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Property: Your Omnipotent Neighbor: A Statutory Definition of Owner and Its Impact on Property Rights—City of Brainerd v. Brainerd Investments Partnerships

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**PROPERTY: YOUR OMNIPOTENT NEIGHBOR: A
STATUTORY DEFINITION OF “OWNER” AND ITS
IMPACT ON PROPERTY RIGHTS—*CITY OF BRAINERD V.
BRAINERD INVESTMENTS PARTNERSHIP***

Maria T. Cisneros[†]

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I. INTRODUCTION

In *City of Brainerd v. Brainerd Investments Partnership*,¹ the Minnesota Supreme Court considered whether the State was a property owner in the context of the State’s special assessment statutes.² By answering the question affirmatively, the court discounted over seventy years of reliance on attorney general opinions that said the State was not an “owner” under the statute.³ The decision solidified the State’s right to petition a municipality

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1. 827 N.W.2d 752 (Minn. 2013).

2. *Id.* at 753. For an example of a special assessment statute defining “owner,” see MINN. STAT. § 429.031, subdiv. 1(f) (2012).

3. The original special assessment statute was interpreted in a 1936 attorney general opinion. After the Minnesota Legislature consolidated the statute and recodified it in 1953, it was again interpreted by the attorney general. *See infra* Part II and notes 21, 29.

for improvements payable by special assessment, even though municipalities lack statutory authority to bind the State to pay those assessments.⁴ The court’s decision correctly relied on the rules of statutory construction by finding that the term “owner” in the statute was unambiguous. Yet the decision draws attention to important policy considerations that may compel the legislature to amend the statute, perhaps to prohibit the State from petitioning for special assessments, or alternatively, to allow municipalities to bind the State to pay for special assessments.⁵

First, this case note will summarize the historical background of Minnesota Statutes section 429.031⁶ and outline the facts of *Brainerd Investments Partnership*.⁷ Next, it will explore the court’s holding and will agree that the court correctly concluded that compelling policy arguments and longstanding extrinsic interpretations do not nullify the court’s duty to interpret statutes according to the law.⁸ It will also examine how, in addition to creating the potential for the State to oblige its neighbors to pay special assessments for projects petitioned for by the State, the State’s immunity from special assessment creates a source of financial uncertainty and instability for municipalities that undertake large infrastructure projects at the request of the State.⁹ Finally, it concludes that this decision highlights important policy considerations that impact all owners of property abutting state-owned land and, therefore, the legislature should consider changing Minnesota’s special assessment statutes to protect both private landowners and municipalities from their omnipotent state neighbor.¹⁰

II. HISTORY OF RELEVANT LAW

Special assessments in Minnesota are a constitutional creation. They defray the cost of local improvements that confer special benefits on certain property by requiring contribution from the owners of the property abutting such improvements.¹¹ They are

4. MINN. STAT. § 435.19, subdiv. 2; *Brainerd Inv. P’ship*, 827 N.W.2d at 753.

5. *See infra* Part IV.

6. *See infra* Part II.

7. *See infra* Part III.

8. *See infra* Part IV.

9. *See infra* Part IV.

10. *See infra* Part V.

11. MINN. CONST. art. X, § 1 (“The legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property

distinct from other forms of public works funding in that they are used to finance specific local improvements. They may only be levied against properties that receive a measurable special benefit from the improvement, such as improved access to a road, and the amount of the charge is directly related to the benefit to the property.¹² However, municipalities cannot bind the State to pay special assessments, even if the improvement benefits the state-owned property.¹³

Under Minnesota law, if the owners of at least thirty-five percent of the property abutting a proposed improvement submit a petition in favor of funding the improvement by special assessment,¹⁴ a municipality can pass the resolution to fund the improvement by a simple majority.¹⁵ This means that if one owner owns thirty-five percent or more of the total front footage abutting the assessment and that owner petitions for the improvement, the city council may approve the resolution by a simple majority, even if all other abutting owners disapprove.¹⁶ Absent such a petition, a four-fifths majority is required.¹⁷ This is known as the thirty-five percent rule. This procedure applies whenever a municipality intends to finance improvements, even partially, by levying special assessments.¹⁸

The statute governing the thirty-five percent rule was first enacted in 1927¹⁹ and has been clarified and amended over the years.²⁰ In 1936, the Minnesota Attorney General issued an opinion to the City of New Ulm in which he stated that “the city is not an ‘owner’ . . . within the meaning of the . . . statutory provisions and

benefited thereby without regard to cash valuation.”).

12. MINN. STAT. § 429.051 (2012); LEAGUE OF MINN. CITIES, INFORMATION MEMO: SPECIAL ASSESSMENT GUIDE 2 (2011), available at <http://www.lmc.org/media/document/1/sagtext.pdf>.

13. MINN. STAT. § 435.19, subdiv. 2.

14. *Id.* § 429.031, subdiv. 1(f).

15. *Id.*

16. *See id.*

17. *Id.*

18. *Id.* § 429.021, subdiv. 3 (“When any portion of the cost of an improvement is defrayed by special assessments, the procedure prescribed in this chapter shall be followed . . .”).

19. *See* Act approved Apr. 14, 1927, ch. 185, § 1, 1927 Minn. Laws 279, 279 (“In any city of the fourth class . . . the council shall have power to improve any street . . . when petitioned for by the owners of not less than thirty-five percent (35%) in frontage of the real property abutting on such street . . .”).

20. MINN. STAT. § 429.031 (amended 1953, 1955, 1957, 1961, 1963, 1965, 1967, 1973, 1984 (four amendments), 1986, 1994, 1996, and 2000).

[city] . . . property should be excluded by the city authorities in determining the sufficiency of the petition.”²¹

In 1949, the language of the 1927 statute²² was transplanted into a newly reorganized chapter dedicated to special assessments.²³ In 1953, it was incorporated into the current special assessments chapter.²⁴ There is no record of the legislature expressing disagreement with the 1936 attorney general opinion,²⁵ and the 1953 version of the statute did not define “owner.”²⁶ The following year, the attorney general issued two more opinions interpreting “owner” in the newly consolidated statute.²⁷ The first of these two opinions answered a related question about the same statute and relied almost entirely on the 1936 opinion.²⁸ In that letter the

21. Cities & Villages—Streets—Improvement of, 56 Op. Minn. Att’y Gen. 133, 134–35 (June 30, 1936). In this opinion, the attorney general relied on the following foreign precedent: *Herman v. City of Omaha*, 106 N.W. 593, 595 (Neb. 1906) (stating that “the right to petition should be confined to the individual taxpayer who bears the greater part of the burden imposed by the special assessment,” and holding that the city did not have the right to petition itself); *Armstrong v. City of Ogden*, 43 P. 119, 121 (Utah 1895) (holding that the city’s property should not be included in calculations to determine whether a petition for special improvements had been signed by the requisite number of votes).

22. Act approved Apr. 14, 1927, ch. 185, sec. 1815, § 1, 1927 Minn. Laws 279, 279 (repealed 1949).

23. Act effective July 1, 1949, ch. 119, § 51, 1949 Minn. Laws 146, 177 (repealed 1953).

24. See Act approved Apr. 17, 1953, ch. 398, § 3, 1953 Minn. Laws 465, 468; *City of Brainerd v. Brainerd Invs. P’ship*, 827 N.W.2d 752, 762 (Minn. 2013).

25. See *Brainerd Invs. P’ship*, 827 N.W.2d at 762.

26. See MINN. STAT. § 429.031 (2012); MINN. STAT. § 412.411 (1949) (repealed 1953); *Brainerd Invs. P’ship*, 827 N.W.2d at 762. The recodification was part of the consolidation of several statutes pertaining to special assessments and was intended to create an integrated chapter on the topic from a plethora of related laws spread throughout the Minnesota Statutes. The appellants contended that these circumstances justified deference to the attorney general’s opinions. In their brief, they stated in part:

The Attorney General’s opinions are especially important, because they bracket in time the comprehensive consolidation of Minnesota’s special assessment statutes . . . [T]he drafters of Chapter 429 included a task force of experienced municipal practitioners . . . If they had wanted to change that rule they surely would not have left the pre-1953 language unamended.

Appellants’ Brief, Addendum and Appendix at 21, *Brainerd Invs. P’ship*, 812 N.W.2d 885 (No. A11-644, -1471), 2011 WL 7807383.

