**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A20-0620**

Richard T. Jellinger, et al.,
Appellants,

vs.

City of Anoka,
Respondent,
Jefferson L. Weaver, et al.,
Respondents.

**Filed December 21, 2020**
**Affirmed in part, reversed in part, and remanded**
**Reyes, Judge**

Anoka County District Court
File No. 02-CV-18-5955

Richard T. Jellinger, Coon Rapids, Minnesota (for appellants)

Scott C. Baumgartner, Hawkins & Baumgartner, PA, Anoka, Minnesota (for respondent City of Anoka)

Kurt B. Glaser, Smith & Glaser, Minneapolis, Minnesota; and

William K. Goodrich, Randall and Goodrich, PLC, Anoka, Minnesota (for respondents Weavers)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Gaïtas, Judge.

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

**REYES**, Judge

Appellants challenge the district court's entry of summary judgment for respondents, arguing that respondents-neighbors' (1) fence violates a city ordinance regulating fence height; (2) trash- and recycling-container storage violates a city ordinance regulating container placement; and (3) dog sign violates a city ordinance regulating the display of signs. Respondents request attorney fees. We affirm in part, reverse in part, and remand.

## FACTS

The undisputed facts of this case are as follows: appellants Richard T. and Margaret K. Jellinger (the Jellingers) and respondents Jefferson L. and Robin A. Weaver (the Weavers) are neighbors, living on two of three lots between Rice Street and the Mississippi River in Anoka, Minnesota. The Weavers' lot lies between the Mississippi River to the south and the Jellingers' lot to the north. The Weavers' lot is a riparian lot. A private drive crosses the Jellingers' lot and serves both the Jellingers' and the Weavers' lots because neither lot directly fronts on Rice Street. Figure 1 below is an aerial photograph of the lots.

The Weavers obtained a permit from the City of Anoka (the city) to construct a six-foot-high, fifty-six-foot-long fence along the lot boundary shared with the Jellingers. The Jellingers complained about the fence height, arguing that it violated the four-foot height limit in the city's fence ordinance for fences in front of houses. The city concluded that the fence location and construction did not violate the fence ordinance because the fence is located on the rear lot line.

