**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A17-0281**

McCullough and Sons, Inc.,
Appellant,

vs.

City of Vadnais Heights,
Respondent.

**Filed December 11, 2017**
**Affirmed in part, reversed in part, and remanded**
**Peterson, Judge**

Ramsey County District Court
File No. 62-CV-14-5555

Mark Essling, North Branch, Minnesota (for appellant)

Caroline Bell Beckman, Vadnais Heights City Attorney, James Erickson, Jr., Assistant City Attorney, Erickson, Bell, Beckman & Quinn, P.A., Roseville, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Peterson, Judge; and Halbrooks, Judge.

**S Y L L A B U S**

When Minn. Stat. § 429.081 (2016) is read in conjunction with Minn. Stat. § 429.061 (2016), the unambiguous statutory language provides that a property owner who, without reasonable cause, fails to sign a written objection to an assessment and to either (1) file the objection with the municipal clerk prior to the assessment hearing or (2) present the objection to the presiding officer at the assessment hearing, is precluded from appealing the assessment to the district court.

## O P I N I O N

**PETERSON**, Judge

This is the second appeal in a special-assessment challenge. In the first appeal, this court reversed the district court's denial of respondent city's motion for summary judgment and remanded to the district court for further proceedings. *McCullough & Sons, Inc. v. City of Vadnais Heights*, 868 N.W.2d 721 (Minn. App. 2015) (*McCullough I*). The supreme court vacated this court's opinion and remanded to the district court, concluding that the appeal to this court was premature. On remand, the district court vacated its earlier decision, expressly adopted this court's analysis of the merits in the earlier decision, and granted summary judgment to respondent city. *McCullough & Sons, Inc. v. City of Vadnais Heights*, 883 N.W.2d 580 (Minn. 2016) (*McCullough II*). In this appeal, appellant landowner argues that (1) Minn. Stat. § 429.081 governs special-assessment appeals to the district court and does not require a property owner to present a written objection prior to or at the assessment hearing to preserve the right to appeal, (2) the district court erred in denying appellant's motion to amend its special-assessment appeal, and (3) Minn. Stat. § 429.061 violates various constitutional protections. The city argues that appellant's claims are barred because it failed to comply with the statutory requirements for appealing a special assessment to the district court. We affirm in part, reverse in part, and remand.

## FACTS

Appellant McCullough & Sons, Inc. (the company), a well-drilling company, owns a nine-acre parcel of property near the intersection of County Road E and Interstate 35E. Jim McCullough (McCullough) is the company's vice president. In the summer of 2014,

McCullough received a notice that respondent City of Vadnais Heights intended to levy a $158,211.46 assessment against the property to pay for street improvements for future commercial development. On July 17, 2014, the city held a public meeting to consider the proposed assessment and any property owner's written and oral objections to the assessment. McCullough testified at the meeting that the assessment cost was high and that the company's property "is a headache" and he is "stuck with it" because the company had been unable to sell or even "give it away" due to the high cost of development. The company did not file or present a written objection to the assessment before or at the July 17 meeting. The mayor instructed people who testified at the meeting to sign a notepad, and McCullough signed the notepad. The city adopted the assessment, including a $158,224.11 assessment against the company's property.

The company challenged the assessment by appealing to the district court. The city moved for summary judgment, arguing that neither McCullough nor the company made a written objection to the assessment before the July 17 hearing as required by statute and, alternatively, that McCullough did not object to the assessment when he testified at the hearing. By order filed September 24, 2014, the district court denied the city's motion, concluding that an oral objection was sufficient under Minn. Stat. § 429.081 and that a fact issue existed on whether McCullough orally objected. Following an evidentiary hearing, by order filed November 24, 2014, the district court found that McCullough objected to the assessment when he testified at the July 17 hearing and denied the city's summary-judgment motion.

