

**STATE OF MINNESOTA
IN COURT OF APPEALS
NO. A12-0735**

**MOTOKAZIE! INC. AND PORTINGA BROTHERS, LLC,
APPELLANTS,**

vs.

**RICE COUNTY, MINNESOTA AND ITS
COUNTY BOARD OF COMMISSIONERS,
RESPONDENTS.**

APPELLANTS' BRIEF AND ADDENDUM

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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 TWO ISSUES

1. Minn. Stat. § 375.51, subd. 1 provides that "[e]very 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." (Emphasis added).

The issue on appeal is whether a county can, through its own ordinance, impose a requirement that ordinance "zoning amendments," including ordinance "text amendments," be approved by a four-fifths (4/5) supermajority vote because that ordinance, once enacted, constitutes a "law" that "require[s]" the supermajority vote.

- District Court held: Yes.
- Preservation of Issue for Appeal. Appellants filed a motion for summary judgment in the district court, and they filed a notice of appeal of the district court's order and judgment pursuant to Minn. R. Civ. App. P. 103.03(a).
- Most Apposite Authority. Minn. Stat. § 375.51, subd. 1; Laws 1974, chapter 571; *American Tower, L.P. v. City of Grant*, 636 N.W.2d 309 (Minn. 2001); *Altenburg v. Bd. of Supervisors Pleasant Mound Twp.*, 615 N.W.2d 874 (Minn. App.), *review denied* (Minn. Nov. 21, 2000); *Lilly v. City of Minneapolis*, 527 N.W.2d 107 (Minn. App.), *review denied* (Minn. Mar. 29, 1995).

2. Minn. Stat. § 15.99, subd. 2(a) provides that "an agency must approve or deny within 60 days a written request relating to zoning" (Emphasis added).

This issue on appeal is whether a request to enact a county zoning ordinance "text amendment" is a "request relating to zoning" subject to Minn. Stat. § 15.99.

- District Court held: No.
- Preservation of Issue for Appeal. Appellants filed a motion for summary judgment in the district court, and they filed a notice of appeal of the district court's order and judgment pursuant to Minn. R. Civ. App. P. 103.03(a).
- Most Apposite Authority. Minn. Stat. § 15.99; *Johnson v. Cook County*, 786 N.W.2d 291 (Minn. 2010); *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536 (Minn. 2007); *In Re System Designation of Multi-Flo Wisconsin Aerobic Treatment Units*, No. C0-01-823, 2001 WL 1665410 (Minn. App. Dec. 21, 2011).

STATEMENT OF THE CASE

A. THE STATUTORILY-IMPOSED SIMPLE "MAJORITY VOTE" REQUIREMENT FOR THE "ENACT[MENT]" OF "EVERY COUNTY ORDINANCE"

On May 24, 1967, the Minnesota Legislature enacted Minn. Stat. § 375.51, subd. 1 (County Ordinance Enabling Law). Add.20. The County Ordinance Enabling Law prescribes the requirements for Minnesota counties to "enact ordinances," which includes amendments thereto.

The County Ordinance Enabling Law provides in its entirety as follows:

375.51 ORDINANCES; ENACTMENT, PUBLICATION

Subdivision 1. Enactment. 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. A public hearing shall be held before the enactment of any ordinance adopting or amending a comprehensive plan or official control as defined in section 394.22. 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. It shall be signed by the chair of the board and attested by the clerk of the board. The ordinance shall be published as provided in this section. Proof of the publication shall be attached to and filed with the ordinance in the office of the county auditor. Every ordinance shall be recorded in an ordinance book in the office of the county auditor within 20 days after its publication. All ordinances shall be suitably entitled and shall be substantially in the style: "The county board of . . . county ordains:".

Id. (bold and capitalization in headings in original; bold and underlining in text added).

The third sentence of the County Ordinance Enabling Law contains the numerical voting requirement for the "enact[ment]" of "[e]very county ordinance." The third sentence requires that "[e]very county ordinance shall be enacted by a majority vote of all members of the county board unless a larger number is required by law." And the third sentence, together with the first sentence, underscores that "law" under the County

Ordinance Enabling Law means something other than that which is provided for by "county ordinance" — namely, that which is provided for by the legislature in state statutes, rules or laws. Both sentences have remained in effect continuously since 1967.

A.13-14 ¶ 40.

B. COUNTY'S PROMPT ADOPTION, NEVERTHELESS, OF A FOUR-FIFTHS (4/5) SUPERMAJORITY VOTE REQUIREMENT FOR THE "ENACT[MENT]" OF "ORDINANCE" "ZONING AMENDMENTS"

Only 110 days after the County Ordinance Enabling Law was enacted, Respondent Rice County, Minnesota (County) adopted its first permanent zoning ordinance. And County's September 11, 1967 zoning ordinance included a provision which purports to require, as follows, a four-fifths (4/5) supermajority vote (Supermajority Vote) to approve the "enact[ment]" of ordinance "zoning amendments":

The County Board shall take action on the proposed amendment within sixty (60) days following receipt of the recommendations by the Planning Commission. Said action for approval by the County Board shall be not 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.

A.281 (emphasis added).

County's Supermajority Vote requirement for "zoning amendments" was enacted in blatant defiance of the third sentence of the County Ordinance Enabling Law. The County Ordinance Enabling Law required a simple "majority vote" that "enact[ment]" of a "county ordinance" occur by a simple "majority vote, unless a larger number is required by law." There was not then (nor has there been since) a "larger number . . . required by law."

County's Supermajority Vote requirement for "zoning amendments" has, nevertheless, remained in place since it was first adopted in 1967. It exists today, as follows, in Rice County Zoning Ordinance (Ordinance) § 503.04(E)(10):

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 be not 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.

A.25 at 3.6 (emphasis added).

C. MOTOKAZIE'S SEPTEMBER 6, 2011 REQUEST FOR AN ORDINANCE "TEXT AMENDMENT" AND COUNTY'S RESPONSE THERETO

1. The Project

Appellant Motokazie! Inc. (Motokazie) is currently developing a \$2.6 million outdoor motor sports park in County (Project). A.1 ¶ 1. The Project is proposed on 131 acres along Interstate 35 just north of Faribault (Property). *Id.* The Project is designed for tracks and trails for (1) snowmobiles, (2) all-terrain vehicles (ATVs), (3) motorcycles, (4) go karts and (5) other smaller motorized vehicles. *Id.*

2. The request and County's tardy decision

On September 6, 2011, Motokazie submitted to County a written request for an Ordinance "text amendment." A.1 ¶ 2. Motokazie's requested "text amendment" sought to amend the definition of "Organized Motor Sports" in Ordinance § 507.05(I) to include (1) ATV "tracks," (2) "snowmobile tracks and trails," and (3) "kart (go kart) tracks and trails." *Id.* "Organized motor sports," which already includes (1) "ATV tracks," (2) "motorcycle tracks and trails," (3) "truck trails" and (4) "tractor pulling," is a "conditional use" within County's Agricultural and Urban Resource zoning districts. *See*

Ordinance Table 508-1 (A.259). These zoning districts constitute the majority of County's zoned land. A.257-67. The Property is within the Agricultural zone. A.198.

County had, per Minn. Stat. § 15.99, subd. 3(a), 15 business days from Motokazie's September 6, 2011 submission of its requested "text amendment" (or until September 27, 2011) to identify in writing to Motokazie any "incompleteness" with the request. And, failing that, County had, per § 15.99, subd. 2(a), 60 days from September 6, 2011 (or until November 7, 2011) to "approve or deny" the request, unless per § 15.99, subd. 3(f) it extended in writing this 60-day deadline by up to another 60 days. Per § 15.99, subd. 2, the statutorily-prescribed consequence for untimely decisionmaking is "automatic approval" of the request.

County did not provide Motokazie with any written notice of (1) "incompleteness," per § 15.99, subd. 3(a), with the requested "text amendment" or (2) "extension" of the 60-day deadline, per § 15.99, subd. 3(f), to "approve or deny" the requested "text amendment." But, between September 6 and 14, 2011, County did orally notify Motokazie that there was no signed authorization from a County landowner. A.126-27 ¶ 7. In response, such a signed authorization was submitted on September 14, 2011 by Appellant Portinga Brothers, LLC (Portinga), a County landowner. *Id.* Because County identified no other alleged "incompleteness" with the requested "text amendment," the latest possible expiration date for § 15.99's 60-day deadline was 60 days from Portinga's September 14, 2011 "signed authorization," or November 14, 2011.

Whether the 60-day deadline expired on November 7 (as Motokazie contends) or November 14 (as County contends), County neither "approve[d]" nor "den[ied]" the

requested "text amendment" within the 60-day deadline. Respondent Rice County Board of Commissioners (County Board) did not act on the request until November 22, 2011, when it voted 3-2 in favor of the request. A.8 ¶ 21; A.149-52.

