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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0020

Eureka Township,
Appellant,

vs.

Teresa Lynn Petter, et al.,
Respondents.

Filed September 5, 2017
Affirmed in part, reversed in part, and remanded; motion dismissed
Hooten, Judge

Dakota County District Court
File No. 19HA-CV-15-2725

Chad D. Lemmons, Martin H.R. Norder, Kelly & Lemmons, P.A., St. Paul, Minnesota (for appellant and cross-respondent)

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Considered and decided by Reyes, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

U N P U B L I S H E D O P I N I O N

HOOTEN, Judge

Appellant township challenges the decision of the district court invaliding its exotic animal ordinance, Eureka, Minn. Ordinance Code (EOC) 3, Chapter 7, Section 3 (2017), on the basis that it conflicts with state law. In their related appeal, respondents challenge

the district court's order: (1) barring respondents from conducting exhibitions and sales relating to their possession of exotic animals; (2) determining that respondent Daniel Storlie is not an animal control officer within the meaning of an exception to the ordinance; and (3) limiting respondents' horticultural sales to only products produced on the property.

We reverse the invalidation of the township's exotic animal ordinance and reverse the injunction prohibiting respondents from having exotic animal exhibitions and related retail sales on their property. But we affirm the district court's order limiting respondents' horticultural sales to only products produced on the property. Relative to respondents' possession of exotic animals, we affirm the district court's application of the grandfathered ownership exception to the exotic animal ordinance, but we reverse the district court's decision that Storlie is not an animal control officer within the meaning of that exception to the ordinance and hold that he may possess exotic animals in conjunction with his work. We therefore remand to the district court for the issuance of an order enjoining respondents from possessing exotic animals except those identified within the exceptions to the township's exotic animal ordinance and from exhibiting exotic animals except as allowed under the township's legal, nonconforming use provision.

FACTS

Appellant Eureka Township (the township) is a Minnesota political subdivision. It enacted a zoning ordinance in 1978 that classifies the use of land within the township. In June 2005, the township adopted an exotic animal ordinance, which prohibits the possession of exotic animals within the township unless the possessor fits into one of several exceptions. EOC 3, ch. 7, § 3. These exceptions include animal control officers,

licensed veterinary hospitals or clinics, any state licensed wildlife rehabilitator with temporary possession of exotic animals, and any persons whose possession is a legal, nonconforming use. EOC 3, ch. 7, § 3(C).

Respondent Teresa Petter owns agriculturally zoned property in the township. Both Petter and respondent Daniel Storlie live on the property. Petter operates a nonprofit corporation called Wolves, Woods & Wildlife on the property. She also runs an animal exhibition business called Fur-Ever Wild Ltd. Over the years, Petter has acquired and possessed, and exhibited to the public, several species of animals that the township describes as exotic. Storlie is a wildlife specialist for the United States Department of Agriculture (USDA), and part of his duties include removing animals from a Metropolitan Airport Commission (MAC) airport located in the township.

In 2006, Petter requested a building permit from the Eureka Township Board (the board) for a structure that could house exotic animals. The board approved the permit in 2007 for the building of a barn for horses and other farm-type animals allowed under the township ordinances. The board also requested that an inventory of Petter's animals be taken to determine whether the property complied with the township's zoning ordinance.

In 2008, after numerous requests by the board, Petter submitted an inventory listing estimates of the number of animals possessed on the property. This inventory included wolves, foxes, raccoons, lynxes, bobcats, skunks, fishers, porcupines, beavers, coyotes, woodchucks, minks, badgers, wolverines, and otters. Petter noted that the number of animals fluctuated during the year because of breeding and pelting seasons. The board expressed concern about the considerable ranges in the number of animals listed in the

inventory and its discrepancies with a related Minnesota Department of Natural Resources (DNR) report.

In 2010, Petter applied for a permit with an agricultural building exemption to build a fox shelter. The board perceived the shelter as a permissible commercial agricultural use for fur-bearing animals and approved the permit with the agricultural exemption. In 2011, Petter filed for another agricultural building exemption for a building that would house fur-bearing animals, store agriculture products, and include a food preparation shelter, quarantine room, and office space. But, the board questioned whether the building would be used to hold public tours and suggested that Petter move forward without attempting to claim the agricultural exemption.

