

NO. A08-880

State of Minnesota
In Court of Appeals

Main Street Fridley Properties, LLC,

Appellant,

vs.

The Housing and Redevelopment Authority in and for the
City of Fridley, Minnesota, a public body corporate and public,

Respondent.

APPELLANT'S BRIEF

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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 LEGAL ISSUES

1. The stated purpose for this taking is “in order to facilitate the construction and operation of a commuter rail station and related facilities within the City of Fridley.” (*A. 30-31, Petition, ¶3*). Minn. Stat. § 174.82 provides MnDOT with sole authority to develop construct and operate commuter rail track, facilities, and services. Minn. Stat. § 117.035 requires the state, through the attorney general, to commence eminent domain proceedings when the property being taken is required for any authorized purpose of the state. The state, through the attorney general, did not join in or commence the condemnation proceedings to take Appellant’s property. Did Fridley HRA have authority to take this property?

The district court concluded that Fridley HRA, acting alone, without state participation, was authorized to take Appellant’s property.

Apposite Cases: *State ex rel. Ford Motor Co. v. District Court of the Fourth Judicial District.*, 133 Minn. 221, 158 N.W. 240 (1916);

City of Granite Falls v. Soo Line R.R. Co., 742 N.W.2d 690, 695 (Minn. App. 2007) *review granted* (Minn. March 18, 2008)

Apposite Statutes: Minn. Stat. § 117.025, subd. 11 (2007);
Minn. Stat. § 117.035 (2007);
Minn. Stat. § 174.82 (2007);
Minn. Stat. § 645.16 (2007)

2. The stated purpose for this taking is “in order to facilitate the construction and operation of a commuter rail station and related facilities within the City of Fridley.” (*A. 30-31, Petition, ¶3*). Minn. Stat. § 174.82 permits MnDOT to enter agreements delegating to other entities MnDOT’s authority over all aspects of commuter rail. MnDOT has not delegated any authority, eminent domain or other, to Fridley HRA, but simply entered into a memorandum of understanding with Fridley HRA that merely agreed a Fridley station should be constructed. Assuming, *arguendo*, that MnDOT can delegate its eminent domain authority, did the memorandum of understanding between MnDOT and Fridley HRA give Fridley HRA authority to take Appellant’s property?

The district court concluded that MnDOT had delegated to Fridley HRA MnDOT's authority to take Appellant's property.

Apposite Cases: *Tuma v. Comm'r of Econ. Sec.*, 386 N.W.2d 702 (Minn. 1986).

Apposite Statutes: Minn. Stat. § 174.82 (2007);
Minn. Stat. § 174.82, subd. 2 (2007);
Minn. Stat. § 174.88, subd. 2 (2007);
Minn. Stat. § 469.001, *et seq.* (2007).

3. Under Minn. Stat. § 117.035, a taking must be instituted by a public body "authorized by law to exercise the power of eminent domain[.]" Minn. Stat. § 469.012 limits the authority of a Housing Redevelopment Authority to take property by eminent domain to the following situations: to eliminate blight and provide safe, low-income housing or to carry out a redevelopment project. Respondent's stated purpose for this taking is neither to provide low income housing nor to carry out a redevelopment project, but rather to "facilitate the construction and operation of a commuter rail station and related facilities within the City of Fridley." Did Fridley HRA have the authority to take Appellant's property by eminent domain?

The district court concluded that Fridley HRA was authorized to take Appellant's property.

Apposite Cases: *State ex rel. Ford Motor Co. v. District Court of the Fourth Judicial District.*, 133 Minn. 221, 158 N.W. 240 (1916);

Tuma v. Comm'r of Econ. Sec., 386 N.W.2d 702, 706 (Minn. 1986).

Apposite Statutes: Minn. Stat. § 117.035 (2007);
Minn. Stat. § 117.035, subd. 2 (2007);
Minn. Stat. § 117.035, subd. 5 (2007);
Minn. Stat. § 469.002, subs. 11 & 14 (2007);
Minn. Stat. § 469.003 (2007);
Minn. Stat. § 469.012 (2007).

4. Minn. Stat. § 471.59 allows government agencies to jointly exercise common power by agreement. The agreement must state the purpose of the agreement or the power to be exercised. Fridley HRA did not enter into any agreement to

jointly exercise a common power with MnDOT or any other relevant government agency. Did the multiple memoranda of understanding between MnDOT, BNSF Railway Company, ACRRA, and Fridley HRA give respondent authority to take Appellant's property as a joint exercise of common power?

The district court concluded that Fridley HRA had authority to take Appellant's property.

Apposite Cases: *Tuma v. Comm'r of Econ. Sec.*, 386 N.W.2d 702 (Minn. 1986);

Condemn. of Cert. Lands in White Bear, 555 N.W.2d 541 (Minn. App. 1996).

Apposite Statutes: Minn. Stat. § 117.016 (2007);
Minn. Stat. § 471.59 (2007).

5. The Northstar Commuter Rail Project is a federally-funded transportation project for construction of a commuter rail line between Big Lake, Minnesota and Minneapolis. Although initially proposed for inclusion in the project, a Fridley Station has since been excluded and there are no currently approved or funded plans to re-insert a Fridley Station into the project. Under Minnesota law, a taking must be necessary to be valid. Fridley HRA has taken Appellant's property to illegally "stockpile" it, while hoping to find some other funding source. Was this taking necessary?

The district court concluded that the taking was necessary.

Apposite Cases: *Regents of the Univ. of Minn. v. Chicago & Nw Transp. Co.*, 552 N.W.2d 578 (Minn. App. 1996) *review denied* (Minn. Nov. 20, 1996);

State ex rel. City of Duluth v. Duluth Street Ry., 229 N.W. 883 (Minn. 1930);

Minneapolis Community Dev. Agency v. Opus Northwest, LLC, 582 N.W.2d 596, 601 (Minn. App. 1998).

6. Legislative amendments to Minn. Stat. § 117.025, enacted in 2006, explicitly reject the notion of general economic development as a valid public use or public purpose for a taking. If an alternative purpose for the taking of Appellant's

property by Fridley HRA was general economic development benefits to the City of Fridley, was that a valid public purpose for the subject taking?