Despite County Board's simple "majority vote" (3-2) in favor of the requested "text amendment" and the "automatic approval" of the request due to the expiration of the 60-day deadline before its November 22, 2011 approval vote, County maintained that the request was not approved. *Id.* Rather, County concluded that the request was neither (1) actually approved, per County Board's simple "majority vote" (3-2) in favor of the request, because of County's Supermajority Vote requirement for "zoning amendments" nor (2) "automatically approved," per § 15.99, subd. 2, because "text amendments" under Ordinance § 503.04(C), unlike "rezoning or land use amendments" under Ordinance § 503.04(D), are not "requests related to zoning" per Minn. Stat. § 15.99, subd. 1(c).

D. THE LAWSUIT

Motokazie immediately petitioned for, and was promptly granted, a Writ of Mandamus to compel County's approval of the requested "text amendment." A.1-18; Add.1-3. In its November 30, 2011 Writ of Mandamus (Writ), the district court, the Honorable Christine A. Long presiding, determined that County had approved of the request in two ways – that is, (1) County actually approved of the request, per County Board's simple "majority vote" (3-2) in favor of the request, because the Ordinance-imposed Supermajority Vote requirement for "zoning amendments" was "ultra vires and illegal" or "invalid[]," and (2) County "automatically approved" of the requested "text amendment," per § 15.99, subd. 2(a), because the request was a "request relating to

zoning" under § 15.99, subd. 1(c) and County failed to timely "approve or deny" the request within the 60-day deadline. Add.2-3.

Following the Writ's issuance, Motokazie and County cross-moved for summary judgment.¹ Motokazie also sought leave to amend its petition to include Portinga as a petitioner/plaintiff in the lawsuit.

E. THE DISTRICT COURT'S SUMMARY JUDGMENT ORDER

In its February 21, 2012 Order for Partial Summary Judgment and Memorandum (Order), the district court reversed its November 30, 2011 Writ. Add.4-10. The district court, the Honorable Christine A. Long presiding, granted County's motion for summary judgment, denied Motokazie's motion for summary judgment, and dismissed with prejudice Motokazie's claims regarding County's actual approval and "automatic approval" of the requested "text amendment." *Id.*

The district court determined that the requested "text amendment" was not actually approved on November 22, 2011, per County Board's simple "majority vote" (3-2) in favor of the request, because County's Supermajority Vote requirement for "zoning amendments" was, contrary to its Writ ruling, valid. Add.9-10. The district court also determined that the requested "text amendment" was not "automatically approved," per § 15.99, subd. 2(a), because, contrary to its Writ ruling, the request was not a "request related to zoning" under § 15.99, subd. 1(c). Add.7-9.

¹ Neither Motokazie nor County sought summary judgment on Motokazie's claim in Count IV, part (c) of the Petition that County's denial of the requested "text amendment" was arbitrary.

Based on its two summary judgment determinations, the district court dismissed Count I (mandamus for automatic approval), Count II (mandamus for actual approval), Count III (mandamus damages) and all of Count IV (declaratory judgment), with the exception of part (c) regarding the arbitrariness of County's denial. Add.5.

F. THE DISTRICT COURT'S MOTION TO AMEND ORDER

The district court simultaneously granted Motokazie's motion to amend to add Portinga as a petitioner/plaintiff in the lawsuit. Add.12-14. But, by virtue of its summary judgment dismissal of all claims other than the arbitrariness challenge in Count IV, part (c), the district court permitted Portinga to be added as a plaintiff only with respect to that remaining Count. *Id.*

G. THIS APPEAL

To expedite the appeal process, the parties subsequently stipulated to, and on April 12, 2012 the district court entered, a judgment of dismissal regarding the arbitrariness challenge in Count IV, part (c). Add.15-19. This appeal followed.

STATEMENT OF THE FACTS

A. COUNTY'S REQUIREMENTS FOR ORDINANCE "ZONING AMENDMENTS"

In County, requests for the "enact[ment]" of Ordinance "zoning amendments" are governed by Ordinance Chapter 503.04. A.23-25. Within Chapter 503.04, there are two types of Ordinance-defined "zoning amendments" — *i.e.*, (1) "text amendments" and (2) "rezoning or land use amendments." *Id.*

Not surprisingly, then, "zoning amendments" are defined in Ordinance § 502.03 to include both "text amendments" and "rezoning or land use amendments." A.226. Section 502.03 defines "zoning amendment" as "[a] change authorized by the County either [(1)] in the allowed use within a district or [(2)] in the boundaries of a district." *Id.* (bracketed information added).

There are slight differences between the "Required information and exhibits" for "text amendments" (A.23 § 503.04(C)) versus "rezoning or land use amendments" (A.23-24 § 503.04(D)). But, whether the requested "zoning amendment" is a "text amendment" or "rezoning or land use amendment," County provides that the request "shall conform" to the same "General Criteria for Amendments" (A.23 § 503.04 (A)) and the same "Procedure" (A.24 § 503.04 (E)). Both are, as well, initiated pursuant to the same "Zoning Amendment & Rezoning Packet" and "Rice County Land Use Permit Application" form. A.273-77.

B. MOTOKAZIE'S SEPTEMBER 6, 2011 REQUEST

For its Project, Motokazie seeks to develop a \$2.6 million, 131-acre outdoor motor sports park in County along Interstate 35 that is designed for tracks and trails for (1) snowmobiles, (2) all-terrain vehicles (ATVs), (3) motorcycles, (4) go karts and (5) other smaller motorized vehicles. A.1 ¶ 1. Motokazie, through its CEO Lee Theis (Theis), has entered into purchase agreements for the Property on which the Project is to be located. A.136 ¶ 2. The Property is in County's Agricultural zone. A.198.

As set forth in Ordinance Table 508-1, "[o]rganized motor sports" are permitted as a "conditional use" in just two of County's zoning districts – *i.e.*, the Agricultural and Urban Resource zoning districts. A.259. These two zoning districts constitute the majority of County's zoned land. A.257-67.

"ATV trails," as well as "motorcycle tracks and trails, truck trails and tractor pulling" are already "conditional uses" within the Ordinance-defined category of "[o]rganized motor sports." A.259. Before it could procure from County all of the necessary conditional use permits and other approvals for the full scope of the Project, Motokazie needed to amend the Ordinance definition of "[o]rganized motor sports" to also include (1) ATV tracks, (2) snowmobile tracks and trails, and (3) kart (go kart) tracks and trails.

On September 6, 2011, Motokazie submitted to County its request to amend, as follows, the "[o]rganized motor sports" category in Chapter 507.05(I) of the Ordinance:

Organized motor sports. This use category includes ATV tracks and trails, motorcycle tracks or trails, snowmobile tracks and trails, kart (go

kart) tracks and trails, truck trails and tractor pulling but not auto or other vehicle racing, tracks or events.

A.197-202 (bold in original; additions double-underlined).

Sometime between September 6 and 14, 2011, County orally "contacted Motokazie to notify it that there was no signed authorization from a County landowner[]." A.126-27 ¶ 7. "[O]n September 14, 2011, the Rice County Planning & Zoning Office received a letter from Joe Portinga in which Mr. Portinga provided the authorization from Portinga Brothers, LLC." *Id.*; A.203. County did not allege any subsequent incompleteness with the requested "text amendment." Motokazie's request was thus "complete" by no later than September 14, 2011.

C. THE PARTIES' SEPTEMBER 21, 2011 PLANNING MEETING AND SEPTEMBER 26, 2011 "DRAFT SCHEDULE"

On September 21, 2011, there was a Project planning meeting between representatives of County and Motokazie to discuss, among other things, a proposed timeline for County's review of the anticipated approval requests for the Project, including the requested "text amendment." A.153-54 ¶ 3; A.156 ¶ 3; A.192-93 ¶¶ 14-17; A.136-37 ¶ 3; A.270-71 ¶¶ 9-11. There was also a September 26, 2011 meeting report with the discussed "Draft Schedule" for the Project. A.145-48.

The parties and their representatives subsequently confirmed that Minn. Stat. § 15.99 — *i.e.*, commonly referred to as the 60-day Rule — was not discussed at the September 21, 2011 meeting or in the September 26, 2011 meeting report. A.137 ¶ 4; A.154 ¶ 4; A.157 ¶ 4; A.192-93 ¶¶ 12-17; A.187 ¶ 6; A.272 ¶ 13. Indeed, it is undisputed in the record that the first Theis learned about the 60-day Rule was after Motokazie

retained Briggs and Morgan as counsel just prior to the November 22, 2011 County Board meeting — in other words, after the 60-day deadline expired. A.138 ¶ 8.

D. COUNTY'S NOVEMBER 22, 2011 DECISION ON THE REQUEST

Sometime shortly after County deemed the requested "text amendment" to be "complete" and the parties' September 21, 2011 Project planning meeting, the request was forwarded by County's zoning staff to the Rice County Planning Commission (Planning Commission) for its consideration. At its October 6, 2011 public hearing, Planning Commission voted unanimously (4-0, with Commissioner Sammon absent) to forward the request to County Board for its consideration. A.7 ¶ 16.

The requested "text amendment" then went to County Board. At its October 11, 2011 meeting, County Board, by a simple "majority vote" (3-2), "set a public hearing for November 3, 2011 at 7:05 p.m. regarding an amendment to Chapter 507.05.I of the Rice County Zoning Ordinance to allow for [(1)] ATV tracks, [(2)] snowmobile tracks and trails and [(3)] karts (go kart) tracks and trails as part of Organized Motor Sports use." A.58-60 (bracketed information added).