In 2008, the board began receiving citizen complaints about Petter's possession of exotic animals. In response to a complaint from August 2013, the board held a meeting and ultimately determined that Petter's possession of the animals complied with the exotic animal ordinance. Citizens sued the board, seeking enforcement of the exotic animal ordinance against Petter and Storlie. *See Fredlund v. Eureka Twp. Bd. of Supervisors*, No. A14-0945, 2015 WL 1880218, at *3 (Minn. Apr. 27, 2015). That lawsuit was later resolved.

In July 2015, the township filed suit against Petter, Storlie, Wolves, Woods & Wildlife, and Fur-Ever Wild Ltd (collectively, respondents). The township sought to enjoin respondents from possessing exotic animals, operating an animal exhibition, and operating a business pelting exotic animals. The district court denied the parties' motions for summary judgment, and the case proceeded to trial.

After holding a three-day bench trial, the district court issued an order for judgment in October 2016. The district court invalidated the exotic animal ordinance, concluding that it conflicted with Minn. Stat. §§ 17.351, .352 (2016). The district court also determined that an animal exhibition was not a permissible use under the zoning ordinance. The district court therefore permanently enjoined respondents from operating an animal exhibition and conducting any retail sales, except for horticultural products, within the township. The township moved to amend the order, requesting that the order be altered to limit respondents' retail sales to horticultural products produced on the property. The district court granted the motion and made the amendment in an order filed in December 2016. Both the township and respondents appeal.

D E C I S I O N

I.

The township contends that the district court erred by invalidating the exotic animal ordinance, EOC 3, ch. 7, § 3. We presume that ordinances are valid and will not set an ordinance aside unless its "invalidity is clear." *Lyons v. City of Minneapolis*, 241 Minn. 439, 443, 63 N.W.2d 585, 588 (1954) (quotation omitted).

A. The exotic animal ordinance does not conflict with Minnesota statutes.

The parties first dispute whether the exotic animal ordinance conflicts with Minnesota statutes, specifically Minn. Stat. §§ 17.351, .352 (2016) and Minn. Stat. §§ 97A.001–.56 (2016). We review de novo the interpretation of state statutes and local zoning ordinances. *Buss v. Johnson*, 624 N.W.2d 781, 784 (Minn. App. 2001).

An ordinance is invalid when it directly and irreconcilably conflicts with a statute. *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 352, 143 N.W.2d 813, 816 (1966). This is because municipalities have no inherent powers and can only enact an ordinance when the authority is expressly conferred by statute or implied as necessary to support powers which are expressly conferred. *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 312 (Minn. 2017). Minnesota caselaw has established four guiding principles to determine whether an ordinance conflicts with a statute: "(a) As a general rule, conflicts which would render an ordinance invalid exist only when both the ordinance and the statute contain express or implied terms that are irreconcilable with each other"; "(b) More specifically, it has been said that conflict exists where the ordinance permits what the statute forbids"; "(c) Conversely, a conflict exists where the ordinance forbids what the statute expressly permits"; and "(d) It is generally said that no conflict exists where the ordinance, though different, is merely additional and complementary to or in aid and furtherance of the statute." *Mangold Midwest Co.*, 274 Minn. at 352, 143 N.W.2d at 816.

Our analysis begins with the ordinance's language. "A zoning ordinance should be construed (1) according to the plain and ordinary meaning of its terms, (2) in favor of the property owner, and (3) in light of the ordinance's underlying policy goals." *Watab Twp. Citizen All. v. Benton Cty. Bd. of Comm'rs*, 728 N.W.2d 82, 94 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. May 15, 2007). The pertinent language of the exotic animal ordinance provides:

> B. Keeping of Exotic Animals Prohibited
>
> 1. It shall be unlawful for any person to own, possess, keep, harbor, bring, or have in one's possession an exotic animal within Township limits.

EOC 3, ch. 7, § 3(B). The plain and ordinary meaning of the ordinance is to prohibit possession of exotic animals within the township. The township's zoning ordinance defines "Exotic Animal" as:

> Any animal that is not normally domesticated in the United States or is wild by nature. Exotic animals include, but are not limited to, any of the following orders and families, whether bred in the wild or captivity, and also any of their hybrids with domestic species. The animals listed in parentheses are intended to act as examples and are not [to] be construed as an exhaustive list or limit the generality of each group of animals, unless otherwise specified:
>
> A. Non-human primates and prosimians (monkeys, chimpanzees, baboons)
> B. Felidae (lions, tigers, bobcats, cougars, leopards, jaguars, not domesticated cats)
> C. Canidae (wolves, coyotes, foxes, jackals, not domesticated dogs)
> D. Ursidae (all bears)
> E. Repitilia (all venomous snakes, all constricting snakes, iguanas, turtles, lizards)
> F. Crocodilia (alligators, crocodiles)
> G. Proboscidae (elephants)
> H. Hyanenidae (hyenas)
> I. Artiodactyla (hippopotamuses, giraffes, camels, not cattle or swine or sheep or goats)
> J. Procyonidae (raccoons, coatis)
> K. Marsupialia (kangaroos or possums)
> L. Perissodactylea (rhinoceroses, tapirs, not horses or donkeys or mules)
> M. Edentata (anteaters, sloths, armadillos)
> N. Viverridae (mongooses, civets, genets)

