

NO. A12-0735

State of Minnesota
In Court of Appeals

Motokazie! Inc. and Portinga Brothers, LLC,

Appellants,

v.

Rice County, Minnesota and its County Board of Commissioners,

Respondents.

**BRIEF AND APPENDIX OF RICE COUNTY AND
THE RICE COUNTY BOARD OF COMMISSIONERS**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE ISSUES

1. Whether the District Court was correct in holding that Minnesota Statutes Section 375.51 allows a county to establish by ordinance a requirement for a four-fifths majority vote to enact a text amendment to a zoning ordinance.
 - a. The issue was raised in the County's memorandum in opposition to Appellants' motion for partial summary judgment.
 - b. The District Court ruled that Section 375.51, subdivision 1, allows a county to establish by ordinance a requirement for a four-fifths majority vote to enact a text amendment to a zoning ordinance.
 - c. The issue was preserved for appeal by the County filing a memorandum in opposition to Appellants' motion for partial summary judgment in District Court, and a Statement of the Case pursuant to Minnesota Rule of Civil Appellate Procedure 133.03.
 - d. Minn. Stat. § 375.51; *Bolen v. Glass*, 755 N.W.2d 1 (Minn. 2008); *State v. Scatena*, 87 N.W. 764 (Minn. 1901); *Mayes v. Byers*, 7 N.W.2d 403 (Minn. 1943).

2. Whether the District Court was correct in holding that an application for a text amendment to a zoning ordinance was not a "request related to zoning" within the meaning of Minnesota Statutes Section 15.99.
 - a. The issue was raised in the County's memorandum in opposition to Appellants' motion for partial summary judgment.
 - b. The District Court ruled that an application for a text amendment to a zoning ordinance is not a request related to zoning within the meaning of Section 15.99.
 - c. The issue was preserved for appeal by the County filing a memorandum in opposition to Appellants' motion for partial summary judgment in District Court, and a Statement of the Case pursuant to Minnesota Rule of Civil Appellate Procedure 133.03.
 - d. Minn. Stat. § 15.99; *Advantage Capital Mgmt. v. City of Northfield*, 664 N.W.2d 421 (Minn.App. 2003); *Sys. Designation of Multi-Flo Wisconsin Aerobic Treatment Units*, C0-01-823, 2001 WL 1665410 (Minn.App. 2001); *Breza v City of Minnetrista*, 706 N.W.2d 512 (Minn.App. 2005).

3. Whether the meeting report created by I&S Group on behalf of Appellants operated as an extension of the sixty-day deadline within the meaning of Minnesota Statutes Section 15.99.
 - a. The County raised extension under Section 15.99, subdivisions 3(f) and 3(g), as a defense to Appellants' Section 15.99 claim in its memorandum in opposition to Appellants' motion for partial summary judgment.
 - b. The District Court did not reach or rule on the County's extension defense due to its ruling that an application for a text amendment is not within the parameters of Section 15.99.
 - c. The issue was preserved for appeal by the County filing a memorandum in opposition to Appellants' motion for partial summary judgment in District Court, and a Statement of the Case pursuant to Minnesota Rule of Civil Appellate Procedure 133.03. The County was not required to file a notice of related appeal to preserve this defense, which was litigated but not ruled on by the District Court. *See Day Masonry v. Indep. Sch. Dist.* 347, 781 N.W.2d 321, 331-32 (Minn. 2010); *Hoyt Inc. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988).
 - d. Minn. Stat. § 15.99; *Manco of Fairmont, Inc. v. Rock Dell Township*, 583 N.W.2d 293 (Minn.App. 1998); *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309 (Minn. 2001); *Hans Hagen Homes, Inc. v. City of Minnestrista*, 728 N.W.2d 536 (Minn. 2007).
4. Whether a mandamus action can be maintained on a claim arising out of the rejection of a proposed text amendment to a zoning ordinance.
 - a. The County argued that Appellants were precluded from proceeding on a petition for writ mandamus in its memorandum in opposition to Appellants' motion for partial summary judgment.
 - b. The District Court did not reach or rule on the County's argument that a mandamus action cannot be maintained because it granted judgment in favor of the County on both mandamus claims, thereby making mandamus damages unavailable to Appellants.
 - c. The issue was preserved for appeal by the County filing a memorandum in opposition to Appellants' motion for partial summary judgment in District Court, and a Statement of the Case pursuant to Minnesota Rule of Civil Appellate Procedure 133.03. The County was not required to file a notice of related appeal to preserve this argument, which was litigated but not ruled on by the District

Court. See *Day Masonry*, 781 N.W.2d 321, 331-32; *Hoyt Inc. Co.*, 418 N.W.2d 173, 175.

- d. Minn. Stat. § 586.02; *Mendota Golf, LLP v City of Mendota Heights*, 708 N.W.2d 162 (Minn. 2006); *In re Welfare of Child of S.L.J.*, 772 N.W.2d 833 (Minn. 2006); *Waters v. Putman*, 183 N.W.2d 545 (Minn. 1971).

STATEMENT OF THE CASE

At the District Court, Appellants¹ claimed that the County's² four-fifths majority voting requirement in Rice County Zoning Ordinance ("Ordinance") Section 503.04(E)(10) violated Minnesota Statutes Section 375.51, subdivision 1, and claimed that there was no case law construing the phrase "required by law." Resp.App. 40. The County argued that Section 375.51, subdivision 1, gives counties the express authority to require more than a simple majority vote to enact or amend zoning ordinances. Resp.App.82-85. The operative language in Section 375.51, subdivision 1, is "unless a larger number is required by law." There is clear case law indicating that the phrase "required by law" includes an ordinance such as Ordinance Section 503.04(E)(10). App.Add.9-10. The Third Judicial District Court, Judge Long presiding, correctly held that Section 375.51, subdivision 1, allows a county to establish by ordinance a requirement for a four-fifths majority vote to enact a text amendment to a zoning ordinance and granted the County judgment on Appellants' Count II. App.Add.9-11.

¹ Unless otherwise specified in this brief, Motokaziel, Inc. and Portinga Bros., LLC will be referred to collectively as "Appellants." Also, it bears noting that Portinga Bros., LLC is not a proper party to this appeal. While the District Court granted leave to amend to add Portinga Bros. to one Count, that Count was dismissed by stipulation of the parties and no amended complaint was ever served.

² Unless otherwise specified in this brief, Rice County and the Rice County Board of Commissioners are collectively referred to as "County."

Appellants also claimed that an application for a text amendment to a zoning ordinance was a “request related to zoning” within the meaning of Minnesota Statutes Section 15.99. Resp.App.8-12. The County argued it was not. Resp.App.60-64. The Minnesota Court of Appeals in *Advantage Capital Management v. City of Northfield*, 664 N.W.2d 421 (Minn.App. 2003), defined a “request relating to zoning” to be a request to conduct a specific use of land within the framework of the regulatory structure relating to zoning. An application for a text amendment is neither a request to conduct a specific use of land, nor a request within the framework of the regulatory structure related to zoning. It is instead a request to change the regulatory framework. App.Add.7-9. The District Court correctly held that an application for a text amendment to a zoning ordinance is not a request related to zoning within the meaning of Section 15.99 and granted the County judgment on Appellants’ Count I. App.Add.7-9, 11.

The County raised extension under Section 15.99, subdivisions 3(f) and 3(g), as a defense to Appellants’ Section 15.99 claim. Resp.App.81-82. The County argued that the meeting report created by I&S Group on behalf of Appellants operated as an extension of the sixty-day timeline under Section 15.99. *Id.* The District Court did not reach or rule on the County’s extension defense due to its ruling that an application for a text amendment is not within the parameters of Section 15.99. App.Add.10-11. In the event this Court disagrees with the District Court’s ruling that an application for a text amendment is not within the parameters of Section 15.99, the County requests that this Court rule on Issue No. 3 and determine whether the meeting report created by I&S

Group on behalf of Appellants operated as an extension of the sixty-day deadline because this is purely a legal issue.

The County also raised equitable estoppel and waiver as defenses to Appellants' Section 15.99 claim. Resp.App.74-81. The District Court did not reach or rule on the County's equitable estoppel or waiver defenses due to its ruling that an application for a text amendment is not within the parameters of Section 15.99. App.Add.10-11. In the event this Court disagrees with the District Court's ruling that an application for a text amendment is not within the parameters of Section 15.99, the County requests a remand to the District Court for disposition of these defenses, which involve questions of fact. *See, e.g., Northern Petrochemical Co. v. U.S. Fire Ins. Co.*, 277 N.W.2d 408, 410 (Minn. 1979); *Valspar Refinish, Inc. v. Gaylord's Inc.*, 764 N.W.2d 359, 367 (Minn. 2009).