The city appealed both orders denying its summary-judgment motion. Although an order denying summary judgment is generally not appealable, this court accepted the city's appeal "as taken from an order denying [the city's] motion for summary judgment on the ground of lack of subject-matter jurisdiction." *McCullough & Sons, Inc. v. City of Vadnais Heights*, No. A15-0064 (Minn. App. Jan. 15, 2015) (order). This court then reversed the denial of summary judgment. *McCullough I*, 868 N.W.2d at 728. This court concluded that (1) under the plain language of Minn. Stat. §§ 429.061, .081, a taxpayer must submit a signed, written objection before or at the assessment hearing to preserve the right to appeal a special assessment, unless the taxpayer shows good cause for the failure to submit a signed, written objection; and (2) strict compliance is required to perfect an appeal from a special assessment, and McCullough orally objecting and signing the notepad at the assessment hearing did not satisfy the written-objection requirement. *Id.*, 868 N.W.2d at 727-28. This court held that the company's appeal of the special assessment was not properly perfected and, therefore, the district court erred in denying the city's summary-judgment motion. *Id.* at 728. This court also remanded for further proceedings. *Id.*

The supreme court granted review and vacated this court's decision on the ground that the district court's denial of summary judgment was not immediately appealable because (1) "it did not involve a final order, decision, or judgment," (2) the written-objection requirement could be effectively reviewed on appeal from a final judgment, (3) "the written-objection requirement is a claims-processing rule rather than a jurisdictional requirement," and (4) the written-objection requirement is not analogous to an immunity claim. *McCullough II*, 883 N.W.2d at 586-90.

On remand to the district court, the company sought leave to amend its appeal to assert that it had reasonable cause for its failure to object in writing and moved for summary judgment on the ground that the assessment was null and void. The district court adopted the reasoning of this court in its vacated opinion and granted summary judgment for the city. The district court vacated the September 24, 2014 order and vacated the November 24, 2014 order to the extent that it was inconsistent with the grant of summary judgment to the city. The district court denied the company's request for leave to amend as untimely.

This appeal followed.

## ISSUES

I. Did the district court err by concluding that Minn. Stat. §§ 429.061, .081 require a written objection to preserve an appeal of a special assessment to the district court?

II. Did the district court abuse its discretion by denying the company leave to amend its pleading?

III. Are the constitutional claims raised by the company properly before this court?

## ANALYSIS

### I.

"We review a district court's summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted).

"[S]tatutory construction is a question of law, which we review de novo." *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). We look first at the statute's plain language to determine whether it is clear or ambiguous. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). A statute is ambiguous if its language "is susceptible to more than one reasonable interpretation." *Id.* (quotation omitted). "When legislative intent is clear from the statute's plain and unambiguous language, this court interprets the statute according to its plain meaning without resorting to other principles of statutory interpretation." *Vermillion State Bank v. State, Dep't of Transp.*, 895 N.W.2d 269, 272 (Minn. App. 2017) (quotation omitted).

Minn. Stat. § 429.081 states:

> Within 30 days after the adoption of the assessment, any person aggrieved, *who is not precluded by failure to object prior to or at the assessment hearing*, or whose failure to so object is due to a reasonable cause, may appeal to the district court by serving a notice upon the mayor or clerk of the municipality.

(Emphasis added.)

The company argues that because section 429.081 is the exclusive statute governing special-assessment appeals and it does not require a written objection, an oral objection is sufficient to preserve a property owner's appeal rights. The city argues that section 429.081 must be read in conjunction with section 429.061.

Although section 429.081 does not expressly require a written objection, this court has recognized that the limitations on the right to appeal referred to in section 429.081 flow from Minn. Stat. § 429.061, which sets forth the procedure for adopting a special

assessment. *Peterson v. City of Inver Grove Heights*, 345 N.W.2d 274, 276 (Minn. App. 1984). Under Minn. Stat. § 429.061, subd. 1, a city council that is considering levying a special assessment is required to publish in the newspaper and mail to the owner of each parcel that will be assessed a notice stating that the council will meet to consider the proposed assessment. The notice must include the date, time, and place of the assessment hearing and a statement that "written or oral objections" to the assessment will be considered at the hearing. Minn. Stat. § 429.061, subd. 1.

> The notice must also state that no appeal may be taken as to the amount of any assessment adopted pursuant to subdivision 2, unless a *written objection* signed by the affected property owner is filed with the municipal clerk prior to the assessment hearing or presented to the presiding officer at the hearing.

*Id.* (emphasis added).

Minn. Stat. § 429.061, subd. 2, states that, at the assessment hearing "or at any adjournment thereof the council shall hear and pass upon *all objections* to the proposed assessment whether presented orally or in writing." (Emphasis added.) And, consistent with the notice requirement in subdivision 1, subdivision 2 states, "No appeal may be taken as to the amount of any assessment adopted under this section unless a *written objection* signed by the affected property owner is filed with the municipal clerk prior to the assessment hearing or presented to the presiding officer at the hearing." *Id.* (emphasis added).