EOC 1, ch. 4 (2017). We first address whether the ordinance conflicts with Minnesota's fur farming statutes.

1. The ordinance does not conflict with Minn. Stat. §§ 17.351, .352.

The district court concluded that the exotic animal ordinance directly conflicts with two Minnesota statutes, Minn. Stat. §§ 17.351 and .352, which concern fur farming for agricultural purposes. Respondents claim that the ordinance's definition of "exotic animals" directly conflicts with the term "fur-bearing animal" as defined in Minn. Stat. §§ 17.351, .352 because the ordinance's broad definition would prohibit them from possessing many of the fur-bearing animals, such as foxes, which they assert are permitted under the statutes. Minn. Stat. § 17.351, subd. 3 defines "fur-bearing animal" as "a fox, mink, fitch, chinchilla, karakul, marten, nutria, or fisher that is the second or later generation raised in captivity." Minn. Stat. § 17.352 further clarifies that, "Fur-bearing animals are domestic animals and products of fur-bearing animals are agricultural products."

While the list of animals in the exotic animal ordinance encompasses some of the fur-bearing animals enumerated in Minn. Stat. § 17.351, subd. 3, this alone does not result in a conflict. A conflict occurs when "the ordinance forbids what the statute *expressly* permits." *Bicking*, 891 N.W.2d at 313 (emphasis in original) (quotation omitted). Minn. Stat. § 17.351 and Minn. Stat. § 17.352 are merely definition statutes. The operative language that explains how these definitions apply is within Minn. Stat. § 17.353 (2016), a statute that the district court did not consider in any significant detail. That statute provides that "a fur farmer *may* register" (emphasis added) with the commissioner of

natural resources (DNR) and that such registration requires registered fur farmers to report the number of pelts sold each year.

The express purpose of the ordinance is "to protect the public against the health and safety risks that exotic animals pose to the community and to protect the welfare of individual animals that are held in private possession."[1] EOC 3, ch. 7, § 3(A) (2017). The fur farming statutes, however, do not relate to community safety or animal welfare but rather outline a voluntary registration system as well as transportation and sale procedures for registered fur farmers.[2] And, Minn. Stat. § 17.354 (2016) states that the fur farming statutes, sections 17.351 to 17.353, do not affect any statutory provision "relating to wild animals." Because the exotic animal ordinance regulates possession for the purposes of public safety and animal welfare and the fur farming statutes govern a voluntary registration system for fur farmers, the ordinance does not forbid any activity that these statutes expressly permit. We conclude that the district court erred in invalidating the exotic animal ordinance on the basis that it conflicts with Minn. Stat. §§ 17.351, .352.

[1] This is consistent with state law that explicitly confers upon townships the authority to promote health, safety, order, convenience, and the general welfare. *See* Minn. Stat. § 365.10, subd. 17(a)(6)–(7) (2016).

[2] We have previously held that a prior fur farming statute, Minn. Stat. § 17.35, "was not intended to regulate the treatment of animals." *Friends of Animals & Their Env't v. Nichols*, 350 N.W.2d 489, 492 (Minn. App. 1984), *review denied* (Minn. Dec. 20, 1984). We note, however, that this case has limited value because Minn. Stat. § 17.35 was repealed and replaced by the current statutory scheme regarding fur farming. *See* 1985 Minn. Laws ch. 44, § 5, at 120.

2. The ordinance does not conflict with Minn. Stat. §§ 97A.001–.56.

Respondents claim that the exotic animal ordinance conflicts with the state's game and fish laws, Minn. Stat. §§ 97A.001–.56. The district court did not specifically address whether the exotic animal ordinance conflicts with any of the state's game and fish laws.

