STATE OF MINNESOTA
IN SUPREME COURT
CASE NO. A21-0895

Almir Puce,

Respondent,

v.

City of Burnsville,

Appellant.

BRIEF OF AMICUS CURIAE HOUSING FIRST MINNESOTA

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STATEMENT OF ISSUES

1. Whether the court of appeals correctly construed § 462.358, Subd. 2b(e), which reads: "The municipality must reasonably determine that it will need to acquire that portion of land for the purposes stated in this subdivision as a result of approval of the subdivision."

Court of Appeals: Concluded that the statute requires individualized consideration of subdivisions and their impacts. 971 N.W.2d 285, 294-295 (Minn. Ct. App. 2022).

2. Whether the court of appeals correctly construed Minn. Stat. § 462.358, Subd. 2c and its "essential nexus" and "rough proportionality" requirements to incorporate and adopt federal case law standards governing exactions.

Court of Appeals: Held that these phrases had a "specialized meaning in the context of the exaction of a fee or a dedication of real property as a condition of the approval of a land-use application" and should be interpreted in accordance with federal case law. 971 N.W.2d at 295.

3. Whether the legislative history of 2004 amendments to Minnesota Statutes § 462.353 and § 462.358 supports affirmance.

Court of Appeals: Ostensibly did not consider the legislative history of the 2004 amendments.

STATEMENT OF AMICUS CURIAE'S IDENTITY

Applicant Housing First is a trade association representing the interest of more than 900 businesses throughout the State of Minnesota that are engaged in the development, construction and remodeling of homes and the supply of materials and services to the housing industry. Housing First includes a diverse group of builders and developers. Among Housing First's organizational mission and purpose is, through advocacy, to oppose unlawful municipal regulations and fees which adversely impact the

housing industry, including park dedication fees, which increase the cost of housing and thereby reduce housing affordability.

STATEMENT OF THE CASE

In 1987, the United States Supreme Court decided *Nollan v. California Coastal Commission*, 483 U.S. 825. The Court ruled that for an exaction on a land use permit approval to pass constitutional muster, there must be an "essential nexus" between the condition and the public burden or need created by the development. *See Nollan*, 483 U.S. at 837.

In 1994, the Supreme Court decided *Dolan v. City of Tigard*, 512 U.S. 374 (1994). In *Dolan*, the Court considered "the required degree of connection between the exactions and the projected impact of the proposed development." *Dolan*, 512 U.S. at 386. The Court specifically cited the decision in *Collis v. Bloomington*, 310 Minn. 5 (1976), but declined to adopts its reasoning as the applicable federal standard, findings its reasonable relationship test "confusingly similar to the term 'rational basis' which describes the minimal level of scrutiny under the Equal Protection Clause of the Fourteenth Amendment." *Id.* at 390-391. Instead, the Court adopted a test of "rough proportionality." *Id.* at 391. Under this standard, the "city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." *Id.*

In 2001, the Minnesota legislature amended Minnesota Statute § 462.353, subd. 4 to provide that, with respect to fees charged by a city for "an application for a permit or

other approval required under an official control", the fees "must be fair, reasonable, and proportionate to the actual cost of the service for which the fee is imposed."

In 2004, the Minnesota legislature again amended Minn. Stat. § 462.353, subd. 4. The bill was known in the Minnesota house as "HF 2103."[1] Housing First was a proponent of the bill and spoke in its favor before the relevant house committee. The legislature added the requirement that, in addition to being "fair, reasonable and proportionate," fees must also "***have a nexus*** to the actual cost of the service for which the fee is imposed." (Emphasis added.) The legislature also contemporaneously made significant amendments to Minnesota Statute § 462.358. The legislature added a requirement that there "must be an essential nexus between the fees or dedication imposed under subdivision 2b and the municipal purpose sought to be achieved by the fee or dedication. The fee or dedication must bear a rough proportionality to the need created by the proposed subdivision or development." Minn. Stat. § 462.358, Subd. 2c ("Nexus"). Moreover, the legislature prohibited cities from using park dedication fees to fund "ongoing operation or maintenance." *See id.* Subd. 2b(g).

