option, the sale of property 0133, currently valued at more than five hundred thousand dollars, would first go to funding Ramsey County's Tax Forfeited Land Department.

On July 20, 2005, Ramsey County contacted the State and complained that the properties at issue in this case were not being used in compliance with the use deeds. RA 114, 162-163. While the State was considering this complaint, Ramsey County followed up several times and expressed its “frustration” that the State was not acting faster. RA 126-127. Ramsey County also informed the State that if declarations of reversion were not issued, they would seek a writ of mandamus ordering the State to do so. RA 127. On May 31, 2006, the State notified the City that declarations of reversion were being issued for all five properties. A 46-50. The City began these lawsuits to prevent the impending reversion.

### STANDARD OF REVIEW

The issues on appeal turn solely on questions of law. See Brookfield Trade Ctr., Inc. v. County of Ramsey, 584 N.W.2d 390, 393 (Minn. 1998) (citing Scheeler v. Sartell Water Controls, Inc., 730 N.W.2d 285, 288 (Minn. Ct. App. 2007)) (stating “[s]tatutory construction is a question of law”). Questions of law on appeal to this Court are reviewed de novo. Thul v. State, 657 N.W.2d 611, 616 (Minn. Ct. App. 2003).

### ARGUMENT

Tax forfeited land is held by the State in trust for taxing districts. Minn. Stat. § 282.01, subd. 1a. The State may also grant this land to a municipality to be used for an authorized public use. Id. A “use deed” allows the State to limit the use of granted lands to “use for the purpose stated in the application.” Id. at subd. 1c. If the municipality fails

to put the property to this use, or abandons the use, then the State may issue a declaration of reversion and reclaim the property. Id. at subd. 1d-c. Thus, a municipality may only retain property if its use is one specified in the application and use deed.

The City's manner of use of all five properties is undisputed. RA 115. The only issues for this Court are whether the City's use is in compliance with the terms "snow removal and street cleaning disposal" and "park purposes" as required by the use deeds.

**I. "SNOW REMOVAL AND STREET CLEANING DISPOSAL" PROPERTY.**

**A. "Street Cleaning Disposal" Defined.**

The parties agree that the terms "snow removal and street cleaning disposal" are unambiguous. RA 351. To the extent the Court finds the terms "snow removal and street cleaning disposal" to be ambiguous, any ambiguity should be resolved in favor of the City. See Int'l Lumber Co. v. Staude, 144 Minn. 356, 359, 175 N.W. 909, 911 (1919) ("the words of a deed are to be taken as the grantor's and any ambiguity is to be resolved in favor of the grantee..."). See also Wisconsin Town Lot Co. v. Astleford, 301 Minn. 331, 334, 222 N.W.2d 285, 288 (1974).

The City's interpretation of "street cleaning disposal" to include storage of street cleaning debris is reasonable. Disposing of street cleaning debris means depositing it on the property. Street sweeping is not done on a continuous basis, with constant dumping at regular intervals. Instead, debris is transferred to the property for long term storage when the City cleaned its streets. It is only logical that the use specified in the use deed

contemplated this disposal and long term use of the property for storage of street cleaning debris. Ramsey County's Inspector even agrees that storage of street sweeping debris would probably be a use compliant with that specified in the use deed. RA 83.

Moreover, the City's use of the property to store street cleaning debris is indicative of the intended meaning of the phrase "street cleaning disposal." The City has been storing deposits on the property for more than twenty years. See A 32. This use has not changed. A 32. It is undisputed that the City immediately began placing street cleaning debris on the property and none has ever been removed. A 32. Thus, storage immediately started to occur. The act of storing debris on the property so soon after conveyance shows that the City's intent and interpretation of the phrase "street cleaning disposal" included storing sweepings on the property. The State should have reviewed the use of the property in 1985 for compliance with the use deed. At that point, the State did not take any adverse action despite debris being stored there. For almost 20 years, neither the State nor Ramsey County objected to the City's use of the property. See A 32. Even after the site was full and the City was forced to stop depositing additional debris on the property, neither the State nor Ramsey County had an issue with the use for almost 10 years. A 32.

Ramsey County and the State support their determination that storage of street cleaning debris is not a compliant use by interpreting disposal to mean "someone actively depositing the results of their street cleaning." RA 118. See also RA 58-59 (Kujala

defines “street sweeping” as the noun, referring to the actual material that is removed from the street, and “disposal” as a verb) and RA 83 (Carroll defines “street cleaning disposal” to mean “taking materials from the street and moving them to the [property]”). “However, no narrow or unreasonable definition, should be placed upon the nature of the use to which [a] property has been dedicated.” John Wright and Asscs., Inc. v. Red Wing, 259 Minn. 111, 116, 106 N.W.2d 205, 208 (1960) (quotation omitted). Not only are these definitions inconsistent, they are a narrow and unreasonable construction of the phrase. These interpretations distinguish between active and passive use. Under the State’s definition, a municipality must be actively placing street sweeping on the site in order to comply with the use deed. This is impossible as street sweeping can only be placed on the site once it is collected, and only until the site is full.