On October 25, 2011, Motokazie's counsel Frank Janes (Janes) contacted Assistant County Attorney Meredith Erickson (Erickson) to both (1) question the necessity of County's four-step approval process (*i.e.*, two Planning Commission and two County Board meetings) and (2) push for the acceleration of the processing and approval of the requested "text amendment." A.61-63. Janes also argued that County's Supermajority Vote requirement for "zoning amendments" — *i.e.*, "text amendments" and "rezoning or land use amendments" — was *ultra vires*. *Id.*

In response to Janes' email, County kept its schedule and rejected Janes' argument on the Supermajority Vote requirement for "zoning amendments." On the latter point, Erickson defended, as follows, the Supermajority Vote requirement for the requested "text amendment":

[Motokazie] correctly cite[s] the statutory basis for amendments to a county zoning ordinance [*i.e.*, Minn. Stat. § 375.51, subd. 1]. The relevant language of the statute provides that "unless a larger number is required by law."

Rice County chose to include this super majority standard when the Zoning Ordinance was first adopted in 1967 and has continued this requirement (RCZO § 503.04.E.8) to the present date. Since a county ordinance has the force and effect of law within its boundaries, the decisions of other counties on this issue is irrelevant to the determination made by the Rice County Board of Commissioners.

Id. (emphasis added). Erickson reiterated the next day that County's position was that its own Ordinance was the authority upon which it was relying to assert that its Supermajority Vote requirement for "zoning amendments" — notably, "text amendments" — is "required by law." *Id.*

At its November 3, 2011 public hearing, Planning Commission voted unanimously (5-0) to recommend that County Board approve of the requested "text amendment." A.64-76.

At its November 22, 2011 meeting, County Board voted by simple "majority vote" (3-2) in favor of the requested "text amendment." A.8 ¶ 21; A.149-52. But, in light of County's Supermajority Vote requirement for "zoning amendments," County maintained that the request was denied. *Id.* And, though County did not dispute that, within the 60-day deadline to do so, it neither (1) denied the request, per Minn. Stat. § 15.99, subd.

2(a), nor (2) extended the timeline for denying the request, per Minn. Stat. § 15.99, subd. 3(f) (A.125-35; 1/24/12 County SJ Opp. Br. at 15-31), County contended that the 60-day Rule did not apply to the request because a "text amendment" under Ordinance § 503.04(C), unlike a "rezoning or land use amendment" under Ordinance § 503.04(D) is not a "request related to zoning" under § 15.99, subd. 1(c).

E. THE DISTRICT COURT'S NOVEMBER 30, 2011 WRIT

Motokazie's November 30, 2011 Verified Petition for Writ of Mandamus and Complaint for Declaratory and Other Relief (Petition) claimed, among other things, that the requested "text amendment" was (1) actually approved, per County's simple "majority vote" (3-2) in favor of the request, and (2) "automatically approved," per § 15.99, subd. 2, due to County's untimely action on the request. A.15-16 ¶¶ 44-54. As is required for such petitions, the Petition contained the entire record of the proceedings regarding County's review of and decision on the requested "text amendment."

Upon its review of the Petition, the district court agreed with both bases for approval of the requested "text amendment." Add.2-3. The district court thus executed the Writ. Add.3.

The district court's Writ adopted as its legal basis for the actual approval of the requested "text amendment," per its simple "majority vote" in favor of the request, that the Supermajority Vote requirement for "zoning amendments," including "text amendments," was "ultra vires and illegal" or "invalid[]." Add.3. The Writ provided as follows:

WHEREAS, the Petition ... demonstrates that County's purported four-fifths (4/5) supermajority voting requirement for Motokazie's requested Ordinance text amendment is **ultra vires and illegal**;

WHEREAS, the Petition demonstrates that, as a result of the invalidity of County's purported four-fifths (4/5) supermajority voting requirement, County Board, at its November 22, 2011 meeting, approved of Motokazie's Application by the statutorily-required simple majority vote (*i.e.*, 3-2), thereby compelling County's approval of Motokazie's requested Ordinance text amendment.

Id. (emphasis added).

The district court's Writ adopted as its legal basis for the "automatic approval" of the requested "text amendment," per § 15.99, subd. 2, that the requested "text amendment" was a "written request related to zoning" under § 15.99, subd. 1(c). Add.2.

The Writ provided as follows:

WHEREAS, Minn. Stat. § 15.99 requires zoning bodies to "approve or deny" within 60 days "written requests related to zoning" or such requests will be "automatically approved";

WHEREAS, the Petition demonstrates that Motokazie made a September 6, 2011 "written request related to zoning" — *i.e.*, a text amendment of the Rice County Zoning Ordinance (Ordinance) to include [(1)] ATV "tracks" and [(2)] "snowmobile tracks and trails, [and (3)] kart (go kart) tracks and trails" within the "[o]rganized motor sports" category in Chapter 507.05(I) of the Ordinance ([request]);

WHEREAS, the Petition demonstrates that Respondent Rice County, Minnesota (County) and its County Board of Commissioners (County Board) failed to timely "approve or deny" the [request] within the statutorily-prescribed 60 days, thereby compelling County's statutorily-prescribed "automatic approval" of Motokazie's requested Ordinance text amendment.

Id. (emphasis added).

F. THE DISTRICT COURT'S FEBRUARY 21, 2012 SUMMARY JUDGMENT ORDER

With its February 21, 2012 summary judgment decision, the district court effectively quashed its Writ. Add.5-11. Indeed, without citing to any new record facts or legal basis for doing so, the district court simply reversed (1) the legal basis in its Writ underlying its actual approval (that is, "the invalidity of County's purported four-fifths (4/5) supermajority voting requirement"), and (2) the legal basis in the Writ underlying its "automatic approval" (that is, "that Motokazie made a September 6, 2011 'written request related to zoning' — *i.e.*, a text amendment"). *Id.*

G. THE APPEAL

This appeal challenges the district court's two summary judgment determinations as being legally erroneous.

ARGUMENT

I. THE STANDARD OF REVIEW IS *DE NOVO*

On appeal from summary judgment, this Court determines whether any genuine issues of material fact exist and whether the district court erred as a matter of law. *See State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). The appropriate standard of review of the district court's summary judgment order is, in all respects, *de novo*.

When, as here, statutory construction is necessary to determine whether the district court erred in granting summary judgment, that statutory interpretation is a question of law that this Court reviews *de novo*. *See Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 539 (Minn. 2007); *American Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). Moreover, a *de novo* standard of review applies to a "district court's decision on a petition for a writ of mandamus that is based solely on legal determinations." *N. States Power Co. v. City of Mendota Heights*, 646 N.W.2d 919, 924 (Minn. App.) (citation omitted), *review denied* (Minn. Sept. 25, 2002). And in a zoning case, this Court independently examines the zoning agency's decision without according any deference to the district court's review of that decision. *See Northwestern College v. City of Arden Hills*, 281 N.W.2d 865, 868 (Minn. 1979); *St. Croix Dev., Inc. v. City of Apple Valley*, 446 N.W.2d 392, 397 (Minn. App.), *review denied* (Minn. Dec. 1, 1989).

A *de novo* review of the County Board's action and the district court's summary judgment decision compels (1) a reversal of the Order and (2) a remand with instructions to enter summary judgment in Motokazie's favor as a matter of law.

II. THE DISTRICT COURT ERRED IN DETERMINING THAT THE REQUEST WAS NOT ACTUALLY APPROVED

This Court should reverse the district court's summary judgment decision because County lacked any authority to impose by ordinance its Supermajority Vote requirement. The County Ordinance Enabling Law mandates that all county ordinances, which includes amendments thereto, "shall be enacted by a majority vote . . . unless a larger number is required by law." Minn. Stat. § 375.51, subd. 1. County's own Ordinance is not a "law" as referenced in the County Ordinance Enabling Law which can authorize or "require[]" County's Supermajority Vote requirement. Because County's Supermajority Vote requirement is *ultra vires* and unenforceable, Motokazie's requested Ordinance "text amendment" was, as a matter of law, approved by County Board's simple "majority vote" (3-2) in favor of the request.

A. County's undisputedly limited statutory authority

There is no dispute that County lacks inherent powers and possesses only those powers that are expressly granted to it by the legislature. *Altenburg v. Bd. of Supervisors Pleasant Mount Twp.*, 615 N.W.2d 874, 880 (Minn. App.) ("[b]oth counties and townships are entities of state creation and have only the powers conferred to them by the state"), *review denied* (Minn. Nov. 21, 2000); *C & R Stacy, LLC v. County of Chisago*, 742 N.W.2d 447, 453 (Minn. App. 2007) ("[a]t the most basic level, the Minnesota Constitution establishes that local-government units possess no inherent powers and are purely creations of the legislature"). And County can go no further than that which the legislature has authorized it to do. *See Reilly Tar & Chem. Corp. v. City of St. Louis*

Park, 265 Minn. 295, 300, 121 N.W.2d 393, 396 (1963) ("[a] municipality in exercising such a delegation of power cannot exceed the limitations thereof"); *Costley v. Caromin House, Inc.*, 313 N.W.2d 21, 27 (Minn. 1981) ("a municipality cannot exceed the limitations imposed by the enabling legislation"); *Brandt v. Hallwood Mgmt. Co.*, 560 N.W.2d 396, 400 (Minn. App.) ("[w]here a statute enumerates the persons or things to be affected by its provisions, there is an implied exclusion of others") (citations omitted), *review denied* (Minn. June 11, 1997).