When Minn. Stat. § 429.081 refers to a person "who is not precluded by failure to object prior to or at the assessment hearing," it is referring to a person who did not fail to provide a signed, written objection as required under Minn. Stat. § 429.061, subd. 2, to take

an appeal of an assessment to the district court. Consequently, when Minn. Stat. § 429.081 is read in conjunction with Minn. Stat. § 429.061, the unambiguous statutory language provides that a property owner who, without reasonable cause, fails to sign a written objection and to either file the objection with the municipal clerk prior to the assessment hearing or present the objection to the presiding officer at the assessment hearing is precluded from appealing a special assessment to the district court. *See also Sievert v. City of Lakefield*, 319 N.W.2d 43, 44 n.3 (Minn. 1982) (dictum recognizing written-objection requirement); *Peterson*, 345 N.W.2d at 277 (accord).

"[A]ppeals by property owners from assessments are wholly statutory, and . . . the conditions imposed by the statute must be strictly complied with." *Wessen v. Village of Deephaven*, 284 Minn. 296, 298, 170 N.W.2d 126, 128 (1969). The district court properly concluded that the company failed to preserve its appeal by failing to file or present a signed, written objection.

**II.**

Minn. R. Civ. P. 15.01 permits a party to amend a pleading by leave of the court, and leave shall be freely granted when justice requires. Whether to permit an amendment is a decision within the district court's discretion, and the district court's decision will not be reversed absent an abuse of discretion. *Johns v. Harborage I, Ltd.*, 664 N.W.2d 291, 295 (Minn. 2003). Prejudice is an important consideration in this decision, and the burden is on the party opposing amendment to show prejudice. *Metag v. K-Mart Corp.*, 385 N.W.2d 864, 866 (Minn. App. 1986), *review denied* (Minn. June 23, 1986).

The company sought leave to amend its appeal to assert that it had reasonable cause for failing to object to the assessment in writing because it was reasonable to construe Minn. Stat. §§ 429.061, .081, as permitting a property owner to preserve its appeal rights by orally objecting at the assessment hearing. The company did not raise the issue of reasonable cause for its failure to comply with the written-objection requirement until 2016, after the supreme court remanded the case to the district court.

The company argues that it "sought leave to amend at its first opportunity." But, at the September 24, 2014 hearing on the city's motion for summary judgment, the district court stated, "And there's no claim by Mr. McCullough that he didn't object and he doesn't argue that the requirements of the statute should be disregarded because he has some reasonable cause. He is saying that I did object, so it sounds to me, which is why I started with that question, that the sole issue is whether he objected or not . . . ."

Addressing the company's claim that it had reasonable cause for failing to object in writing would require a determination whether a company representative read the statute and misinterpreted it. The record contains no evidence that anyone did so or that the company's knowledge of the appeal procedure came from anything other than the notice that the company received from the city. An evidentiary hearing would be necessary to determine the company's reasonable-cause claim, which the company could have raised in 2014 when the city made the argument that a written objection was required.[1] Given the

[1] If the company's failure to present a written objection prior to or at the July 17, 2014 assessment hearing was due to a reasonable cause, the company would have known about the reasonable cause before the September 24, 2014 hearing on the city's motion for summary judgment.

company's delay and the necessity of an evidentiary hearing, the district court did not abuse its discretion in denying the company leave to amend its appeal to assert reasonable cause for its failure to object in writing. *See Metag*, 385 N.W.2d at 866 (affirming denial of motion to amend complaint when party delayed in moving to amend and amendment would have required discovery).

**III.**

The company asserts several claims that the special-assessment process is unconstitutional, including claims that the written-objection requirement in Minn. Stat. § 429.061, subd. 2, is unconstitutional. Although the company presented to the district court the constitutional claims that it raises before this court, the district court failed to address those claims. An appellate court generally considers only issues that were presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Therefore, because the company's claims challenge the constitutionality of the statutory procedure that the district court concluded the company failed to follow, we remand the constitutional claims to the district court for consideration.

**D E C I S I O N**

We affirm the district court's denial of leave to amend and its conclusion that the company failed to follow the written-objection requirement in the statutory procedure for preserving an appeal of a special assessment to the district court. But because the district court has not considered the company's challenges to the constitutionality of the statutory requirement that the company failed to follow, we reverse the grant of summary judgment

for the city and remand the company's constitutional claims to the district court for consideration.

**Affirmed in part, reversed in part, and remanded.**