The district court concluded that the taking was for a valid public purpose.

Apposite Cases: None.

Apposite Statutes: Minn. Stat. § 117.025 (2007).

STATEMENT OF THE CASE

Respondent, The Housing and Redevelopment Authority in and for the City of Fridley (hereinafter “Fridley HRA”) initiated proceedings to take by power of eminent domain property owned by Appellant, Main Street Fridley Properties, LLC (hereinafter “Main Street”) “in order to facilitate the construction and operation of a commuter rail station and related facilities within the City of Fridley.” (*A. 30-31, Petition ¶ 3.*)¹ A hearing was conducted over the course of two separate days in the District Court, Anoka County, following which Barry A. Sullivan, J., issued an Order granting Fridley HRA’s Petition. (*A.1-12.*) Main Street appeals from the Order arguing that the district court committed an error of law in concluding that Fridley HRA was authorized to take Main Street’s property for purposes of constructing a commuter rail station and related facilities, and that the district court also committed clear error of fact in concluding that the taking was necessary, even in the absence of an approved plan, funding, or schedule for any project that includes construction of a commuter rail station and related facilities in Fridley.

¹ Citations to documents included in the Appendix to Appellant’s Brief will be in the format “A. ___” followed by a brief description where appropriate.

STATEMENT OF FACTS

I. Background on the Subject Property and Northstar.

The Northstar commuter rail is a rail line for passenger trains running from Big Lake to Minneapolis. (A.77 - T.29.)² The project has a total cost of over \$300,000,000, half of which comes from the federal government. (A.79 - T.31.)

Main Street owns over 10.5 acres of undeveloped property in the city of Fridley that is the subject of this appeal. (A.62 - *Petition, Ex. I*; A.91-92 - T.63-64.) According to Mike Schadauer, MnDOT's Metro District Transit Section Director and Deputy Director of Budget, Grants and Project Controls for the Northstar Project, Main Street's property was considered for use as a station for the Northstar commuter rail line even prior to 2001. (A.76 - T.26.) Fridley HRA's counsel admitted to the district court that this property was considered for the station as far back as 1997. (Memorandum in support of Petition for Condemnation, p. 4) In fact, MnDOT offered to purchase Main Street's property for the Northstar line on August 9, 2006. (A.71 - *MnDOT 7-2-07 Letter*.) Main Street did not accept MnDOT's offer and sought to negotiate the purchase price. (A.98 - T.131.)

II. The Subject Property is Not Part of the Northstar Commuter Rail Project and is Not Part of Any Finalized, Approved, or Funded Plan.

On July 2, 2007, John Isackson, on behalf of MnDOT, sent Main Street a letter informing it that its property "is no longer needed for the Northstar Commuter Rail

² While the entire transcript from the hearings of March 4, 2008, and March 11, 2008, is in the district court file, Appellant has included cited excerpts from the transcript in its Appendix for the Court's convenience. Transcript citations will be in the form "A. __ - T. __."

Project.” (A.71.) The letter noted, “The offer made to you on 8/09/06 is hereby rescinded.” (*Id.*)

Fridley HRA’s own witness at the hearing on this matter demonstrated beyond a doubt that Main Street’s property is not part of current Northstar plans. Mr. Schadauer testified that the Fridley station “is not in our construction plans right now[.]” (A.81 - T.33.) He also testified that MnDOT does not have funding at this time for construction or operation of a Fridley station. (*Id.*) Mr. Schadauer explained that while the Fridley station had been planned for some time, BNSF Railway, which was leasing its tracks to the state, charged the state too much for this service, so there was no money for the Fridley station.³ (A.77 - T.29.) When Mr. Schadauer was asked what changed relating to the Fridley Station (to prompt the condemnation hearing), he responded: “It hasn’t changed. The project that is being constructed today is not going to include Fridley.” (*Id.*)

Rather, Mr. Schadauer testified that MnDOT and its collective partners simply “would like to maintain the opportunity to add the Fridley station when the funding becomes available.” (A.78 - T.30.) He later testified, that MnDOT is treating this property and condemnation as a “place-holder for a future station.” (A.97 - T.88.)

Contrary to this clear testimony from MnDOT’s representative, the Executive Director of the Northstar Project, Tim Yantos, stated that while the Fridley Station is no longer part of the federally-funded project, it is still part of a project at the regional level.

³ According to Fridley HRA’s counsel, “this particular property was identified and has been pursued as the best location for a Fridley commuter station since the inception of the Northstar Project in 1997.” (Memo in Support of Petition for Condemnation, p. 4.)

(A.82 - T.37.) Notably, there is no other testimony or evidence about any other element of the Northstar Project that is part of a separate “regional project” but not part of the federally-funded project. Indeed, Mr. Yantos’ assertion that there are two projects is refuted by the testimony of Mr. Schadauer and of Paul Bolin, a Fridley HRA employee. Mr. Schadauer’s testimony shows there is no state plan for a Fridley station:

Q. Is there **any project** that MnDOT has funding for or is able to fund that would include the construction and operation of a Fridley station at this time?

A. We don’t have funding at this time for that.

(A.81 - T.33 (*emphasis added*.) Mr. Bolin testified that there is no finalized plan that shows the Fridley station and related facilities (A.84 - T.55.), explaining that there is “not a hard and fast plan; not an approved plan by any means.” (A.87 - T.58.) Additionally, Mr. Bolin admitted that there is no “specific plan or project” that shows that Fridley HRA needs Main Street’s property to meet a development for housing or redevelopment project. (A.88-89 - T.59-60.) The only redevelopment plan that arguable covers this property is a 2030 Comprehensive Plan that has not been adopted or approved yet. (A.90 - T.62.) Notwithstanding this lack of need, the Fridley HRA passed a resolution to take Main Street’s property for a commuter rail station and parking facilities. (A.35 - *Petition Ex. A.*)

