STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1700
A19-1701
A19-1702
A19-1703

State of Minnesota,
Appellant,

vs.

Guy Gerald Sanschagrin,
Respondent (A19-1700),
Kristine Knudson Sanschagrin,
Respondent (A19-1701),
Jeffery Lowell Cameron,
Respondent (A19-1702),
Linda Kay Cameron,
Respondent (A19-1703).

Filed April 6, 2020
Affirmed
Reyes, Judge

Hennepin County District Court
File No. 27-CR-18-23368

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Martin H.R. Norder, Kelly & Lemmons, P.A., St. Paul, Minnesota; and

Timothy J. Keane, Leland P. Abide, Kutak Rock, L.L.P., Minneapolis, Minnesota (for appellant)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Wynn Curtiss, Chestnut Cambronne, P.A., Minneapolis, Minnesota (for respondents)

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Bryan, Judge.

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

REYES, Judge

In these consolidated cases, appellant State of Minnesota challenges a district court's pretrial order granting respondents' motion to dismiss misdemeanor charges for maintaining a dock on lakeshore property in violation of a city zoning ordinance. The state argues that (1) respondents' letter replying to the state's first notice of a zoning violation (first notice) was not a "request" within the meaning of Minn. Stat. § 15.99 (2018) and (2) even if it was a request, the state's withdrawal of the first notice mooted the statute's 60-day deadline. We affirm.

FACTS

Respondents Jeffrey Lowell Cameron, Linda Cameron, Guy Sanschagrin, and Kristine Sanschagrin own an undeveloped parcel of real property (the property) in the City of Shorewood (Shorewood), fronting Lake Minnetonka. Although the property is too small for a residence, respondents reside near the property and possess deeded-access rights to Lake Minnetonka across the property.

In April 2017, respondents installed a seasonal dock on the property. In May 2017, Shorewood issued respondents a first notice, stating that the dock violated the Shorewood City Code of Ordinances (city code) because the property lacked a principal dwelling and

respondents did not occupy the property.[1] Shorewood ordered respondents to remove the dock, but it allowed them to appeal the order within six days.

Respondents sent Shorewood a timely letter in response to the first notice, arguing that the city code did not prohibit their seasonal dock because it applied only to "permanent" and "floating" docks. Respondents argued that a "seasonal" dock differed from a "permanent" or "floating" dock, citing the Lake Minnetonka Conservation District Code of Ordinances (LMCD code), which it argued covers communities on Lake Minnetonka, including Shorewood, and applies in the absence of other regulations.[2]

On July 12, 2017, 60 days after respondents sent their letter, Shorewood withdrew its first notice.

Two months after receiving respondents' letter, Shorewood amended its city code by removing reference to "permanent or floating" docks, thereby prohibiting any dock from being built on land in a residential district unless the land contained a principal dwelling.[3] Eight months later, Shorewood sent respondents a second notice of violation. Respondents replied again, reasserting their position and appealing Shorewood's violation

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[1] The Shorewood Zoning Ordinance provides that "[d]ocks and wharves, permanent or floating, shall not be built, used or occupied on land located within the R[esidential] Districts until a principal dwelling has been constructed on the lot or parcel." Shorewood, Minn., Code of Ordinances §§ 1201.01, .03, subd. 14.b. (2017).

[2] The LMCD code defines a "permanent dock" as a non-"[s]easonal [d]ock" and defines a "[s]easonal dock" as "any dock which is so designed and constructed that it may be removed from the Lake on a seasonal basis[] . . . without use of power equipment, machines or tools other than hand held power tools." Lake Minnetonka Conservation Dist., Code of Ordinances § 1.02, subds. 35, 46 (2017).

[3] Shorewood, Minn., Ordinance 542 (July 24, 2017).

determination. Shorewood declined to hear the appeal, citing its untimeliness, and charged respondents with criminal city-code violations.

Respondents filed a motion to dismiss Shorewood's charges, which the district court granted. The district court determined that Shorewood's first notice qualified as a zoning decision and that respondents' first letter qualified as a request for zoning action under section 15.99. The district court then determined that Shorewood had approved respondents' request for zoning action under section 15.99, subd. 2(a), because Shorewood failed to deny respondents' request within 60 days. As a result, the district court determined that Shorewood's subsequent amendment to the city code retroactively restricting respondents' dock had no effect on its earlier approval of the dock. The district court therefore dismissed the state's charges against respondents because they lacked probable cause. This appeal follows.

D E C I S I O N

I. The district court's alleged error will have a critical impact on the outcome of trial.

As a threshold matter, when the state appeals a pretrial order, it must show "how the district court's alleged error, unless reversed, will have a critical impact on the outcome of the trial." Minn. R. Crim. P. 28.04, subd. 2(2)(b); *State v. Osorio*, 891 N.W.2d 620, 626-27 (Minn. 2017). If a district court's ruling "significantly reduces the likelihood of a successful prosecution," it has a critical impact. *State v. Kim*, 398 N.W.2d 544, 551 (Minn. 1987). The parties do not dispute, and we agree, that dismissal of the state's complaint

meets the critical-impact requirement, allowing us to consider the state's appeal. *See State v. Varnado*, 582 N.W.2d 886, 889 n.1 (Minn. 1998).