Additionally, the County argued that Appellants were precluded from proceeding on a petition for writ of mandamus. Resp.App.54-58. Mandamus is an extraordinary legal remedy to be used only in rare and exceptional circumstances where there is a clear and present duty to perform an act and there is no adequate remedy at law. The County argued that the declaratory judgment claim provided an adequate remedy at law and that the Appellants had no right to obtain a particular wording of a zoning ordinance.

Therefore, mandamus was unavailable to Appellants under the law. Resp.App.57-58.

The District Court did not reach or rule on the County's argument on mandamus because it granted judgment in favor of the County on both mandamus claims, Counts I and II, thereby making mandamus damages unavailable to Appellants under Count III.

App.Add.10-11. If this Court disagrees with the District Court's grant of judgment, the

County requests that this Court rule on Issue No. 4 and determine whether a mandamus action can be maintained on a claim arising out of the rejection of a proposed text amendment to a zoning ordinance because this is purely a legal issue.

STATEMENT OF THE FACTS

Under Ordinance Section 507.05(I), individuals may apply for a conditional use permit (“CUP”) to engage in organized motor sports, which include “ATV trails, motorcycle tracks or trails, truck trails and tractor pulling but not auto or other vehicle racing, tracks or events.” App.App.245. The category of organized motor sports specifically excludes other “auto or other vehicle racing, tracks or events” that are not listed. *See id.*; App.App.190.

On September 6, 2011, Appellant Motokazie! submitted an application (“Application”) for a text amendment to the Ordinance in its most recent attempt to develop a motor sports park within the County. App.App.197-202. Specifically, the Application requested a change to Section 507.05(I)’s definition of “organized motor sports” to include ATV tracks, snowmobile tracks and trails, and kart (go kart) tracks and trails. *Id.* The application initially did not contain a legible signature from a County resident or landowner. The Ordinance requires an application to be made by a County resident or landowner. App.App.231. Thus, it was not deemed complete by the County until September 16, 2011, which was the date Mr. Theis submitted a document containing a legible signature from a representative of Appellant Portinga Bros., LLC. App.App.190, 203; Resp.App.90, 125.

The Application was submitted under Section 503.04(C) of the Ordinance, which governs applications for text amendments. App.App.191-92, 230. There was no application to rezone and the application did not include the information required by Section 503.04(D) of the Ordinance, which governs applications for rezoning. *Id.* A rezoning application requires an applicant to submit detailed information concerning the proposed rezone site, as well as other information that Appellants did not submit. *Id.*

On September 21, 2011, Rice County Administrator Gary Weiers, Rice County Economic Development Director Deanna Kuennen, and Environmental Services Director Julie Runkel attended a meeting with representatives of Appellants to discuss, among other things, the timeline in which the County would process the Application. App.App.186-87, 192. Mr. Theis, Jamie Swenson, and Lynn Bruns attended the meeting as representatives of Appellants, Mr. Swenson and Mr. Bruns in their capacity as Appellants' paid consultants. *Id.*

At the September 21, 2011 meeting, Mr. Theis stated he wanted a clear idea of the County's timeline for processing the Application because Appellants did not want to incur significant expenses paying their consulting firm, I&S Group, for services prior to the County Board's approval of the text amendment application. App.App.186-87, 192-93. Mr. Weiers, Ms. Kuennen, and Ms. Runkel worked with Mr. Theis, Mr. Swenson, and Mr. Bruns to develop a detailed, mutually agreeable proposed timeline for the County's processing of the Application. *Id.* The parties mutually agreed the Application would go before the County Board for final approval at its November 22, 2011 meeting. *Id.*

The day after the meeting, on September 22, 2011, Appellants' representatives Mr. Swenson and Mr. Bruns prepared a draft meeting report outlining the timeline, and e-mailed the report to everyone who was present at the September 21, 2011 meeting. App.App.139-41, 193. Their draft report identified November 22, 2011 as the date the County Board would vote on whether to approve the proposed text amendment, noting specifically that a supermajority vote was required for approval. *Id.*

Between September 22, 2011 and September 26, 2011, the parties exchanged e-mail correspondence in which minor changes were made to the draft report. No changes were made to the November 22, 2011 meeting date for action on the proposed text amendment. App.App.142-148, 193-194. On September 26, 2011, Appellants' representative and consultant Mr. Bruns sent a final revised version of the report via e-mail to everyone who attended the September 21, 2011 meeting. App.App.146-48, 194. The revised report clearly stated the County Board would vote on whether to approve the Application at its November 22, 2011 meeting. *Id.* Mr. Theis was copied on the e-mail. *Id.* Mr. Theis, Mr. Swenson, and Mr. Bruns did not provide the County with any additional comments or feedback on the report and did not object to the November 22, 2011 meeting date. App.App.194.

Between September 21, 2001 and November 18, 2011, neither Appellants nor any of their representatives contacted the County to request that the text amendment go before the County Board before November 22, 2011, or to otherwise object to the November 22, 2011 meeting date. The County had been operating under its longstanding understanding that the 60-day rule did not apply to text amendment applications and its

agreement with the Appellants as to the timeframe in which the County Board would consider the text amendment Application. *See, e.g.*, Resp.App.126, 128. The first time anyone ever mentioned the 60-day rule was on November 18, 2011 after the purported deadline had already passed. Attorney Jack Perry sent a letter to Mr. Weiers, Ms. Erickson, and the Rice County Commissioners claiming the Application had already been “automatically approved” based on Petitioner’s new claim that Section 15.99 applies to zoning ordinance text amendments. App.App.188; Resp.App.113-124. County staff disagreed with Mr. Perry’s assertion and the Application went before the County Board on November 22, 2011, where it failed to garner the necessary four-fifths majority support for approval. App.App.205.

In December 2011, Appellants initiated the instant litigation. In an order dated February 17, 2012, the District Court granted partial summary judgment in favor of the County and rejected the Appellants’ contentions that the proposed text amendment was automatically approved by operation of Section 15.99 and actually approved by virtue of the County Board’s vote on November 22, 2011. App.Add.5-11. Upon stipulation of the parties, Judge Long issued an order dismissing with prejudice the remaining claim in Appellants’ Petition/Complaint on April 11, 2012. This appeal followed.

ARGUMENT

I. STANDARD OF REVIEW.

Since the issues associated with this case involve pure questions of law and statutory construction, the standard of review is *de novo*. *See, e.g., State v. Stewart*, 624 N.W.2d 585, 588 (Minn. 2001). An order on an application for mandamus relief based

solely on a legal determination is reviewed *de novo*. *Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006).

II. THE DISTRICT COURT CORRECTLY RULED THE COUNTY MAY REQUIRE A FOUR-FIFTHS MAJORITY FOR APPROVAL OF ZONING ORDINANCE TEXT AMENDMENTS.

The County has required a four-fifths majority of the County Board of Commissioners for approval of an Ordinance text amendment since 1967. App.App.281. This requirement is consistent with the County's express and implied authority to regulate land use in accordance with its police power. Section 503.04(E)(10) of the Ordinance, the challenged supermajority provision, provides:

County Board action required. The County Board shall take action on the proposed amendment following receipt of the recommendations from the Planning Commission. Said action for approval by the County Board shall not be less than a four-fifths (4/5) vote of its members. The person making application for the amendment shall be notified in writing of the Board's action.

App.App.25. The issue of whether this Ordinance provision is valid centers on a single question: Is a county ordinance a law?

Since the answer to this question is unequivocally yes, the County's four-fifths majority requirement is wholly consistent with Minnesota law providing that an ordinance may be enacted by a greater number of county board members than a simple majority if "required by law." Minn. Stat. § 375.51, subd. 1.

A. Section 503.04(E)(10) is Presumed Valid.

Ordinances are presumed to be valid, and are not to be set aside by the Courts unless their invalidity is clear. *Bolen v. Glass*, 755 N.W.2d 1, 5 (Minn. 2008). As the

party challenging Section 503.04(E)(10), Appellants bear the burden of proving the four-fifths majority requirement is clearly invalid. *Id.*; *see also Northern States Power Co. v. City of Oakdale*, 588 N.W.2d 534, 541 (Minn.App. 1999). Appellants utterly fail to carry their burden of proving Section 503.04(E)(10) is clearly invalid.