**B. Compliance With Use Deed.**

The City’s use is in compliance with the terms set forth in the 1980 use deed. From 1980 until 1995, the City used this property to dump street cleaning debris from street sweeping operations within the City. A 32. In 1995, the parcel was filled to capacity with street cleaning debris. A 32. Since then it has been used to store this debris. Presently there is at least fifty (50) feet of street cleaning debris being stored on the property. A 32. Further, it is undisputed that there is no room to accommodate additional deposits. A 32. Storing the street cleaning debris dumped on the property in years past constituted a “street cleaning disposal” purpose and still does.

**C. Change In Use Investigated.**

The State attempts to confuse the issue before the Court by pointing to discussions the City had regarding the use of this property. See App. Br. p. 12. However, what was considered by the City, but never done, does not change the actual use of the property.<sup>8</sup> As even Appellants agree, the resolution of this case is “solely dependent upon the City’s actual use of the property and the application of law to that use.” See RA 352. Therefore, what the City contemplated is of no consequence.

**D. No Supportable Reason For Reversion.**

The State issued the Declaration of Reversion because it claims the City was no longer using the property for “snow removal or street cleaning disposal.” See RA 353. It is undisputed, however, that the City only stopped adding new street cleaning deposits when the property reached capacity and has been storing fifty feet of debris since 1995. A 32. Any interpretation of the use deed which fails to incorporate the storage of street cleaning debris disposed of on the property would be unreasonable. The City’s continued use of the property in compliance with the use deed makes reversion improper.

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<sup>8</sup> This is particularly true when the City could have legally pursued a change of use of the property without having it revert back to the State in 1994. See 2001 Minn. Laws, ch. 5, art. 3, § 61 (removing provision allowing for change of use without reconveyance but indicating new provision is only effective for deeds issued after August 1, 2001), at RA 106. The City may have also been able to do the same thing in 2004 or 2005. RA 106.

The City is confused by the State's complete change of position. Despite the continued use of this property in the same manner as when it was deeded, the State now seeks to terminate the City's use. The undisputed facts, however, are that Ramsey County put significant pressure on the State to issue a declaration of reversion. Ramsey County's Tax Forfeited Land Division is completely funded by the sale of properties like 0133. Ramsey County now values property 0133 at more than five hundred thousand dollars. The valuation of this property has been on an unusual and precipitous rise since Ramsey County informed the City the only way to retain the property was to purchase it. In 2000, the property was valued at \$86,400. In 2004, after the County demanded that the City either purchase the property or reconvey it, the value exactly tripled to \$259,200. Finally, in tax year 2006-2007, the value of 0133 was exactly doubled to \$518,400.

## **II. "PARK PURPOSES" PROPERTIES.**

### **A. "Park Purposes" Defined.**

#### **1. City Charter and Code.**

The City's use of the park purposes properties for open space and resource protection are within the limitations placed upon them in the use deeds. There is no definition of "park purposes" in the tax forfeited land statute. See Minn. Stat. § 282. However, the St. Paul City Charter defines "park purposes" to "include, but not be limited to mean, playground, trail, parkways, open space and any other recreational purpose."

Charter § 13.01.1, at RA 164-165.<sup>9</sup> The St. Paul Legislative Code defines open space as “[l]and and water areas retained for use as active or passive recreation areas or for resource protection.” Code § 60.216, at RA 177. Despite these clear definitions, the State takes the position that the City was required to use these properties as “municipal parks.” App. Br. p. 9. The use deeds, however, do not require the properties be used as parks. A 57, 65, 73, 81. The City actually defines “park,” a concept separate from park purposes, elsewhere in the Code. See Code §170.01, at RA 183. The use deeds require the properties be used for “park purposes,” not as parks. A 57, 65, 73, 81.

The Charter, coupled with the Code, provide a definition of park purposes that the City relied upon in obtaining these properties. RA 164-165. The City also expressed its intent to use these properties in a manner consistent with the Charter and Code. The application for parcel 0123 expressly informed the State that the property was sought for “Open Space - Natural prairie remnant.” RA 96-98. The resolutions passed to obtain parcels 0080, 0081, and 0053, expressed the City’s desire to use the properties to preserve wet lands and a parkway. RA 92-95. These preservation purposes are clearly within the definition provided by the Charter and Code.