B. County's legislative grant of authority to "enact" a "county ordinance"

The County Ordinance Enabling Law provides the authority for and prescribes the requirements of County to "enact" a "county ordinance." *See* Minn. Stat. § 375.51, subd. 1 (Add.20). With respect to the "enact[ment]" of "county ordinance[s]," the County Ordinance Enabling Law provides in relevant part as follows:

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. (emphasis added).

An ordinance is *ultra vires* and, thus, without legal force or effect if it is "beyond the limits of the power granted" to the enacting political subdivision. *See Lilly v. City of Minneapolis*, 527 N.W.2d 107, 113 (Minn. App.), *review denied* (Minn. Mar. 29, 1995); *see also Lewis v. Ford Motor Co.*, 282 N.W.2d 874, 877 (Minn. 1979). Thus, if County

exceeded its authority granted by the County Ordinance Enabling Act, then its actions are *ultra vires* and legally ineffective.

C. **County exceeded its legislative authority by "enact[ing]" its Supermajority Vote requirement for "zoning amendments"**

Setting aside its summation of the parties' respective arguments and the history of the law itself (Add.9-10), the district court's entire summary analysis on this issue was as follows:

Minn. Stat. § 375.51, subd. 1, specifically allows that a larger number of votes than a simple majority may be "required by law." County zoning ordinances do "have the force of law." PTL, L.L.C. v. Chisago County Bd. of Com'rs, 656 N.W.2d 567, 574 (Minn. App. 2003). Rice County's ordinance at § 503.04(E)(10) is a law requiring a larger number than a simple majority vote, which is permitted by Minn. Stat. § 375.51, subd. 1 and is **not in conflict** with Laws 1974, chapter 571. This provision of the ordinance is not illegal or beyond the authority of the county to enact.

Add.10 (emphasis added). The district court's conclusory analysis was legally erroneous in three respects. The district court's decision had two fundamental omissions, and it manufactured a "conflict" requirement under the "Laws 1974, Chapter 571."

1. **ERROR NO. 1: As matter of statutory construction, the County Ordinance Enabling Law's references to "law" cannot include "county ordinances"**

Despite being urged to do so by Motokazie (A.284-86; A.333-37), neither County nor the district court engaged in any statutory construction of the County Ordinance Enabling Law. As such, the district court, like County in its briefing (1/24/12 County SJ Opp. Br. at 39-42) and oral argument below (A.342-56), made literally no effort to reconcile the distinction between "county ordinance" and "law" in the first and third sentences of the County Ordinance Enabling Law.

With regard to the number of votes required for the "enact[ment]" of a "county ordinance" (*i.e.*, simple "majority" vs. supermajority), the third sentence of the County Ordinance Enabling Law requires that the "enact[ment]" of a "county ordinance" "shall be . . . by a majority vote of all members of the county board unless a larger number is required by law." Minn. Stat. § 375.51, subd. 1 (Add.20) (emphasis added). The County Ordinance Enabling Law does not specifically define what it meant by its reference to "law." *Id.*

But, in the first and third sentences of the County Ordinance Enabling Law, the Minnesota Legislature separately provided for and distinguished between what is (1) "required by law" (including what is "authorized by law" and "provided by law") and (2) a "county ordinance." *Id.* (emphasis added). In other words, the County Ordinance Enabling Law draws a clear and plain distinction between (1) a "law," which authorizes the "enact[ment]" of a "county ordinance," and (2) a "county ordinance." This plain statutory language must be respected and enforced. *See Mavco, Inc. v. Eggink*, 739 N.W.2d 148, 153 (Minn. 2007); *American Tower, L.P.*, 636 N.W.2d at 312. Thus, a "county ordinance" cannot itself be the "law" which "require[s]" a "larger number" than a simple "majority vote" to "enact" a "county ordinance."² Rather "law" refers to a state-enacted statute, rule or regulation, not a "county ordinance."

² The Association of Minnesota Counties and the Minnesota Association of County Administrators have prepared the Handbook for Minnesota Counties as a "comprehensive resource for laws affecting Minnesota county governments." A.78. Predictably, the Handbook for Minnesota Counties (citing Minn. Stat. § 394.25, subd. 1) has adopted this plain and unambiguous reading of the County Ordinance Enabling Law. The Handbook for Minnesota Counties specifically advises that "[a]ll official controls must be passed by

To the extent a purported ambiguity exists regarding the legislature's use of the separate and distinct terms "law" and "county ordinance" in the County Ordinance Enabling Law, principles of statutory construction are used to determine the legislature's intent. *See ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005) ("Only if the statute is ambiguous do we apply the rules of statutory construction"). And application of the relevant statutory construction rules leads to the same result – namely, the legislature precluded a "county ordinance" itself from being the "law" which "require[s]" more than a simple "majority vote" for the "enact[ment]" of the "county ordinance."

First, the district court's reading of the reference to "law" in the County Ordinance Enabling Law as being inclusive of a "county ordinance" would render the requirement for a "majority vote" in the third sentence of the County Ordinance Enabling Law meaningless as subordinate to any "larger number" required by any "county ordinance." This is, of course, prohibited as a matter of law. *See Owens v. Federated Mut. Implement & Hardware Ins. Co.*, 328 N.W.2d 162, 164 (Minn. 1983) ("whenever possible, no word, phrase, or sentence should be deemed superfluous, void, or insignificant"); *see also* Minn. Stat. § 645.16 ("Every law shall be construed, if possible, to give effect to all its provisions").

Second, the rules of statutory construction also require this Court to read a particular statutory provision in context with other provisions of the same statute to ordinance, and thus must be adopted by a **majority vote of the board.**" A.92 (emphasis added).

determine the meaning of the provision at issue. *See Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) ("[appellate courts] are to read and construe a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations"); *Kachman v. Blosberg*, 251 Minn. 224, 229, 87 N.W.2d 687, 692 (1958) (same). And the only way to give effect to the legislature's distinction between a "law" and a "county ordinance" in the County Ordinance Enabling Law is to construe them as separate and distinct terms with separate and distinct meanings.

Third, for the district court's interpretation of the County Ordinance Enabling Law to be correct, the first and third sentences of the statute would have to be effectively rewritten as follows:

In any instance in which a county board is **authorized by law**[, including its own county ordinance,] to enact **ordinances**, the **ordinances** shall be adopted in the manner prescribed in this section except as otherwise **provided by law**[, including its own county ordinance]. . . . 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**[, including its own county ordinance].

(Emphasis and bracketed information added). There is, however, no authority for such a re-writing of "law" as provided for under the first and third sentences of the County Ordinance Enabling Law. Indeed, when a question of statutory construction involves a failure of expression rather than an ambiguity of expression, "courts are not free to substitute amendment for construction and thereby supply the omissions of the legislature." *Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114, 117 (Minn. 2001) (quoting *State v. Moseng*, 254 Minn. 263, 269, 95 N.W.2d 6, 11-12 (1959)).

And, fourth, had it intended for its references to "law" and "county ordinance" to have the same meaning, the legislature would have said so. But it did not do so, and neither the executive branch (e.g., County) nor the judicial branch (e.g., this Court) can amend that which was plainly provided for by the legislative branch. See *Peoples Natural Gas Co. v. Minn. PUC*, 369 N.W.2d 530, 534 (Minn. 1985) ("Neither agencies nor courts may under the guise of statutory interpretation enlarge the agency's powers beyond that which was contemplated by the legislative body") (quoting *Waller v. Powers Dep't Store*, 343 N.W.2d 655, 657 (Minn. 1984); *Northland Country Club v. Comm'r of Taxation*, 308 Minn. 265, 271, 241 N.W.2d 806, 809 (1976) (when construing statutes, a reviewing court "cannot supply that which the legislature purposely omits or inadvertently overlooks") (citation and quotation omitted); *Amcon Block & Precast, Inc. v. Suess*, 794 N.W.2d 386, 390 (Minn. App. 2011) ("it is not within the purview of [a] court to supply through statutory construction that which the legislature has omitted through the legislative process").

Thus, as a matter of law, the legislature's reference to "law" in the County Ordinance Enabling Law refers to a state statute, rule or regulation and does not include "county ordinance" such that a "county ordinance" can, itself, authorize or "require[]" a "larger number" of votes than a simple "majority vote" to enact a "county ordinance."