B. Section 503.04(E)(10) is Consistent with the County’s Express Authority to Enact Official Controls.

Appellants are simply wrong in their assertion that the County does not have authority to enact the four-fifths majority requirement. Notably, they do not contest the fact that the County has broad statutory authority to carry on planning and zoning activities for the purpose of promoting the health, safety, morals and general welfare of its citizens. Minn. Stat. § 394.21, subd. 1. Nor do Appellants contest the fact that the County has explicit statutory authority to implement official controls by enacting a zoning ordinance. Minn. Stat. § 394.25. The four-fifths majority requirement contained in Section 503.04(E)(10) is effectively a procedural requirement that is necessarily an implied extension of the County’s express authority to create its own regulatory framework for zoning and must be upheld.³

There is a well-established line of case law establishing that a county may not only exercise those powers that are expressly granted it by the legislature, but also those powers that may be “fairly implied as necessary to the exercise of the express powers.”

Calm Waters, LLC v. Kanabec County Bd. of Com’rs, 756 N.W.2d 716, 721 (Minn.

³ The weakness of Appellants’ argument that the County has no authority to enact and enforce Section 503.04 is underscored by the fact that their discussion of the County’s authority under Chapter 394 is limited to a single sentence. App.Br.26.

2008); *see also In re Bd. of County Comm'rs of Cook County*, 177 N.W. 1013, 1014 (Minn. 1920). Consistent with this precedent, Minnesota courts broadly interpret the scope of counties' powers. Specifically, the Minnesota Supreme Court has held that a legislative grant of authority includes the doing of everything which is reasonably necessary to the efficient execution of the authority granted to counties and the performance of the duties imposed upon them by law. *Armstrong v. Board of Comm'rs of St. Louis County*, 114 N.W. 89, 90 (Minn. 1907); *see also* Minn. Stat. § 373.01, subd. 1(a)(5) (authorizing counties to "do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate powers"); *John Wright & Associates, Inc. v. City of Red Wing*, 93 N.W.2d 660, 664 (Minn. 1959) (holding that a "municipal corporation or its agency is invested with full power to do everything necessarily incident to the proper discharge of its public functions").

When it comes to zoning ordinance amendments, a detailed analysis of Minn. Stat. § 394.25 makes it clear that amendments are not to be taken lightly and that counties have the authority to enact procedural requirements necessary to approve or deny amendments. The statute requires any amendment not initiated by the planning commission to be referred to the planning commission, if there is one, "for study and report." Minn. Stat. § 394.25, subd. 10. The statute further provides that a county board may not act on an application for a text amendment until it has received a recommendation from the planning commission. *Id.* Moreover, the legislature specifically authorizes counties to regulate the manner in which an individual may initiate the process of amending a zoning ordinance. *Id.* ("An amendment to official controls

may be initiated by the board, the planning commission, or by petition of affected property owners as defined in the official controls.” (emphasis added)).

Consistent with the principles and legal authority outlined above, the County may enact procedural requirements that must be followed in order to amend the Ordinance. Notably, the Minnesota Supreme Court ruled over 100 years ago that a local government may impose requirements that impliedly flow from its express authority. *State v. Scatena*, 87 N.W. 764 (Minn. 1901). In the *Scatena* decision, the Supreme Court upheld a Minneapolis requirement that an applicant for a liquor license submit an affidavit describing the nature of the business related to the application. *Id.* at 765-66. The Court upheld the requirement, even though it was not specifically authorized by statute, because it was enacted “in pursuance of and within the limits of the power” granted to the Minneapolis City Council to “regulate the liquor traffic and issue licenses.” *Id.*

In this case, the County’s four-fifths majority requirement was enacted as part of the County’s effort to carry on planning and zoning requirements as expressly permitted by Minnesota law. Moreover, the requirement is wholly within the limits of the “forms of control” provisions of Minn. Stat. § 394.25, which expressly allows the County to regulate the manner the Ordinance may be amended and further provides that the County’s official controls need not be “limited to the features set forth in [Section 394.25].” Minn. Stat. § 394.25, subs. 1 and 10.

Accordingly, Appellants’ claim that the County has no authority to enact and enforce the four-fifths majority requirement must fail.

C. Section 503.04 is a “Law” as the Term is Used in Minnesota Statutes Section 375.51, Subdivision 1.

Although Appellants devote 11 pages to their argument that the County lacks authority to require a four-fifths majority for the approval of text amendment, their argument is very simple. They argue an ordinance is not a law as the term is used in Minn. Stat. § 375.51. This position is fatally flawed because it runs contrary to well-established precedent and a common sense interpretation of what the word law means. While Appellants bemoan what they assert is the District Court’s “summary analysis,” the fact is that little analysis is required to establish that an ordinance is a law as the term is used in Minn. Stat. § 375.51.

Appellants entire argument rests on a few sentences contained in Minn. Stat. § 375.51, subd. 1. In relevant part, the statute provides:

In any instance in which a county board is authorized by law to enact ordinances, the ordinances shall be adopted in the manner prescribed in this section except as otherwise provided by law ... Every county ordinance shall be enacted by a majority vote of all the members of the county board unless a larger number is required by law.

Id. Appellants essentially argue that because the legislature used the phrase “county ordinance” and the word “law” separately in the statute, “county ordinance” and “law” must be mutually exclusive terms. App.Br.20-21. None of the cases they cite stand for this proposition. Moreover, Appellants cite no case, statute, or dictionary that defines what the words “law” and “county ordinance” mean. Appellants make no effort to explain how this Court could possibly rule that “county ordinance” and “law” are mutually exclusive terms without first stating what those terms mean. Thus, Appellants’

attempt to distinguish the legislature's use of the words "law" and "county ordinance" must fail.

The operative statutory language is the phrase "unless a larger number is required by law." Minn. Stat. § 375.51 subd. 1. The question of whether the phrase "required by law" when used in a State statute includes an ordinance was resolved more than a century ago in the *Scatena* case, which involved a perjury prosecution under a State law that essentially made it a crime to lie under an oath "required by law." *State v. Scatena*, 87 N.W. 764 (Minn. 1901). One question before the Court was whether "an oath required by an ordinance is an oath 'required by law.'" *Id.* at 764. The defendant unsuccessfully tried to argue the oath was merely a regulation of the municipality, not a law. *Id.* at 765. The Court ultimately held that the requirement of the ordinance was in fact something "required by law." *Id.* at 765-66; *see also Bott v. Pratt and Another, Partners, Etc.*, 23 N.W. 237, 239 (1885); *Mayer v. Byers*, 7 N.W.2d 403, 407 (1943) (a city ordinance has the force and effect of law); *Eagan Econ. Dev. Authority v. U-Haul Co. of Minnesota*, 787 N.W.2d 523, 534 (Minn. 2010) (same); *Oakman v. City of Eveleth*, 203 N.W. 514, 516 (Minn. 1925) ("An ordinance is a local law.").

In addition to the case law cited above, elementary principles of statutory construction militate against the Appellants' bizarre assertion that an ordinance is not a law. The words of a statute are generally construed according to their common and approved usage. *See, e.g.*, Minn. Stat. § 645.08(1); *Bearder v. State*, 806 N.W.2d 766, 772 (Minn. 2011). If statutory language is clear and free from ambiguity, courts apply its

plain meaning. *See, e.g.*, Minn. Stat. § 645.16; *Wynkoop v. Carpenter*, 574 N.W.2d 422, 425 (Minn. 1998).

Since the words “county ordinance” and “law” are not technical terms, this Court must apply the ordinary meaning of the words. By applying the ordinary meaning to the words, the only conclusion that can be reached is that word “law” is a broad term that incorporates a “county ordinance.” This interpretation is supported by numerous dictionary definitions. *See, e.g.*, BLACK’S LAW DICTIONARY 900 (8th ed. 2004) (defining “law” as “[t]he aggregate of legislation, judicial precedents, and accepted legal principles; the body of authoritative grounds of judicial and administrative action; esp. the body of rules, standards, and principles that the courts of a particular jurisdiction apply in deciding controversies brought before them”); BLACK’S LAW DICTIONARY 1132 (8th ed. 2004) (defining “ordinance” as “[a]n authoritative law or decree; esp., a municipal regulation”); WEBSTER’S II NEW RIVERSIDE DICTIONARY 397 (Office Ed. 1984) (defining “law” as “[a] rule of action or conduct established by authority, society, or custom”); WEBSTER’S II NEW RIVERSIDE DICTIONARY 495 (Office Ed. 1984) (defining “ordinance” as “a municipal regulation or statute”); WEBSTER’S NEW WORLD DICTIONARY 342 (Revised Ed. 1984) (defining “law” as “all the rules of conduct established by the authority or custom of a nation” or “any rule expected to be observed”); WEBSTER’S NEW WORLD DICTIONARY 422 (Revised Ed. 1984) (defining “ordinance” as “a statute or regulation, esp. a municipal one”). Based on the common usage of “law” and “ordinance,” there can be no question that the word “law”

incorporates myriad legal principles and authority that include, but are in no way limited to county ordinances.