Charter and Code provisions carry the force and effect of law. See State v. Thomas, 279 Minn. 326, 327-328, 156 N.W.2d 745, 746 (1968) (“[o]rdinances by

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<sup>9</sup> The City’s definition of park purposes was incorporated into the Charter in 1991 and remains unchanged. RA 190-195. Thus, this definition was in existence at the time the City applied for and was granted the properties.

definition are the laws of a municipality”); Constr. & Gen. Laborers Union v. St. Paul, 270 Minn. 427, 429, 134 N.W.2d 26, 28 (1965) (a municipal corporation’s powers are limited by the city charter); State v. Simonsen, 252 Minn. 315, 326, 89 N.W.2d 910, 917 (1958) (city ordinances have effect and force of law); State v. Ritschel, 220 Minn. 578, 589-590, 20 N.W.2d 673, 679 (1945). They were passed under the authority provided in the Charter and are a reasonable exercise of the City’s legislative power. In this case, the local law provisions do not conflict with state or federal laws; the City is therefore entitled to rely on the Charter and Code to define “park purposes.” In fact, the City was legally required to use the properties in conformance with the Charter and Code. See Constr. & Gen. Laborers Union, 270 Minn. 427 at 429, 134 N.W.2d at 28 (city’s power limited by charter).

The State relies on an extremely strained reading of the Charter and Code to support a claim that these laws support their position. See App. Br. pp. 7-9. The State cites the portion of the Charter where it states “‘Park purposes’ shall include . . . any . . . recreational purpose.” App. Br. p. 8. To make its argument, the State ignores the phrase preceding “any other recreational purpose” where the Charter explicitly states that park purposes shall include “open space.” Charter § 13.01.1, at RA 164-165. The State then claims that the clear definition of open space in the Code does not apply. App. Br. pp. 8-9. There is no reason, however, to claim that the Charter and Code should not be read

together, except that they clearly support the City's position that the properties are being used for park purposes.

## **2. State's Arbitrary Approach.**

To determine compliance with the use deeds, the State had to establish a definition for park purposes. Rather than rely upon the clearly established and legally binding definitions in the Charter and Code, the State adopts an approach that depends on the situation. See RA 307, 318, 329, 340. That is, the State reviews the land with no set definition in mind and decides if that parcel meets the State's "park purposes" requirement. The State goes so far as to say that this situational approach is "precisely what the Commissioner should be doing when reviewing land. . . ." RA 307, 318, 329, 340. The State claims that only by applying their situational approach can they determine whether or not the use meets the law. RA 307, 318, 329, 340. This situational approach also leads to the State's confusing explanation that "[a] park is a place where people can go to . . . hav[e] a picnic on a picnic bench" but that "placing a bench on [a] parcel would [not] be enough to constitute it as a park." RA 119, 127. This argument gives the State the ability to set the definition of the use long after a property is deeded. Under the State's approach, it would be able to find a property's use in compliance during the review period, and then a year later, determine that the same use was no longer compliant. This inconsistent result is made more likely when, as in this case, the personnel involved in the application, issuance, and initial review are not the same as those seeking reversion.

RA 44, 74, 112, 123. A clear definition, such as that found in the Charter and Code, should be applied to avoid arbitrary decisions.

### 3. Decisions in Other Jurisdictions.

The State also relies upon a number of cases outside of this jurisdiction to support its claim that the City's use of the land is not a "park purpose." See App. Br. pp. 9-10.<sup>10</sup> Each of these cases actually supports the City's position. For instance, in Missouri the court found that "the definition of park is not limited to a public place of green lawns, walkways and benches. The definition is broad, and the question when applying this definition is whether a particular use of the property serves a public purpose." Siegel, et al. v. City of Branson, 952 S.W.2d 294, 297 (Mo. 1997). This supports the City's position that property held in its natural state for the benefit of the public serves a public purpose although it is not a park with benches and swing sets.

The State also cites to Burnam v. City of Jackson, 379 S.2d 931, 933 (Miss. 1980). In this case, the court relied on a definition of "park" from the 1977 Websters New Collegiate Dictionary which stated that a park is "an area maintained in its natural state as

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<sup>10</sup> These cases appear to be cited in support of the State's argument that the properties were not used as parks. App. Br. pp. 9-10. The City, however, does not have to utilize the properties as parks to be in compliance with the use deeds. Instead, the properties must be used in compliance with the broader concept of park purposes. A 57, 65, 73, 81, 97; Minn. Stat. § 282.01, subd. 1d. Of course, the City and State agree that use of these properties as parks would put them well within the scope of the park purposes restriction. See RA 119.

a public property.” Id.<sup>11</sup> This case also supports the City’s position that an area maintained in its natural state as a public property, such as the ones in dispute in these lawsuits, qualifies as a park. A Nebraska court agreed in City of Lincoln v. Townhouses, Inc., 534 N.W.2d 756, 760 (Neb. 1995) when it stated that “a park may be little more than an area maintained in its natural state.” In the case at bar, it is undisputed that the properties have been maintained in their natural state. See A 4, 13, 22, 40. Clearly, use of such parcels qualifies as a park purpose.