27. Special Assessments—Property Owned by the State, 408-c Op. Minn. Att’y Gen. 1, 1–2 (Oct. 28, 1954); Cities: Improvements—Sewer, 387-B-10 Op. Minn. Att’y Gen. 1, 1–5 (June 29, 1954).

28. Cities: Improvements—Sewer, 387-B-10 Op. Minn. Att’y Gen. at 1–5 (stating in reference to the attorney general’s opinion of 1936, “Upon its

attorney general concluded that, in determining the adequacy of a petition to make improvements, it was not necessary to consider city-owned property.²⁹

A few months later, the attorney general again weighed in on how the statute applies to state-owned property.³⁰ This last opinion echoed the previous opinions and concluded that the State was not an owner within the meaning of the statute because the city could not require the State to pay special assessments.³¹ Therefore, according to this opinion, state land was not considered in calculating whether there was sufficient landowner support for a petition, and the State was not eligible to petition “for or in favor of the improvement.”³²

Since 1954, the statute has been amended fifteen times.³³ In two of those amendments, the legislature addressed the meaning of the word “owner.” In 1961, the legislature added a provision strengthening notice requirements for owners, defining “owner” for the purpose of mailed notice, and explicitly acknowledging tax exempt owners as owners deserving of notice.³⁴ In 1967, the provision defining “owner” enacted in the 1961 amendment was rewritten; however, the explicit acknowledgment of tax exempt owners remained intact.³⁵ Additionally, a 1996

authority, your first question is answered in the negative”).

29. *Id.* at 4.

30. Special Assessments—Property Owned by the State, 408-c Op. Minn. Att’y Gen. at 2.

31. *Id.* (“Since the property of the State abutting upon the street named as the location for the improvement is not subject to a special assessment for the improvement contemplated it is my opinion that [the State] is not an ‘owner’ within the requirements of 429.031”); see also Cities: Improvements—Sewer, 387-B-10 Op. Minn. Att’y Gen. at 4; Cities & Villages—Streets—Improvement of, 56 Op. Minn. Att’y Gen. 133, 135 (June 30, 1936) (interpreting MINN. STAT. § 1815 (Mason 1927)) (“[T]he city is not an ‘owner’ of such abutting park property within the meaning of the . . . statutory provisions . . .”).

32. Special Assessments—Property Owned by the State, 408-c Op. Minn. Att’y Gen. at 2.

33. See *supra* text accompanying note 20.

34. Act effective Jan. 1, 1962, ch. 525, § 5, 1961 Minn. Laws 910, 913 (inserting three sentences requiring notice be mailed to owners of parcels within the proposed assessment area not less than ten days before a hearing, defining “owners” for the purpose of mailed notice as those shown as of thirty days prior to the adoption of the resolution providing for the hearing, and providing a special procedure for identifying tax exempt owners and obtaining waiver of notice by tax exempt owners).

35. See Act approved Mar. 10, 1967, ch. 57, § 1, 1965 Minn. Laws 136, 136 (amending the 1961 provision defining owner for the purpose of mailed notice by deleting the thirty-day qualification).

amendment made several changes to the wording of the statute apparently aimed at modernizing the language and improving clarity.³⁶ In 2013, the Minnesota Legislature proposed, but did not pass, an amendment to section 435.19. The amendment would have given municipalities the ability to bind the State to pay assessments, while allowing the State to maintain its ability to negotiate the amount it would pay.³⁷ Additionally, the amendment would have required the State to appropriate a set amount of funds each year to pay special assessments levied against the State.³⁸ There was an additional proposal to appropriate \$2 million in the form of a reimbursement grant to the City of Moose Lake.³⁹ For reasons explained in Part IV, this proposal passed.

III. FACTS OF THE CASE

The appellants, Roger and Elizabeth Anda,⁴⁰ and James Martin, own several apartment buildings located across College

36. See Act of Apr. 2, 1996, ch. 402, § 1, 1996 Minn. Laws 542, 542–43. For example, this amendment changed “[n]ot less than 10 days before the hearing, notice thereof shall also be mailed to the owner of each parcel within the area proposed to be assessed” to “[n]ot less than 10 days before the hearing, notice of the hearing must also be mailed to the owner of each parcel within the area proposed to be assessed.” *Id.* The amendment also changed “[f]or the purpose of giving mailed notice, owners shall be those shown to be such on the records of the county auditor” to “[f]or the purpose of giving mailed notice, owners are those shown as owners on the records of the county auditor.” *Id.*

37. S.F. 552, 88th Leg., Reg. Sess. art. 2, § 33, subdiv. 2 (Minn. 2013). This proposed amendment would have required the city to determine the amount that would have been assessed had the public land been privately owned and, although the State would have retained its ability to pay an amount less than the amount determined by the city, the last two sentences of the current version, which prohibit a municipality from binding the State by assessments, were eliminated. *Id.*

38. *Id.* art. 2, § 34, subdiv. 6(a) (“There is annually appropriated from the general fund and credited to the agency assessment account in the special revenue fund, \$5,000,000 in fiscal year 2014 and each year thereafter. Money in the agency assessment account is appropriated annually to the commissioner of revenue for grants to reimburse instrumentalities, departments, or agencies for payment of special assessments, as required under subdivision 2.”).

39. *Id.* art. 2, § 34, subdiv. 6(b).

40. Roger and Elizabeth Anda own land and businesses around the State of Minnesota and have been involved in other real estate related litigation, including a recent case that also reached the Minnesota Supreme Court. See *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 866 (Minn. 2010). That case considered issues related to eminent domain and reimbursement for mitigation of contaminated soil. See *id.*

Drive from Central Lakes College (CLC) in Brainerd, Minnesota.⁴¹ In 2008, the Brainerd City Council began to explore the possibility of expanding College Drive due to increased traffic.⁴² The Council proposed a combination of funding sources for the project, including federal stimulus funds and state-aid funding.⁴³ The project also required local cost sharing, but the Council was opposed to the use of general tax revenues.⁴⁴ Instead, some members of the Council proposed the use of special assessments on adjacent properties to meet the local contribution requirements.⁴⁵

The Council lacked the requisite four-fifths majority to pass the resolution without a petition and could not invoke the thirty-five percent rule because no petition was forthcoming.⁴⁶ The city engineer sent a letter to the vice president of administrative services for CLC to inquire whether CLC, an entity of the State, would consider submitting a petition for the improvements.⁴⁷ Although CLC did not make a firm financial commitment at that time, the vice president expressed willingness to submit a petition and pay a portion of the special assessments.⁴⁸ On November 15, 2010, CLC formally petitioned the Council, and on December 6, 2010, the Council approved the resolution by a four-to-three vote.⁴⁹ Though CLC had not committed to an exact dollar amount at the time of the Council's vote, CLC and the city maintain that CLC made a financial commitment prior to the vote.⁵⁰

41. Appellants' Brief, Addendum and Appendix, *supra* note 26, at 1.

42. *Id.* at 4.

43. *Id.* at 5.

44. *Id.*

45. *Id.* In the spring of 2008, the city engineer recommended against special assessments because, in his opinion, "the proposed project [was] being driven by increasing regional traffic demand in the corridor, not the adjacent land uses" *Id.*

46. *Id.* at 5–7.

47. *Id.* at 6; *see also* City of Brainerd v. Brainerd Invs. P'ship., 827 N.W.2d 752, 754 (Minn. 2013) (stating that the State owns over thirty-nine percent of the property abutting the project area).

48. Respondent's Brief and Appendix at 6, *Brainerd Invs. P'ship.*, 812 N.W.2d 885 (No. A11-644, -1471), 2011 WL 7807384 (stating that CLC was in favor of the improvements because of the focus on improving safety).

49. *Brainerd Invs. P'ship.*, 827 N.W.2d at 754.