Finally, it is only logical to conclude that the phrase “required by law” as it is used in Minn. Stat. § 375.51 includes the Ordinance at issue in this case. This notion is highlighted by the fact that the legislature gave the County broad authority to enact official controls by ordinance and to regulate the manner in which the official controls may be amended. *See* Minn. Stat. § 394.21, subd. 1; Minn. Stat. § 394.25, subd. 10.⁴

III. THE DISTRICT COURT CORRECTLY HELD THAT MINNESOTA STATUTES SECTION 15.99 DOES NOT APPLY TO TEXT AMENDMENTS TO LAW.

Appellants assert that their application to the County for a text amendment to the definition of “organized motor sports” in the Ordinance is a “request relating to zoning” within the meaning of Minnesota Statutes Section 15.99. There is no dispute that the 60-day rule applies to a “request relating to zoning” and that the request must be “for a permit, license, or other governmental approval of an action.” Minn. Stat. § 15.99, subd. 2(a). But a proposed text amendment to an ordinance is neither. A text amendment is a formal revision made to a law, in this case an ordinance, by modifying its wording.

⁴ Pages 27 through 29 of the Appellants’ brief are devoted to a nebulous argument that the County was somehow required to “bring its Ordinance into compliance” with a 1974 amendment to Minn. Stat. § 375.51 within four years of August 1, 1974. This argument is a red herring. By Appellants’ own admission, the statutory language at issue was not amended in 1974. App.Br.27. Therefore, the four-fifths majority requirement has been valid since it was first enacted in 1967 or not at all.

A. The Plain Language of Section 15.99 Does Not Apply to Text Amendments to Law.

The goal of all statutory interpretation is to ascertain the intent of the legislature. *See* Minn. Stat. § 645.16. When construing the language of a statute, words and phrases must be given their plain and ordinary meaning. *See* Minn. Stat. § 645.08. If the language of a statute is clear and free from ambiguity, a court's role is to apply the plain language of the statute. *See* Minn. Stat. § 645.16; *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).

In 1995, the Minnesota legislature enacted Section 15.99, which establishes time deadlines for local governments to take action on specific applications. *See Am. Tower, L.P.*, 636 N.W.2d at 312. Section 15.99 states in part:

[A]n agency must approve or deny within 60 days a written request relating to zoning, septic systems, watershed district review, soil and water conservation district review, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action. Failure of an agency to deny a request within 60 days is approval of the request.

Minn. Stat. § 15.99, subd. 2(a) (emphasis added).

Minnesota courts have long held that the specificity of the listed subjects to which the 60-day response period applies indicates that the statute is tailored to only particular actions. *See Advantage Capital Mgmt.*, 664 N.W.2d 421, 426 (Minn.App. 2003).

Notably, ordinance text amendments are not one of the five particular actions listed.

Where a statute clearly limits its application to specifically enumerated subjects, its application is not to be extended to other subjects by a process of construction. *See, e.g., Wallace v. Comm'r of Taxation*, 184 N.W.2d 588 (Minn. 1971); *State v. Corbin*, 343

N.W.2d 874 (Minn.App. 1984). If the legislature intended text amendments to ordinances and other laws to be regulated by the 60-day rule, it would have listed this as it did the other five particular actions. It did not. Appellants' assertion that an ordinance text amendment is within Section 15.99 is not supported by the plain language of the statute. The District Court correctly found as much and declined to apply Appellants' interpretation because it would produce an absurd or unreasonable result that is plainly at variance with the policy of the legislation as a whole. App.Add.7-8.

Citing to only an argument "proffered by a party but rejected by the Court of Appeals," which the District Court already informed Appellants was "exceptionally unpersuasive," and to a concurring opinion, which has no precedential value, Appellants assert that the District Court refused to apply the broader plain meaning of the phrase "request relating to zoning." App.Add.8; App.Br.33. Appellants' argument has no merit. Although Appellants argue that there is no ambiguity in this phrase and that the District Court failed to identify any before refusing to give effect to its broader plain meaning, the mere fact that the District Court was presented with more than one potentially reasonable interpretation creates an ambiguity in the language of the statute. *See Am. Tower, L.P.*, 636 N.W.2d 309, 312. While the County asserts its interpretation of the plain language of Section 15.99 as excluding text amendments is the correct interpretation, even if the language of Section 15.99 were ambiguous, case law and legislative history clearly show that the statute was not meant to apply to text amendments.

B. A Text Amendment to Law is Not a Request Relating to Zoning.

To the degree that the meaning of Section 15.99 is not explicit, its meaning must be ascertained examining the legislature's intent. *See Advantage Capital, Mgmt.*, 664 N.W.2d 421, 427. This Court in *Advantage Capital* did that to ascertain the meaning of the phrase "written request relating to zoning." *Id.* The court determined that a statute is ambiguous not only when the language is subject to more than one reasonable interpretation, but also when there is "any kind of doubtful meaning of words [or] phrases." *Id.* The court found that "this definition of ambiguity is consistent with the statutory canons that permit construction when the words of a law are ambiguous, unclear, or not sufficiently explicit." *Id.*; Minn. Stat. § 645.16.

In *Advantage Capital*, this Court first determined that the "underlying purpose of the statute is to establish time deadlines for local governments to take action on *zoning applications*." 664 N.W.2d at 427. The court then looked at the legislative history of Section 15.99 and noted that "[d]uring senate floor debate, the senate version of the bill was amended to delete a reference to the generic term, 'land use,' and replace it with the more precise term, 'zoning.'" *Id.* The court concluded the phrase "written request relating to zoning" applied to *zoning applications* rather than all land use decisions that might be tangentially connected to zoning. *Id.* (emphasis added). The court reasoned that if the legislature intended the 60-day rule to apply to all activities related to the "use of land," it would not have removed "land use" and replaced it with the more specific term "zoning." *Id.* Therefore, simply because a text amendment to a zoning ordinance may relate to the use of land does not mean it "relates to zoning" within the Section 15.99

meaning of the phrase. The court then provided a specific definition of a zoning application to which the 60-day rule applies:

In light of the legislative history, purpose, and effect of the competing interpretations, we conclude that “a written request relating to zoning” is a request to conduct a specific use of land within the framework of the regulatory structure relating to zoning, or in other words, a zoning application.

Id. at 427 (emphasis added); Minn. Stat. § 15.99, subd. 2(a).⁵

The *Advantage Capital* Court stated that this interpretation of Section 15.99 as applying to zoning applications “is consistent with the cases that have applied the sixty-day rule to special-use permits, conditional-use permits, variances, and site-plan approval that relate specifically to zoning,” listing numerous cases and noting they all dealt with such permits. *Id.* Decisions on such permit-type requests are quasi-judicial because the governing agency is applying specific standards set by the zoning ordinance to a particular individual use. *See Rochester Assoc. of Neighbors v. City of Rochester*, 268 N.W.2d 885 (Minn. 1978). Such quasi-judicial decisions are made independent of one another, and a decision on one application does not establish a standard or framework that will be applied to subsequent applicants.

These cases demonstrate the narrow application of Section 15.99 to requests to conduct a specific use of land within the framework of the zoning regulatory structure, or

⁵ Appellants’ argument that *Advantage Capital* set forth a two part conclusion, which the District Court refused to apply, has no merit. App.Br.36. The *Advantage Capital* Court defined a “written request relating to zoning” as one thing, namely, “a request to conduct a specific use of land within the framework of the regulatory structure relating to zoning, *or in other words*, a zoning application.” 664 N.W.2d 421, 427 (emphasis added). The phrase “in other words” is merely a way of expressing the same thing differently.

in other words, “zoning applications.” In each, the applicants were seeking permission to build or locate structures on a particular site or piece of land. Based on its interpretation, the court concluded that an application for a building permit, while possibly tangentially connected to zoning, was not a request that related specifically to zoning. *See Advantage Capital Mgmt.*, 664 N.W.2d at 427. Therefore, “[t]o force agencies to consider building-permit applications and other land-use permits and approvals as triggering [S]ection 15.99 would frustrate the legislative intent of ensuring timely compliance by the city in notifying the landowner whether a particular zoning action is allowable.” *Id.* Building-permit applications and other land-use permits simply are not zoning actions. In this case, the legislature’s concern with notice is not an issue because Appellants knew that what they wanted to do was not permitted by the Ordinance and thus sought to change the County’s regulatory framework itself.