II. The district court did not erroneously grant respondents' motion to dismiss for lack of probable cause because it correctly determined that respondents' letter constituted a request invoking section 15.99.

The state does not challenge the district court's determination that the previous version of the city code did not prohibit seasonal docks. Rather, the state argues that respondents' letter did not qualify as a zoning request under section 15.99, subd. 1(c), which governs the timeframe by when an agency must respond to "a written request relating to zoning."[4] Minn. Stat. § 15.99, subd. 2(a). We are not persuaded.

We review de novo whether the district court properly determined that respondents' first letter qualified as a zoning request triggering the timing requirements of section 15.99. *See Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). When interpreting a statute, we first determine whether the statutory language is clear or ambiguous. *Id.* A statute is ambiguous only if its language has more than one reasonable interpretation. *Id.* If the language of a statute is unambiguous, we must enforce its plain language. *Id.*, *see also* Minn. Stat. § 645.16 (2018).

The Minnesota Supreme Court has held that the phrase "[a] written request relating to zoning" in section 15.99, subd. 2(a), "is unambiguous and refers to a written request that

[4] The state also argues that respondents' letter did not qualify as a request because it did not include an applicable fee under section 15.99, subd. 3(a). But the state did not argue this issue before the district court, so it forfeits it on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Moreover, we note that the state failed to provide any evidence of, or reference to, what fee would have been required.

has a connection, association, or logical relationship to the regulation of building development or the uses of property." *500, LLC v. City of Minneapolis*, 837 N.W.2d 287, 291 (Minn. 2013).

Section 15.99, subd. 1(c), defines "[r]equest" as "a written application related to zoning . . . for a permit, license, or other governmental approval of an action." Such a request "must be submitted in writing to the agency on an application form provided by the agency, if one exists." Minn. Stat. § 15.99, subd. 1(c). If a form does not exist, the request "must clearly identify on the first page the specific permit, license, or other governmental approval being sought." *Id.* Because "a written *request* relating to zoning" in section 15.99, subd. 2(a), is unambiguous, and a "request" is defined as "a written *application* related to zoning," we conclude that section 15.99, subd. 1(c), is also unambiguous. *See* Minn. Stat. 15.99, subds. 1(c), 2(a) (emphases added); *see also 500, LLC*, 837 N.W.2d at 291.

Here, respondents' letter met all of the plain-language requirements for a zoning request listed in section 15.99, subd. 1(c). Respondents' written letter related to zoning and has a connection to zoning because it responded to Shorewood's "notice of *zoning* violation," which provided respondents the opportunity to appeal. (emphasis added).[5] Respondents submitted their written letter to Shorewood, an agency, and met the appeal

[5] Shorewood informed respondents that, "[i]f you wish to appeal this order to the City Council, you may do so in writing, by 17 May, 2017. Your appeal letter must state the basis for the appeal."

deadline.[6] Moreover, the letter stated on the first page that its purpose was to "respectfully appeal this order to the city council," and it ended by stating that "[a]ccordingly, we believe we do comply with the City's code and we will respectfully wait to hear from you with regard to your thoughts on this matter."

The state argues that this court has previously adopted a broad rule that, "[g]iven the decisive effect of section 15.99, we are not inclined to expand its operation beyond its clear meaning to include notices of appeal and letters confirming telephone conversations." *Yeh v. County of Cass*, 696 N.W.2d 115, 130-31 (Minn. App. 2005), *review denied* (Minn. Aug. 16, 2005). But that quote must be read within its context. In *Yeh*, the letter of appeal at issue did not contain a request for approval. *Id.* at 130. We did not make a broad holding that letters of appeal can never constitute written requests. By contrast, respondents' letter contained an implicit request for Shorewood to approve their interpretation of the zoning ordinance's inapplicability. This request is apparent by its context as a response to a notice of zoning violation and as an appeal of that alleged zoning violation. We conclude that respondents' letter properly constituted a request invoking section 15.99.

III. Shorewood accepted respondents' request because it failed to deny it within 60 days.

[6] Shorewood is an agency. An "[a]gency" includes "a statutory or home rule charter city, county, town . . . and any other political subdivision of the state." Minn. Stat. § 15.99, subd. 1(b).

The state argues that, even assuming section 15.99 applies, its withdrawal of the first notice mooted any appeal.[7] We disagree.

Under section 15.99, subd. 2(a), "[f]ailure of an agency to deny a request within 60 days is approval of the request." This 60-day time limit "begins upon the agency's receipt of a written request containing all [applicable] information." Minn. Stat. § 15.99, subd. 3(a).

Here, Shorewood did not deny respondents' request. It merely withdrew its notice of violation, 60 days after respondents' letter of appeal. Its failure to deny the request within 60 days resulted in its approval of the dock as a matter of law. *See id.*, subd. 2(a).

In sum, because section 15.99 applies to respondents' letter of appeal and because Shorewood failed to deny respondents' request within 60 days, Shorewood approved respondents' dock, and the district court appropriately dismissed the charges for lack of probable cause.

Affirmed.

[7] The district court characterized the state's failure to approve or deny respondents' request as a de facto approval, making the dock a legal nonconforming use. As a result, subsequent modification of the statute to exclude seasonal docks had no effect on respondents' dock. Because the state does not challenge the district court's determination that a legal nonconforming use is exempt from the modified statute, we need not address that issue.