Finally, the Massachusetts court cited by the State found that a parcel of property next to a parkway, which reinforces the greenness of the area, alone might well support a conclusion that a property is a park or a park purpose. The court found that “by ornamenting the parkway and making the general area pleasing to the eye, the parcel serves its purpose.” Cohen v. City of Lynn, 598 N.E.2d 682, 686 (Mass. App. 1992), rev. den. 602 N.E.2d 1094. Parcel 0053 is a “steep, partially wooded hillside along Wheelock P[arkway].” See A 66. This property’s location adjacent to a parkway supports the City’s position that the property is being used for a “park purpose.”

**B. Compliance With Use Deeds.**

It is undisputed that the City followed its Charter and Code and put these properties to the use of open space and resource protection as soon as the grants became

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<sup>11</sup> The State introduces a 1976 Webster’s Dictionary definition but ignores this 1977 Webster’s Dictionary definition adopted by the Mississippi Supreme Court in the case they cited. Cf. App. Br. p. 7 with App. Br. p. 9.

effective. A 5, 14, 23, 41. Thus, the City immediately used these properties for a “park purpose.” The State apparently agreed because it deeded the properties to the City for “park purposes” based upon the description of the use proposed in the City’s application. Furthermore, no action was taken when the grace period expired and an initial review should have been conducted. Rather than issue declarations of reversion, the State allowed the initial use to continue until Ramsey County threatened a mandamus action if a reversion was not initiated. See A 46-50; RA 89-90. In light of the satisfactory initial compliance check and the continuous, unchanged use of the properties, there is no valid reason for the properties to revert to the State.

Interestingly, the State continues to argue that the properties should have been held “open to the public for recreation or enjoyment.” App. Br. p. 10. However, the State also admits that it is “understandable” that the City has not done so because the properties are unsuitable as parks for a number reasons. See RA 305, 316, 327, 338. Such an admission completely exposes the State’s untenable position in this case. The properties were deeded to the City for park purposes. One can only assume that they were deeded for a park purpose because such a use was possible. To be sure, the City kept the properties for park purposes by keeping them as open space for resource protection. If the properties were always unsuitable for the authorized public use of park purposes, then the State should never have deeded them to the City in the first place. By following the State’s

reasoning to its logical conclusion, the City was deeded a piece of property for “park purposes” that could never have been used as such. Clearly, this is not the case.

The State also argues that the City “has implicitly conceded” to using these properties for some use other than “park purposes.” The City, however, understood the State was concerned about the clarity of the use specified in the use deeds. A 94-96. The City expressed a willingness to have the use deeds reissued so that the specified use would more clearly identify the authorized public use to which the properties were being placed.<sup>12</sup> *Id.* The City’s willingness to amicably resolve the dispute and avoid these proceedings is not an admission that the properties are not being used in compliance with current use deeds.

**C. No Supportable Reason For Reversion.**

The declarations of reversion were issued for the sole reason that the parcels were allegedly not being used for park purposes. *See* A 46-48, 50. However, the only definition of “park purposes” which supports such a conclusion comes from the State’s arbitrary and situational approach. The City, however, relies upon a binding legal definition under which the properties were obtained. The State also argues that these properties were always unsuitable for parks and therefore could never be compliant with

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<sup>12</sup> While previously unidentified, the City may also have had a right to pursue a change of use by passing a resolution indicating such a change was necessary. *See* 2001 Minn. Laws, ch. 5, art. 3, § 61 (removing provision allowing for change of use without reconveyance but indicating new provision is only effective for deeds issued after August 1, 2001), at RA 106.

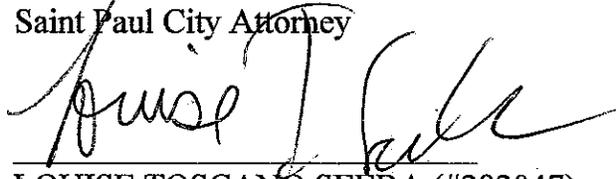
the State's definition. See RA 305, 316, 327, 338. It is inconsistent for the State to now claim that the City has somehow run afoul of the use deeds, when they claim that the use deeds could never be followed. Furthermore, the State found the uses compliant after conducting its initial review. The only rational and logical conclusion is that the properties were deeded to the City for "park purposes," the City immediately used the properties for such, and those uses have continued to the present day.

### CONCLUSION

For the foregoing reasons, the City respectfully requests that the trial court's decisions be affirmed and the declarations of reversion be declared null and void.

Dated: December 10, 2007

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