The District Court correctly relied on this reasoning to find that considering a text amendment as triggering Section 15.99 would frustrate the legislative intent because it too is not a zoning action. App.Add.7-8. The District Court correctly relied on *Advantage Capital* to hold that a proposed text amendment to a zoning ordinance, while possibly tangentially connected to zoning, is neither a request “to conduct a specific use of land,” nor a request “within the framework of the regulatory structure relating to zoning.”

1. A proposed text amendment to law does not constitute a zoning application because it is not a request to conduct a specific use of land.

A proposed text amendment is not a request to conduct a specific use of land or to do something specific to land the way an application for a CUP, a special use permit, or a site plan is. Unlike the cases cited by *Advantage Capital*, Appellants are not proposing structures for a land parcel, seeking to build a tower, to construct a landfill, or to use a specific parcel of land in any other manner. As the District Court properly found, Appellants' proposed text amendment "discloses no specific proposed use of any Rice County property, so it is impossible that it could constitute a 'request to conduct a specific use of land.'" App.Add.9. Instead, Appellants are proposing to formally revise the Ordinance by modifying the wording of the definition "organized motor sports." This is a request specific to the regulatory framework itself, not a particular piece of land. As Appellants admit, such a text amendment would affect over half the land in the County. A decision on such a non-permit type request is legislative because it requires the governing agency to make a legislative judgment that a particular term will be defined in a manner that will be consistent with promoting the public health, safety, morals and general welfare. *See* Minn. Stat. § 394.21, subd. 1; *Rochester Assoc. of Neighbors*, 268 N.W.2d at 889.

Appellants too narrowly characterize a text amendment as a change that would necessarily allow new types of uses within the County. App.Br.43. A text amendment to the Ordinance encompasses much more because it could change not only uses, but procedures and performance and area standards in the County. App.App.208-265.

Procedures concern, for example, how people apply for building permits, how the County decides whether to grant a building permit, how planning commission members are removed, and how vacancies are filled on the board of adjustment. App.App.227-29, 235-36. Proposed text amendments to such procedures in the Ordinance do not propose a specific use of a specific parcel of land. Performance and area standards concern things such as how high buildings can be, how far structures need to be set back from boundaries, and how much impervious surface coverage there can be. App.App.241-42. Proposed text amendments to such standards in the Ordinance do not propose a specific use of land. They affect vast numbers of parcels in any given zoning district. Because a proposed text amendment is not a request to “conduct a specific use” of specific land, it is not a zoning application within Section 15.99.

This interpretation is consistent with the purpose of Section 15.99, which is “to establish time deadlines for local governments to take action on zoning applications.” *Advantage Capital, Mgmt.*, 664 N.W.2d at 427. Our courts have said that avoiding approval by default provides a powerful incentive to government agencies to operate more efficiently on requests to conduct specific uses of land. *See Manco of Fairmont, Inc. v. Town Board of Rock Dell Township*, 583 N.W.2d 293, 296 (Minn.App. 1998).

But this incentive does not extend to lawmaking. The purpose of Section 15.99 is not to make law by default, or to incentivize government agencies to make law without proper consideration and input. This cannot be the case given the legislature defined a zoning ordinance, which is an official control, as being “legislatively defined and enacted.” Minn. Stat. § 394.22, subd. 6. The legislature intends for counties to carefully

consider defining, enacting, and amending ordinances, not for ordinances to be unexamined and automatically approved under any time period. Under Appellants' interpretation, however, this would all occur within a 60-day window. Keep in mind that Section 15.99, through subdivision 1(b), applies to state agencies as well as counties. State rules could be made by default. Not only is a text amendment not a request to conduct a specific use of land, it is not consistent with the purpose of the 60-day rule.

2. A proposed text amendment to law does not constitute a zoning application because is not a request within the framework of the regulatory structure relating to zoning.

Nor is a text amendment a request within the framework of the regulatory structure relating to zoning. As the District Court properly found, it is instead a request to *change* that regulatory structure. App.Add.9. With their proposed text amendment, Appellants seek to revise the Ordinance by adding words to the definition "organized motor sports." Appellants, therefore, are not requesting to do something within the regulatory structure, but are requesting to change the structure itself. Contrary to a quasi-judicial decision like the grant of a CUP or variance, such a legislative decision alters the framework of the regulatory structure, which will be applied to all subsequent applicants and all other County residents. In this case, Appellants' request to change the text of the Ordinance would impact two complete zoning districts and over 82 percent of the County. App.App.191-92.

To further demonstrate this distinction, consider a request that *is* within the framework of the regulatory structure relating to zoning, such as a CUP application that is undisputedly within the scope of Section 15.99. An ordinance typically contains a list

of uses that are permitted and a list of uses that are conditional. App.App.258-62.

Permitted uses are permitted as a matter of right while conditional uses are uses that are allowed, but require a CUP. App.App.258. A CUP application is a request for something, namely to conduct a specific use of land, which is allowed under the ordinance. It is within the regulatory structure relating to zoning. Unlike a text amendment, it is not a request to change the regulatory structure itself.

Appellants are requesting to make a formal revision to law by modifying the words of the law. Their Application is not a zoning application as defined by *Advantage Capital*. Therefore Section 15.99 does not apply.

C. A Text Amendment to Law is Not a Request for a Permit, License, or Other Governmental Approval of an Action.

Contrary to Appellants' assertion, because the District Court determined that a text amendment is not a request "relating to zoning," its inquiry properly ended. If, however, this Court finds that a text amendment is a request "relating to zoning," its inquiry does not end. Section 15.99 applies only if Appellants' application is also a request "for a permit, license, or other governmental approval of an action." *See* Minn. Stat. § 15.99, subd. 2(a); *Sys. Designation of Multi-Flo Wisconsin Aerobic Treatment Units*, C0-01-823, 2001 WL 1665410 at *3 (Minn.App. 2001).

Appellants' application for a text amendment is not a request for a "permit" or "license" as those terms are used within the context of zoning. Therefore, Section 15.99 only applies if Appellants' request to change the regulatory structure is a request for "other governmental approval of an action." It is not.

The *Multi-Flo* Court determined that a request to change the regulatory structure in which statewide actors participate does not fall within the parameters of the 60-day rule because it is not a request for “other governmental approval of an action.” *See* 2001 WL 1665410 at *3-4. The applicant in *Multi-Flo* sought to change the regulatory structure governing individual sewage-treatment systems (ISTS) to include its new ISTS as a standard system under the Minnesota Pollution Control Agency’s (MPCA) rules. *See id.* at *1. After the MPCA failed to act on the application within sixty days, the applicant asserted that the MPCA violated the 60-day rule and that the system was approved statewide. *See id.* at *2. The court concluded otherwise.

The court examined the legislative history of the term “action” and noted that there was no indication that “the legislature intended for [S]ection 15.99 to apply to actions with statewide effect.” *Id.* at *4. This reading was consistent with “an analysis of the public interests involved and the consequences of the particular interpretation of [S]ection 15.99 urged by [the applicant].” *Id.* While the public interest in prompt agency action would be furthered if, as the applicant asserted, Section 15.99 applied to the MPCA’s consideration of its application approval by default would pose potential statewide hazards. *Id.* The Court found nothing to indicate that the intent of the statute was to accept such widespread potentially negative consequences from automatic approval. *Id.* at *4. The *Multi-Flo* Court concluded that Section 15.99 did not apply to the applicant’s attempt to change the MPCA’s regulatory structure. *See id.*

Section 15.99 simply does not apply to an attempt to change the regulatory structure of a law. If it did, instead of submitting an application to the MPCA for

approval of its ISTS as a “standard system,” the *Multi-Flo* applicant would merely have had to submit a petition requesting an amendment to the text of the definition of “standard system” to include its ISTS. *See* Minn. Stat. § 14.09; Minn. R. 1400.2040, 1400.2500. Under the interpretation urged by Appellants, if the MPCA failed to act on this text amendment within sixty days, the amendment would be approved and the applicant’s unproven ISTS would be designated as a “standard system” under the law. This is the very outcome the *Multi-Flo* Court deemed unacceptable because the negative statewide consequences of changing the regulatory structure by default clearly outweigh the interest in prompt agency action. Appellants, however, ignore the consequences of their interpretation. Instead, Appellants’ claim that because legislators discussed Section 15.99 as hypothetically applying to the geographical scope of a county boundary, applying Section 15.99 to a text amendment fits within the legislatively intended parameters of the 60-day rule. App.Br.44-45. As *Multi-Flo* shows, it simply does not.