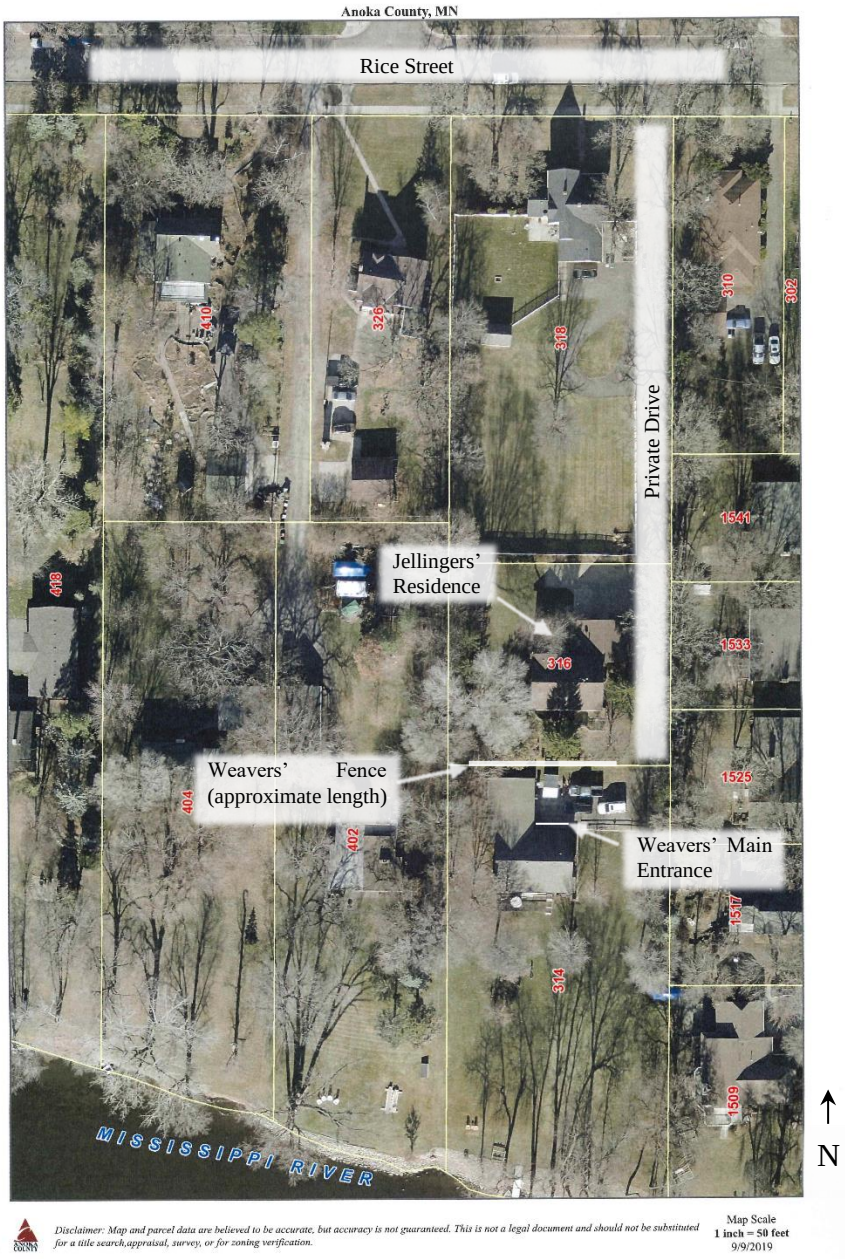


Figure 1. This aerial photograph is taken from the summary-judgment record. We added labels, north arrow, and a depiction of the private drive to clarify the layout.

The Jellingers also complained to the city about the Weavers leaving their trash and recycling containers on the private drive for collection. The city concluded that the city's trash ordinance, which requires people who place their containers on the street or curb to

return the containers to storage within 12 hours, did not apply to the Weavers because they "reside on a riparian lot not abutting a public street."

The Weavers also display a yellow, diamond-shaped plaque stating "Golden Retriever Crossing" and containing a silhouette of a dog (dog sign) on their fence between their lot and the Jellingers' lot. The Jellingers complained about the dog sign to the city. The city concluded that the dog sign is not a sign for purposes of the city's sign ordinance because it is "a decorative plaque not directed at the public."

The Jellingers sought a declaratory judgment that the Weavers' fence, trash- and recycling-container storage, and dog sign violated various city ordinances. The Jellingers moved for summary judgment on all three issues. In response, the Weavers and the city (collectively, respondents) each requested that the district court grant summary judgment in their favor. The district court denied the Jellingers' motion and granted summary judgment for respondents. This appeal follows.

## D E C I S I O N

### I. We review summary judgment interpreting unambiguous city ordinances de novo.

In reviewing the district court's grant of summary judgment, we review de novo "whether there are any issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). We view the facts in the light most favorable to the party against whom summary judgment was granted. *Grondahl v. Bulluck*, 318 N.W.2d 240, 242 (Minn. 1982).

"[T]he interpretation of an existing ordinance is a question of law for the court." *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). "Ordinances are construed according to the recognized principles of statutory construction." *Chanhassen Estates Residents Ass'n v. City of Chanhassen*, 342 N.W.2d 335, 339, n.3 (Minn. 1984). We first determine whether the ordinance is ambiguous. *Cannon v. Minneapolis Police Dept.*, 783 N.W.2d 182, 193 (Minn. App. 2010). An ordinance is ambiguous only when it is subject to multiple reasonable interpretations. *Id.* at 193. If the ordinance is unambiguous, we apply the plain and ordinary meaning of its terms. *Frank's Nursery*, 295 N.W.2d at 608; *State ex rel. Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996).