50. Respondent's Brief and Appendix, *supra* note 48, at 7. Respondents stated on the record that the petition represented CLC's agreement to pay the assessment. *Id.* at 7. The final assessment amount totaled \$359,882.80. On December 17, 2009, CLC sent a letter to the City specifically agreeing that the improvements would benefit the College and agreeing to pay the assessment. *Id.* at 7–8. CLC further asserts that it waived its right to challenge the assessment as

In response to these events, the appellants initiated an injunction action, claiming the petition was invalid.⁵¹ The appellants argued that the State was not eligible to petition for improvements because it could not be bound to pay special assessments and, therefore, was not an "owner" within the meaning of the statute.⁵² Both parties filed motions for summary judgment. The district court granted the City's motion, concluding that the word "owner" was unambiguous and the State was an "owner" eligible to petition, and dismissed the appellants' claims.⁵³ The court of appeals affirmed, holding that "owner" must be "construed according to the rules of grammar and 'common and approved usage.'"⁵⁴

The supreme court affirmed the court of appeals, relying on Minnesota Statutes section 645.08⁵⁵ and the dictionary definition of the word "owner."⁵⁶ The court concluded that it was not necessary to consider the attorney general opinions or legislative history to determine the meaning of the statute because the statute was not ambiguous on its face.⁵⁷ Because the ambiguity threshold was not met, the court declined to consider extrinsic sources.⁵⁸

excessive or demand hearings, and that it budgeted for the assessments pursuant to section 435.19, subdivision 2 of the Minnesota Statutes. *Id.* at 7–8; *accord Brainerd Invs. P'ship*, 827 N.W.2d at 754 n.2.

51. *Brainerd Invs. P'ship*, 827 N.W.2d at 754.

52. *Id.*; see also MINN. STAT. § 435.19, subdiv. 2 (2012).

53. *Brainerd Invs. P'ship*, 827 N.W.2d at 755.

54. *Id.* (citing *City of Brainerd v. Brainerd Invs. P'ship*, 812 N.W.2d 885, 891–92 (Minn. Ct. App. 2012)).

55. MINN. STAT. § 645.08(1) ("[W]ords and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, or are defined in this chapter, are construed according to such special meaning or their definition.").

56. *Brainerd Invs. P'ship*, 827 N.W.2d at 756; see BLACK'S LAW DICTIONARY 1214 (9th ed. 2009) (defining owner as "[o]ne who has the right to possess, use, and convey something").

57. *Brainerd Invs. P'ship*, 827 N.W.2d at 753 ("Because we conclude that the State is an 'owner' of property under the plain language of the statute, we affirm."); see also *id.* at 756 ("The Legislature did not make any distinctions among owners in section 429.031, subdivision 1(f) Moreover, the Legislature has demonstrated that when it intends to treat property owned by the State differently from privately-owned property, the Legislature knows how to make the distinction clear."). See generally MINN. STAT. § 645.16 ("When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.").

58. *Brainerd Invs. P'ship*, 827 N.W.2d at 757; see MINN. STAT. § 645.16.

The dissent, however, argued that the plain language of the statute, when analyzed in the context of the statute as a whole, “clearly establishe[d] that the State is not an ‘owner’ under the 35 percent owner rule.”⁵⁹ Specifically, the dissent pointed out that subdivision three of the same provision, which governs the requirements of a “unanimity petition,”⁶⁰ requires that the owners signing the petition agree to pay the full cost of the project.⁶¹ Accordingly, the majority’s interpretation would create two inconsistent interpretations of the word “owner” in the same statute and, therefore, by considering the context of the entire statute,⁶² the dissent concluded that “owners” must actually mean “owners of assessable property.”⁶³

IV. ANALYSIS

The court’s holding in *Brainerd Investments Partnership*, in addition to confirming that the statute is not ambiguous, highlights two policy issues that arise from the court’s interpretation and the underlying structure of Minnesota’s special assessment statute. First, because the State has the power to petition for improvements, private landowners neighboring state-owned property may, subject to approval by elected officials, be powerless to avoid special assessments if the State decides to petition for improvements under the thirty-five percent rule.⁶⁴ Second, because municipalities cannot levy binding assessments against the State, cities are at risk of being left with no means of paying for large structural improvements that the State has asked them to undertake and for which the city is powerless to bind the State to pay.⁶⁵

59. *Brainerd Invs. P’ship*, 827 N.W.2d at 758 (Anderson, J., dissenting).

60. A unanimity petition is one signed by all owners of land abutting the proposed improvement in which they all agree to pay the full amount of the assessment. See MINN. STAT. § 429.031, subdiv. 3.

61. *Brainerd Invs. P’ship*, 827 N.W.2d at 760 (citing MINN. STAT. § 429.031, subdiv. 3).

62. *Brainerd Invs. P’ship*, 827 N.W.2d at 759 (“Our case law mandates that we look at [the statute] ‘as a whole and interpret each section in light of the surrounding sections to avoid conflicting interpretations.’” (citing *Eng’g & Constr. Innovations, Inc. v. L.H. Buldoc Co.*, 825 N.W.2d 695, 711 (Minn. 2013))); see also MINN. STAT. § 645.16 (“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.”).

63. *Brainerd Invs. P’ship*, 827 N.W.2d at 760.

64. See *id.* at 758.

65. That private landowners would be fearful of solidifying the power to

Furthermore, empowering the State to petition causes tension between local and state priorities because of the potential to leave either the private owner or the municipality with the bill if the State refuses payment.⁶⁶ On the other hand, simply allowing the State to petition does not commit municipalities or private landowners to a project.⁶⁷ A petition submitted under section 429.031 does not negate other protections built into the special assessment statutes.⁶⁸ Municipal city councils may still choose not to approve the project,⁶⁹ and private landowners may still challenge special assessments under the special benefits test or on procedural grounds.⁷⁰

A. *The Question of Ambiguity*

While it may be tempting to frame the *Brainerd Investments Partnership* decision around fairness to private landowners, the court's decision to leave such policy questions to the legislature appears to be a common approach.⁷¹ What is more, this approach provides an opening for the legislature to take a broader look at the statute and consider the impact of the current framework when municipalities and the State do not cooperate. The court's decision in *Brainerd Investments Partnership* came down to the threshold

petition for special assessments makes sense because the State may elect not to pay its portion of the very assessment for which it petitioned. See MINN. STAT. § 435.19, subdiv. 2.

66. See *infra* text accompanying notes 135–43.

67. See MINN. STAT. § 429.061 (outlining required special assessment procedures).

68. See *id.* § 429.031, subdiv. 1(f); *infra* text accompanying notes 69–70.

69. MINN. STAT. § 429.031, subdiv. 1(f) (“[T]he improvement *may* be adopted at any time within six months after the date of the hearing by vote of a majority of all members of the council” (emphasis added)).

70. See *id.* § 429.061 (explaining the special benefits test); *id.* § 429.031, subdiv. 1 (requiring a published plan, notice, and public hearing before special assessments can be levied). See generally 16B AM. JUR. 2D *Legal Forms* § 236:1 (2009) (“Special or local assessments may be levied for a wide range of purposes, providing that the improvement for which the assessment is levied confers a benefit to the property assessed, which is . . . special to the property rather than general to the community as a whole.”); 70C AM. JUR. 2D *Special or Local Assessments* § 29 (2011) (“A legislative body cannot by its fiat make a local improvement of that which in its essence is not such an improvement, and it cannot by its fiat make a special benefit to sustain a special assessment where there is no special benefit.”).

71. See, e.g., *City of Phoenix v. State ex rel Harless*, 117 P.2d 87 (Ariz. 1941); *City of Phoenix v. Wilson*, 5 P.2d 411 (Ariz. 1931); *Esling v. Krambeck*, 663 N.W.2d 671 (S.D. 2003); *Pappas v. Richfield City*, 962 P.2d 63 (Utah 1998); *Armstrong v. Ogden City*, 43 P. 119 (Utah 1895), *aff'd*, 168 U.S. 224 (1897).

question of whether Minnesota Statutes section 435.19 is ambiguous.⁷² Both the majority and the dissent offer well-developed arguments on this point. Had the appellants successfully established that the statute was ambiguous, thereby allowing the court to consider extrinsic sources in its interpretation, their position would have been much stronger and more persuasive due to the important policy questions in play and the inequities inherent in the plain interpretation of the statute.⁷³

Justice Anderson argues that relying on the common meaning of the word “owner” causes the word to have two different meanings within the same statute because if the State is an owner within the meaning of the statute it would be impossible to obtain a valid unanimity petition.⁷⁴ This may not be as natural a conclusion as Justice Anderson determines it is. Minnesota Statutes section 429.031, subdivision 3 does not explicitly state that a unanimity petition may not be signed by the State;⁷⁵ rather, it says “[w]henver all owners of real property abutting upon any street named as the location of any improvement shall petition the council to construct the improvement and to assess the entire cost against their property, the council may . . . adopt a resolution . . . ordering that improvement.”⁷⁶ Thus, the statute requires (1) that all owners of property abutting the street named as the location of the improvement sign the petition; and (2) that they agree that the entire cost of the project shall be assessed against their property.⁷⁷ The dissent’s interpretation of the statute requires an inference that the State may not be voluntarily assessed.⁷⁸

72. *City of Brainerd v. Brainerd Invs. P’ship*, 827 N.W.2d 752, 757 (Minn. 2013).