Appellants also ignore the analysis of the public interests involved. The County, like the state, has a strong interest in protecting the health, welfare, and safety of its citizens through its use of official controls. *See* Minn. Stat. § 394.21, subd. 1. An “official control,” such as a zoning ordinance, is “legislatively defined and enacted” and controls the physical development and any other detail of a county. Minn. Stat. § 394.22, subd. 6. An official control is also the means by which the County guides development and the use of land as outlined in its comprehensive plan. *See id.*

While the public interest in prompt board action would be furthered if, as Appellants assert, Section 15.99 applied to the County Board’s consideration of a

proposed text amendment, the approval by default of an unexamined change to the structure of the Ordinance would pose a significant threat to the health, welfare, and safety of the public. Official controls are “legislatively defined and enacted” for a reason. The state delegated to the County the authority to carry on county planning and zoning activities and in doing so, charged the County with the duty to ensure its ordinances and other official controls are cohesively organized, worded and set forth in a manner that promotes the health, safety, morals, and general welfare of the community. This duty cannot be abrogated by inaction nor is it ever delegated to individuals. The public interest in prompt County Board action does not outweigh the strong interests of the County in the protection of its residents and land, especially from the impact of unexamined laws being made by default.

Under Appellants’ interpretation, an applicant could apply for a text amendment to include a nuclear power plant or a massage parlor in the definition of a single-family home in a residential area. An applicant could seek to amend the text of the Ordinance to allow sexually oriented businesses to be located next to churches in residential areas. Another applicant could seek to amend the procedures so that vacancies on the planning commission may never be filled or so that such members may never be removed, even for gross misconduct. If the County did not act within sixty days on these applications, the text amendments would be automatically approved. The approval by default of such absurd text amendments would pose a significant threat to the health, safety, morals, and general welfare of the public, which was not contemplated by the 60-day rule.

Furthermore, Appellants request is not an “other government approval.” It is undisputed that Section 15.99 applies to certain permit requests and to certain license requests. The phrase other governmental “approval” of an action in Section 15.99 is meant to encompass those requests that seek approval for a specific use of land but may be given another name, such as a variance. A variance, however, is not a “permit,” nor is it a “license.” Appellants’ proposed amendment to the text of the Ordinance seeks to revise the words of the Ordinance; it is not in itself a request for approval. *See Moreno v. City of Minneapolis*, 676 N.W.2d 1, 6 (Minn.App. 2004) (an appeal from an adverse decision “seeks to reverse or overturn the approval of a request; it is not in itself a request for a permit, license, or approval”). Therefore Section 15.99 does not apply.

D. The 60-day Rule Cannot be Used to Get That Which an Applicant is Not Entitled To.

Breza v. City of Minnetrista and *Town of Brook Park v. Tretter* both stand for the proposition that an applicant cannot use the 60-day rule to get something the applicant is not entitled to. 706 N.W.2d 512 (Minn.App. 2005); No. A10-1881, 2011 WL 3903189 (Minn.App. Sept. 6, 2011). In *Breza*, the applicant could not use the 60-day rule to receive an exemption for the 5,737 square feet he requested because under state law the applicant was not entitled to an exemption over 400 square feet. *See* 706 N.W.2d at 518. In *Tretter*, the applicant could not use the 60-day rule to receive a CUP to operate a salvage yard because under the city ordinance the applicant was not entitled to the CUP. *See* 2011 WL 3903189 at *4.

Appellants cannot use the 60-day rule to receive approval of a text amendment because under the law, no one is entitled to have a law passed or rewritten in the exact manner that they want, in favor of their private business interests. Our Supreme Court has emphasized the fact that Section 15.99 is merely a timing statute. *See Breza*, 706 N.W.2d at 517. The idea that it is a vehicle through which a businessman can force government to change laws to read exactly as he wants is simply unsupportable. To argue that the legislature intended to undertake such a drastic change to law through Section 15.99 is without support. Case law does not state, suggest, or even imply that an individual may determine how laws should read. Lawmaking is left to counties in the case of county ordinances, and is left to the state legislature in the case of state laws.

For example, in *Mendota Golf, LLP v. City of Mendota Heights*, a landowner was not entitled to a writ of mandamus requiring the city to amend its comprehensive plan in the way the landowner desired. 708 N.W.2d 162 (Minn. 2006). The Supreme Court held that the district court exceeded its authority by interfering with the exercise of legislative discretion and ordering the city to amend its comprehensive plan the specific way the landowner desired. *Id.* at 174. Individuals are never entitled to have a law changed exactly how they desire because the legislative body, in this case the County, has the sole discretion and authority to determine what its official controls should be. *See* Minn. Stat. §§ 394.21, subd. 1, 394.22, subd. 6.

It has long been the law of this state that a municipality has a right to determine whether changing conditions or the public interest demands an exercise of the power to amend a zoning ordinance and to select the measures that are necessary for that purpose.

The “wisdom” or “good policy” of a zoning ordinance is for a municipality to determine. *See Beck v. City of St. Paul*, 231 N.W.2d 919 (Minn. 1975). This principle is not changed through the existence of a timing statute like Section 15.99.

It is also the case that our law has long stated that a person acquires no rights in continuing an existing zoning ordinance. That is how the vested rights doctrine has come into existence. *See, e.g., Kiges v. City of St. Paul*, 62 N.W.2d 363 (Minn. 1953). How then can a person acquire a right to force a change to a zoning ordinance, to have it read exactly as he wants, through government inaction? The plain words of Section 15.99 do not justify such a conclusion. Nor does anything point to this result as being intended by the legislature.

Indeed, when a law is found to be invalid, an individual who challenges its validity is not entitled to rewrite it the way he or she wants. Instead, the proper remedy is for a court to declare the law invalid and enjoin its enforcement. *See Holaway v. City of Pipestone*, 296 N.W.2d 28, 30-31 (Minn. 1978). A court cannot, through operation of the 60-day rule or otherwise, make, amend, or change the law in the manner an individual desires. *See Beaulieu v. Mack*, 788 N.W.2d 892, 894 n.1 (Minn. 2010); *City of St. Louis Park v. King*, 75 N.W.2d 487, 495 (Minn. 1956). Because neither an individual nor a court are entitled to rewrite a law in a manner the individual desires, they cannot do so through application of the 60-day rule. Section 15.99 cannot be used to rewrite the Ordinance.

E. A Text Amendment to Law is Not a Rezoning Request.

For the reasons stated above, it is clear that the 60-day rule does not apply to legislative decisions such as text amendments. Appellants desperately assert that because Section 15.99 applies to rezoning requests, which have been characterized as quasi-legislative, it also has to apply to text amendments. They want this Court to view lawmaking and acting on a request to rezone a parcel or parcels of land as the same thing. But they are not. And, contrary to Appellants' assertion, the Ordinance treats them differently.

As an initial matter, while rezoning requests have been at issue in the context of 60-day rule cases, neither this Court nor the Supreme Court has decided a case in which the delay of an agency actually resulted in the automatic approval of a rezoning request.⁶ Instead, each case concerned a particular nuance of the 60-day rule and the rezoning request was not automatically approved. *See Johnson v. Cook County*, 786 N.W.2d 291, 296 (Minn. 2010); *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 544 (Minn. 2007); *Allen v. City of Mendota Heights*, 694 N.W.2d 799, 803-04 (Minn.App. 2005); *Concept Properties, LLP v. City of Minnetrista*, 694 N.W.2d 804, 826 (Minn.App. 2005); *Tollefson Dev., Inc. v. City of Elk River*, 665 N.W.2d 554, 558-59 (Minn.App. 2003). None of these cases actually raised the issue of whether the 60-day rule applied to

⁶ Appellants' reliance on two of Appellants' counsel's own district court orders demonstrates the bankruptcy of Appellants' argument. App.Br.38. Neither order has any precedential value and the order in *Veit v. Sherburne County* has no validity given the decision in *Johnson v. Cook County*, 786 N.W.2d 291 (Minn. 2010). App.App.42-52.

rezoning. Thus, no case has actually decided that. More importantly, no Minnesota case has applied the 60-day rule to the legislative decision to amend the text of a law.