As an initial matter, respondents argue that we should defer to the city's interpretation of its own ordinances. But the interpretation of ordinances is a question of law, which we review de novo. *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75 (Minn. 2015) (citing *Frank's Nursery*, 295 N.W.2d at 608); *cf. St. Otto's Home v. Minn. Dept. of Human Servs.*, 437 N.W.2d 35, 40 (Minn. 1989) ("No deference is given to the agency interpretation if the language of the regulation is clear and capable of understanding.").

Respondents cite several cases for the proposition of judicial deference to municipal decisionmaking. *White Bear Docking and Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 175 (Minn. 1982); *Arcadia Dev. Corp. v. City of Bloomington*, 125 N.W.2d 846, 850 n.5 (Minn. 1964); *Eagle Lake v. Becker County*, 738 N.W.2d 788, 792 (Minn. App. 2007); *Berndt v. County of Crow Wing*, Nos. A05-1381, A05-1409, 2006 WL

1073196 (Minn. App. April 25, 2016). But those cases involved challenges to quasi-judicial decisions by local government bodies. It is true that courts defer to the quasi-judicial decisions, such as whether to grant permits or variances, of such entities. In this case, the city issued a permit for the Weavers' fence; however, the Jellingers did not challenge the permit. Instead, they filed this declaratory judgment action in which resolution of all issues turns on the interpretation of the city's ordinances. And because we review interpretation of ordinances de novo, we owe the city's interpretation of its ordinances no deference.

## II. Because the plain language of the city ordinance prohibiting fences exceeding four feet in height "in front of the front line of a residential structure" applies to the Weavers' fence, the district court erred by entering summary judgment in favor of respondents.

The Jellingers argue that the Weavers' six-foot fence violates the city's fence ordinance height restriction. We agree.

The fence ordinance states that "[i]n single- and two-family residential districts, no fence may exceed four feet in height above the ground level, *in front of the front line of the residential structure*, along any street or highway right-of-way, or in the front yard." Anoka, Minn., Code of Ordinances (ACO), § 78-562(e) (2020) https://library.municode.com/mn/anoka/codes/code_of_ordinances (emphasis added).[1] Because the fence ordinance is written in the disjunctive, a fence that exceeds four feet in

[1] The city revised its city code in August and September of 2020. The revisions do not change the substance of any applicable sections, except for renumbering. We therefore cite the most recent version of the city code. *See Interstate Power Co. v. Nobles Cty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, "appellate courts apply the law as it exists at the time they rule on a case").

height in any one of the three locations violates the ordinance. *See Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 385 (Minn. 1999) (noting that "or" is generally disjunctive).

All parties agree that the only issue is whether the fence is "in front of the front line of the residential structure." Because the fence ordinance is unambiguous, we look to the plain and ordinary meaning of its terms. The city code does not define "front line" or "front line of the residential structure." "Front line" is modified by the adjectival prepositional phrase, "of the residential structure," signifying the specific "front line" to which the phrase refers. "Residential structure" in this context plainly refers to the house. "Front," with reference to a structure like a house, generally means the side with the main entrance. *Merriam-Webster's Collegiate Dictionary* 503 (11th ed. 2014) (defining "front" as "a side of a building, especially the side that contains the principal entrance"); *cf. Oxford Dictionary of English* 702 (3d ed. 2010) (defining "front" as "the side or part of an object that . . . is normally seen or used first"). We conclude that the plain meaning of "the front line of the residential structure" is a line that runs along the side of the home with the principal or main entrance. Fences may not exceed four feet in height in front of this line. ACO, § 78-562(e).