73. *Id.* at 758 (“We acknowledge that the current statutory framework grants the State discretion to determine if, and how much, it should be assessed. We also recognize that interpreting the word ‘owner’ to include the State could reduce the ability of private landowners to prevent improvements if they own property adjacent to state-owned land.”).

74. *Id.* at 761 (Anderson, J., dissenting). Justice Anderson quotes section 435.19, subdivision 2 of the Minnesota Statutes, reasoning that “to have a valid unanimity petition, ‘all owners’ upon which the ‘entire cost’ can be assessed must sign the petition.” *Id.* Thus, because the State cannot be assessed, they may not sign a unanimity petition. *Id.*

75. MINN. STAT. § 429.031, subdiv. 3.

76. *Id.*

77. *Id.*

78. In some jurisdictions, if an entity or party voluntarily pays an assessment, the payment does not qualify as an assessment because an assessment is a tax and taxes are, by definition, involuntary. *See, e.g., Pappas v. Richfield City*, 962 P.2d 63

In support of its argument, the dissent relied on the Supreme Court of Utah's decision in *Armstrong v. Ogden City*.⁷⁹ In that case, Ogden City created an improvement district for street repavement, which included 660 frontage feet owned by the city and used for the city hall.⁸⁰ The court found that the city did not have jurisdiction to create the improvement district because the owners of more than fifty percent of the front footage objected to the proposal within the time required.⁸¹ Though the statute did not require the signatures of fifty percent of the *assessable* owners, the court concluded that city property should not be included in the calculation of the percentage of protests.⁸² The *Ogden* court decided the case on policy grounds, rather than the plain meaning of the statute, opining that otherwise "the statute would become inoperative."⁸³ In fact, the statute would not become inoperative; rather, it would operate in a way that the court thought "would produce great injustice."⁸⁴

In *Brainerd Investments Partnership*, the majority did not agree with this reasoning. Instead, the court concluded that although

(Utah 1998). It is not clear whether this is the law in Minnesota. See Oral Argument at 26:35, 58:25, *City of Brainerd v. Brainerd Invs. P'ship*, 827 N.W.2d 752 (Minn. 2013) (No. A11-644, -1471), available at http://www.tpt.org/courts/MNJudicialBranchvideo_NEW.php?number=A110644. It is also not clear whether or why a voluntary assessment paid by the State would not qualify as an assessment within the meaning of the statute, while a voluntary assessment paid by private landowners, who demonstrate their voluntary agreement by signing a petition, must qualify to give any meaning at all to the provision. Furthermore, the phrase "assessed against *their* property" could be interpreted to refer to the property collectively, without regard to how the assessment is divided. See MINN. STAT. § 435.19, subdiv. 3.

79. 43 P. 119 (Utah 1895).

80. *Id.* at 120. This case is distinguishable from *Brainerd Investments Partnership* because (1) the city was petitioning itself; and (2) the city did not contribute any funds toward the project.

81. *Id.* at 120–21.

82. *Id.* at 120 (citing Utah's special assessment statute, which prohibited creation of an improvement district "[i]f at or before the time fixed written objections to such improvements [are] signed by the *owners* of one half of the front feet abutting upon that portion of the street." (emphasis added)).

83. See *id.* at 121.

84. *Id.* ("If, for instance, the city council should create a paving district out of the four portions of streets that surround a square used exclusively for city purposes, it would only be necessary to secure the consent of the owner of a single front foot of property abutting upon the opposite side of the street from the public square to abstain from protesting, and the remaining frontage would not only be powerless to prevent the improvement, but would be compelled to pay practically the entire expense."). While it is true that this might seem unfair, it does not render the statute inoperative.

definitions of ‘owner’ that differ from the plain meaning could yield other reasonable interpretations, because application of the plain meaning resulted in only one reasonable interpretation, the statute was not ambiguous.⁸⁵ Thus, the court declined to consider interpretations that required using a definition other than the plain meaning, as well as extrinsic sources such as the attorney general opinions and legislative history.⁸⁶

B. Support for the Plain Meaning Approach in Minnesota and in Other Jurisdictions

Minnesota Statutes section 645.16 supports the plain meaning approach to the interpretation adopted by the majority. That statute states, “When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.”⁸⁷ Several recent Minnesota Supreme Court cases have relied on this portion of section 645.16 to interpret other statutes and have come to conclusions that parallel the holding in *Brainerd Investments Partnership*.⁸⁸

85. *City of Brainerd v. Brainerd Invs. P’ship.*, 827 N.W.2d 752, 757 (Minn. 2013). Another possible interpretation of subdivision 3 is that it limits the ability of private landowners whose land abuts state land to petition at all. Appellants’ Brief, Addendum and Appendix, *supra* note 26, at 30. Alternatively, it could mean that a petition signed by all of the neighbors but not the public entity is unanimous, or that the legislature intended that the State be able to sign a unanimous petition, just like any other owner, as long as it agreed to pay its share of the assessment. *But see* *Cities & Villages—Streets—Improvements of*, 56 Op. Minn. Att’y Gen. 133, 134 (June 30, 1936). The latter interpretation seems to make sense in the context of the statute because it creates an explicit purpose for Minnesota Statutes section 435.19, which provides that the city may determine the amount the State would pay if it were assessable.

86. *See supra* note 85 and accompanying text.

87. MINN. STAT. § 645.16 (2012).

88. *See, e.g.*, *N. States Power v. Aleckson*, 831 N.W.2d 303, 309 (Minn. 2013) (quoting MINN. STAT. § 645.16) (“When a statute’s language is ‘clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.’”); *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 836 (Minn. 2012) (“If the language of the statute is clear and free from ambiguity, the court’s role is to enforce the language of the statute and not explore the spirit or purpose of the law.”); *Abrahamson v. St. Louis Cnty. Sch. Dist.*, 819 N.W.2d 129, 134 (Minn. 2012) (“Given that the Legislature has specifically designated school districts as public corporations, . . . excluding school districts from the definition of ‘corporation’ . . . simply because other statutes refer separately to ‘corporations’ and ‘school districts’ ignores the plain meaning of [the statute].” (citations omitted)); *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721, 726 (Minn. 2010) (“If the law is ‘clear and free from all ambiguity,’ the plain meaning

Other jurisdictions also interpret statutes that deal with petitions made by landowners in much the same way as Minnesota. For example, the South Dakota Supreme Court decided a similar case, involving a petition to annex land, based on a plain language reading of that statute. In *Esling v. Krambeck*⁸⁹ the county presented a voluntary petition to the City of Spearfish to annex certain county lands, including a public airport, and make them part of the city.⁹⁰ South Dakota law requires that the owners of at least three-fourths of the value of the land proposed to be annexed sign the petition.⁹¹ A group of citizens challenged the sufficiency of the petition arguing, among other things, "that the term 'value' in [the relevant statute] means only the 'assessed value' of real property subject to voluntary annexation"⁹²

Ultimately, the court found that value did not mean "assessed value" and upheld the sufficiency of the petition, stating, "SDCL 9-4-1 does not expressly state that the 'value of the territory' must be the assessed value. If the legislature had intended to limit 'value' to 'assessed value,' it certainly could have done so."⁹³

Thus, under a plain meaning interpretation of the statute, the court interpreted "value" according to its common meaning. The court noted that courts in other jurisdictions had found that the assessed value must be used in voluntary annexations; however, it distinguished those cases on the basis that, unlike the South Dakota Statute, "those cases all dealt with statutes that included the word 'assessed' or some variation of it."⁹⁴

controls and is not disregarded under the pretext of pursuing the spirit." (citations omitted)).