In 2013, the United States Supreme Court held that monetary exactions imposed by cities on development (viz., "fees in lieu") are subject to review under *Nollan* and *Dolan*. *See Koontz v. St. John's River Water Management District*, 570 U.S. 595. The

[1] The final version of the bill can be viewed here: *https://www.revisor.mn.gov/bills/text.php?number=HF2103&version=latest&session=ls83&session_year=2004&session_number=0*. The bill passed 81-47 in the house, and passed *unanimously* in the senate.

Court concluded that the "fulcrum this case turns on is the direct link between the government's demand and a specific parcel of real property." *Koontz*, 570 U.S. at 614.

Appellant City of Burnsville (the "City") and amicus League of Minnesota Cities (the "League") contend that there is no requirement under either Minnesota or federal law for cities to demonstrate that a land use exaction imposed on a landowner has an essential nexus and rough proportionality with the specific development proposed. In fact, the League contends that the Court should rely upon the decision in *Collis* (*see League Br. pp. 9-11)*, decided in 1976, which predates *Nollan*, *Dolan*, *Koontz*, and the 2001 and 2004 amendments to Minnesota Statutes § 462.353 and § 462.358.

State and federal law governing exactions has changed considerably since *Collis* was decided in 1976. Subsequent amendments to Minnesota Statutes—including amendments specifically designed to incorporate the *Nollan* and *Dolan* standards into state statute—govern here, not *Collis*. The court of appeals correctly applied these standards in favor of Respondent Puce. The Court should affirm.

STATEMENT OF THE FACTS

Housing First requests that the Court take judicial notice of the legislative history and proceedings before the Committee relative to HF 2103. The audio recordings of the proceedings are available online through the Minnesota Legislative Reference Library, are readily capable of accurate determination, and therefore are properly subject to judicial notice.[2]

[2] *See* Minn. R. Evid. 201(b) (judicial notice proper where fact is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be

A. HF 2103 as Originally Introduced in the Legislature.

HF 2103 was originally introduced in the Minnesota House of Representatives on February 12, 2004. As originally proposed, the bill required municipalities to perform statements of needs and reasonableness ("SONAR") before imposing dedication exactions. The draft bill read:

> New and increased fees must not be imposed until the municipality issues a statement of need and reasonableness regarding the need for the fee or dedication. The statement must include the cost of the service or demand in relation to the need created by the project or program and the need created by the general public. The statement must also include whether the new or increased fee is necessary and cost effective and what portion of the costs of the service or demand should be borne by the municipality's general fund. [3]

This SONAR requirement was not incorporated into the final bill; however, as is discussed, the intent behind HF 2103 remained that there would be municipal findings before such development fees were imposed.

B. Proceedings Before the Committee.

HF 2103 came before the Committee for presentation and testimony on February 17 and 18, 2004. HF 2103 was revised by the author and was ultimately approved by the Committee, as amended, on March 10, 2004. On February 17, Remi

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questioned."); *Eagan Econ Dev. Auth. v. U-Haul Co. of Minn.,* 787 N.W.2d 523, 530 (Minn. 2010) (observing that judicial notice is proper "'where the orderly administration of justice commends it.'") (citation omitted).

[3] The text as originally introduced in the house is available on the Office of the Revisor of Statutes website: https://www.revisor.mn.gov/bills/text.php?number=HF2103&version=0&session=ls83&session_year=2004&session_number=0

Stone, of the Builders Association of the Twin Cities[4], spoke in favor of the bill. In relevant part, she said the following about the bill:

- "As you know in 2001 the legislature enacted a law that required fees be 'fair, reasonable, and proportionate to the actual costs of the services provided.' However, it has been the industry's experience that in the last three years fees are still set without clear proof beforehand that there is a direct and specific link between the fees charged or the dedications exacted and the services provided. And that is precisely what we are trying to get to with this bill today."[5]