III. Fridley HRA Was Not Delegated Authority to Take the Subject Property for Commuter Rail.

Fridley HRA’s stated purpose for this taking was “in order to facilitate the construction and operation of a commuter rail station and related facilities within the City

of Fridley.” (A.30-31 - *Petition* ¶3.) Ostensibly to this end, on January 25, 2008, Fridley HRA entered into a Memorandum of Understanding (“MOU”) with the State of Minnesota, through MnDOT. (A.60 - *Petition Ex. H.*) Critically, this memorandum did not establish a joint powers agreement or delegate any of MnDOT’s authority regarding commuter rail to Fridley. (A.60-61.) The MOU states the following in relevant part:

Whereas, Minn. Stat. §174.82 provides that the Commissioner of the Minnesota Department of Transportation (hereinafter “Mn/DOT”) is responsible for all aspects of commuter rail in Minnesota; and

Whereas, Minn. Stat. § 174.82 authorizes the Commissioner to enter into a memorandum of understanding with a public entity to carry out Mn/DOT’s responsibility for commuter rail; and

* * *

Whereas, in order to construct the tunnel, transit station, and park and ride facility that will serve the Fridley Station, it is necessary to acquire certain property described in Attachment 1 [the subject property]; and

Whereas, the Housing and Redevelopment Authority in and for the City of Fridley, Minnesota (hereinafter “the HRA”) is a duly constituted housing and redevelopment authority as defined in Minn. Stat. § 469.001 *et seq.*, and has the powers enumerated therein including the power to enter into and perform the obligations in this memorandum of understanding; and

* * *

THEREFORE, pursuant to this memorandum of understanding the HRA will:

1. acquire the Property by purchase or condemnation[.]

* * *

Pursuant to this memorandum of understanding Mn/DOT will:

1. assist the HRA by providing advanced and final plans and other necessary technical information relating to the Fridley Station[.]

(Id.) Instead of delegating to Fridley the authority to take the property, the MOU simply discussed the station and then acknowledged that Fridley HRA had authority to take property pursuant to its HRA power of eminent domain. *(Id.)*

This MOU is markedly different from the one between the state and Anoka County Regional Railroad Authority (“ACRRA”) related to Fridley’s role in the Northstar Project. *(A.45-46 - Petition Ex. E.)* In that MOU, MnDOT specifically delegated it’s authority to ACRRA, stating:

Mn/DOT will: 1. **designate** the ACRRA as its “Designee” as defined in Section 7.1 of the Fridley Master Agreement and **delegate** to the ACRRA the necessary authority to fulfill its obligations under the Underpass Construction Agreement; 2. notify BNSF that the ACCRA [sic] **is authorized to act as Mn/DOT’s Designee** pursuant to the Fridley Master Agreement for the purposes of entering into the Underpass Construction Agreement[.]

(Id. (emphasis added).)

IV. The Fridley Station Cannot be Part of the Northstar Plan Because it Ruins the Efficiency Quotient Needed to Receive Federal Funding.

Mr. Schadauer testified that part of the application process to receive federal funding was to show how efficient the commuter rail would be, which included showing how much it cost versus how much time it saved commuters. *(A.95 - T.85.)* While Mr. Schadauer clearly did not want to, he admitted that adding the Fridley station, even if the

addition was done without federal funds, would change the efficiency of the entire project. (A.95-96 - T.85-86.) He testified that he did not know whether the federal government would require a formal submittal regarding the addition or whether it would create problems, but agreed that MnDOT would “certainly communicate” with the federal government about it. (*Id.*)

But documents in the record show that the State of Minnesota, through its representatives, was very concerned about the inclusion of the Fridley Station and its interference with the federal funding. On October 7, 2007, Mark Fuhrmann (believed to be Transportation Projects Director for the Met Council) explained the danger of adding the Fridley Station. Fuhrmann wrote:

In short, the FTA [Federal Transit Authority] grant is firmly based on an arcane calculation called the Cost Effective Index which is largely driven by travel time saved by Northstar passengers vis-à-vis if they were driving a car. **The inclusion of Fridley Station** in this federal calculation **adversely impacts the cost effectiveness** because the trains must stop at Fridley, thus adding travel time for the thousands of Northstar passengers going through Fridley every AM and PM. We cannot give the feds at this 11th hour of securing the FFGA [Full Funding Grant] ANY reason for them to delay execution of the Northstar FFGA with any inkling of Fridley becoming a reality concurrent with the rest of Northstar.

(A.72, Fuhrmann 10-7-07 email (*emphasis added*)).

V. Fridley HRA Allegedly Needed Main Street’s Property Now to Construct a Tunnel Underneath BNSF’s Rail Line during a Holiday Weekend (Memorial Weekend).

Tim Yantos testified that BNSF imposed a deadline on building a tunnel under the rail line on the subject property of Memorial weekend of 2008. (A.83 - T.43.) Fridley

HRA's counsel also indicated that BNSF only agreed to allow construction of the tunnel on Memorial weekend due to the disruption the construction would create on BNSF's rail traffic. (A.75 - T.10.) However, there is no evidence in the record as to whether there was any negotiation with BNSF as to whether it would allow construction on a different holiday weekend, in a different year, perhaps when there is an approved plan and funding for a Fridley station.

VI. Newly Discovered Evidence Bears Directly Upon Whether Fridley HRA had Authority to Take the Subject Property.⁴

Since the hearing on this matter, Main Street discovered a set of emails between MnDOT officials on October 11, 2007, that are material to the district court's decision to grant the Petition. In an email from Mr. Schadauer to Bob McFarlin, then MnDOT's Assistant to the Commissioner-Transportation Policy and Public Affairs, Mr. Schadauer made several statements regarding the proposed Fridley commuter rail station. (A.73 - 10-11-07 Emails.) The email was captioned "Delegation for Fridley Tunnel" and Mr. Schadauer referenced BNSF's deadline of November 1, 2007, to commit to installing a tunnel to serve a future Fridley Station. (*Id.*) Mr. Schadauer then stated the following:

As you know, **there are no plans to build the Fridley station within the current Northstar project.** The City of Fridley, however, would like to have the tunnel installed to preserve the opportunity for the station. The City is seriously

⁴ The newly discovered evidence was the basis for Main Street's Motion for a New Trial (A.24-27), which was referenced in Main Street's Statement of the Case filed with this Court on May 23, 2008. The motion is currently pending before the district court. While this Court sought informal memoranda on the propriety of the motion and its impact on this appeal, this Court stated that its request would not affect the deadlines in this appeal. Thus, Main Street is filing this brief, even though, this Court may ultimately conclude that the appeal is premature.

looking at ways to finance the tunnel and possibly the entire station and the Anoka County Regional Railroad Authority may work with the City of Fridley to accomplish one or both. **With MnDot having the statutory authority for commuter rail, it appears that a delegation agreement would be necessary** to give the City or County Regional Railroad Authority the authority to take either action. Will MnDot delegate its authority for the Fridley station to the City of Fridley or the Anoka County Regional Railroad Authority much like MnDot delegated its authority for design and BNSF negotiations to the NCDA?