89. *Esling v. Krambeck*, 663 N.W.2d 671 (S.D. 2003).

90. *Id.* at 674.

91. S.D. CODIFIED LAWS § 9-4-1 (West, Westlaw through 2013 Reg. Sess.) ("The governing body of a municipality, upon receipt of a written petition . . . may by resolution include such territory or any part thereof within such municipality if the petition is signed by not less than three-fourths of the registered voters and by the owners of not less than three-fourths of the value of the territory sought to be annexed to the municipality.").

92. *Esling*, 633 N.W.2d at 676.

93. *Id.* at 677. "The ordinary meaning of the term 'value' is 'the monetary worth or price of something; the amount of goods, services, or money that something will command in an exchange.'" *Id.* at 676 (quoting BLACK'S LAW DICTIONARY 1549 (7th ed. 1999)).

94. *Id.* at 676 (citing *City of Phoenix v. State*, 117 P.2d 87 (Ariz. 1941)); *People ex rel. Thain v. City of Palo Alto*, 78 Cal. Rptr. 240 (Ct. App. 1969); *Johnson v. City of Spokane*, 577 P.2d 164 (Wash. Ct. App. 1978).

Utah confronted a similar problem of statutory construction and resolved the question by relying on the plain language approach. In *Pappas v. Richfield City*⁹⁵ the Supreme Court of Utah was confronted with the question of whether land owned by a school district, which was immune from special assessments, should be counted in the calculation of assessable frontage to determine if sufficient protests had been submitted in opposition to the creation of a special improvement district (SID).⁹⁶ The school district supported the project and had voluntarily agreed to pay an assessment; however, a group of private landowners, following statutory procedure, filed protests to the creation of the SID.⁹⁷ The statute required at least fifty percent of the owners of assessable front footage to file protests within a certain period of time to impede the creation of the district.⁹⁸ The city's calculations revealed that if the school district property was included in the calculation of total front footage, the protests filed amounted to only forty-five percent of the front footage, not sufficient to defeat the SID.⁹⁹ But if the school district property was excluded, then the protests would equal fifty-three percent of the front footage and would defeat the SID.¹⁰⁰

The district court held that the city had properly included the school district property in their calculations, but the Utah Supreme Court overturned, relying on a literal reading of the statute.¹⁰¹

[The] statute . . . provides that “the necessary number of protests [to defeat a SID] means the aggregate of the following: (i) protests representing one-half of the front footage *to be assessed* where an assessment is proposed to be made according to frontage.” The dispositive issue in this case is therefore whether the school district property was “to be assessed” within the meaning of 17A-3-307(3)(b)(i). We hold that it was not because such property is exempt from local assessments.¹⁰²

95. 962 P.2d 63 (Utah 1998).

96. *Id.* at 65.

97. *See id.* at 64–65.

98. *Id.* at 66 (citing UTAH CODE ANN. § 17A-3-307(3)(b)(i) (repealed 2007)).

99. *Id.* at 64.

100. *Id.*

101. *Id.* at 65–66.

102. *Id.* at 66 (second alteration in original) (citations omitted). The *Pappas* court declined to adopt the city's interpretation that *Ogden* stands for the narrow proposition that land may be excluded from calculations only if the owner of public property does not agree to pay its fair share of the assessments. *Id.* at 65.

Thus, by applying the same plain language approach, the court found for the private landowners because, unlike the Minnesota statute, this Utah statute explicitly used the words "to be assessed."¹⁰³

The Arizona Supreme Court has also interpreted that state's special assessment statute very literally. In *City of Phoenix v. Wilson*¹⁰⁴ the court was asked to determine whether a public park abutting the proposed assessed area should be counted for the purpose of determining whether sufficient protests had been signed in opposition to the proposed improvement.¹⁰⁵ The court held that if "public property is expressly exempted from a special improvement assessment" that property should not be considered in determining whether sufficient owners have protested against the assessment.¹⁰⁶ "[B]ut . . . where . . . the municipality has become obligated to pay its proportionate share of the cost of the improvement . . . such frontage should be included in passing upon this question."¹⁰⁷ In so holding, the court stated that "[t]he Legislature of Arizona . . . very carefully provided . . . that when the proposed improvement was ordered, unless the resolution of intention expressly excluded the city property from the assessment, the municipality itself should be liable for its proportionate share of the expenses."¹⁰⁸

Instead, the court held that even a voluntary agreement by the school district to pay an amount equal to the proposed assessment would not be sufficient justification to count the school district's property because a contractual payment is not the same as an assessment, which is a tax. *Id.* at 66. Therefore, whether the school district actually paid or not was irrelevant because the statute, literally construed, designated that only assessable front footage is included in the calculation. *See id.*

103. *Id.* at 66 (citing UTAH CODE ANN. § 17A-3-307(3)(b)(i)). This holding is especially interesting in light of the fact that Utah is the jurisdiction that decided *Ogden*, the case upon which the dissent and the Minnesota Attorney General rely and which ignored the plain meaning of the statute in favor of equity. *See Armstrong v. Ogden City*, 43 P. 119 (Utah 1895).

104. 5 P.2d 411 (Ariz. 1931).

105. *Id.* at 411 (finding that if a publicly owned park were counted in determining the total frontage, the protests filed would be less than the statutorily required fifty percent, but if the public land were not counted, the protests would represent more than fifty percent of the total frontage in the district).

106. *Id.* at 413.

107. *Id.*

108. *Id.* at 412. In another Arizona case decided a decade later, the court held that the school district was not qualified to sign a petition for annexation because the district's land was not subject to taxation or assessment. *City of Phoenix v. State ex rel. Harless*, 117 P.2d 87, 88 (Ariz. 1941). The statute at issue stated that the petition should be signed by "the owners of not less than one-half in value of the property in any territory contiguous to the city, as shown by the last assessment of said property." *Id.* at 87. Because the property was not subject to taxation it was

The interpretations by these various courts support the Minnesota Supreme Court's plain meaning interpretation of the Minnesota statute; however, they also recognize in some way the potential for injustice to the private landowner whose land abuts an improvement also abutting publicly owned property.¹⁰⁹ It seems that Utah, in *Ogden City*, is an outlier in that it decided the case on grounds of equity rather than the rules of statutory construction.¹¹⁰

C. The Other Side of the Coin: The City of Moose Lake

Lack of a clear statutory mechanism for the city to bind the state to pay special assessments can create inefficiency and waste for both the city and the state, and can make it difficult for city leaders to work with the state to make infrastructure improvements benefiting state land.¹¹¹ One such recent case involved the City of Moose Lake, Minnesota. In that case, the State backed out of an agreement to help finance a major sewer system upgrade intended primarily to benefit a state-run treatment center and prison, forcing the city to cancel the final phase of construction and lose substantial investments.¹¹²

When a municipality decides to complete improvements that will benefit state property, the municipality and state may choose to negotiate a plan for the project and the amount the state will pay toward the project.¹¹³ These costs may be levied as voluntary special assessments, or they may be paid through another financing mechanism.¹¹⁴ Sometimes, such as in *Brainerd Investments*

not on the assessment roll and, therefore, the owner of the property was not eligible to petition. *Id.* at 89.

109. See *Wilson*, 5 P.2d at 412.

110. See *Armstrong v. Ogden City*, 43 P. 119, 121 (Utah 1895) (“[W]e think that the establishment of such a rule would not only be wrong in principle and wrong in theory, but it would also be contrary to the spirit and intention of the statutes providing for special improvement assessments.”).

111. Telephone Interview with Theodore Shaw, Mayor, City of Moose Lake, Minn. (Aug. 12, 2013) [hereinafter Interview with Mayor Shaw I].

112. See *infra* notes 135–37 and accompanying text.

113. See MINN. STAT. § 429.051 (2012); *City of Brainerd v. Brainerd Invs. P’ship*, 827 N.W.2d 752 (Minn. 2013); LEAGUE OF MINN. CITIES, *supra* note 12, at 29.