Respondents argue that the Weavers' lot should be treated differently because it is a riparian lot. *See Girvan v. County of Le Sueur*, 232 N.W.2d 888 (Minn. 1975) (noting the "peculiar circumstances relating to lakeshore property in Minnesota"). They argue that "the front line of the residential structure" either is, or is on the same side as, the "front lot line" of a lot, and that because the Weavers' lot is a riparian lot with the front lot line abutting the river to the south, the front line of the residential structure must also be to the

south. Because the fence is on the north lot line, they contend that the fence is not "in front of the front line of the residential structure." We are not persuaded. Respondents' argument confuses the front line of the *property* with the front line of the *residential structure*. We agree that the front lot line of a riparian lot abuts the water and that a riparian lot's front yard is therefore on the side of the lot facing the water. (*See* Fig. 2). We also agree that the Weavers' fence is in their rear yard. But none of that changes that the front line of the *house* is on the north side of the structure, which contains the main entrance and is the part of the house a person approaches first. (*See* Fig. 2).

Here, the Weavers' fence is "in front of the front line of the residential structure" because, like the main entrance, the fence is on the north side of the house. Because the fence exceeds the height limitation for this area, it violates the fence ordinance. We therefore reverse the district court's entry of summary judgment for respondents as to the fence, and remand to the district court for entry of summary judgment for the Jellingers on this issue.