Respondents' argument relies on Minn. Stat. § 97A.105, which establishes game and fur farming licensing requirements for implementation by the DNR. The statute provides that "[a] person may breed and propagate fur-bearing animals, game birds, bear, or mute swans only on privately owned or leased land and after obtaining a license." Minn. Stat. § 97A.105, subd. 1(a). A game farm license may be issued to an applicant who is responsible, has adequate knowledge of how to care for the animals, and has adequate fencing, facilities, and necessities to care for and protect the animals. Minn. R. 6242.0600 (2015). For purposes of the game and fish laws, "fur-bearing animals" are defined as "mammals that are protected wild animals, except big game." Minn. Stat. § 97A.015, subd. 22. The statute explains that the definition of "protected wild animals" includes both big game and small game. *Id.*, subd. 39. The statute further defines small game as "game birds, gray squirrel, fox squirrel, cottontail rabbit, snowshoe hare, jack rabbit, raccoon, lynx, bobcat, wolf, red fox and gray fox, fisher, pine marten, opossum, badger, cougar, wolverine, muskrat, mink, otter, and beaver." *Id.*, subd. 45.

As with the fur farming statutes, the game and fish laws list certain "fur-bearing animals," such as foxes and wolves, which are specifically prohibited under the exotic animal ordinance. But, definitions that appear incompatible alone cannot create a conflict; we must look to the operative language of Minn. Stat. § 97A.105 and the corresponding

agency rules to determine whether a conflict exists between the game and fish laws and the ordinance. *See Mangold Midwest Co.*, 274 Minn. at 352, 143 N.W.2d at 816. As discussed previously, a conflict exists when "the ordinance forbids what the statute *expressly* permits." *Bicking*, 891 N.W.2d at 313 (emphasis in original) (quotation omitted). Similar to the fur farming statutes, the aim of the state's game and fish laws—establishing licensing and permit requirements—is different than the policies underlying the exotic animal ordinance—protecting the public and animal welfare. The prohibition of exotic animals under the township's ordinance therefore does not prohibit the DNR from issuing a game farm license. We conclude that the exotic animal ordinance does not conflict with Minn. Stat. §§ 97A.001–.56.

In addition to the lack of a conflict, we note that the DNR is not authorized to override the broad grant of authority given to municipalities and townships in zoning matters. Respondents' argument implies that because their possession and care of exotic animals at their farm has been approved by the licensing authority of the DNR, the township is prohibited from enacting and enforcing a zoning ordinance that would prohibit such possession. But, this ignores the legislature's broad grant of zoning authority to townships under Minnesota's Municipal Planning Act. *See* Minn. Stat. § 462.357, subd. 1 (2016); *see also Altenburg v. Bd. of Supervisors of Pleasant Mound Twp.*, 615 N.W.2d 874, 878 (Minn. App. 2000), *review denied* (Minn. Nov. 21, 2000). "Zoning ordinances were established to control land use, and development in order to promote public health, safety, welfare, morals, and aesthetics." *In re Stadsvold*, 754 N.W.2d 323, 329 (Minn. 2008) (quotation omitted). As a result, municipalities and townships have broad discretion in

enacting zoning ordinances. *Odell v. City of Eagan*, 348 N.W.2d 792, 796 (Minn. App. 1984).

Respondents have not provided any legal authority that would support their implicit claim that the legislature intended that its grant of licensing authority to the DNR could be used to invalidate a zoning ordinance enacted pursuant to the grant of authority by another state statute. The DNR, as an administrative agency, only has the power given to it by the legislature and "[n]either an agency nor the courts may enlarge the agency's powers beyond which was contemplated by the legislative body." *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010) (quotations omitted). The DNR, which is authorized to issue game and fish licenses, does not have either the express or implied statutory authority to ignore, impede, or circumvent the township's zoning ordinance. *See id.* at 321 (holding that because statutes did not unambiguously grant authority for DNR to certify city's variance decision and there is no implied authority for such certification, DNR did not have express or implied authority to do so); *see also Siewart v. N. States Power Co.*, 793 N.W.2d 272, 282 n.2 (Minn. 2011) (applying *Hubbard* analysis in deciding whether Minnesota Public Utilities Commission had express or implied authority to exercise jurisdiction over common law tort claims against public utilities).

Respondents' interpretation would result in an absurd situation where a township's enactment of a zoning ordinance for the public health and safety of its citizens could be invalidated merely by the DNR's issuance of a game license to a single individual in the township, thereby nullifying or making conditional the broad statutory grant of zoning authority to the township. Applying the presumptions set forth in Minn. Stat. § 645.17

(2016) in determining the legislature's intent relative to this interaction, we conclude that the legislature did not intend for this absurd result, that it expected that its broad grant of zoning authority to the township would be effective, and that the zoning ordinance enacted for the public health and safety of its citizens take precedence over the DNR's issuance of a game license to a single individual.