(Id. (emphasis added).)

In his response to the position expressed by Mr. Schadauer, McFarlin did not say that a delegation was not necessary, instead asking, “couldn’t we reach a financial agreement?” *(Id.)* Two emails later, McFarlin wrote, “I get a bit concerned about too many delegations.” *(Id.)*

SCOPE OF REVIEW

This Court’s scope of review on this appeal is limited to determining whether there was a public use or public purpose, whether the taking was necessary and whether the Fridley HRA had authority for the taking. *See Granite Falls v. Soo Line R.R. Co.*, 742 N.W.2d 690, 695 (Minn. App. 2008) (stating that at an evidentiary hearing, the district court decides these three things, and citing Minn. Stat. 117.075, subd. 1 (2004)) *review granted* (Minn. March 18, 2008); *see also The Housing and Redevelopment Authority in and for the City of Richfield v. Walser Auto Sales, Inc.*, 630 N.W.2d 662 (appeal from condemnation proceeding specifically examining whether the taking for transfer to a private entity was authorized by law).

A district court's determinations on public use or public purpose and on necessity are questions of fact that are subject to a "clearly erroneous" standard of review on appeal. *Minneapolis Community Dev. Agency v. Opus Northwest, LLC*, 582 N.W.2d 596, 601 (Minn. App. 1998) (citing *State by Humphrey v. Byers*, 545 N.W.2d 669, 672 (Minn. App. 1996)). A district court's determination on whether the petitioner has authority for the taking, as it involves analysis of the statutory grant of eminent domain power, is necessarily a question of law, meaning that an appellate court is not bound by the determination and need not give deference to it. *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 393 (Minn. 2003) (citing *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984)).

ARGUMENT

I. The District Court's Decision Granting the Quick Take was Contrary to Law Because Fridley HRA lacked authority for this *Conduit Condemnation*.

The primary issue in this case is whether Fridley HRA has authority to take Main Street's property for the particular proposed public purpose – facilitating construction of a commuter rail station and related facilities. To decide the question of authority, the Court must understand that within the universe of "public purpose" there exist separately delineated purposes for the state, for municipalities, and for certain, authorized individuals. *See* Minn. Stat. § 117.035 (2007) (noting the existence of separate proper purposes for the state, for a corporation or other body, public or private, or an individual). Critical to analyzing the present case is recognizing that Fridley HRA, a municipal entity, is taking Main Street's property for a state purpose. *See* Minn. Stat. § 174.82

(2007) (assigning to MnDOT exclusive responsibility for “all aspects of planning, developing, constructing, operating, and maintaining commuter rail”).

Under these circumstances, Fridley HRA’s Petition is best described as a *conduit condemnation*; that is to say that Fridley HRA is acting as a mere *conduit* to take the property from Main Street and pass it to MnDOT or MnDOT’s designee. The property is not being taken for any ultimate use by Fridley HRA itself. Rather, Fridley HRA is taking the property to ultimately turn it over to MnDOT or MnDOT’s designee so that it can be used for the construction and operation of a commuter rail station and related facilities.

Many of Main Street’s arguments stem from this concept. For the reasons set forth in more detail below, there is no currently valid legal authority for such a *conduit condemnation*.⁵ In fact, a Minnesota Attorney General Opinion from 1958 addressed a strikingly similar situation and advised that such an action was not permitted by law.⁶ While not binding precedent, Attorney General Opinions are “entitled to careful consideration,” particularly when such opinions are long-standing. *Billigmeier v. County of Hennepin*, 428 N.W.2d 79, 82 (Minn. 1988).

⁵ While in recent years conduit condemnations had obtained judicial approval, specifically in the context of takings for transfer to private developers, the 2006 amendments to Chapter 117 of the Minnesota Statutes (Eminent Domain) now preclude property taken by eminent domain being given to private entities when the sole public purpose is general economic development. Minn. Stat. § 117.025, subd. 11(b). Since now invalid takings for transfer to private developers formed the basis for the line of jurisprudence approving conduit condemnations, previous case law holding such conduit condemnations invalid are now revitalized.

⁶ A copy of the Attorney General Opinion is included in Appellant’s Addendum.

In the matter underlying the Attorney General Opinion, the City Attorney for Thief River Falls sought advice on whether Thief River Falls could acquire a tract of land located outside the city limits by condemnation and then convey it to the Minnesota Department of Highways for construction of a roadside parking area and historic monument. Op. Att’y Gen. 59a-14 (Dec. 30, 1958), p. 1. The attorney general concluded that Thief River Falls could not go forward with the condemnation. *Id.*, p. 3. The analysis focused on the statute that set forth the purposes for which a city could condemn private property, and noted that the “instant purpose is not specifically listed.” *Id.*, pp. 2-3. The attorney general cited the Minnesota Supreme Court’s holding in *State ex rel. Ford Motor Co. v. District Court of the Fourth Judicial District* that a municipality could only take property for certain designated purposes and can take property for no purposes other than those so designated. *Id.*, p. 2, (citing *Ford Motor Co.*, 133 Minn. 221, 158 N.W. 240 (1916)). Even if the “non-designated” purpose was a public purpose, it was nonetheless outside the scope of permitted takings for the city. *Id.*

The following quote from the attorney general opinion summarizes the conclusion and offers significant guidance on the issues presented here:

The . . . statutes authorize the city to condemn private property for municipal purposes only. Under the facts as stated it is proposed that the city condemn land not for municipal but for state purposes. It will act as a mere conduit for the transfer of the property to the state, although using city funds for the purchase thereof. Upon such transfer the city will be divested of ownership and control of the property condemned by it. In making a gift of land to the state under M.S., sec. 465.025, the authority of the city is restricted to land which is no longer needed for municipal purposes.