- "First and foremost, we establish a state policy a clear nexus—i.e., the connection between a fee or dedication and the need. We want to have it put down in writing the findings that support a fee or a dedication, before, not after, a fee is adopted."[6]

- "Nexus is a connection between the fee that's collected or the land that's dedicated and the need or use, the service provided by community. That's a fair concept and a concept that's well established in case law."[7]

- "The other component is an idea of findings of fact. The bill as originally introduced talked about a SONAR, a Statement of Need and Reasonableness, a little bit more of an elaborate process of establishing a paper trail if you will, for fees, and in fact this is now calling for a findings of fact, something that municipalities are quite familiar with doing since they need to establish a findings of fact on conditional use permits for variances . . ."[8]

Representative Carla J. Nelson, who presented the bill to the Committee, spoke several times regarding its purpose. She stated:

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4 Housing First Minnesota was previously known as the Builders Association of the Twin Cities.

5 February 18, 2004 Committee hearing, 4 minutes, 30 seconds.

6 *Id.* 5 minutes, 42 seconds.

7 February 17, 2004 Committee hearing, 2 hours, 32 minutes, 52 seconds.

8 February 17, 2004 Committee hearing, 2 hours, 33 minutes, 13 seconds.

- "The point of this bill is that there needs to be a connection, a nexus, between the fee that is charged and the cost that the development brings to the city."[9]

- "With all due respect I think Mr. Johnson actually made the case for me. And that is specifically in his comments about how 180 days are impossible to live with as far as setting these fees because the budgets aren't even in place then. And that's the whole point. The fees have nothing to do with the budgets of the cities. The fees need to be tied to the cost of the development that is being brought to the municipalities. So, I don't think the fees are a budget, something that makes the budget of the city. The fees should be tied to the costs that the cities incur from the development."[10]

- "The point of this legislation is simply to work off what was passed in 2001, and the nexus piece is what is missing here. Is there a connection between the development and the fees? And that's all it is. It appears that the intent of the legislature was to include that there would be a nexus, in that it talked about 'fair, appropriate", and I forgot the other adjective right now, 'proportionate fees', and this is just clarifying that it's fees that are tied, its costs that are tied to the development."[11]

- "The intent of this bill is basically that it is not a slush fund for a city basically, so there needs to be some connection, and we cannot ask developers to fund things that are city issues, and that are greater than their share of the development, and I think that's the bottom line. It's an issue of fairness."[12]

Several persons spoke in opposition to HF 2103, including, but not limited to, (1) Kevin G. Ross, then a Greene Espel attorney[13], invited to discuss the bill by the League, and (2) Barry Johnson, then the Woodbury City Administrator. Relevant comments from these individuals are included below.

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9 February 18, 2004 Committee hearing, 46 minutes, 6 seconds.
10 *Id.*
11 *Id.* 51 minutes, 50 seconds.
12 *Id.* 53 minutes, 30 seconds.
13 Kevin Ross is now a judge on the Minnesota Court of Appeals.

Attorney Ross stated that:

- "As far as park dedication, I talked to our city planning folks after I saw this particular legislation and in fact what happens under current law there is a presumption that cities do need parks and therefore can dedicate a certain amount of land or ask for money to pay for park services and what they use the money for often is to rehabilitate older parks in the area to accommodate the new development without necessarily adding a new park and has been stated that is a big concern in this legislation it seems to close that door."[14]

Mr. Johnson stated that:

- "The first part of the legislation asks us to justify fees in general. This section seems to say that the application of a fee to any given development also is subject to challenge. Well the fact is fees are set on averages. And so, if we are open to challenge on every fee that some developer may believe is beyond his costs, in essence what we are saying is that no one above an average can be charged, only those below average."[15]

- "The section on dedications is perhaps one of the most troubling in this legislation. First, the language requires that the dedication of land be necessary as a result of approval of that subdivision. Well the fact is when you put in a park it serves not just that particular subdivision but the whole surrounding area. And proving that that extent of dedication is required only by that subdivision is in many cases not going to be possible. Some subdivisions are required to dedicate land. Some subdivisions are required to provide a fee in lieu. But all are treated we believe equally. And yet there is a special burden as a result of this language on showing that the land dedication for development is required just by that subdivision."[16]