Therefore, the issuance of a game and fish license to an individual is subject to local zoning ordinances enacted by townships to protect the health and public safety of its citizens. *See Canadian Connection v. New Prairie Twp.*, 581 N.W.2d 391, 396 (Minn. App. 1998) (noting that permit from state's pollution control agency must conform to local permit requirements), *review denied* (Minn. Sept. 30, 1998). Presumably, in recognition of these statutory and caselaw limitations on its authority in issuing licenses, the DNR form application completed by Petter for a game and fur farming license provides that "[i]ssuance of this license does not exempt [the applicant] from compliance with other pertinent laws, ordinances, and regulations," and even more specifically that "[i]ssuance of this license does not exempt [the applicant] from compliance with *local ordinance or zoning laws*." (Emphasis added.)

We conclude that not only is there no conflict between the township's exotic animal ordinance and the state's game and fish laws but also that the legislature did not intend to grant authority to the DNR which could override the authority given to townships in creating their zoning laws.[3]

[3] The township proposed that if we determined that the exotic animal ordinance conflicts with Minn. Stat. §§ 17.351, .352, only a portion of the ordinance, specifically the inclusion

B. The exotic animal ordinance is not otherwise preempted by state law.

Respondents assert that regardless of whether the exotic animal ordinance conflicts with state law, the ordinance is preempted under the doctrine of field preemption. Field preemption occurs when state law fully occupies a particular field of legislation and "leaves no room for local regulation." *Altenburg*, 615 N.W.2d at 880. When field preemption occurs, any local law that governs, regulates, or controls an aspect within that field is deemed void, even if the local law and state law do not conflict. *In re Appeal of Rocheleau*, 686 N.W.2d 882, 890 (Minn. App. 2004), *review denied* (Minn. Dec. 22, 2004). Whether an ordinance is preempted by state law is a question which appellate courts review de novo. *Bicking*, 891 N.W.2d at 312.

In deciding whether state law preempts a local ordinance, we consider four factors: (1) the subject matter regulated; (2) whether the subject matter is so fully covered by state law that it has become solely a matter of state concern; (3) whether any partial legislation on the subject matter evinces an intent to treat the subject matter as being solely a state concern; and (4) whether the nature of the subject matter is such that local regulation will have an adverse effect on the general state population. *Rocheleau*, 686 N.W.2d at 890.

Regarding the first factor, the district court determined that the subject matter at issue is the possession of certain animals within the township. For the second and third

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of foxes as an exotic animal, need be struck down. Respondents claimed that the township waived this severability theory because it was not presented to the district court. Prior to oral argument, the township moved to strike the section of respondents' reply brief pertaining to this waiver argument. Because we conclude that the exotic animal ordinance does not conflict with any Minnesota statute, this severability issue and the motion to strike are moot.

factors, the district court determined that the legislature does not indicate that animal possession is a matter solely of state concern and that Minnesota statutes do not explicitly prohibit local regulation. For these reasons, the district court concluded that state law does not preempt the exotic animal ordinance. We agree.

Respondents argue that the licensing scheme set forth in these statutes extensively covers the ownership and possession of the animals relevant to this case. We recognize that the ownership and preservation of wild animals has historically been a matter of state interest. *See State v. Rodman*, 58 Minn. 393, 400, 59 N.W. 1098, 1099 (1894) ("[T]he ownership of wild animals . . . is in the state, not as proprietor, but in its sovereign capacity, as the representative, and for the benefit, of all its people in common. The preservation of such animals . . . is within the police power of the state."); *see also* Minn. Stat. § 97A.025 (2016) (codifying concept).

But, respondents do not provide any persuasive authority that the legislature intended the game licensing statutes to exclusively cover the entire field regarding the possession and retailing of these exotic animals to the exclusion of the zoning ordinance enacted by the township pursuant to its statutory zoning authority. Our construction of the fish and game licensing statutes in conjunction with the statutory grant of zoning authority to municipal governments for the purpose of promoting the public health, safety, and general welfare leads us to the conclusion that the legislature did not intend that game and fish licensing statutes preempt zoning ordinances relative to the possession and retailing of exotic animals. For these reasons, we conclude that state law does not preempt the exotic animal ordinance.