114. See generally 64 AM. JUR. 2D *Public Securities and Obligations* § 99 (noting that the issuance of bonds is governed by state statute and bonds are usually authorized “for the acquisition, construction, maintenance, improvement, addition to, and operation of . . . ’public project[s]’”); Jeanette Behr, *Infrastructure Needs: Financing Infrastructure Improvements*, MINN. CITIES MAG., Aug. 2009, at 6, 6, available at http://www.lmc.org/media/document/1/financing_infrastructure.pdf

Partnership, a municipality and the state may come to an agreement and sign a contract binding the state to contribute some portion of the cost of the project.¹¹⁵ Other times, such as in the case of Moose Lake, the process of voluntary contribution breaks down. Moose Lake's experience demonstrates the financial vulnerability of municipalities and how a special assessment statute allowing municipalities to bind the state, in the same way other landowners are bound, could create security for municipalities, reduce opportunities for wasteful reimbursement appropriations, and reduce tension between the state and municipalities.

The City of Moose Lake is a small town in northern Minnesota with a population of about 2751 people and a total area of 3.66 square miles.¹¹⁶ The city is an important hub for Minnesota's state park system,¹¹⁷ and it is also home to two state-run facilities, including a prison operated by the Minnesota Department of Corrections (DOC),¹¹⁸ and a treatment center for sex offenders called the Minnesota Sex Offender Program (MSOP).¹¹⁹

("Cities can generate funds for infrastructure projects in a variety of ways, including issuing debt (bonds) or certificates of indebtedness; levying property taxes; charging service fees; using development agreements; using statutory financing tools such as special assessments; and using land use-related funding.")

115. *Brainerd Invs. P'ship*, 827 N.W.2d at 752.

116. John Hall, *Census Data for Moose Lake*, ROADSIDE THOUGHTS, <http://www.roadsidethoughts.com/mn/moose-lake-census.html> (last modified Nov. 5, 2013); *Moose Lake City, Minnesota*, U.S. CENSUS BUREAU, http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml (search "Moose Lake") (last visited Dec. 10, 2013).

117. The city's parks serve as a trailhead for the Willard-Munger trail system that stretches 159 miles from the city of Duluth all the way to the cities of Minneapolis and Saint Paul and several regionally significant snowmobile and bike trails. See *State Trails*, MINN. DEP'T NAT. RESOURCES, http://www.dnr.state.mn.us/state_trails/willard_munger/index.html (last visited Oct. 13, 2013); see also *Find a State Trail by Location*, MINN. DEP'T NAT. RESOURCES, http://www.dnr.state.mn.us/state_trails/map.html (last visited Oct. 13, 2013).

118. *Facility Information: Willow River/Moose Lake*, MINN. DEP'T CORRECTIONS, <http://www.doc.state.mn.us/facilities/willowriver.htm> (last visited Oct. 13, 2013) (stating a total population of 1045 inmates as of September 16, 2013).

119. *Minnesota Sex Offender Program Overview*, MINN. DEP'T HUM. SERVICES, <http://mn.gov/dhs/> (follow "A-Z Topics" hyperlink; then follow "MN Sex Offender Program" hyperlink) (last visited Oct. 13, 2013) ("The Minnesota Sex Offender Program (MSOP) provides services to individuals who have been court-ordered to receive sex offender treatment. MSOP clients have completed their prison sentences and are civilly committed by the courts and placed in sex offender treatment for an indeterminate period of time. A civil court may commit a person for sex offender treatment if a judge determines that the individual is a 'sexual psychopathic personality,' a 'sexually dangerous person,' or both.").

The prison houses approximately 1050 inmates, and it is located within the city limits on state-owned land.¹²⁰ The MSOP facility houses approximately 503 civilly committed individuals who have completed prison sentences for sex-related crimes but who have been deemed too dangerous to release.¹²¹ Thus, over half of the population of Moose Lake is institutionalized.¹²² Both the prison and treatment center depend on the city for various infrastructure needs.¹²³ Specifically, because the combined facilities house approximately fifty-six percent of the total population, they are the largest users of the city's sewer collection system and municipal electric utility.¹²⁴

Approximately eighty-one percent of the land within the city limits of Moose Lake is tax exempt.¹²⁵ About fifty percent of that is state-owned land.¹²⁶ Because the city's tax base comes from around twenty-five percent of the land area and less than fifty percent of the population,¹²⁷ which is equal to about 650 households, the city is challenged to spread those tax dollars to maintain infrastructure across the entire city.¹²⁸

In 2005, the DOC and MSOP approached the City of Moose Lake about increasing the city's sewer system capacity to

120. See *Bill Authorizing the City of Moose Lake to Impose a Local Sales and Use Tax: Hearing on S.F. 1053 Before the Tax Reform Div. of the S. Tax Comm.*, 88th Leg., Reg. Sess. (Minn. 2013) [hereinafter *Hearing*], available at http://www.senate.leg.state.mn.us/media/media_video_popup.php?flv=cmte_taxesreform_040413.flv (statement of Theodore Shaw, Mayor, City of Moose Lake); *Facility Information*, *supra* note 118.

121. *Minnesota Sex Offender Program Statistics*, MINN. DEP'T HUM. SERVICES (Oct. 2, 2013), http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=dhs16_151535.

122. This estimate includes inmates at the two state-run incarceration facilities, as well as those residing in either a nursing home or hospital located inside the city limits. See *Hearing*, *supra* note 120 (statement of Tom Paul, Flood Manager, City of Moose Lake).

123. Interview with Mayor Shaw I, *supra* note 111.

124. *Id.* In addition to connecting to the city's sewer collection system and electric utility, the facilities require fire and police service from the city. *Id.* The city expends substantial police resources at the MSOP facility because, due to the nature of the program, guards are prohibited from carrying firearms. *Id.*

125. Moose Lake City Council Minutes 6 (Mar. 14, 2007), available at http://www.cityofmooselake.com/resources/Archived_Minutes/March%202007.docx; Interview with Mayor Shaw I, *supra* note 111.

126. See *Hearing*, *supra* note 120 (statement of Theodore Shaw, Mayor, City of Moose Lake).

127. See *id.*

128. See *id.* (statement of Tom Paul, Flood Manager, City of Moose Lake).

accommodate projected growth at both facilities.¹²⁹ Although the city's need for additional capacity was not great at the time, the mayor and city council decided to move forward with the project because the state facilities are major employers in the region and, as such, are of significant economic benefit to the city.¹³⁰

Over a period of several months, the city worked with the DOC and MSOP to create a Wastewater Collection and Facility Treatment Plan, which incorporated twenty-year growth projections submitted by the city, the DOC, MSOP, and the surrounding sewer district.¹³¹ Upon completion of the plan, in February of 2007, the city obtained state approval for the project, secured funding, and began construction.¹³² During the planning stage, the Mayor of Moose Lake and the city administrator attempted to negotiate a signed contract with the DOC to bind the State to contribute to the project; however, the State refused to sign a contract, stating that it could not bind future legislatures to debt payments.¹³³ Nevertheless, the city was assured of the State's commitment to payment through increased water-use rates, which would be paid periodically until the agreed upon amount was paid in full.¹³⁴

129. Telephone Interview with Theodore Shaw, Mayor, City of Moose Lake, Minn. (Aug. 19, 2013) [hereinafter Interview with Mayor Shaw II]; *see also* Moose Lake City Council Minutes 7 (June 13, 2007), *available at* http://www.cityofmooselake.com/resources/Archived_Minutes/June%202007.doc; Interview with Mayor Shaw I, *supra* note 111.

130. Interview with Mayor Shaw II, *supra* note 129.

131. *See Hearing, supra* note 120 (statement of Theodore Shaw, Mayor, City of Moose Lake). The Wastewater Collection and Treatment Facilities Plan was a requirement of the State Public Financing Administration. The funding of the project was based on projections submitted by the city, the sewer district, and the state agencies involved.

132. Interview with Mayor Shaw I, *supra* note 111. The project was divided into three phases. According to Mayor Shaw, the city alone did not need the increased capacity, and in 2007, while the city was meeting with the Minnesota Pollution Control Agency, the Environmental Protection Agency, the Department of Natural Resources, various legislative committees, and the Public Finance Agency to secure the necessary permits and funding, the State wrote a letter to the city encouraging them to include the second and third phases of the project to accommodate the State's needs. *Id.* Phase one was designed to upgrade and repair the city's current system. *Id.* Phases two and three were designed to increase capacity to accommodate the State's projected needs. *Id.*

133. *Id.*

134. *Id.*; Moose Lake City Council Minutes (Sept. 9, 2009), *available at* http://www.cityofmooselake.com/resources/Archived_Minutes/September%202009.docx.