Turning to the application at issue in this case, Appellants submitted their application materials under Section 503.04(C) of the Ordinance, which concerns text amendments, not requests for rezoning. App.App.191-92. These materials do not contemplate specific pieces of land or the use of that land and, therefore, do not constitute a “request to conduct a specific use of land.” App.Add.9; App.App.191-92. In contrast, rezoning requests are specific to a piece of land and the use of that land. For example, a rezoning request under Section 503.04(D) requires an applicant to submit a specific description of the area of land proposed to be rezoned, a description of all property lying within 500 feet of that area, a legal description of the property to be rezoned, the present and the proposed district classifications, and a map, plat plan, or survey drawing of the property to be zoned depicting its location and dimensions, the zoning of adjacent properties, and existing uses and buildings on adjacent properties. App.App.230-31. It is easy to see that the inquiry is quite different than that for a text amendment. Appellants did not submit the materials required for a rezoning request under Section 503.04(D). App.App.191-92.

Despite the Ordinance’s requirement that rezoning requests contemplate specific pieces of land and the use of that land, Appellants speciously assert that rezoning requests only consider the impact rezoning would have on the public health, safety, and welfare. App.Br.40-41. First, all land use decisions are based on public health, safety, and welfare. So that says nothing. Second, cases examining rezoning say something

different. In order to determine if rezoning is appropriate, the governing body needs to look at the specific piece of property proposed to be rezoned, the use of that land, and the impact of rezoning on surrounding lands. *See, e.g., Rochester Assoc. of Neighbors*, 268 N.W.2d 885, 890 (Minn. 1978); *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 418 (Minn. 1981). Indeed, at the summary judgment hearing, Appellants agreed that rezoning cases relate to specific pieces of property. App.App.360-61.

Further, a request to rezone a piece of property, unlike a text amendment, is “within the framework of the regulatory structure” of the Ordinance. With a request to rezone, an applicant desires to use land in manner that is allowed under regulatory structure, but just not on that particular parcel or parcels. Therefore, the applicant seeks to have that parcel reclassified to allow the proposed use. The reclassification would fall within one of eleven classes of zoning districts under the Ordinance. App.App.230-31, 257. The applicant is maneuvering within the Ordinance because the applicant is not seeking a use prohibited under the Ordinance, just a use prohibited on that piece of land but allowed elsewhere. The applicant is in fact not seeking to change one word of the zoning ordinance. With the instant text amendment, the Appellants want something completely prohibited under the Ordinance, which, if granted, changes its regulatory structure and applies to all subsequent applicants. The request to rezone, if granted, applies only to that particular piece of land and unlike a text amendment, does not establish a framework that will apply to subsequent applicants. Rezoning and lawmaking are simply not the same thing. The 60-day rule simply does not apply in this case, and the District Court’s grant of summary judgment should be affirmed.

IV. THE 60-DAY DEADLINE WAS EXTENDED BY THE MEETING REPORT CREATED AFTER THE PARTIES' SEPTEMBER 21, 2011 MEETING.

Even if this Court determines that Section 15.99 applies to a request for a zoning ordinance text amendment, Appellants' request was not "automatically approved" because the parties engaged in conduct that operated as an extension of the 60-day deadline.

A. Lynn Bruns' E-mails of September 22, 2011 and September 26, 2011 Extended the 60-day Deadline.

"An applicant may by written notice to the agency request an extension of the time limit under [Section 15.99]." Minn. Stat. § 15.99, subd. 3(g). The statute does not articulate any standards for what must be contained in an applicant's request for an extension. Accordingly, the only statutory requirement that applies to an applicant's request for an extension is that it must be in writing.

Appellants met with County officials and agreed upon a timeline through which the County would review Appellants' text amendment Application. The parties agreed not to operate under the time constraints outlined in Section 15.99. This mutual understanding is memorialized in writing.

On September 22, 2011, Mr. Bruns, while acting as a paid consultant on behalf of Appellants, sent a meeting report to County staff in which he articulated, in writing, the parties' mutual understanding that the text amendment application would go before the County Board for final approval at the November 22, 2011 meeting. *See, e.g.,* App.App.139-148, 187, and 192. Mr. Bruns' correspondence immediately followed a September 21, 2011 meeting between County officials and representatives of Appellants.

Id.; see also App.App.192. Although the parties exchanged subsequent e-mails in which minor changes were made to the meeting report created by Mr. Bruns, the parties' agreement that the text amendment application would go before the County Board on November 22, 2011 never changed during the course of the e-mail exchange. App.App.139-148.

The nature of the e-mails exchanged between Mr. Bruns and Ms. Runkel, which all were also sent to Mr. Theis, demonstrates a written agreement to extend any deadlines imposed by default under Section 15.99. The language of subdivision 3(g) does not define what constitutes a written request to extend the time limit under Section 15.99. Under the circumstances of this case, the most logical and reasonable interpretation of the statute is to conclude that the e-mails sent by Mr. Bruns on September 22, 2011 and September 26, 2011 resulted in a request for an extension. A conclusion to the contrary would yield an extremely inequitable result given the County's reliance on the agreed-upon timeline.

B. Julie Runkel's September 26, 2011 E-mail Extended the 60-day Deadline.

Even if this Court concludes the actions of the Appellants and their agents did not extend the 60-day deadline, Ms. Runkel's response to the meeting report created by Mr. Bruns gives another basis upon which to conclude the deadline was extended.

The County may extend the 60-day deadline in Section 15.99 "before the end of the initial 60-day period by providing written notice of the extension to the applicant." Minn. Stat. § 15.99, subd. 3(f). The notice "must state the reasons for the extension and

its anticipated length.” *Id.* Any reason at all is sufficient to satisfy the statutory requirements. *See Manco of Fairmont, Inc.*, 583 N.W.2d 293, 295 (the need to take more time to make a decision is itself a valid “reason” to extend the deadline and noting that Minn. Stat. § 15.99, subd. 3(f) is a directory statute that outlines no negative consequence for failure to provide “reasons”); *Am. Tower, L.P.*, 636 N.W.2d 309, 314 (County does not need to identify “extenuating circumstances” to extend deadline). Moreover, the doctrine of substantial compliance applies to the extension requirements outlined in Minn. Stat. 15.99, subd. 3(f). *Manco of Fairmont, Inc.*, 583 N.W.2d at 295.

Ms. Runkel’s September 26, 2011 e-mail response to Mr. Bruns, which was copied to Mr. Theis, substantially complied with the requirements of Section 15.99, subd. 3(f). App.App.142-44. Ms. Runkel told Mr. Theis why the County wanted to set the text amendment for final County Board approval on November 22, 2011 in person at the September 21, 2011 meeting. App.App.193. The “reason” she gave is that the text amendment application could not go before the County Board at its November 8, 2011 meeting because County Board packets for that meeting were scheduled to be sent to the County Commissioners on November 2, 2011, which was the day before the Rice County Planning Commission’s November 3, 2011 public hearing on the application. *Id.* Her e-mail provides written notice of the extension of the 60-day rule and the length of the extension because the attachment to the e-mail specifies that the application was to go before the County Board for approval on November 22, 2011. App.App.142-44. The e-mail was sent on September 26, 2011, which was well within 60 days of when Appellants completed their application on September 16, 2011.

Since Ms. Runkel's September 26, 2011 e-mail substantially complies with Section 15.99, subdivision 3(f), it must be construed as a valid extension of the 60-day time period outlined in Section 15.99.

V. APPELLANTS ARE NOT ENTITLED TO MANDAMUS RELIEF UNDER THE CIRCUMSTANCES OF THIS CASE.

A lingering and important issue in this case is whether Appellants' appropriately sought mandamus relief in the first instance. Although the District Court declined to address this issue, the County urges this Court to consider the matter to curtail a judicially recognized trend of the inappropriate use of mandamus relief in zoning cases. An appellate court may affirm a trial court's decision on separate legal grounds if the trial court came to the correct conclusion, particularly if overriding policy reasons support affirming a trial court on a separate basis. *See, e.g., Brecht v. Schramm*, 266 N.W.2d 514, 521 (Minn. 1978); *Rosenberg v. Townsend, Rosenberg & Young, Inc.*, 376 N.W.2d 434, 436 (Minn.App. 1985); *Myers Through Myers v. Price*, 463 N.W.2d 773, 775 (Minn.App. 1990); *Reed v. Univ. of North Dakota*, 543 N.W.2d 106, 108 (Minn.App. 1996).