C. The exotic animal ordinance is consistent with the township's zoning ordinance as a whole.

Respondents also allege that the township's zoning ordinance as a whole are internally inconsistent. They assert that the exclusion of exotic animals prohibits respondents from raising fur-bearing animals, which is a permissible agricultural operation. This argument is based on the district court's conclusion that a conflict exists between the ordinance provisions themselves because the township permits raising fur-bearing animals as an agricultural operation but prohibits possessing many of the species of animals used for fur-bearing operations as exotic animals.

The zoning ordinance permits "[a]ny and all forms of commercial agriculture and commercial horticulture, as defined by this Ordinance." EOC 3, ch. 2, § 1(B)(1) (2017). The definition of "Commercial agriculture" includes:

> The exclusive use of ten (10) or more contiguous acres of land for the production . . . of livestock products, livestock. For purposes of this section, the term . . . livestock products and livestock shall include, but not be limited to:
>
> B. . . . [F]urs.
>
> C. Livestock as defined herein.

EOC 1, ch. 4. The ordinance defines "agricultural operations" as "[o]perations operating for a profit which include, but [are] not limited to . . . the raising of livestock, fur-bearing animals . . . ." *Id.* The definition of "livestock" includes but is not limited to "poultry, cattle, swine, sheep, goats and horses, but shall not include . . . [e]xotic animals." *Id.*

Respondents claim that the exotic animal ordinance's prohibition is too broad to allow for any fur-bearing operations. We disagree. That statute lists animals that under

the ordinance are not prohibited exotic animals but could be used for fur-bearing operations. For example, Minn. Stat. § 17.351 defines a karakul as a fur-bearing animal. A karakul is explicitly omitted from the ordinance's exotic animal prohibition but would fall within the definition of livestock.[4] *See* EOC 1, ch. 4 (explaining that "cattle or swine *or sheep* or goats" are not exotic animals) (emphasis added). We conclude that the exotic animal ordinance is consistent with the township's zoning ordinance as a whole.

II.

Because we conclude that the ordinance does not conflict with any state statute and is not preempted by state law, we turn next to whether respondents' exhibition and possession of these animals fits within any of the enumerated exceptions to the exotic animal ordinance.

A. Respondents' exhibition of animals is a legal, nonconforming use.

Respondents challenge the district court's order prohibiting them from exhibiting animals and conducting retail sales on the property. The district court determined that exhibiting animals was not a permitted, conditional, or interim use under the zoning ordinance. The township's zoning ordinance governs the use of all land located within the township and lays out the forms of permitted uses and conditional uses. The exhibition of animals is not listed as a permitted use, conditional use, or interim use, and the zoning ordinance provides that "[a]ll other uses and structures which are not specially permitted as a right or by Conditional Use Permit or Interim Use Permit . . . shall be prohibited in the

[4] A "karakul" is "[a]ny of a breed of Central Asian sheep." *The American Heritage Dictionary of the English Language* 957 (5th ed. 2011).

Agricultural District." EOC 3, ch. 2, § 1(E). But, respondents claim that their possession and exhibition of these animals constitutes a legal, nonconforming use that they may continue to exercise on their property.

Minnesota statute and caselaw has established the general principle that a property use or structure that is in existence at the time of an adverse zoning change may continue to exist unless removed or discontinued. *See* Minn. Stat. § 462.357, subd. 1e (2016); *see also Freeborn Cty. v. Claussen*, 295 Minn. 96, 99, 203 N.W.2d 323, 325 (1972) ("A residential zoning ordinance may constitutionally prohibit the creation of uses which are nonconforming, but existing nonconforming uses must either be permitted to remain or be eliminated by use of eminent domain."). In 2005, the township enacted an ordinance titled "Non-Conforming Uses and Structures," which provides that any existing use or structure as of September 7, 2004 may continue as a legal nonconforming use (also known as a grandfathered use) subject to certain conditions. EOC 3, ch. 1, § 4 (2017).

In this case, the district court explicitly found that respondents began exhibiting animals as early as 2003. Based upon this finding, we agree with respondents that to the extent that they legally possessed exotic animals under the township's ordinance, the exhibition of such animals is a legal, nonconforming use under Minnesota law, as well as the township's own ordinance. Accordingly, we must look to the ordinance to determine whether respondents fit into any of the enumerated exceptions which would allow them to continue to possess the exotic animals.