2. ERROR NO. 2: County had no authority to "enact" in 1967, or to continue to the present, its Supermajority Vote requirement for "zoning amendments"

Because counties undisputedly only have the express authority granted to them by the legislature (see *Altenburg*, 615 N.W.2d at 880; *C & R Stacy, LLC*, 742 N.W.2d at

453), County expressly acknowledged below that, for a county ordinance provision to "have the force of law," the provision must be statutorily "authorized." Indeed County's own parenthetical quotes from two of its cited cases contain this qualification. As quoted by County on page 41 of its opposition brief below (1/24/12 County SJ Opp. Br. at 41), the Minnesota Supreme Court in *Mayes v. Byers*, 214 Minn. 54, 63, 7 N.W.2d 403, 407 (1943), clarifies that "[a] city ordinance **within its proper scope** has the force and full effect of law." (Emphasis added). And, as also quoted by County on page 41 of its opposition brief below (*id.*), the court in *Bott v. Pratt*, 33 Minn. 323, 328, 23 N.W. 237, 239 (1885), likewise clarified that "[a]n ordinance **which a municipal corporation is authorized to make**, is as binding on all persons within the corporate limits as any statute or other laws" (emphasis added). County's other cited authority below says the same thing. See *Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 787 N.W.2d 523, 534 (Minn. 2010) ("A city ordinance within its proper scope has the force and effect of law") (emphasis added) (quoting *Mayes*, 214 Minn. at 63, 7 N.W.2d at 407).

And it is axiomatic that actions by statutorily-created agencies, including the promulgation of rules and enactment of ordinances, which are inconsistent with or beyond the agency's express statutory authority "are ineffective and do not carry the force and effect of law." *Sellner Mfg. Co. v. Comm'r of Taxation*, 295 Minn. 71, 74, 202 N.W.2d 886, 888 (1972); see also *American Tower*, 636 N.W.2d at 313 (holding that city exceeded its statutory authority by granting itself an extension to the 60-day Rule on applications before it even received the applications); *Housing and Redevelopment Auth. of Minneapolis v. City of Minneapolis*, 293 Minn. 227, 234-35, 198 N.W.2d 531, 536-37

(1972) (striking municipal referendum because it exceeded municipality's statutory authority); *In re On-Sale Liquor License, Class B*, 763 N.W.2d 359, 368-71 (Minn. App. 2009) (striking city's imposition of conditions on liquor license because doing so exceeded city's statutory authority).

The narrow issue, then, was whether there was (and is) a statutory authorization for County to "enact" its Supermajority Vote requirement for "zoning amendments." And, on this issue, there is no dispute. None exists.

To illustrate one example of statutory authorization for ordinance enactment by a supermajority vote, Minn. Stat. § 462.357, subd. 2(b) provides — in the context of city ordinances — that "[t]he adoption or amendment of any portion of a zoning ordinance which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote of all members of the governing body." (Emphasis added). But there is no similar statutory authorization for county ordinances. Rather the prescribed method for county ordinance enactment is in the County Ordinance Enabling Law, which prescribes a simple "majority vote." There is, more specifically, no provision anywhere in Minn. Stat. ch. 375, including § 375.51, which permits a county to enact a supermajority voting requirement regarding the enactment or amendment of ordinances. And there is no provision anywhere in Minn. Stat. ch. 394, including §§ 394.24 and .25, authorizing a supermajority voting requirement. County did not argue and the district court did not hold otherwise.

3. **ERROR NO. 3: Per Minn. Stat. § 394.312, County was otherwise required to bring its Ordinance into compliance with the County Ordinance Enabling Law's simple "majority vote" requirement by August 1, 1978**

Minn. Stat. § 394.312 provides that "[a]ny [(1)] official controls and [(2)] any procedures for the administration of official controls which are in existence on August 1, 1974, shall be brought into compliance with Laws 1974 chapter 571, within four years from August 1, 1974." (Emphasis and bracketed information added). County's Supermajority Vote requirement for "zoning amendments" is indisputably either an "official control" or a "procedure for the administration of official controls." Minn. Stat. §§ 394.22, subd. 6 and 394.25.

And the Laws 1974, chapter 571 addresses provisions within Chapter 394 as well as provisions within Chapter 375. In fact, Laws 1974, chapter 571 amended Minn. Stat. § 375.51, subd. 1 as follows:

375.51 ORDINANCES; ENACTMENT, PUBLICATION. Subdivision 1. ENACTMENT. **In any instance in which a county board is authorized by law to enact ordinances, such county ordinances shall be adopted in the manner hereinafter prescribed except as otherwise provided *by law*.** A public hearing shall be held prior to the enactment of any ordinance adopting or amending a comprehensive plan or official control as defined in section 394.22. **Every county ordinance shall be enacted by a majority vote of all the members of the county board except where a larger number is required *by law*.** It shall be signed by the chairman of the board and attested by the clerk of the board. The ordinance shall be published as hereinafter provided. Proof of the publication shall be attached to and filed with the ordinance in the office of the county auditor. Every ordinance shall be recorded in an ordinance book in the office of the county auditor within 20 days after its publication. All ordinances shall be suitably entitled and shall be substantially in the style: "The county board of County ordains:"

A.302-03 (underlining indicates amendment; bold and italics added). In other words, Laws 1974, chapter 571 enacted an amended County Ordinance Enabling Law, which continued both (1) its explicit requirement in the first sentence that "such county ordinances shall be adopted in the manner hereinafter prescribed except as otherwise provided by law" and (2) its explicit requirement in the third sentence that "[e]very county ordinance shall be enacted by a majority vote of all the members of the county board except where a larger number is required by law." As such, in order for County to bring its Ordinance "into compliance with Laws 1974, chapter 571 within four years from August 1, 1974," County was required to amend its Ordinance on or before August 1, 1978 to provide for a simple "majority vote" for "zoning amendments."

The district court held that Minn. Stat. § 394.312 did not require County to amend its ordinance to require a simple "majority vote" for "zoning amendments" because it "preexisted the passage of laws 1974, chapter 571, and nothing in that law is in conflict with the 4/5ths [super]majority requirement of [Ordinance] § 503.04(E)(10)." Add.10 (emphasis and bracketed information added). But there is no requirement in Minn. Stat. § 394.312 or Laws 1974, chapter 571 that a "conflict" exist before a zoning ordinance must be brought into compliance with Laws 1974, chapter 571, including the then-amended County Ordinance Enabling Law. Rather, because, as set forth above, there was no statutory authority for County's "enact[ment]" of its Supermajority Vote requirement for "zoning amendments" other than County's own Ordinance, to bring its Ordinance into compliance with the County Ordinance Enabling Law's requirement of a simple "majority vote" to enact ordinances, County was required to replace by no later

than August 1, 1978 the Supermajority Vote requirement for "zoning amendments" with a simple "majority vote" requirement. County's failure to do so renders the Supermajority Vote requirement *ultra vires* and ineffective.

Because County was statutorily-authorized to have only a simple "majority vote" requirement for "zoning amendments," including Ordinance "text amendments," County Board's November 22, 2011 (3-2) vote in favor of Motokazie's request constitutes actual approval of the requested "text amendment" as a matter of law. The district court's contrary decision should be reversed.

III. THE DISTRICT COURT ERRED IN DETERMINING THAT THE REQUEST WAS NOT "AUTOMATICALLY APPROVED"

As a separate and independent basis for reversal, this Court should reverse the district court's decision because Motokazie's request for an Ordinance "text amendment" is a "request relating to zoning" that is subject to Minn. Stat. § 15.99. Indeed, an application requesting a text amendment to a zoning ordinance, like a rezoning request, plainly "relat[es] to zoning" and is a "zoning application." Accordingly, County's undisputed failure to timely approve or deny Motokazie's request and zoning ordinance "text amendment" within the 60-day period in Minn. Stat. § 15.99, subd. 2(a) requires reversal of the district court's contrary decision.

A. The 60-day Rule

Per the Minnesota Supreme Court, the legislature enacted the 60-day Rule in 1995 "to establish deadlines for local governments to take action on zoning applications." *Hans Hagen Homes, Inc.*, 728 N.W.2d at 540 (emphasis added); *see also American*

Tower, L.P., 636 N.W.2d at 312.³ The 60-day Rule thus provides a clear, unambiguous deadline for government action on particular requests: "an **agency must** approve or deny within 60 days a written **request relating to zoning**." Minn. Stat. § 15.99, subd. 2(a) (emphasis added).⁴ And "'[a]gency' includes a county." *Gun Lake Ass'n v. County of Aitkin*, 612 N.W.2d 177, 180 (Minn. App.) (emphasis added), *review denied* (Minn. Sept. 13, 2000); *see also* Minn. Stat. § 15.99, subd. 1(b).⁵

Minnesota courts generally demand strict compliance with § 15.99. *See Hans Hagen Homes*, 728 N.W.2d 536.⁶ As an example of the judicially-required "strict compliance" with the 60-day Rule, this Court in *Demolition Landfill Servs., LLC v. City of Duluth*, 609 N.W.2d 278, 281 (Minn. App.), *review denied* (Minn. July 25, 2000),

³ The Handbook for Minnesota Counties agrees that "[t]he underlying purpose of the [60-day] [R]ule is to keep governmental agencies from taking too long in deciding land use issues." A.87. The League of Minnesota Cities' similar Handbook for Minnesota Cities repeats the same purpose. A.163 and 171 ("[T]he underlying purpose of the [60-day] [R]ule is to keep governmental agencies from taking too long in deciding land use issues").