At various points after construction began, MSOP approached the city to adjust the plan due to changes in its own proposed timeline for expansion.¹³⁵ During 2010, the city and the DOC attempted to negotiate rate increases to cover the cost of the project¹³⁶ but were unable to agree on an acceptable rate.¹³⁷ Finally, in February of 2011, MSOP informed the city that it did not foresee a time when it would expand to its previously projected levels and, therefore, it would no longer connect to the new line that was built to accommodate its previously predicted needs.¹³⁸ The city immediately cancelled the final phase of the project, but was left with nearly \$900,000 worth of damages, plus the cost of the already-completed portion.¹³⁹ MSOP ultimately decided not to complete its own planned updates and, therefore, never hooked up to the new sewer line the city built for its use, which was capped and sits unused adjacent to the state-owned property.¹⁴⁰

135. Interview with Mayor Shaw I, *supra* note 111. The city reacted to these changes by adjusting the timeline for phase three of the project and renegotiating water rates. *Id.* The State eventually rejected the proposed rates and the parties negotiated a settlement in mediation. See Moose Lake City Council Minutes (Mar. 14, 2012), available at http://www.cityofmooselake.com/resources/2012_Minutes/March%202012.docx.

136. Moose Lake City Council Minutes (Nov. 10, 2010), available at http://www.cityofmooselake.com/resources/2010_Minutes/November%202010.doc.

137. Interview with Mayor Shaw I, *supra* note 111; see Moose Lake City Council Minutes (Mar. 14, 2008), *supra* note 135.

138. Moose Lake City Council Minutes (Feb. 9, 2011), available at http://www.cityofmooselake.com/resources/2011_Minutes/February%202011.doc (“Leadership from DOC stated that there would not be growth at the Moose Lake facility for the next 30 years. DHS indicated that despite the second phase being under construction at the MSOP facility no additional flow would be added to the city’s wastewater system. City Administrator Vahlsing stated to the state officials that construction was well underway for the lagoon expansion. He also stated that the expansion was implemented due to state needs and that the state could not arbitrarily change it’s [sic] projections and expect not to pay for it’s [sic] portion of the expansion.”).

139. Interview with Mayor Shaw I, *supra* note 111. Damages included unpaid water bills and the costs of a pond expansion design, construction mobilization, plan modification due to DOCs withdrawal, wetland credits and permits purchased, and land purchased for additional treatment ponds. *Id.* According to Mayor Shaw, if the city had not received reimbursement from the State for the cost of the first two phases of the project and the 650 taxpaying households in the city had borne the entire cost, the City of Moose Lake would have had some of the highest sewer rates in the country. *Id.*

140. See *Hearing*, *supra* note 120 (statement of Theodore Shaw, Mayor, City of Moose Lake).

Moose Lake's sewer expansion project had an estimated cost of \$5.1 million.¹⁴¹ Approximately \$1.5 million of that was directly attributable to the new sewer line built to accommodate the State's facilities.¹⁴² An additional \$3.775 million was spent to prepare the city's system for the State's increased capacity.¹⁴³ When municipalities undertake projects of this magnitude, they need assurance that each source of funding is reliable. In Moose Lake's case, the city was unable to extract a legal promise to pay from the State.¹⁴⁴ The city planned and completed the project based on projections provided by the State and an agreement that the State would help pay for the project.¹⁴⁵ City officials never imagined that the State, which approached the city to begin the project in the first place, would or could back out on its financial commitment.¹⁴⁶

Providing a clear statutory mechanism for the city to bind the State prior to beginning work on Moose Lake's sewer project would have (1) reduced or avoided the tension created between the city and the State, thus encouraging future cooperation; (2) conserved state resources invested in planning, approving, permitting, and funding a project that was never completed; and (3) avoided payment of a \$2 million reimbursement grant¹⁴⁷ for which the State will see no return. Instead of the reimbursement grant, a comparable sum would have been spent over a period of time in exchange for increased sewer capacity at the state facilities.¹⁴⁸

Since this controversy, city leadership in Moose Lake has determined that it is in the city's best interests to require the State to allocate funds in advance for any infrastructure or public utility upgrades it requires.¹⁴⁹ Other cities also have had problems

141. Moose Lake City Council Minutes 7 (June 13, 2007), *supra* note 129.

142. Interview with Pat Oman, Moose Lake City Adm'r., in Moose Lake, Minn. (Aug. 19, 2013).

143. *Id.*

144. Interview with Mayor Shaw I, *supra* note 111. The city requested a contract but was told that the State could not bind the legislature to future debt payments. *Id.*

145. Moose Lake City Council Minutes (Feb. 9, 2011), *supra* note 138.

146. Interview with Mayor Shaw I, *supra* note 111.

147. Act of May 23, 2013, ch. 143, art. 4, § 49, 2013 Minn. Laws 1969, 2018 (appropriating \$2 million to Moose Lake as reimbursement for a portion of the loss produced by the city's reliance).

148. Interview with Mayor Shaw I, *supra* note 111.

149. *Id.* After the DOC backed out of the sewer project, it informed the city that it needed increased electrical capacity and asked the city to install a new transformer at a cost of around \$700,000. *Id.* The city declined and required the State to make the investment up front. *Id.*

obtaining financial commitments from the State for improvement projects. The City of Minneapolis has a policy of never assessing the State or other political subdivision.¹⁵⁰ Other cities assess the State, only to never receive payment. For example, the City of Robbinsdale, a suburb of Minneapolis, has levied special assessments on land owned by the Minnesota Department of Transportation for improvements abutting developable land owned by the State,¹⁵¹ but the State simply has not paid the assessments.¹⁵²

The State of Minnesota owns about seventeen percent of the land within the state borders, or about 8.4 million acres.¹⁵³ Much of that land is dedicated to state parks and forests, however, other state agencies, such as the Department of Transportation, the Minnesota State Colleges and Universities systems, and the Department of Human Services also own and manage land around the state.¹⁵⁴ By amending this statute, or creating an alternative mechanism for municipalities to bind the State, the legislature could help increase certainty of repayment, increase efficiency, reduce wasted efforts on projects that will later be cancelled, and build trust and cooperation between the State and municipalities.

D. Dealing with the Problem

There are various possible ways to deal with the policy issues surrounding Minnesota's special assessment statute. During the 2013 legislative session, Senator Rod Skoe, of northwestern Minnesota, proposed an amendment to Minnesota's special assessment statute that would allow municipalities to bind the State to pay special assessments.¹⁵⁵ The amendment would have empowered municipalities to bind the State, while allowing the State to maintain the ability to negotiate the amount of the

150. Telephone Interview with Suzette Hjermstad, Supervisor, Minneapolis Pub. Works Special Assessment Office (Aug. 15, 2013).

151. The city did not attempt to assess undevelopable land. Telephone Interview with Marcia Glick, City Manager, City of Robbinsdale, Minn. (Aug. 14, 2013).

152. Interview with William A. Blonigan, City Councilmember, City of Robbinsdale, Minn., in Robbinsdale, Minn. (Aug. 1, 2013).

153. JOHN HELLAND, MINN. HOUSE OF REPRESENTATIVES RESEARCH DEP'T, STATE-OWNED LAND IN MINN. 1 (2002), *available at* <http://www.house.leg.state.mn.us/hrd/pubs/ss/sssoland.pdf>.