- "It may be Representative Nelson's intent that in fact each individual development should not have to pay more than its costs, but the reality is that when you put together a city budget which is a statement of your costs to provide services for the coming year, you have to look at your estimate of what it takes to provide a service in total to all development. Now if you are then subsequently going to be second guessed when that general fee is applied to any given development, what it means is you will end up in

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[14] February 18, 2004 Committee hearing, 33 minutes, 48 seconds.
[15] *Id.* 38 minutes, 7 seconds.
[16] *Id.* 40 minutes, 00 seconds.

> individual cases having to reduce your fees, meaning that you will reduce the charges that you have budgeted for. "[17]

Despite these objections, HF 2103 was passed by both the Minnesota house and senate and signed into law.

ARGUMENT

I. MINNESOTA LAW REQUIRES THAT THE DECISION OF THE COURT OF APPEALS BE AFFIRMED.

A. The Court of Appeals Correctly Construed and Applied Minn. Stat. § 462.358, Subd. 2b(e).

The 2004 amendments to Minnesota Statutes §§ 462.353 and 462.358 clearly adopted and incorporated the *Nollan* and *Dolan* standards into Minnesota law. The League has asserted that the references to "essential nexus" and "rough proportionality" added to the statute by HF 2103 had some other meaning but never explains what that could be. *See League Br. p. 4*. There is no other reasonable interpretation of these terms, both of which were taken verbatim out of the United States Supreme Court decisions. The court of appeals was manifestly correct when it observed that these terms have a specialized meaning in the context of land use exactions. *See Puce v. City of Burnsville*, 971 N.W.2d 285, 295 (Minn. Ct. App. 2022).

The City contends that the court of appeals erred in applying Minn. Stat. § 462.358, Subd. 2b(e) to specific fee dedications. *City Br. p. 26*. This portion of the statute reads: "The municipality must reasonably determine that it will need to acquire

[17] *Id.* 48 minutes, 48 seconds.

that portion of land for the purposes stated in this subdivision as a result of approval of the subdivision."

The City avers that "[b]y its plain language section 462.358, subd. 2b(e) establishes requirements for a municipality's subdivision regulations, not its specific dedication decisions." *Id.* p. 27. To the contrary, the plain language of Minn. Stat. § 462.358 Subdivision 2b is abundantly clear that its provisions bear upon individual subdivisions. For example, Subd. 2b(c) provides that "[t]he ***municipality may choose*** to accept a cash fee as set by ordinance from the applicant for some or all of the new lots created in the subdivision, based on the average fair market value of the unplatted land for which park fees have not already been paid[.]" (Emphasis added.) This portion of the statute allows the city to choose whether to accept a cash fee in lieu of a land dedication for some or all of the lots created by a specific subdivision. Subdivision 2b regulates specific development decisions by requiring the city to pay in each case the "average fair market value of the unplatted land[.]" Minn. Stat. § 462.358, Subd. 2b(c). Thus, the amount of the exaction varies depending upon the particular subdivision at issue.

Furthermore, Subd.2b (d) provides that: "In establishing the portion to be dedicated or preserved or the cash fee, the regulations shall give due consideration to the open space, recreational, or common areas and facilities open to the public ***that the applicant proposes to reserve for the subdivision***." (Emphasis added.) This requires a city to consider, for each subdivision, how much land the developer proposes to set aside for the purposes specified. The foregoing leaves no reasonable doubt that when Subd. 2b(e) provides that "The municipality must reasonably determine that it will need to

acquire ***that portion of land*** for the purposes stated in this subdivision ***as a result of approval of the subdivision***", the bolded language refers to a particular development.

The City claims that Subd. 2b(e) is referring only to generalized municipal regulations as opposed to individual decisions. *City Br. p. 28*. But Subd. 2b(e) never references a city's "regulations." As shown by the discussion above, time and again, when Subd. 2b references "the subdivision," it is referring to *a single development*. The City's "construction" of Subd. 2b(e) is a clear departure from the statute's plain language and must be rejected.