Since condemnation for the proposed purpose is not among the designated purposes for which a city of the class of Thief River Falls is authorized to condemn property, we answer your question in the negative.

Id. p. 3 (emphasis in original).

The present Fridley case is strikingly similar to the Thief River Falls situation. As noted by the district court in its order and in Fridley HRA's Petition, Fridley HRA is not taking land for its own purposes but for state purposes (commuter rail). Moreover, Mr. Schadauer testified that there is "no doubt" that if a Fridley station is ever established the Met Council would be responsible for operating it by virtue of MnDOT having delegated to the Met Council the authority to operate and maintain the Northstar Commuter Rail Project. (A.93-94 - T. 76-77.) Fridley HRA is using its own funds to act as a conduit for acquiring the property for use by the state (through the Met Council). Fridley HRA will neither own nor control the property it is taking – the Met Council will. (See A.85-86 - T.56-57 (Fridley HRA representative Paul Bolin testified that the Met Council will operate and control the tunnel and proposed park and ride facility), A.93 - T.76 (Mr. Schadauer testified there is "no doubt" that the Met Council would operate the station)).

The same legal rationale that prohibited Thief River Falls from taking property and acting as a mere conduit by transferring it to the state for a public highway and historic landmark also prohibits the Fridley HRA from taking Main Street's property and acting as a mere conduit to transfer it to the state (or Met Council) for a commuter rail station and related facilities.

A. Standard of Review.

While a judicial finding of public purpose or necessity is a question of fact, a finding on authority, involving as it does the analysis and interpretation of the various statutory grants of eminent domain power, is a question of law. Thus, where an appeal challenges the district court's finding of authority, the reviewing court is not bound by and need not give deference to a district court's decision. *Modrow v. JP Foodservice, inc.*, 656 N.W.2d 389, 393 (Minn. 2003) (citing *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639 (Minn. 1984)). In addition, the statutory construction necessary for the analysis of the authority issue is also a question of law, which the Court of Appeals reviews de novo. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998).

B. The Fridley HRA lacked authority to take Main Street's property when the property was to be used by the state but where the state, through the Attorney General, did not join in the taking.

MnDOT has sole authority to plan, develop, construct, operate, and maintain commuter rail track, facilities, and services. Minn. Stat. § 174.82. By law, when land is being taken for state purposes, the state, through the attorney general, is to commence eminent domain proceedings. Minn. Stat. § 117.035 (emphasis added). By Fridley HRA's admission, this property is being taken for a state purpose; "in order to facilitate the construction and operation of a commuter rail station and related facilities within the City of Fridley." (*A.30-31 - Petition* ¶3.) Yet the state, through the attorney general, did not join in or commence the condemnation proceedings to take Main Street's property.

In Minnesota, the object of all statutory construction is to “ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2007). When a statute’s words are clear and free of ambiguity, courts have no right to construe or interpret the statute’s language. *Tuma v. Comm’r of Econ. Sec.*, 386 N.W.2d 702, 706 (Minn. 1986). Minn. Stat. § 117.035 is not ambiguous. Its plain language, which is entitled “**Proceedings, By Whom Instituted,**” clearly delineates three separate entities that may take property – the state; a corporation or other body, public or private; or an individual – and states that each must separately be the condemning entity when the property being taken is for that entity’s authorized purpose. Minn. Stat. § 117.035.

Moreover, the Attorney General Opinion discussed above and the *Ford Motor Co.* case cited therein provide further authority that conduit condemnations are not legally authorized. The reasoning underlying that concept can first be found in section 117.035 – if the land is being taken for a state purpose, the state is the entity by whom the proceeding must be instituted.

Main Street anticipates that Fridley HRA will argue that this Court’s decision in *Granite Falls* repudiates the Attorney General Opinion regarding Thief River Falls and Main Street’s statutory argument. But the *Granite Falls* conclusion provides little assistance to Fridley HRA. First, the Minnesota Supreme Court accepted review of the case in March 2008, calling the decision into question. Second, one of the underpinnings of the *Granite Falls* decision (the evolution of eminent domain law that permitted condemnation for transfer to private developers) has since been eliminated in Minnesota with the 2006 amendments to Minn. Stat. § 117.025, adding subdivision 11, which now

defines a “public use” or “public purpose” as “the possession, occupation, ownership, and enjoyment of the land by the general public, or by public agencies.”⁷ Third, although the *Granite Falls* opinion was issued in 2007, after the major amendments to Chapter 117, the decision was based on the 2004, pre-amendment version of the statute. With the 2006 amendments to Chapter 117, and in particular, to section 117.025, the attorney general opinion in Thief River Falls remains vibrant, persuasive authority on the prohibition against “conduit condemnations” that exceed the condemning entity’s specific authority. Thus, the district court erred as a matter of law in concluding that the Fridley HRA, acting alone, was authorized to take Main Street’s property for what is clearly a state purpose.

C. The memorandum of understanding between MnDOT and Fridley HRA did not delegate authority to Fridley HRA to take Main Street’s property.

By statute, MnDOT may enter agreements delegating to other entities MnDOT’s authority over all aspects of commuter rail. Minn. Stat. § 174.82. But MnDOT has not delegated any authority, eminent domain or other, to Fridley HRA. Instead, MnDOT simply entered into a memorandum of understanding with Fridley HRA that merely agreed it was in the “best interest of the State of Minnesota” for a Fridley Station to be constructed. (*See A.60 - Petition Ex. H.*) Assuming, *arguendo*, that MnDOT can delegate its eminent domain authority, the district court erred in concluding that the memorandum

⁷ Subdivision 11 also defines public purpose or public use as “the creation or functioning of a public service corporation” or “mitigation of a blighted area, remediation of an environmentally contaminated area, reduction of abandoned property, or removal of a public nuisance” none of which are applicable here.

of understanding between MnDOT and Fridley HRA, constituted a delegation of MnDOT's eminent domain authority to Fridley HRA.