As a matter of law, Appellants cannot satisfy the requisite elements to be entitled to a Writ of Mandamus. "Mandamus is an extraordinary remedy that should only be awarded in the exercise of judicial discretion and upon equitable principles." *Walther v. Lundberg*, 654 N.W.2d 694, 697 (Minn. 2002). Mandamus is not issued as a matter of right. *Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn.App. 1995). To be entitled to a Writ of Mandamus compelling the performance of an official duty, Appellants must

prove three elements: (1) that the County “failed to perform an official duty clearly imposed by law,” (2) that Appellants “suffered a public wrong and [were] specifically injured” by the County’s failure, and (3) that Appellants have “no other adequate legal remedy.” *See, e.g., In re Welfare of Child of S.L.J.*, 772 N.W.2d 833, 838 (Minn.App. 2009); *Breza*, 725 N.W.2d 106, 110. Appellants’ request for mandamus relief fails as a matter of law in this case because they cannot satisfy the first and third elements.

A. The County Board has No Official Duty to Amend its Zoning Ordinance in Accordance with Appellants’ Specific Request.

The notion underlying Appellants’ argument is unprecedented. Appellants claim members of the County Board had a clearly defined official duty to amend a law to meet their self-serving interests. This assertion, if adopted by this Court, would inevitably lead to pervasive attempts to use mandamus relief to strip county boards of their ability to exercise discretion and enact legislation. The County Board has no clearly defined official duty to enact a zoning law that specifically conforms to the Appellants’ wishes.

The first requirement for mandamus relief is satisfied “only when the petitioner has shown the existence of a legal right to the act demanded which is so clear and complete as not to admit any reasonable controversy.” *In re Welfare of Child of S.L.J.*, 772 N.W.2d at 838. “[M]andamus will lie only to compel performance of a duty which the law clearly and positively requires.” *Day v. Wright County*, 391 N.W.2d 32, 34 (Minn. 1986). Not only must there be a duty to perform the act, the duty must exist to perform the act in the particular time and the particular manner in which it is demanded for mandamus to lie. *Spurck v. Civil Service Board*, 42 N.W.2d 729 (Minn. 1950).

Consistent with this duty to act requirement, mandamus will not lie against a public officer to compel an act for which the officer has discretion. *See, e.g., Waters v. Putnam*, 183 N.W. 2d 545, 550 (Minn. 1971); *Sinell v. Town of Sharon*, 289 N.W. 44, 45 (Minn. 1939). Discretion in this sense means the power or right of an official to act according to what, in that official's mind, appears best and appropriate under the circumstances. *See, e.g., Romsdahl v. Town of Long Lake*, 220 N.W. 166, 167 (Minn. 1928); *Zion Evangelical Lutheran Church v. City of Detroit Lakes*, 21 N.W.2d 203, 206 (Minn. 1946).

Nothing is more discretionary than the act of creating legislation in accordance with a county's police powers. When a county adopts or amends a zoning ordinance, it acts in a legislative capacity under its delegated police powers. *See, e.g., Rochester Assoc. of Neighbors*, 268 N.W.2d at 888; *Sun Oil Co. v. Village of New Hope*, 220 N.W.2d 256, 261 (Minn. 1974); *Parranto Bros. v. City of New Brighton*, 425 N.W.2d 585, 588 (Minn.App. 1988). Legislative policy "is not for the courts." *State ex. rel. Beery v. Houghton*, 204 N.W. 569, 570 (Minn. 1925), *aff'd*, 273 U.S. 671 (1927). With respect to zoning, a governing body's police power is extremely broad:

The police power, in its nature indefinable, and quickly responsive, in the interest of common welfare to changing conditions, authorizes various restrictions upon the use of private property as social and economic changes come ... As social relations become more complex, restrictions on individual rights become more common. With the crowding population of cities, there is an active insistence upon the establishment of residential districts from which annoying occupations, and buildings undesirable to the community are excluded.

Id.; see also *Naegele Outdoor Advertising Co. v. Village of Minnetonka*, 162 N.W.2d 206, 210 (Minn. 1968). The act of passing or amending a zoning ordinance requires county board members to make a legislative judgment to determine what will promote the public health, safety, and welfare. *Id.* at 889. Moreover, the factors upon which county board members base their legislative judgment are routinely evolving. See *Houghton*, 204 N.W. at 570. “[W]hat best furthers public welfare is a matter primarily for determination of the legislative body concerned.” *Sun Oil Co.*, 220 N.W.2d at 261.

The discretionary nature of the act of creating and amending zoning ordinances is further highlighted by the fact that courts are extremely reluctant to interfere with a county’s expansive discretion when it comes to lawmaking. “When considering decisions of a governmental unit involving judgment and discretion, the court will not substitute its judgment for that of the governmental unit.” *Miller v. Foley*, 317 N.W.2d 710, 714 (Minn. 1982). The Minnesota Supreme Court specifically extends this standard to zoning matters, stating:

Even where the reasonableness of a zoning ordinance is debatable, or where there are conflicting opinions as to the desirability of restrictions it imposes ..., it is not the function of courts to interfere with legislative discretion on such matters.

Sun Oil Co., 220 N.W.2d at 261. A governmental body has broad discretion with respect to enacting zoning laws and courts will not interfere with its decision if there is a rational basis for it. *Honn*, 313 N.W.2d 409, 415. This narrow scope of review reflects a clearly recognized policy that a governmental body is in the best position to assess what zoning classification best serves the public welfare. *Rochester Assoc.*, 268 N.W.2d at 888.

The upshot of the case law cited above is that lawmaking is a purely discretionary act and the County Board's decisions with respect to amending its zoning ordinance will not be disturbed if there is any rational basis supporting the decision, even if the reasonableness of the its decision is debatable. Therefore, the County Board had no official duty to take any kind of action on Appellants' application for a text amendment and Appellants cannot satisfy the first element of the mandamus analysis as a matter of law.

B. Appellants Concede They have an Adequate Remedy at Law in the Form of a Declaratory Judgment Action.

Appellants also are precluded from bringing a mandamus action because they have an adequate remedy at law. The reason for this is that the Declaratory Judgment Act provides Appellants an adequate remedy at law. Appellants acknowledged as much when asserting Count IV in their Petition.⁷ App.App.15.

The mandamus statute specifically states that a writ "shall not issue in any case where there is a plain, speedy, and adequate remedy in the ordinary course of law." Minn. Stat. § 586.02. The Minnesota Supreme Court has specifically ruled that a declaratory judgment proceeding is a plain, speedy, and adequate remedy in the ordinary course of law. *Mendota Golf, LLP*, 708 N.W.2d 162, 178. Several other cases reiterate this ruling. *See, e.g., Hinz v. City of Lakeland*, No. A06-1872, 2007 WL 2481021 *3 (Minn.App. 2007) (specifically noting that mandamus was unavailable when a party asserted a declaratory judgment claim in addition to a mandamus claim); *Sutton v. Town*

⁷ Appellants' declaratory judgment claim (Count IV) is based on the same facts that give rise to the mandamus claims in Counts I and II. App.App.15.

Board of Princeton, No. A06-702, 2007 WL 48872 *3 (Minn.App. 2007); *Bosse v. City of Ottertail*, No. A07-2248, 2008 WL 2889474 *3 (Minn.App. 2008).

In *Mendota Golf*, the Minnesota Supreme Court extensively reviewed the use of mandamus. The Court commented on its use in past cases and made unequivocal pronouncements to guide courts in applying mandamus in future cases. *Mendota Golf, LLP*, 708 N.W.2d 162 (Minn. 2006). Starting with a 1945 case, the Supreme Court noted that courts have not always been clear or consistent in defining the proper reach of mandamus. However, the one rule that the Court noted had existed through all cases is that mandamus would not lie unless there was no other adequate remedy. *Id.* at 177. And yet, in examining case law, the Court observed that in “practice” it appeared that the “extraordinary remedy” of mandamus was being used in quite ordinary matters. The Court went on to note, with disapproval, “moreover, mandamus is used in many cases in which an adequate remedy at law—a declaratory judgment action—is available.” *Id.* at 187.

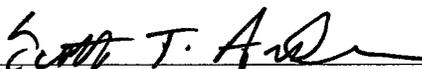
Thus, the *Mendota Golf* decision clearly established that a declaratory judgment action is generally an adequate remedy at law which would preclude the use of mandamus. Since Appellants assert a declaratory judgment claim in Count IV of their Petition, mandamus is unavailable to them.

CONCLUSION

For all of the foregoing reasons, the County respectfully requests that this Court affirm the District Court in all respects.

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Dated: June 22, 2012

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for Respondents certifies that this brief complies with the requirements of Minn. R. App. P. 132.01 in that it is 45 pages in length, exclusive of pages containing the table of contents, table of citations, and Respondents' Appendix.

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