The City's argument for reversal relating to Subd. 2b(e) rests wholly upon its conclusion the inquiry under this subparagraph concerns the City's original decision to establish a dedication fee structure by ordinance, as opposed to whether it made a reasonable determination on a specific development. *See City Br. pp. 38-39*. The City's discussion of its legislative determination to adopt a fee schedule is irrelevant. Instead, the City was required to demonstrate here that it needed to acquire a specific portion of Puce's land "as a result of approval of" his development. Minn. Stat. § 462.358, Subd. 2b(e). It never did so.

The court of appeals observed that "the city council was under the mistaken assumption that it could impose a park-dedication fee simply because it was approving additional development, without making a reasonable determination that it will need to acquire and develop or improve a reasonable portion of land as a result of the City's approval of Puce's development application." 971 N.W.2d at 392. The City labors under the same misapprehension in this appeal. The City has not even attempted to argue it

made (or could have reasonably made) an individualized determination on Puce's specific development. The court of appeals should be affirmed.

B. The Court of Appeals Correctly Construed and Applied Minn. Stat. § 462.358, Subd. 2c(a).

The Court of Appeals correctly construed "essential nexus" and "rough proportionality" in Minn. Stat. § 462.358, Subd. 2c(a) to refer to and incorporate federal constitutional standards into the Minnesota statutory analysis. *See Puce*, 971 N.W.2d at 295-296. As the court of appeals observed, "rough proportionality" requires that there be an "individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." *Dolan*, 512 U.S. at 391. The City makes no serious effort to argue it made an individualized determination.

The League asserts that even if the legislative intent to adopt *Dolan* was clear, "the Legislature cannot dictate to this Court how it must interpret constitutional provisions or require this Court to apply a particular constitutional takings analysis without violating the constitutionally required separation of powers." *League Br. p. 5*. This assertion is unfounded. Cities have no inherent authority to impose development fees. *See generally Harstad v. City of Woodbury*, 916 N.W.2d 540 (2018). The legislature has authority, within constitutional boundaries, to determine when and under what conditions development fees may be imposed. *See Collis v. City of Bloomington*, 310 Minn. 5, 17 (1976). The legislature clearly could not dictate to this Court how to interpret the Minnesota Constitution. But it is a state statute—not the state constitution—that is at issue in this case. Although the legislature may not adopt standards that are less

protective of property rights than the constitution requires, it certainly may adopt standards that are more protective. The Court is duty bound to apply the statutory standards adopted by the legislature. *State v. Khalil*, 956 N.W.2d 627, 634 (Minn. 2021) ("If the Legislature's intended meaning is clear from the text of the statute, we apply that meaning and not what we may wish the law was or what we think the law should be.").

The League claims that the *Nollan* and *Dolan* analysis should not apply here, because "these cases involved adjudicatory exactions of property, imposed in a project-specific manner, not the legislative imposition of fees through a generally applicable ordinance." *League Br. p. 12*. Neither state nor federal law recognize such a distinction. By statute all land dedications (or fees in lieu of dedication) in Minnesota must have an essential nexus and bear a rough proportionality to the need created by the proposed subdivision. Minn. Stat. § 462.358, Subd. 2c(a).

Nor does federal case law recognize such a distinction. The League has cited a federal district court decision from Tennessee in support of its claimed rule, *Knight v. Metro Government of Nashville and Davidson County*, No. 3:20-cv-00922, 2021 WL 5356616 (M.D. Tenn. Nov. 16, 2021). The decision in *Knight* contradicts the reasoning of *Koontz*, which applied *Nollan* and *Dolan* to monetary exactions forced on a developer. The United States Supreme Court stated that the "fulcrum this case turns on is the direct link between the government's demand and a specific parcel of real property." *Koontz*, 570 U.S. at 614. Irrespective of whether the amount of the exaction is set in advance by ordinance, or in an ad hoc basis, what matters for purposes of constitutional scrutiny is the fact the exaction is a condition to the development of specific parcels of real property.