1. The plain language and terms of the memorandum of understanding do not delegate any authority to Fridley HRA.

The memorandum of understanding between MnDOT and Fridley HRA, which only generally discusses (or muses about) a state public purpose, falls fatally short of an actual delegation. The evidence demonstrates that MnDOT knew how to delegate its authority in the proper circumstances. Among the various agreements presented to the district court in Fridley HRA's Petition was a memorandum of understanding between MnDOT and the Anoka County Regional Railroad Authority ("ACRRA"). (*A.45-46 - Petition Ex. E.*) In that memorandum of agreement, MnDOT acknowledged its statutory authority over all aspects of commuter rail in Minnesota and its ability to delegate that authority. (*See id.*) MnDOT then exercised its power and authority in the memorandum of understanding to "**delegate** to the ACRRA the necessary authority to fulfill its obligations under the Underpass Construction Agreement" and for ACRRA "to act as MnDOT's **designee** and enter into the Underpass Construction Agreement with BNSF **on behalf of MnDOT.**" (*See id. (emphasis added).*) By such action, MnDOT specifically delegated its exclusive commuter rail power to ACRRA for purposes of getting a tunnel for the commuter rail station constructed. MnDOT did not exercise its power and authority by any such similarly specific delegation to Fridley HRA with respect to taking Main Street's property.

The memorandum of understanding between MnDOT and the Fridley HRA contains nothing resembling the delegation of power in the memorandum of understanding between MnDOT and ACRRRA and offers only its general support for the purpose. The memorandum of understanding with Fridley HRA again acknowledges MnDOT's exclusive power over commuter rail and its ability to delegate that power, but critically fails to name Fridley HRA as MnDOT's "designee" to acquire the property. The use of the term "designee" in the memorandum of understanding with ACRRRA and its absence from the memorandum of understanding with Fridley HRA is not only significant, but dispositive. MnDOT understands the importance and implications of the language it uses when entering agreements. Naming ACRRRA as its designee and failing to name Fridley HRA as its designee is neither accidental nor meaningless. MnDOT carefully avoided actual delegation of MnDOT's power to use eminent domain to take the subject property for a commuter rail station and related facilities to Fridley HRA.

Main Street anticipates that Fridley HRA will argue, as it did in the opposition to Main Street's motion for new trial, that MnDOT "effectively" delegated its authority to Fridley HRA. However, there is no support for the contention that MnDOT can "effectively" delegate its authority to any entity; certainly not in an area as complex and technically precise as condemnation. When a governmental entity engages in the drastic step of taking private property from a citizen, the law necessarily demands both legal and technical precision. "Effectively" satisfying legal requirements cannot suffice.

Instead of validly delegating authority to Fridley HRA, the memorandum of understanding between MnDOT and Fridley HRA disingenuously and incorrectly infers

that the Fridley HRA already had the power to take the property under Minn. Stat. § 469.001, *et seq.* (*See id.*)⁸ Additionally, the newly discovered evidence belies this inference by showing that MnDOT knew it had to delegate authority to Fridley HRA, but had an important reason not to do so. MnDOT's failure to actually delegate authority is understandable because an actual delegation would have had an adverse effect on federal funding for the overall transportation project at that critical time. (*A.76.1-78, 94.1-96 - T. 28-30, 84-86; see also A.72 - Furhmann 10-7-07 email (Furhmann expresses concern that inclusion of the Fridley station in the Northstar Project could jeopardize federal funding).*)

2. MnDOT cannot delegate authority that it had not yet acquired for itself.

MnDOT's failure to actually delegate its authority may well also be attributable to MnDOT's knowledge that it cannot delegate power that it lacks. MnDOT's authority is limited by statute to circumstances in which an approved plan and specific funding source exist. *See* Minn. Stat. § 174.84, subd. 2 (2007) (MnDOT's authority is restricted to actions in conformity with an approved commuter rail system plan) and Minn. Stat. § 174.88, subd. 2 (2007) (MnDOT cannot spend state funds for construction of commuter rail facilities unless such funds have been appropriated specifically for those purposes). Because there is no approved plan that includes a Fridley station and there is no funding for construction of a Fridley station and related facilities, MnDOT, itself, has no authority

⁸ This will be discussed in more detail in section I.D. below.

to take Main Street's property, meaning that MnDOT cannot delegate authority to take Main Street's property to Fridley HRA or any other entity.

D. Fridley HRA lacked authority to take Main Street's property when the stated purpose of the taking was not related to providing safe low-income housing or to carry out a redevelopment project.

Under Minnesota law, a taking must be instituted by a public body "authorized by law to exercise the power of eminent domain[.]" Minn. Stat. § 117.035. A Housing Redevelopment Authority can only take property by eminent domain in the following situations: to provide safe low-income housing or to carry out a redevelopment project. Minn. Stat. § 469.012, subd. 1g (2007). As demonstrated by the admission in Fridley HRA's Petition, the stated purpose of this taking is "to facilitate the construction and operation of a commuter rail station and related facilities within the City of Fridley." (*A.30-31 - Petition*, ¶3.) Fridley HRA's stated purpose for this taking is neither to provide low-income housing nor to carry out a redevelopment project. Thus, the taking is not authorized under section 469.012.

Statements in Petitions of Condemnation are deemed admissions by the condemnor. *See Condemn. of Cert. Lands in White Bear*, 555 N.W.2d 541, 543 (Minn. App. 1996) (citation omitted) (observing in a dispute on a motion for new trial in a condemnation matter that "once filed the petition represents an admission by the condemnor of its contents"). Fridley HRA's Petition contains no statements that the taking is to provide safe, low-income housing or to carry out a redevelopment project. The only statement is that the taking is "to facilitate the construction and operation of a commuter rail station and related facilities within the City of Fridley." Thus, Fridley

HRA has admitted that it is not taking the property for any purpose authorized by section 469.012.