B. Respondents' possession of exotic animals is limited to one exotic animal under the ordinance.

The township enacted the exotic animal ordinance in June 2005. One of the exceptions to the exotic animal ordinance addresses grandfathered ownership. This exception applies to:

> Any person who owned, possessed, kept or harbored exotic animal(s) on or before the effective date of this Chapter, provided that all federal, state, and local licensing and/or approval requirements are met. Any person who falls within this paragraph shall be permitted to hold, keep, harbor or maintain the number of exotic animals that person was legally permitted to hold, keep, harbor or maintain as of the date of adoption of this chapter but shall not be permitted to increase the number of exotic animals held, kept, harbored or maintained within the Township.

EOC 3, ch. 7, § 3 (C)(4). The district court found that Petter possessed one wolf before the ordinance's enactment. The district court thereby concluded that possession of any exotic animal other than one wolf does not qualify for this exception.

Petter testified at trial that the total number of animals has not expanded since 2005. But, the evidence shows that respondents did not obtain their first game farm license until August 2006 and that they did not begin purchasing "starter" animals for exhibition until June 2006. And, the most definitive evidence in the record is a DNR licensing application in which Petter reported that she possessed only one wolf as of March 1, 2006. The evidence is sufficient to support the district court's finding that Petter only possessed one wolf at the time the exotic animal ordinance was enacted and that this animal may have been exhibited as early as 2003.

One of the conditions to the legal, nonconforming use provision states that "no such use shall be expanded or enlarged except in conformity with the provisions of this Ordinance." EOC 3, ch. 1, § 4 (A). Any exhibition that includes more than one exotic animal would amount to an improper expansion of the legal, nonconforming use under the ordinance. For these reasons, we reverse the district court's injunction against respondents' animal exhibitions on their property within the township and remand for entry of an injunction to exclude the possession and exhibition of one wolf as an exception and legal nonconforming use under the township's zoning ordinance.

C. Storlie is an animal control officer.

Respondents also argue that Storlie qualifies as an animal control officer and therefore his possession of exotic animals is exempt from the exotic animal ordinance. Another of the five exceptions to the ordinance is for animal control officers. EOC 3, ch. 7, § 3(C)(1). Because the ordinance does not define the term "animal control officer," we will construe the term (1) according to its plain and ordinary meaning, (2) in a light favorable to the property owner, and (3) in consideration of the ordinance's underlying policy goals. *Watab Twp. Citizen All.*, 728 N.W.2d at 94. Additionally, we may apply general principles of statutory construction to an ordinance's terms. *Chanhassen Estates Residents Ass'n v. City of Chanhassen*, 342 N.W.2d 335, 339 n.3 (Minn. 1984).

The district court applied Minn. Stat. § 343.20, subd. 5 (2016) to conclude that Storlie is not an animal control officer under the ordinance. But that statute's definition of "animal control officer" is limited to Minn. Stat. §§ 343.20–.36 (2016), statutory provisions relating to the prevention of animal cruelty. *See* Minn. Stat. § 343.20, subd. 1. Even though

Storlie is not under contract with the township or any other state governmental subdivision, the undisputed evidence demonstrates that he works as a wildlife specialist for the USDA and performs animal control duties. Using the plain and ordinary meaning of the term, in a light most favorable to respondents, we conclude that Storlie is an animal control officer under the ordinance.

But, viewed in light of other exceptions to the ordinance, particularly the exception for licensed veterinary hospital or clinics, we believe it is reasonable to conclude that this exception applies to temporary possession of exotic animals in conjunction with one's work as an animal control officer. It would be an absurd result if the township intended to allow animal control officers to possess a potentially unlimited number of exotic animals, especially those species completely unrelated to their job duties. *See* Minn. Stat. § 645.17 (explaining that Minnesota courts should presume that legislature does not intend absurd, impossible, or unreasonable results).

Therefore, even though we conclude that Storlie is an animal control officer under the ordinance, respondents' argument that Storlie's employment permits them to permanently harbor exotic animals is unpersuasive because Storlie may possess these animals only to the extent that such possession is associated with his duties as an animal control officer.

III.

Respondents contend that, even if the township's exotic animal ordinance is valid, the township is estopped from prohibiting their possession and showing of their exotic animals. Estoppel is an equitable doctrine in which the district court may exercise its

discretion to prevent a party from taking advantage of its own wrongs by asserting its legal rights against another party. *Nelson v. Comm'r of Revenue*, 822 N.W.2d 654, 660 (Minn. 2012). In order to estop the township from enforcing the ordinance, respondents must establish four elements: (1) that the township exercised wrongful conduct; (2) respondents reasonably relied on this wrongful conduct; (3) respondents incurred unique expenditures in their reliance; and (4) the balance of equities weigh in favor of estoppel. *Id.* Respondents must satisfy a "heavy burden of proof" to prevail on their estoppel claim. *Id.* (quotation omitted). "Wrongful conduct is not established by simple inadvertence, mistake, or imperfect conduct." *Id.* (quotation omitted). Rather, the wrongful conduct must equate to an affirmative misrepresentation because any court applying estoppel against a government entity must consider the public's interest. *Concept Props., LLP v. City of Minnetrista*, 694 N.W.2d 804, 821 (Minn. App. 2005), *review denied* (Minn. Jul. 19, 2005).