⁴ Per the Handbook for Minnesota Counties, "[t]he courts have been rather expansive in their interpretation of the phrase **related to zoning**, and **almost all requests affecting the use of land have been treated as subject to the law**." A.87 (citing *Advantage Capital Mgmt.*, 664 N.W.2d 421) (emphasis added); *see also* Add.90 (listing items which may be regulated by zoning ordinances).

⁵ The Handbook for Minnesota Counties agrees. A.87 ("[t]he failure of a county to deny a written request within 60 days functions as approval of the request") (emphasis added).

⁶ The Handbook for Minnesota Counties agrees: "Minnesota courts have generally demanded **strict compliance** with the [60-day] [R]ule." A.87 (citing *Hans Hagen Homes, Inc.*, 728 N.W.2d 536) (emphasis added). The Handbook for Minnesota Cities repeats that "Minnesota courts have generally demanded **strict compliance** with the [60-day] [R]ule." A.163 (citing *Hans Hagen Homes, Inc.*, 728 N.W.2d 536) (emphasis added).

found that Duluth failed to comply with the 60-day Rule because its timely non-approval of its "resolution for approval" for the requested landfill conditional use permit (CUP) was not equivalent to a "resolution of denial" and its "resolution for denial" was not approved until 16 days after the expiration of the statutory deadline. Similarly, the district court in *Veit USA, Inc. v. Sherburne County*, No. 71-CV-07-1855 (Minn. 10th Jud. Dist. Sept. 25, 2008) (A.42-52) found that Sherburne County failed to comply with the 60-day Rule because it denied the requested 200-acre rezoning one day after the deadline expired.

Finally, the statutorily-described consequence for non-compliance with the 60-day Rule is also clear – namely, "automatic approval" of the request. Minn. Stat. § 15.99, subd. 2(a). And the courts have not hesitated to strictly enforce this statutorily-prescribed consequence. *See, e.g., Veit Co. v. Lake County*, 707 N.W.2d 725, 730-31 (Minn. App.), *review denied* (Minn. App. Apr. 18, 2006); *American Tower, L.P.*, 636 N.W.2d at 313-14; *Kramer v. Otter Tail County Bd. of Comm'rs*, 647 N.W.2d 23, 26 (Minn. App. 2002); *Northern States Power Co.*, 646 N.W.2d at 928; *Demolition Landfill Servs., LLC*, 609 N.W.2d at 281; *Demolition Landfill Servs., LLC v. City of Duluth*, No. C7-00-81, 2000 WL 1015893, at *1 (Minn. App. July 25, 2000) (A.53-55), *review denied* (Minn. Oct. 17, 2000); *Gun Lake Ass'n*, 612 N.W.2d at 181; *VONCO Corp. v. Sherburne County, Minn. and its Bd. of Comm'rs*, No. C2-01-969 (Minn. 10th Jud. Dist. Aug. 8, 2001) (A.34-41); *Veit USA, Inc.*, No. 71-CV-07-1855 (A.42-52). Indeed, the Minnesota Supreme Court recently reiterated the validity of this statutorily-prescribed consequence for failing to timely act per the 60-day Rule. *See Johnson*, 786 N.W.2d at 294 ("The parties do not

dispute that if the County failed to deny a zoning request within the 60-day response period, the automatic-approval penalty provision of the statute would be triggered") (emphasis added).

B. County's undisputed failure to comply with the 60-day Rule

There is no dispute that County did not "approve or deny" Motokazie's requested "text amendment" within the 60-day deadline prescribed by § 15.99, subd. 2(a). Indeed County's November 22, 2011 vote on the request was, at a minimum, eight days too late under the 60-day Rule.

The sole 60-day Rule issue before this Court, then, is whether the request is a "request related to zoning" under § 15.99, subd. 1(c). If it is a "request," then the district court legally erred and the request has been "automatically approved" as a matter of law because County did not approve or deny it within the requisite 60-day deadline. Conversely, if it is not a "request," then no error was made because the "automatic approval" consequence under the 60-day Rule does not apply.

C. As a matter of law, the requested "text amendment" is a "request related to zoning" under § 15.99, subd. 1(c)

In reaching its decision that the requested "text amendment" was not a "request related to zoning" under § 15.99, subd. 1(c), the district court made four main points, each of which was legally erroneous. Ironically, each of the district court's four points actually undermines (rather than supports) its summary judgment holding. As a fifth legal error, the district court also ignored the one appellate case on point.

1. **ERROR NO. 1: The district court's refusal to apply the "plain meaning" of "request related to zoning" to the requested "text amendment"**

The district court began its analysis by acknowledging that, with regard to whether the requested "text amendment" fits within § 15.99, subd. 1(c), "the **plain meaning** of 'request related to zoning' may suggest inclusion of an application to amend a zoning ordinance." Add.7 (emphasis added). The district court also correctly noted that Motokazie argued the following in its motion for partial summary judgment below:

Even worse for the County's argument, the appellate court in *Advantage Capital*, 664 N.W.2d at 426, further observed that the legislature's "use of the phrase 'relating to' suggests [a] broader application" (Emphasis added).

Add.8 n.1. But, while the district court characterized Motokazie's argument as "exceptionally unpersuasive" in light of "the detailed analysis appearing in *Advantage Capital*" (*id.*), Justice Dietzen in his concurrence in *Calm Waters, LLC v. Kanabec County Bd. of Comm'rs*, 756 N.W.2d 716, 723 (Minn. 2008) (Dietzen, J., concurring), which was decided five years after *Advantage Capital*, disagreed. Justice Dietzen elaborated, as follows, on this same point:

The words "relating to" mean a connection, link, or logical relation to something. See American Heritage Dictionary 1742 (4th ed. 2006) (defining 'relate' as '[t]o bring into or link in logical or natural association [and] [t]o have connection, relation, or reference'). Because the words 'relating to' refer to a connection, link, or logical relationship between objects, they are not words of limitation. Clearly, the phrase 'written request relating to zoning' **describes something broader than 'zoning' itself.** Giving the words 'relating to' their plain and ordinary meaning results in the conclusion that the phrase 'relating to zoning' described not only requests made under a zoning ordinance, but also other requests that have a connection, link, or logical relationship to a zoning ordinance".

Id. (emphasis added). *See also* 1/5/12 Motokazie SJ Br. at 9.

And the district court neglected to identify any ambiguity in the statutory definition of "request" in § 15.99, subd. 1(a) as it relates to the requested "text amendment" (Add.7-9). County did not below and cannot before this Court argue otherwise because its own Ordinance (A.23-24 §§ 503.04(A), (C), (D)) and application forms (A.273-77) confirm that the requested "text amendment" is a request "related to zoning."

Absent an ambiguity in what is meant by a "request related to zoning," this Court is bound by its plain language. *See State v. Anderson*, 683 N.W.2d 818, 821 (Minn. 2004) ("When the text of a law is plain and unambiguous, we 'must not engage in any further construction'") (quoting *Gomon v. Northland Family Physicians, Ltd.*, 645 N.W.2d 413, 416 (Minn. 2002)); Minn. Stat. § 645.16 ("When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit"). There is literally no basis to assert that the "plain meaning" of the phrase "request related to zoning" is inapplicable to the requested zoning ordinance "text amendment." And there is no rule of construction which would support a reading of "request related to zoning" as not applying to the requested zoning ordinance "text amendment."

Relying on this Court's decision in *Advantage Capital Mgmt. v. City of Northfield*, 664 N.W.2d 421, 425 (Minn. App. 2003), the district court nevertheless "noted that Minnesota courts will not give effect to plain meaning if it produces [(1)] an absurd result

or [(2)] an unreasonable result that is plainly at variance with the policy of the legislation as a whole." Add.7 (emphasis and bracketed information added).

Based on this recognized exception to the preeminence of "plain meaning" to statutory construction, this Court ruled that "[t]o force agencies to consider building-permit applications as triggering Section 15.99 would frustrate the legislative intent of ensuring timely compliance by city in notifying the landowner whether a particular zoning action is allowable." *Id.* (quoting *Advantage Capital*, 664 N.W.2d at 427) (emphasis added). Indeed this Court noted in *Advantage Capital* that there are separate State statutes which govern building codes (*i.e.*, Minn. Stat. §§ 326B.101-.16 (state building code)) versus zoning (*i.e.*, Minn. Stat. chs. 394 (counties) and 462 (municipalities)). *See Advantage Capital*, 664 N.W.2d at 426-27.

Curiously, however, the district court neither ruled that nor even attempted to explain how the application of the 60-day Rule to zoning ordinance "text amendments" "would frustrate the legislative intent" of the 60-day Rule. Had it tried, the district court could not have done so. Unlike building-permit applications which are subject to a separate non-zoning legislative scheme (*i.e.*, Minn. Stat. §§ 326B.101-.16), county zoning ordinance "text amendments" are subject to the zoning legislative scheme (*i.e.*, Minn. Stat. ch. 394). Thus, under the plain language of § 15.99, subd. 1(c), Motokazie's requested zoning ordinance "text amendment" was a "request related to zoning" as a matter of law.