See id. To adopt the League's distinction would make it "very easy for land-use permitting officials to evade the limitations of *Nollan* and *Dolan*." *See id.* at 613. There is no reason to believe the federal supreme court would tolerate constitutional protections being weakened in this way.

C. If the Court Concludes Minn. Stat. § 462.358 is Ambiguous, the Legislative History of HF 2103 Supports Respondent Puce.

1. *Reliance on Legislative History*.

"The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." 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." *Id.* The test of ambiguity is whether the law is subject to more than one reasonable interpretation. *T.G.G. v. H.E.S.*, 946 N.W.2d 309, 316 (Minn. 2020). When a law is ambiguous, the legislative intent may be considered by considering various pieces of evidence, including:

1. The occasion and necessity for the law;
2. The circumstances under which it was enacted;
3. The mischief to be remedied;
4. The object to be attained;
5. The former law, if any, including other laws upon the same or similar subjects;
6. The consequences of a particular interpretation;
7. The contemporaneous legislative history; and
8. Legislative and administrative interpretations of the statute.

Minn. Stat. § 645.16.

2. *The legislative history surrounding the adoption of HF 2103 proves the League and its allies opposed the bill in the legislature because they knew it had the consequences the League now denies it carried.*

The City and the League spent substantial portions of their briefing arguing why public policy supports their "constructions" of Minn. Stat. § 462.358. *See City Br. p. 45-47*; *League Br. p. 8*. Their arguments are substantially similar to arguments made by opponents of HF 2103 before the Committee. The Court need not reach these policy arguments because the statues are clear and unambiguous. If, however, the Court concludes that the statutes are ambiguous, then it should review the legislative history regarding the adoption of HF 2103. The legislative history demonstrates that the legislature rejected the very arguments the City and the League are making herein:

1. **City Argument No. 1**. "There is nothing controversial about the fact Minn. Stat. § 462.358, subd. 2b(e) requires a municipality to 'reasonably determine that it will need to acquire the portion of land for' public use as a result of approving a subdivision. What is controversial, however, is the idea this requirement applies to specific fee dedication decisions on an individual case-by-case basis, as opposed to a municipality's determination during the ***fee setting process***." *City Br. p. 45* (emphasis in original).

   Corresponding argument made before the Committee:

   - "The first part of the legislation asks us to justify fees in general. This section seems to say that the application of a fee to any given development also is subject to challenge. Well the fact is fees are set on averages. And so, if we are open to challenge on every fee that some developer may believe is beyond his costs, in essence what we are saying is that no one above an average can be charged, only those below average."[18]

   - "It may be Representative Nelson's intent that in fact each individual development should not have to pay more than its costs, but the

[18] February 18, 2004 Committee hearing, comments of Barry Johnson, 38 minutes, 7 seconds.

reality is that when you put together a city budget which is a statement of your costs to provide services for the coming year, you have to look at your estimate of what it takes to provide a service in total to all development. Now if you are then subsequently going to be second guessed when that general fee is applied to any given development, what it means is you will end up in individual cases having to reduce your fees, meaning that you will reduce the charges that you have budgeted for. "[19]

2. **City Argument No. 2**. "In most instances, this 'would be impossible' and would 'cast an unreasonable burden of proof upon the municipality[.]" *City Br. p. 45*.

   Corresponding argument made before the Committee:

   - "The section on dedications is perhaps one of the most troubling in this legislation. First, the language requires that the dedication of land be necessary as a result of approval of that subdivision. Well the fact is when you put in a park it serves not just that particular subdivision but the whole surrounding area. And proving that that extent of dedication is required only by that subdivision is in many cases not going to be possible. Some subdivisions are required to dedicate land. Some subdivisions are required to provide a fee in lieu. But all are treated we believe equally. And yet there is a special burden as a result of this language on showing that the land dedication for development is required just by that subdivision."[20]

The legislative history demonstrates that the League's representative and certain cities appeared before the Committee in 2004 arguing that passage of HF 2103 would have consequences for cities. They claimed they could not prove proportionality on a case-by-case basis. They argued it would make it harder to preserve land for park and open spaces. They argued that passage would inevitably increase litigation. The arguments cities made against HF 2103 are fundamentally inconsistent with their position

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[19] *Id.* 48 minutes, 48 seconds.