As to the first factor in determining whether respondents are entitled to estoppel, respondents assert, and the district court determined, that the township repeatedly made representations that respondents' use of the property was permissible under the exotic animal ordinance. For instance, in August 2013, the board passed a motion concluding that "[t]he animals Terri Petter has are within line with the exotic animal ordinance of the Township." The record also supports the district court's finding with regard to the second factor that respondents reasonably relied on the board's representations that the use of the property complied with the ordinance as evinced by the building and repair of structures, including a fox shelter, on the property.

But, there is also support in the record for the district court's finding that respondents failed to show that they made any "unique" expenditures on the property, the third factor supporting the equitable relief of estoppel. The district court determined that the buildings could continue to have other approved commercial agricultural purposes because the buildings were located on an agriculturally-zoned property. Respondents argue that the district court's analysis is flawed because the township failed to provide any evidence that the buildings could be repurposed. But the burden is on respondents, not the township, to prove that these buildings could not be used in other profitable ways. And, Petter admitted that the animal exhibition was a "secondary use" of the property.

Furthermore, the balance of equities does not weigh in favor of estoppel. Minnesota courts have established that estoppel should be used "sparingly" against governmental entities. *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 293–94 (Minn. 1980). A township cannot be estopped from correctly enforcing an ordinance, even if a property owner relied on the township's prior representations. *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 607 (Minn. 1980).

In sum, we conclude that the district court did not abuse its discretion by determining that respondents failed to demonstrate their entitlement to equitable relief.

IV.

Finally, respondents argue that the district court erred in amending the judgment. Minn. R. Civ. P. 52.02 allows the district court to amend its findings and to amend the judgment once judgment has already been entered. Appellate courts review de novo the

district court's interpretation and the application of the Minnesota Rules of Civil Procedure. *In re Skyline Materials, Ltd.*, 835 N.W.2d 472, 474 (Minn. 2013).

After the district court issued its order in October 2016, the township moved to amend one paragraph in the conclusions of law, which originally stated that, "Retail sales, except for horticultural products, is not a permitted, conditional or interim use pursuant to the Eureka Township Zoning ordinance since the time Petter began retail sales on the . . . Property." The township requested that the district court amend its order to limit respondents' horticultural sales to products produced on the property. The district court granted the township's request, amending the order to state that, "Retail sales, except for horticultural products *produced on* [Respondents'] . . . Property, is not a permitted, conditional or interim use pursuant to the Eureka Township Zoning ordinance since the time Petter began retail sales on the . . . Property." (Emphasis added.)

Respondents claim that the initial order accurately reflected the law because the property is within the township's agricultural district and the zoning ordinance permits "[a]ny and all forms of commercial agriculture and commercial horticulture, as defined by this Ordinance." EOC 3, ch. 2, § 1(B)(1). "Horticulture" is defined as "[t]he use of land for production and sale of fruits, including apples, grapes, and berries, vegetables, flowers, and nursery stock, including ornamental shrubs and trees and cultured sod." EOC 1, ch. 4. Respondents ask that this court read the "use of land for production *and* sale" language disjunctively, rather than conjunctively. We may construe "and" as a disjunctive to ensure legislative intent, but only if a conjunctive reading of the word "and" would lead to an absurd result. *See Benton Co. v. Kismet Investors, Inc.*, 653 N.W.2d 193, 197 (Minn. App.

2002). Here, interpreting the ordinance's language to require sale of horticultural products from the land itself is not inherently unreasonable.[5] We conclude that the district court did not err by amending the judgment.

Affirmed in part, reversed in part, and remanded; motion dismissed

[5] Respondents also assert that the district court's amended judgment results in an unfair interpretation of "horticulture" when compared to how the township has applied the ordinance to other businesses in the township. But in those other circumstances, the township either did not hold a hearing on the issue or had determined that the business' retail sales were a legal, nonconforming use. We cannot say that the township has unfairly interpreted the "horticulture" definition against respondents.