A closer examination of section 469 further demonstrates that Fridley is not taking this property for any of its authorized purposes. Whether for purposes of providing safe, low-income housing or to carry out a redevelopment project, the underlying rationale for an HRA to exercise eminent domain under section 469 is to remove blight and redevelop property within a particular municipality. *See, e.g.*, Minn. Stat. § 469.003 (2007) (setting forth purposes necessary for an HRA resolution permitting condemnation) and § 469.002, subs. 11 & 14 (2007) (defining “blighted area” and “redevelopment project”). These purposes necessarily imply that some development already exists on the property being taken that has either become blighted or requires redevelopment. *See* Minn. Stat. § 469.002, subd. 14. That is not the case here. There is no dispute that Main Street’s property remains undeveloped. Similarly, there is no evidence that the property is blighted in any way. *See* Minn. Stat. § 469.002, subd. 11 (defining a blighted area as any area with buildings or improvements that have become detrimental to safety by virtue of various conditions such as dilapidation or overcrowding). To the contrary, Paul Bolin admitted at the hearing that there has been no finding that the subject property was blighted. (*A.88 - T.59.*) Additionally, Bolin admitted that there is no “specific plan or project” that shows that Fridley HRA needs Main Street’s property to meet a development for housing or redevelopment project. (*A.88-89 - T.59-60.*)

Indeed, the district court appeared to further acknowledge the lack of authorization for Fridley HRA to take this property on its own when it noted that the showing by

Fridley HRA of “benefits of anticipated economic development” through the acquisition of the property was “minimal.” (*See A.21 – Court’s Memo, p. 8.*) The “minimal” showing when combined with the admissions of the Petition and of Mr. Bolin, and the requirements of section 469 lead to an inescapable conclusion that the Fridley HRA was only taking this property as a conduit to provide land for a commuter rail station and sought to show an independent purpose under Minn. Stat. § 469.012 after being confronted with an objection and citation to contrary law by Main Street. Accordingly, the district court erred as a matter of law by concluding that Fridley HRA had authority on its own for this taking.

E. The multiple memoranda of understanding between MnDOT, BNSF Railway Company, ACRRA, and Fridley HRA failed to provide Fridley HRA with authority to take Main Street’s property as a joint exercise of common power.

The district court erred in concluding that the multiple memoranda of understanding between MnDOT, BNSF Railway Company, ACRRA, and Fridley HRA gave Fridley HRA authority to take Main Street’s property as a joint exercise of common power. (*A.21 - Court Memorandum, p. 8.*) While government units can jointly exercise common power by agreement under Minn. Stat. § 471.59 (2007), the agreement must state the purpose of the agreement or the power to be exercised and the method by which to accomplish the purpose or the manner in which to exercise the power. Minn. Stat. § 471.59, subd. 2. (2007). The agreement must also provide for the disposition of any property acquired as the result of the joint or cooperative exercise of power. Minn. Stat. § 471.59, subd. 5. (2007). In this case, the record is devoid of evidence of the required

criteria for a joint powers agreement, and therefore conclusively demonstrates that Fridley HRA did not enter into any agreement to jointly exercise a common power with MnDOT or any other relevant governmental unit. MnDOT did not act at all in the taking; the only condemning agency is Fridley HRA. There was nothing “joint” about this proposed taking.

The evidence in this case clearly establishes that, at best, the taking of this property would require combined action: by MnDOT, for the commuter rail station and related facilities; and by Fridley HRA, for “benefits of anticipated economic development” from that station. Such a taking is by definition a joint taking as contemplated by Minn. Stat. § 117.016 (2007) and would necessarily require both a joint acquisition agreement between MnDOT and Fridley HRA and that both entities proceed together as named Petitioners in the condemnation action. Minn. Stat. § 117.016. None of the multiple memoranda of understanding in this case satisfy the requirements of section 117.016. The absence of a joint acquisition agreement and the absence of MnDOT from this proceeding invalidates the taking.

F. Main Street’s Newly Discovered Evidence Reinforces that Fridley HRA Lacked Authority for this Taking.

Main Street’s new evidence demonstrates that MnDOT officials themselves (one of whom was one of Fridley HRA’s witnesses at the hearing on this matter) agreed with Main Street’s analysis that Fridley HRA lacked authority for this taking; they knew that only MnDOT or its designee could take Main Street’s property for a commuter rail station.

In his October 11, 2007, email Mike Schadauer told Bob McFarlin that “[w]ith MnDOT having the statutory authority for commuter rail, it appears that a delegation agreement would be necessary to give the City or County Regional Railroad Authority the authority to take either action.” (A.73.) This admission goes to the heart of Main Street’s argument, that Fridley HRA does not have authority to take the property for a commuter rail station and related facilities; only MnDOT has that authority. Moreover, the record, including Fridley HRA’s Petition, demonstrates that MnDOT has not delegated that authority to the Fridley HRA.⁹ This simply reinforces Main Street’s position and shows the district court erred as a matter of law.

II. Fridley HRA’s taking constituted an improper “stockpiling” of Main Street’s property, and was not necessary for a public purpose.

The district court’s finding that this taking was necessary is a fact question, subject to a “clearly erroneous” standard of review on appeal. *Minneapolis Community Dev. Agency v. Opus Northwest, LLC*, 582 N.W.2d 596, 601 (Minn. App. 1998) (citing *State by Humphrey v. Byers*, 545 N.W.2d 669, 672 (Minn. App. 1996); *Regents of the University of Minn. v. Chicago and North Western Transp. Co.*, 552 N.W.2d 578 (Minn. App. 1996) *review denied* (Minn. Nov. 20, 1996)). Reversal is warranted when findings are clearly erroneous or “manifestly contrary to the weight of the evidence or not

⁹ Main Street still contends, as it did in its submissions to the district court, that MnDOT cannot delegate its power of eminent domain in this matter. However, even if one disagrees with that argument (as the district court did), this newly discovered evidence demonstrates that MnDOT officials understood that MnDOT had exclusive authority for the taking and needed to delegate that authority to Fridley HRA to permit this matter to go forward. For whatever reasons, MnDOT did not delegate that authority.

reasonably supported by the evidence as a whole[.]” *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999).