2. **ERROR NO. 2: The district court's refusal to apply the second part of this Court's "[u]ltimate[] . . . conclu[sion]" in *Advantage Capital***

Following its plain language acknowledgement, the district court next quoted, as follows, the "[u]ltimate[] . . . conclu[sion]" of this Court in *Advantage Capital*:

Ultimately, the court concluded, "[i]n the light of the legislative history, purpose, and effect of the competing interpretations, . . . that 'a written request relating to zoning' is [(1)] a request to conduct a specific use of land within the framework of the regulatory structure relating to zoning **or**, in other words, [(2)] a zoning application.

Add.8 (emphasis and bracketed information added). Based on this "[u]ltimate[] . . . conclu[sion]," the district court noted that this Court ruled that "building-permit applications" are not "requests related to zoning" under § 15.99, subd. 1(c) because they are neither "a request to conduct a specific use of land within the framework of the regulatory structure relating to zoning" nor "a zoning application." Add.8-9.

While applying the first part of this Court's "[u]ltimate[] . . . conclu[sion]" (Add.8), the district court completely ignored the second part – *i.e.*, whether the requested "text amendment" was "a zoning application." *Id.* There is no ambiguity in the second part of this Court's "[u]ltimate[] . . . conclu[sion]" in *Advantage Capital* — that is, "that 'a written request relating to zoning' is . . . a zoning application." Add.8 (quoting *Advantage Capital*, 664 N.W.2d at 427) (emphasis added). And this second part was later reinforced by the Supreme Court. *See Hans Hagen Homes, Inc.*, 728 N.W.2d at 540 (the legislature enacted the 60-day Rule "to establish deadlines for local governments to take action on zoning applications") (emphasis added).

The district court's omission is fatal because, unlike the "building-permit applications" in *Advantage Capital*, the requested zoning ordinance "text amendment" was without question "a zoning application." Indeed, an application for a "text amendment" to a zoning ordinance could not be anything but a "zoning application." No one has argued (or can in good faith argue) otherwise.

3. ERROR NO. 3: The district court's erroneously characterized § 15.99 "rezoning" cases

As the key to its summary judgment decision, "the [district] court's survey of the applicable case law" applying § 15.99 identified four appellate decisions which treated "rezoning" applications as "requests related to zoning" under § 15.99, subd. 1(c). Add.8. As identified and explained by the district court, these four appellate cases are as follows:

Johnson v. Cook County, 786 N.W.2d 291 (Minn. 2010) (application to rezone specific property); *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536 (Minn. 2007) (application to rezone specific property); *Allen v. City of Mendota Heights*, 694 N.W.2d 799 (Minn. App. 2005) (application for . . . rezoning for development of specific property); . . . *Tollefson Development, Inc. v. City of Elk River*, 665 N.W.2d 554 (Minn. App. 2003) (rezoning of specific property).

Id. (emphasis added).⁷

⁷ In its summary judgment opposition below, County argued that "[n]one of these cases even addressed whether the 60-day rule applied to rezoning." See 1/24/12 County SJ Opp. Br. at 30. This is erroneous. While none of the four "rezoning" cases enforced § 15.99, subd. 2(a)'s "automatic approval" penalty, each of the cases analyzed and applied § 15.99 to the "rezoning" requests. See *Johnson*, 786 N.W.2d at 296 (Supreme Court applied § 15.99 to request to rezone two parcels, but determined that "automatic approval" penalty did not apply because "the failure to comply with the written-reasons requirement does not result in the application of the penalty provision . . . provided the agency decision is made within the time deadline"); *Hans Hagen Homes*, 728 N.W.2d at 544 (Supreme Court applied § 15.99 to rezoning request, but determined that "automatic approval" penalty did not result from county's failure to provide rezone applicant with a

Beyond the four "rezoning" cases cited by the district court, there are at least three other like judicial decisions. See, e.g., *Concept Props., LLP v. City of Minnetrista*, 694 N.W.2d 804, 826 (Minn. App. 2005) (with respect to requests to amend comprehensive plan to place subject property in the MUSA and to rezone property to R2, "[t]he parties agree that the deadline for approving or denying Concept Properties' application, after numerous written extensions [of the 60-day deadline in § 15.99], was May 27, 2003"), *review denied* (Minn. July 19, 2005); *Veit USA, Inc.*, No. 71-CV-07-1855 (A.42-52) (with respect to request to "rezone [a 200-acre] property from agricultural to heavy industrial," district court applied the 60-day Rule and "automatically approved" of the rezoning) (emphasis added); *VONCO Corp.*, No. C2-01-969 (A.34-41) (with respect to request to "rezone 160 acres of land from 'agricultural' to 'industrial'," court applied the 60-day Rule and "automatically approved" of the rezoning) (emphasis added). And there is no case law which holds that rezoning requests are not subject to the 60-day Rule.⁸

statement of written reasons for denial); *Allen*, 694 N.W.2d at 802-04 (this Court applied § 15.99 to rezoning request, among others, to determine that 60-day deadline was stayed by subdivision 3(d) pending completion of environmental review); *Tollefson Dev., Inc.*, 665 N.W.2d 554, 558 (Minn. App. 2003) (this Court applied § 15.99 to rezoning request and determined that 60-day deadline began to run from the date the amendment to the rezoning request was submitted rather than date of the original application submission).

⁸ Indeed, the Association of Minnesota Counties' Handbook for Minnesota Counties, as well as the League of Minnesota Cities' Handbook for Minnesota Cities, both advise that the 60-day Rule applies to requests for "rezoning." The Handbook for Minnesota Counties advises, with regard to requests for "rezoning," that "[c]are should be taken so that the 60-day [R]ule discussed previously is not violated, resulting in an automatic granting of the rezoning." A.97 (emphasis added). The Handbook for Minnesota Cities likewise advises its members that they "must remember that they generally have only 60 days to approve or deny a written request relating to zoning, including rezoning requests." A.171 (emphasis added).

But, without providing any explanation for so doing, the district court then inexplicably concluded that these "rezoning" cases, as well as the three other § 15.99 cases in its "survey of the applicable case law," "only . . . applied [the 60-day Rule] to [(1)] requests for specific property uses within an existing legislative framework and [(2)] never to an application for amendment of an ordinance." *Id.* (emphasis and bracketed information added). This is, as it relates to the four "rezoning" cases cited by the district court and the other three "rezoning" cases cited above, demonstrably false. For each of these "rezoning" cases, the "rezoning" applications at issue were not "requests for specific property uses" but rather "application[s] for amendment of an ordinance." Indeed, the Supreme Court has confirmed that a request for "rezoning" seeks to amend the existing zoning ordinance. *See Honn v. City of Coon Rapids*, 313 N.W.2d 409, 417 (Minn. 1981) ("In enacting a zoning ordinance or in amending an ordinance to rezone, the approach is legislative") (emphasis added).

Minnesota appellate decisions have, in fact, repeatedly confirmed that decisions on requests for "rezoning" do not regard "specific property uses" but rather reflect legislative judgment regarding the effect of the requested "rezoning" on the public. *See State, by Rochester Ass'n of Neighborhoods v. City of Rochester*, 268 N.W.2d 885, 889 (Minn. 1978) ("In passing a zoning or rezoning ordinance, a city council is required to make a legislative judgment that a certain zoning classification will promote the 'public health, safety, morals and general welfare'"); *see also Honn*, 313 N.W.2d at 414 ("rezoning involves a legislative determination"); *In re Merritt*, 537 N.W.2d 289, 290 (Minn. App. 1995) ("Merritt's request for rezoning called for the county board's legislative action").

Indeed, "[w]hile an amendment of the zoning ordinance can permit particular property to be used in a manner formerly forbidden by the ordinance," it is, nonetheless, not a decision on a "specific property use." *See State, by Rochester Ass'n of Neighborhoods*, 268 N.W.2d at 889.

This Court's decision in *St. Croix Development, Inc.*, 446 N.W.2d 392 is instructive. In that case, developers submitted a petition to "rezone" the subject property in order to obtain a preliminary plat for a planned townhome development. *Id.* at 395. After the city denied the rezoning petition, the developers appealed, arguing that the denial lacked a rational basis. *Id.* at 395-96. In affirming the city's denial of the requested "rezone," this Court rejected the developers' argument that the city was required to evaluate the impacts of the specific project being proposed. *Id.* at 398-99. Instead, this Court held, as follows, that legislative "rezoning" decisions do not consider specific property uses or impacts but rather the impact the requested "rezoning" would have on the public health, safety and welfare generally:

When considering an application to rezone property, the city considers more factors than are presented by the particular project. Zoning and rezoning decisions are legislative in nature and are distinguished from decisions on variances and special use permits, which are quasi judicial. *See Honn* 313 N.W.2d at 417; *State, by Rochester Association of Neighbors v. City of Rochester*, 268 N.W.2d 885, 889 (Minn. 1978). In particular,

[i]n passing a zoning or rezoning ordinance, a city council is required to make a legislative judgment that a certain zoning classification will promote the "public health, safety, morals and general welfare." Minn. St[at]. 462.357, subd. 1. In granting or denying a special-use permit, a city council is not altering the legislative judgment as to the zoning classification. Rather, it has the function, adjudicative in nature, of applying specific use

standards set by the zoning ordinance to a particular individual use and must be held strictly to those standards.