154. *See id.*

155. S.F. 552, 88th Leg., Reg. Sess. art. 2, § 33 (Minn. 2013).

assessment.¹⁵⁶ Additionally, the amendment would have required the State to make an annual appropriation to pay such special assessments.¹⁵⁷

An amendment allowing municipalities to bind the State would provide an advantage to municipalities, but it is difficult to know what the actual cost of such an amendment would be to the State.¹⁵⁸ In the absence of this option, municipalities have learned to fund their projects without relying on the State, which makes it especially difficult to gather reliable data on how much municipalities would rely on this option if it were available.¹⁵⁹ In a survey conducted by the League of Minnesota Cities, thirty-nine of fifty-six cities responded that they have not tried to assess the State during the last ten years. Seventeen others responded that they had tried to assess the State. Of those, eight stated that the State refused to pay the assessment; only one reported an assessment successfully collected.¹⁶⁰

Additionally, the 2013 proposed amendment provides little procedural guidance for the negotiation process employed when the State disputes the amount of an assessment levied, nor does it appoint a definitive decision maker to turn to when the parties cannot reach an agreement.¹⁶¹ One way to solve these problems is to avoid negotiation by creating a custom special benefit test or a calculation procedure for assessing the State.¹⁶²

156. *Id.*

157. *Id.*; see *supra* text accompanying note 38. *But see* *City of Fargo v. State*, 260 N.W.2d 333, 336–38 (N.D. 1977) (holding that even with a statutory mandate, it is impossible to require the State to pay assessments because the State relies on appropriation to pay). See generally 64 C.J.S. *Municipal Corporations* § 1752 (2011) (“Since property in public use cannot be sold for delinquent assessments, collection may be enforced only by a judgment against the public body controlling the property or by an order for it to levy taxes to meet assessments if necessary.”).

158. Telephone Interview with Patrick Hynes, Intergovernmental Relations Representative, League of Minn. Cities (July 19, 2013); Telephone Interview with Steve Peterson, Senate Tax Comm. Analyst, State of Minn. (July 19, 2013). On the other hand, the State would still have the ability to negotiate the amount due, thereby controlling the cost. S.F. 552 art. 2, § 33.

159. Telephone Interview with Steve Peterson, *supra* note 158.

160. League of Minnesota Cities, State Payments Survey Data 9-17 (Sept. 17, 2013) (unpublished manuscript) (on file with author). One of the respondents reported an outstanding assessment of over \$336,000 dating back to 1985. *Id.*

161. S.F. 552 art. 2, § 33 (“The [State] may, after consultation and agreement by the governing body of the city or town, pay an amount less than the amount determined.”).

162. *Cf.* MINN. STAT. § 473.334 (2012) (defining specific guidelines to determine the special benefits received by regional recreation open space

The solution might be as straightforward as appointing a binding decision maker and adding parameters to guide judicial discretion.¹⁶³ These additions would allow the State to maintain the ability to negotiate a lower amount and would provide a framework for the decision maker to apply where the parties cannot agree on an acceptable assessment amount. Alternatively, the legislature could add a provision to the special assessment statutes explicitly granting the State the ability to consent to special assessments, thereby eliminating any question of whether a consenting state owner is an owner under all sections of the statute. This would allow municipalities to bind the State once an agreement is reached, it would allow the State to maintain its ability to negotiate with municipalities, and it would nullify the policy concerns raised by the private landowners in *Brainerd Investments Partnership*.¹⁶⁴

V. CONCLUSION

The problem of whether or not to include the State in the definition of “owner” under Minnesota Statutes section 435.19 has come a long way since the attorney general interpretations of the statute. The \$9.45 million project¹⁶⁵ at issue in *Brainerd Investments Partnership* is far removed from the construction of sanitary sewers, curbs, and gutters that were at issue when the attorney general weighed in.¹⁶⁶ The relationship between the State and municipalities is complex when it comes to the task of completing infrastructure improvements, and it is not uncommon for these projects to involve substantial funds from various sources.¹⁶⁷ As

property).

163. *See, e.g., id.* § 282.01 (appointing the county board to determine the amount of special benefit conferred on tax-forfeited lands).

164. *See, e.g.,* N.C. GEN. STAT. ANN. § 153A-205(c) (West, Westlaw through 2013 Reg. Sess.) (stating that state-owned property may be considered in calculating frontage and number of owners only if the State has consented to the assessment).

165. Jessi Pierce, *2012 Year in Review: No. 4-College Drive Project Complete*, BRAINERD DISPATCH (Dec. 21, 2012), <http://brainerddispatch.com/extra/2012-12-21/no-4-college-drive-project-complete>.

166. Special Assessments—Property Owned by the State, 408-c Op. Minn. Att’y Gen. 1, 1–2 (Oct. 28, 1954) (regarding laying water and sanitary sewer lines); Cities: Improvements—Sewer, 387b-10 Op. Minn. Att’y Gen. 1, 4 (June 29, 1954) (regarding construction of a sewer); Cities & Villages—Streets—Improvement of, 56 Op. Minn. Att’y Gen. 133, 133 (June 30, 1936) (regarding construction of six blocks of “tarvia, curb, and gutter” improvements).

167. *See, e.g.,* Respondent’s Brief and Appendix, *supra* note 48, at 5 n.3 (“The estimated \$6.9 million cost of the Project is to be funded as follows: Federal \$2,234,300 State Aid \$3,809,918 BPU \$193,700 Crow Wing County \$40,882 Local

such, changing the definition of “owner” to “assessable owner” does little to solve the underlying problem that the State may refuse to pay special assessments.¹⁶⁸ In the context of this larger problem, whether the State petitions for the improvements, requests them informally, or opposes them is a drop in the bucket.

The court correctly declined to add words to the statute; instead, it left the policy issues raised in *Brainerd Investments Partnership* to the legislature.¹⁶⁹ Perhaps the most important outcome of this decision is that it draws attention to the possibility of amending the statute in some manner to give municipalities the ability to bind the State to pay special assessments, which would relieve private landowners from the anxiety of having to wonder whether their omnipotent State neighbor might petition for an improvement with no intention to pony up. Furthermore, such an amendment would give municipalities security when they develop and complete expensive infrastructure improvements that provide a special benefit to the State.

On the other hand, the holding in *Brainerd Investments Partnership* is narrow, as it applies only to the status of the State as an owner.¹⁷⁰ Perhaps the appellants’ argument that the court’s decision has eliminated any line of defense against the use of special assessments that serve a non-local purpose goes too far.¹⁷¹ After all, the argument fails to acknowledge the most powerful and important tool the private landowner has that the State does not—the ability to elect municipal representatives; if private landowners are not satisfied with the decisions of their city council, they may

Cost share \$621,200[.]”).

168. See MINN. STAT. § 435.19.

169. *City of Brainerd v. Brainerd Invs. P’ship.*, 827 N.W.2d 752, 756 (Minn. 2013).

170. *Id.* at 758.

171. Appellants’ Brief, Addendum and Appendix, *supra* note 26, at 30. Appellants contended that this holding empowers a state instrumentality situated across from property zoned for development to “decide to impede that development by refusing to sign a petition for improvements even though the State intends to refuse to make any voluntary payment towards the project.” *Id.* Accordingly,

Private property owners who live in areas with large swaths of state-owned property could not petition for public improvements without the consent of the State of Minnesota, even if the State is not going to be assessed. Conversely, the State could petition for assessments against private property owners on items where the State’s goal is to serve a non-local purpose, while keeping the State’s costs at a minimum.

Id. at 30.

vote them out. Additionally, despite the fact that a council may not bind the State by use of special assessments, the many other controls of Minnesota Statutes chapter 429 will still shield the process.¹⁷² Finally, cities may still obtain a voluntary contractual commitment from the State, as the City of Brainerd did in this case to fund its road improvement project.¹⁷³

That private landowners and attorneys general have been pointing out this inequity for nearly 100 years¹⁷⁴ speaks to the legitimacy of the landowners' complaints. Whether the legislature will attempt to unravel this complicated relationship between municipalities and the State remains to be seen; however, by upholding the controversial plain meaning of this statute, the supreme court has provided the perfect window of opportunity for the legislature to take a hard look at the structure of the statute and at its implications on municipal financing.

172. See, e.g., MINN. STAT. § 429.031, subdiv. 1(a) ("Before the municipality awards a contract for an improvement . . . or before the municipality may assess any portion of the cost of an improvement . . . the council shall hold a public hearing on the proposed improvement following two publications in the newspaper of a notice . . ."); *id.* § 429.031, subdiv. 1(b) ("Before the adoption of a resolution . . . the council shall secure . . . a report advising it in a preliminary way as to whether the proposed improvement is necessary, cost-effective, and feasible The report must also include the estimated cost of the improvement as recommended. A reasonable estimate of the total amount to be assessed, and a description of the methodology used to calculate individual assessments for affected parcels, must be available at the hearing.").

173. Respondent's Brief and Appendix, *supra* note 48, at 7–8.

174. See, e.g., Cities & Villages—Streets—Improvement of, 56 Op. Minn. Att'y Gen. 133, 133 (June 30, 1936).