[20] February 18, 2004 Committee hearing, comments of Barry Johnson, 40 minutes, 00 seconds.

in this appeal. The cities correctly recognized in 2004 the consequences of the legislation—viz., that cities had to prove nexus and rough proportionality in each case. The cities now deny any such requirement exists under state law. The cities were right in 2004 and are wrong now.

The contemporaneous comments of Representative Carla J. Nelson, co-author of HF 2103, clearly establish that the bill was intended to require a nexus and rough proportionality for all development fees imposed by municipalities. She explained the intent of the bill several times:

- "The point of this bill is that there needs to be a connection, a nexus, between the fee that is charged and the cost that the development brings to the city."[21]

- "With all due respect I think Mr. Johnson actually made the case for me. And that is specifically in his comments about how 180 days are impossible to live with as far as setting these fees because the budgets aren't even in place then. And that's the whole point. The fees have nothing to do with the budgets of the cities. The fees need to be tied to the cost of the development that is being brought to the municipalities. So, I don't think the fees are a budget, something that makes the budget of the city. The fees should be tied to the costs that the cities incur from the development."[22]

- "The point of this legislation is simply to work off what was passed in 2001, and the nexus piece is what is missing here. Is there a connection between the development and the fees? And that's all it is. It appears that the intent of the legislature was to include that there would be a nexus, in that it talked about 'fair, appropriate", and I forgot the other adjective right now, 'proportionate fees', and this is just clarifying that it's fees that are tied, its costs that are tied to the development."[23]

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[21] February 18, 2004 Committee hearing, 46 minutes, 6 seconds.
[22] *Id.*
[23] *Id.* 51 minutes, 50 seconds.

- "The intent of this bill is basically that it is not a slush fund for a city basically, so there needs to be some connection, and we cannot ask developers to fund things that are city issues, and that are greater than their share of the development, and I think that's the bottom line. It's an issue of fairness."[24]

The comments of Remi Stone also elucidate the intent behind HF 2103. She explicitly stated that the concepts adopted by HF 2103 came from federal case law.[25] She explained that even after the 2001 amendment to Minn. Stat. § 462.353, "it has been the industry's experience that in the last three years fees are still set without clear proof beforehand that there is a direct and specific link between the fees charged or the dedications exacted and the services provided. And that is precisely what we are trying to get to with this bill today."[26] Although HF 2103 ultimately dispensed with the requirement of a SONAR, the intent of the bill was that municipalities would adopt findings of fact in support of the nexus and proportionality requirements of Minn. Stat. § 462.358, Subd. 2c.[27] The absence of any such findings by the City in this case necessitates affirmance of the court of appeals.

CONCLUSION

For all the foregoing reasons, amici Housing First Minnesota requests that this Court affirm the decision of the court of appeals.

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[24] *Id.* 53 minutes, 30 seconds.
[25] February 17, 2004 Committee hearing, 2 hours, 32 minutes, 52 seconds.
[26] February 18, 2004 Committee hearing, 4 minutes, 30 seconds.
[27] February 17, 2004 Committee hearing, 2 hours, 33 minutes, 13 seconds.

Dated: July 21, 2022

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CERTIFICATE OF COMPLIANCE

1. This brief conforms to the requirements of Minnesota Rules of Civil Appellate Procedure 132.01, Subd. 1.
2. This Brief complies with the word count limitation in Rule 132.01, Subd. 3(b)(1) of the Minnesota Rules of Civil Appellate Procedure as it contains 5,378 words.
3. Microsoft Word for Office 365 was used to prepare this Brief. The font used in this Brief is Times New Roman 13 point.

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