Under Minnesota law, a taking must be necessary to be valid. Minn. Stat. § 117.075, subd. 1 (2007); *see also Regents*, 552 N.W.2d at 580. “Necessity . . . means now or in the future.” *State ex rel. City of Duluth v. Duluth Street Ry.*, 229 N.W. 883, 884 (Minn. 1930) (citation omitted). “Necessary’ does not mean that a thing will possibly be needed at some remote time in the future.” *Id.* (citation omitted). Further, speculative purposes are not enough to demonstrate necessity. *Id.*

The Northstar Commuter Rail Project is a federally-funded transportation project for construction of a commuter rail line between Big Lake, Minnesota and Minneapolis. (A.77 - T.29.) Although initially proposed for inclusion in the project, as Mr. Schadauer testified at the hearing, a Fridley station has since been excluded and there are no currently approved or funded plans to re-insert a Fridley station into the project. (A.78, 81 - T.30, 33.) Rather, Mr. Schadauer testified that MnDOT and its collective partners simply “would like to maintain the opportunity to add that Fridley station when the funding becomes available.” (A.78 - T.30.) With no funding or plan, but rather a mere intention of maintaining an opportunity to use the subject property, Fridley HRA has taken Respondent’s property to illegally “stockpile” it, while hoping to find some other funding source. As Mr. Schadauer testified, MnDOT is treating this condemnation as a “place-holder for a future station.” (A.97 - T.88.) “Holding a place” for a future commuter rail station is synonymous with “stockpiling” the land for a future commuter rail station.

Indeed, this scenario is very similar to that in *Regents* where the University of Minnesota tried to take land for which it had no approved planned use, and for which it had to undertake decontamination. Further, at least one University representative defined the time period before the land would be used as “potentially indefinite.” *Id.* Similarly, in this case, Mr. Schadauer testified that there is no approved construction plan, funding, or timeline for the Fridley Station. (A.81 - T.33). There is no evidence in the record on when such a plan or funding might develop. Thus the present facts look quite different from facts where the court found a taking was necessary. *Cf. Minneapolis Community Dev. Agency*, 582 N.W.2d at 601 (citing a Wisconsin case and permitting condemnation to go forward where, among other things the city passed resolutions supporting the project, a contract was in place with a builder, and funding was in place). Notwithstanding Fridley HRA’s citations to the hopes of Paul Bolin and Tim Yantos, and Mr. Yantos’ dubious assertion that the Fridley station is a separate project from the federally-funded Northstar Project, the fact remains that there is no funding or current plan that would permit the construction of a Fridley commuter rail station at any point in the foreseeable future. Mr. Schadauer of MnDOT put it best when he testified that this condemnation is a “place-holder for a future station.” Fridley HRA is simply stockpiling Main Street’s property, while it, Mr. Bolin and Mr. Yantos hope to find a funding source to pay for the construction. Accordingly, the district court’s finding of necessity was clearly erroneous.

III. General Economic Development Benefits Alone Cannot Support a Taking.

As noted above, a finding of a public purpose for a taking is a question of fact that is subject to a clearly erroneous standard of review on appeal. *Minneapolis Community Dev. Agency*, 582 N.W.2d at 601 (citation omitted); *Walser*, 630 N.W.2d at 666. Reversal is warranted when findings are clearly erroneous or “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole[.]” *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999).

The 2006 legislative amendments to Chapter 117 explicitly reject the notion of general economic development as a valid public use or public purpose for a taking. Minn. Stat. § 117.025, subd. 11(b). To the extent that the district court found that an alternative purpose for the taking of Main Street’s property by Fridley HRA was general economic development benefits to the City of Fridley, rather than construction of a commuter rail station and related facilities, the district court erred and ignored the statute in concluding that there was a valid public purpose to the subject taking.

The district court curiously acknowledged the 2006 amendments to section 117.025 and correctly noted that the amended statute precludes a taking where the exclusive “public purpose” is general benefits from economic development. (*A.20 - Court Memorandum*, p. 7.) However, the district court decided that it did not need to analyze the statute further because in its view general benefits from economic development were not the sole public purpose being presented by the proposed taking. Rather, the court erroneously concluded that there was an additional public purpose here – namely a commuter rail station –which authorized the taking, making no distinction

about whether that purpose was a proper municipal or delegated state purpose, which it was neither.

The court's stated companion public purpose of construction and operation of a commuter rail station is not a public purpose for which Fridley HRA is statutorily authorized to exercise eminent domain and MnDOT has not delegated its exclusive authority for that public purpose to Fridley HRA. Indeed, with respect to the public purpose that would permit a taking of this land – operation of a commuter rail station – there is no actor in this proceeding that is authorized to exercise that taking. Thus, the district court clearly erred when it concluded that the general public purpose of a commuter rail station was sufficient to overcome the prohibition of Minn. Stat. §. 117.025, subd. 11(b) against public benefits of economic development being the sole “public use” or “public purpose” to justify a taking.

Moreover, the district court correctly pointed out that the evidence of public purpose was “minimal.” (*A.21 - Court Memorandum, p. 8.*) Along with the court, even Fridley HRA acknowledged that Minn. Stat. § 117.025, subd. 11(b) prohibits condemnation actions where the sole public use or public purpose is “the public benefits of economic development.” (*A.20 - Court Memorandum, p 7; Petitioner's Memo in Opp. to Resp.'s Motion for a New Trial at p. 12.*) Fridley HRA's minimal evidence of general economic benefit arising from this taking, without participation by the state in the proceeding, renders the taking invalid under Minn. Stat. § 117.025, subd. 11(b). Accordingly, the district court's finding of public purpose was clearly erroneous and should be reversed.

CONCLUSION

Fridley HRA is not a public body authorized to take the subject property “in order to facilitate the construction and operation of a commuter rail station and related facilities within the City of Fridley,” solely a state purpose. The focus is not on whether the taking is for a public use or public purpose; rather, the focus is on whether the taking falls within the limited statutory eminent domain authority provided to Fridley HRA under Minn. Stat. § 469.012.

Because the district court erred (1) in concluding that Fridley HRA had authority on its own, delegated from MnDOT, or through some type of joint power agreement to take the property; (2) in concluding that the taking was necessary; and (3) in concluding the taking served a public use, this Court should reverse the decision of the district court.

Respectfully submitted,

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