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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-0659**

Gust G. Johanson, et al.,  
Respondents,

vs.

City of Moorhead,  
Appellant.

**Filed December 23, 2019  
Affirmed  
Slieter, Judge**

Clay County District Court  
File No. 14-CV-15-3832

Patrick B. Steinhoff, Bruce D. Malkerson, Malkerson Gunn Martin LLP, Minneapolis,  
Minnesota (for respondents)

James J. Thomson, Elizabeth C. Brodeen-Kuo, Kennedy & Graven Chartered,  
Minneapolis, Minnesota (for appellants)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reilly, Judge.

**UNPUBLISHED OPINION**

**SLIETER**, Judge

Appellant City of Moorhead challenges the district court's summary judgment in favor of respondents Gust and Brenda Johanson prohibiting the city from imposing periodic interest on proposed special assessments. Because the relevant statutes disallow a city from imposing periodic interest on a proposed special assessment, we affirm.

## FACTS

The Johansons previously owned two parcels of land totaling 640 acres just outside Moorhead. In 2003, the city annexed the northern 320 acres of the 640-acre plot at the request of the Johansons. The southern 320 acres are not yet annexed by the city and are the subject of this appeal. The Johansons sold this land in 2015 but continue to retain an option to repurchase the parcel.

Between 2003 and 2007, the city completed seven separate public improvement projects on the southern 320 acres. All projects relate to water drainage and are necessary improvements to convert farmland to urban use. The city financed six of the seven improvement projects by issuing municipal bonds. The city used its “cash reserves to pay Mr. Johanson for the work that he performed” on the seventh improvement project.

In 2005 and 2007, the city adopted seven proposed special assessments on the land based on these improvement projects. For the six projects financed with bond money, the city imposed periodic interest at a rate equal to the interest rate on “the bonds that [were] issued to finance [each] improvement project.” For the project financed with city funds, the city imposed periodic interest at a rate that “reflected the cost of capital for other contemporaneous City projects.”

At the time the special assessments were first proposed, the total amount was \$470,506. To date, the proposed special assessments have not been levied because the city has not annexed the land. See Minn. Stat. § 429.052 (2018) (“When property is brought within the corporate limits of the municipality, the municipality may subsequently reimburse itself for all or any portion of the cost of the improvement for which municipal

funds have been expended, by levying an assessment . . . .”). As of July 2018, the total amount was \$712,152, including \$241,646 in accrued interest. A 2015 appraisal of the property predicted that it is “fairly unlikely” the city will annex the property “in the foreseeable future (at least for 10+ years) for multiple reasons.”

In November 2015, the Johansons sought a declaration that the city lacked the authority to impose periodic interest on proposed special assessments. The Johansons moved for summary judgment. The district court granted summary judgment for the city. The Johansons appealed.

We held that the appeals process in Minn. Stat. § 429.081 is not the exclusive remedy for challenging a proposed special assessment and remanded for further consideration of whether declaratory relief was appropriate. *Johanson v. City of Moorhead*, No. A17-0557, 2017 WL 6418236, at \*4 (Minn. App. Dec. 18, 2017). We also instructed the district court that if it “finds declaratory relief appropriate, it must then engage in an analysis of the pre-levy interest on assessments imposed by the City.” *Id.* “[T]he district court must determine whether the City’s imposition of pre-levy interest on proposed special assessments is authorized by law.” *Id.*

On remand, the parties agreed that declaratory relief is the appropriate remedy but disagreed as to whether the city may impose periodic interest on a proposed special assessment. Each moved for summary judgment on the issue. The district court concluded that the city may not impose interest on proposed special assessments because the interest is not a cost the city incurred in financing or completing the improvement projects. The district court granted the Johansons’ motion for summary judgment. This appeal follows.

## DECISION

“On appeal, [appellate courts] review a grant of summary judgment to determine (1) if there are genuine issues of material fact and (2) if the district court erred in its application of the law.” *See Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (quotation omitted). “When the district court grants summary judgment based on the application of a statute to undisputed facts, the result is a legal conclusion that we review *de novo*.” *See Weston v. McWilliams & Assocs.*, 716 N.W.2d 634, 638 (Minn. 2006). We also review a district court’s interpretation of a statute *de novo*. *See STARS Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002).

“When interpreting statutes, our function is to ascertain and effectuate the intention of the legislature.” *Anker v. Little*, 541 N.W.2d 333, 336 (Minn. App. 1995), *review denied* (Minn. Feb. 9, 1996). “[W]e first look to see whether the statute’s language, on its face, is clear or ambiguous.” *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). “A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.” *Id.* (quotation omitted).

“If the statute is free from ambiguity, we look only at its plain language.” *Anker*, 541 N.W.2d at 336. “[I]n the absence of ambiguity, [this court] will not disregard the letter of the law in the pursuit of its purpose.” *Nichols v. State Farm Mut. Ins. Co.*, 927 N.W.2d 334, 336 (Minn. App. 2019) (alterations in original) (quotation omitted). “A statute should be interpreted, whenever possible, to give effect to all of its provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant.” *Schroedl*, 616 N.W.2d at 277 (quotation omitted).

None of the statutes that the city relies on to support its imposition of pre-levy interest on proposed special assessments allow the practice. Instead, the relevant statutes authorize the city to assess improvement costs.

A city may assess “the cost of any improvement, or any part thereof, . . . upon property benefited by the improvement.” Minn. Stat. § 429.051 (2018). The city argues this statute authorizes it to impose the interest on the proposed special assessments. Minn. Stat. § 429.061 (2018) directs otherwise. It provides that, among other requirements, “the notice mailed to the owner must state in clear language . . . the time within which prepayment may be made *without the assessment of interest.*” Minn. Stat. § 429.061, subd. 1(5) (emphasis added). It goes on to describe how a city formally adopts an assessment, indicating that “[t]o the first installment of each assessment shall be added interest on the entire assessment from a date specified in the resolution levying the assessment, *not earlier than the date of the resolution.*” *Id.*, subd. 2 (2018) (emphasis added). Finally, the statute prescribes that

The owner of any property so assessed may, at any time prior to certification of the assessment or the first installment thereof . . . , pay the whole of the assessment . . . , with interest accrued . . . , *except that no interest shall be charged if the entire assessment is paid within 30 days from the adoption thereof.*

*Id.*, subd. 3 (emphasis added).

The city has imposed periodic interest on each of the proposed special assessments. In doing so, the city has exceeded its authority under each of the above three subdivisions. First, the city seeks to include interest on the “entire assessment” *before* the “date of the resolution.” *Id.*, subd. 2. Second, this arrangement would also effectively preclude the

property owner from paying the “whole of the assessment” without interest “if the entire assessment is paid within 30 days from the adoption thereof.” *Id.*, subd. 3. And third, the arrangement would fail to provide the property owner a timeframe “within which prepayment may be mailed *without the assessment of interest.*” *Id.*, subd. 1(5) (emphasis added).

For these reasons, we hold that the city lacks the authority to impose periodic interest on the proposed special assessments. We affirm the district court.

**Affirmed.**