Id. Therefore, when a local governing body acts in its legislative policy-making capacity and denies a petition to amend a zoning ordinance [for a rezoning], this court's scope of review is narrowed and the scope of the change being requested is determined by the requested zoning classification, not by the specifics of the proposed project.

Id. (emphasis and bracketed information added).

The district court's fundamentally mistaken reading of these § 15.99 "rezoning" cases is critical because the district court compounded its mistake by relying on this error to conclude that the requested "text amendment" is not a "request related to zoning." The district court explained that the requested "text amendment" "is a request to change the zoning-regulations framework such that new types of uses would be permitted universally within Rice County" (Add.8) — or, more specifically, within County's Agricultural and Urban Resource zoning districts. While the district court's characterization of the requested "text amendment" is accurate, this characterization was, generally speaking, also true of each of the requests in the four "rezoning" cases which were recognized to be "requests related to zoning" subject to § 15.99. The district court's characterization of the requested "text amendment" is, as well, true of all requests for "rezoning or land use amendments" under Ordinance § 503.04(D) and true of all other requests for "text amendments."

4. **ERROR NO. 4: The district court failed to recognize that, as it relates to whether they are "requests related to zoning" under § 15.99, subd. 1(c), there are no material "differences" between "rezoning" and "text amendment" requests**

As an attempt to further illustrate that the requested "text amendment" is not a "request related to zoning" under § 15.99, subd. 1(c), the district court identified "notable **differences** between the requirements for a conditional use permit application under [Ordinance] § 503.05 and those for a zoning amendment application under [Ordinance] § 503.04" (Add.9 (emphasis added)), which, again, consists of "text amendments" and "rezoning or land use amendments." But, due to its express acknowledgement that one of County's two Ordinance-defined "zoning amendments" (*i.e.*, "rezoning" applications) have been uniformly recognized as "requests related to zoning" subject to § 15.99, the district court's comparison between CUPs and "zoning amendments" under the Ordinance is irrelevant.

Based on the district court's acknowledgement that "rezoning" applications have been uniformly recognized as "requests related to zoning" under § 15.99, subd. 1(c) (Add.8), the relevant comparison within the Ordinance is, instead, the "difference," if any, "between the requirements . . . for [the two types of] zoning amendment application under [Ordinance] § 503.04." More precisely, the relevant comparison is between (1) an Ordinance § 503.04(D) "rezoning or land use amendment," which the district court recognized is the type of application that has been uniformly recognized to be a "request related to zoning" under § 15.99, subd. 1(c) (Add.8), and (2) an Ordinance § 503.04(C)

"text amendment," which the district court held is not a "request related to zoning" under § 15.99, subd. 1(c) (Add.8-9).

A "rezoning" application under Ordinance § 503.04(D) "is a request to change the zoning regulations framework such that new types of uses would be permitted" within County on the subject property. Similarly, a "text amendment" application under Ordinance § 503.04(C) is a "request to change to zoning-regulations framework such that new types of uses would be permitted within Rice County" in the zoning district(s) which allow for the affected use that is subject to the "text amendment" under Ordinance § 503.04(D). Each type of Ordinance-defined "zoning amendment" is thus a "request to change the zoning-regulations framework such that new types of uses would be permitted within Rice County" either (1) on the subject property (for "rezoning or land use amendments" under § 503.04(D)) or (2) in the zoning district(s) which allow for the affected use that is subject to the "text amendment" (for "text amendments" under § 503.04(C)). Each type of Ordinance-defined "zoning amendment" is, to use the district court's description, a "request to change the 'regulatory structures relating to zoning' rather than a request 'within the framework of that regulatory structure.'" Add.9.

Therefore, per County's own Ordinance, requests for "rezonings" and "text amendments" must be classified the same for purposes of § 15.99 — that is, they both are "requests related to zoning." The district court's contrary treatment was legal error.

5. ERROR NO. 5: The district court failed to address the only appellate decision on point, which compels the recognition of "text amendments" within "county boundaries" as "requests related to zoning" under § 15.99, subd. 1(c)

Other than the previously-identified "rezoning" cases, the only appellate decision regarding the application of the 60-day Rule to a "request" similar to an ordinance "text amendment" is this Court's recent decision in *In Re System Designation of Multi-Flo Wisconsin Aerobic Treatment Units*, No. C0-01-823, 2001 WL 1665410 (Minn. App. Dec. 21, 2011) (A.363-68) (*Multi-Flo*). Motokazie and County addressed both in their respective summary judgment briefs (1/24/12 County SJ Opp. Br. at 21-25; 1/30/12 Motokazie SJ Reply Br. at 4) and during their respective summary judgment oral argument (A.339-40, 352-53), the *Multi-Flo* decision as it relates to the applicability of the 60-day Rule to the requested "text amendment." The district court's Order is, however, conspicuously devoid of any mention (let alone analysis) of the case. See Add.5-11.

In *Multi-Flo*, this Court ultimately determined that the 60-day Rule was not intended to approve by default (or untimely action) of "unproven sewage-treatment systems as 'standard systems'" because of the potential for a "negative statewide effect." *Multi-Flo*, 2001 WL 1665410, at *3-4. But, in so ruling, this Court confirmed that the 60-day Rule was, per the legislative history, intended to apply to such legislative "requests" within "a local geographic area" and "constrained area," including, specifically, "county boundaries." *Id.* at *4.

This Court summarized this legislative history as follows:

The statute was enacted in 1995. *See* 1995 Minn. Laws ch. 248, art. 18, § 1. During committee hearings and floor debates on the bill, legislators discussed hypothetical situations to which the 60 day time limit would apply. The geographical scope of these situations ranged from an individual property to county boundaries. *See Hearing on S.F. 647 Before the Senate Comm. on Governmental Operations and Veterans* (Mar. 29, 1995) (statement of Sen. Beckman) (County of Faribault to install septic system); *Hearing on H.F. 641 Before the House Comm. on Local Gov't and Metro. Affairs* (Apr. 6, 1995) (statement of Rep. Kelley) (shelter seeking conditional-use permit); *Senate Floor Debate on S.F. 1246* (May 2, 1995) (statements of Sen. Weiner and Sen. Mondale) (city to expand and lay down sewers). We find no indication that the legislature intended for section 15.99 to apply to actions with statewide effect.

Id. (italics in original; underlining added). From this legislative history, this Court added that "the legislature was prepared to accept negative local consequences from the automatic approval of requests resulting from agency delays." *Id.* (emphasis added).

The requested "text amendment" fits squarely within the legislatively intended parameters of the 60-day Rule as recognized by this Court in *Multi-Flo*. The request, if "automatically approved" under § 15.99, subd. 2(a), would have an effect only within "[C]ounty boundaries" (*i.e.*, within County's Agricultural and Urban Resource Zoning districts) — that is, it would only have a "negative local consequence[]." Hence, the request is, per this Court's *Multi-Flo* decision, a "request" subject to § 15.99. And, since it is undisputed that County failed to timely "approve or deny" the request within the requisite 60-day deadline, the request was "automatically approved" as a matter of law per the 60-day Rule no later than November 14, 2011. The district court's contrary decision was legally erroneous and should be reversed.

CONCLUSION

A *de novo* review of the district court's decision compels its reversal on either of two independent grounds. The requested zoning ordinance "text amendment" was (1) actually approved as a matter of law per County Board's November 22, 2011 "majority vote" (3-2) in favor of the request and/or (2) "automatically approved" by operation of law pursuant to the 60-day Rule. Under either or both bases, the district court's decision should be reversed and Motokazie's requested "text amendment" should be approved as a matter of law.

DATED: May 23, 2012

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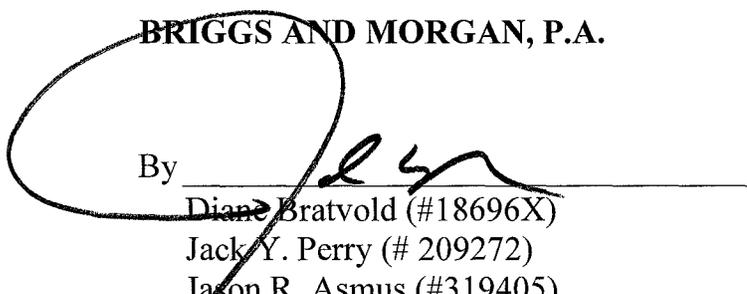
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CERTIFICATE OF COMPLIANCE

The undersigned counsel for Appellants certifies that this brief complies with the requirements of Minn. R. App, P. 132.01 in that it is printed in 13 point, proportionately spaced typeface utilizing Microsoft Word 2007 and contains 12,333 words, including headings, footnotes and quotations.

DATED: May 23, 2012

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