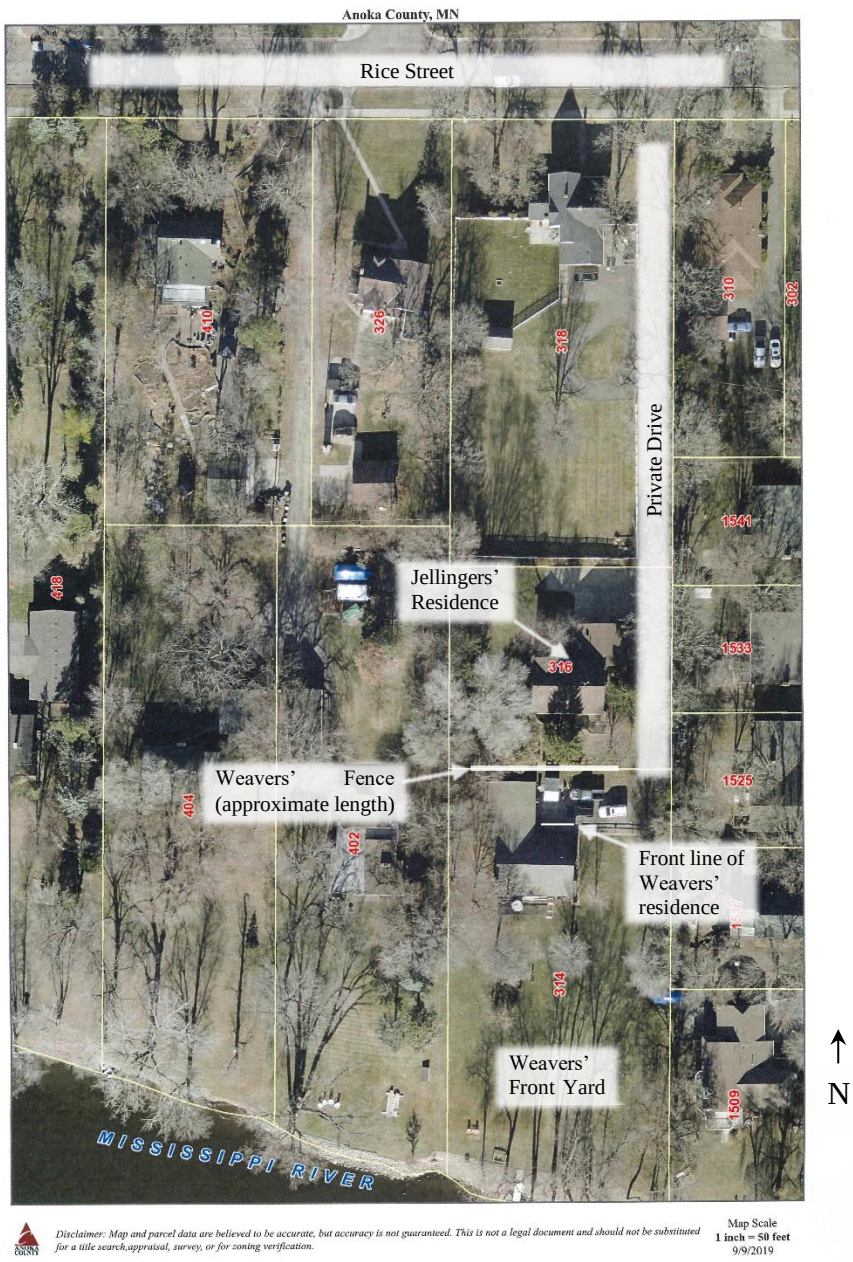


Figure 2. This is the same aerial photograph as used in Figure 1. We again added labels, north arrow, and a depiction of the private drive to clarify the layout and legal conclusions.

## III. Because the plain language of the city ordinance regulating trash and recycling collection does not apply to the Weavers, the district court did not err by granting summary judgment to respondents.

The Jellingers argue that the Weavers violated the city code's requirement that trash and recycling containers be returned to their place of storage within 12 hours of collection. We disagree.

In relevant part, the city's trash ordinance provides that "[c]ontainers may be placed next to the street or curb on the days scheduled for collection but shall be returned to the place of storage within 12 hours after collection." ACO, § 70-81(c) (2020). The plain language of the trash ordinance applies specifically to those who place their containers next to the street or curb for collection. Here, the Weavers place their containers on the private drive near their home such that the collectors must travel the private drive in order to collect the Weavers' trash and recycling. Because the Weavers do not place their containers next to the street or curb, the portion of the trash ordinance requiring residents to return containers to storage within 12 hours of collection does not apply to the Weavers.

The Jellingers argue that the intent of the trash ordinance is to provide a "complete system for collection" and to safeguard health and sanitary conditions for city residents, and that failing to apply the trash ordinance to the Weavers undermines these goals. But the intent of the ordinance cannot override the plain language. *See Cannon*, 783 N.W.2d at 193. Moreover, the Jellingers have not alleged any particular way in which the Weavers' container storage is unhealthy or unsanitary, or renders the collection system incomplete. We therefore conclude that the district court did not err in granting summary judgment for respondents as to the trash and recycling containers.

## IV. Because the plain language of the city ordinance defining and regulating signs does not apply to the Weavers' dog sign, the district court did not err by granting summary judgment to respondents.

The Jellingers argue that the Weavers' dog sign, which they contend resembles an animal-crossing sign, is a sign regulated under the city's sign ordinance. We disagree.

The sign ordinance defines a sign as "a name, identification, description, display, illustration or device which is affixed to or represented directly or indirectly upon a building, structure or land in view of the general public and which directs attention to a product, place, activity, person, institution, or business." ACO, § 78-512 (2020). The parties dispute whether the dog sign is "in view of the general public." We again look to the plain meaning of the terms in the definition. "General public" is not defined in the city code, but a dictionary definition provides that "public" means "the people as a whole," a meaning which "general" simply reinforces. *Merriam-Webster's Collegiate Dictionary* 520, 1005 (11th ed. 2014) (defining "general" as "involving, relating to, or affecting the whole").

Here, the dog sign is not in view of the general public. The dog sign is on a private drive, 386 feet from the nearest public street. Only those entering the private drive can see the dog sign. The Jellingers argue that, because delivery drivers, garbage collectors, visitors, and neighbors will see the dog sign when they enter the private drive, it is in view of the general public. But these are not the "people as a whole," which is what the term "general public" entails. Further, by statute, a private drive is a privately owned road used by the owner "and those having express or implied permission from the owner, but not by other persons." Minn. Stat. § 169.011, subd. 57 (2018). In contrast, streets are "open to the

use of the public." *Id.* § 169.011, subd. 81 (2018). Because the dog sign is visible to non-neighbors only from the private drive, and because only those with express or implied permission to use the private drive may do so, it is not in view of the general public. As a result, the dog sign is not a sign for purposes of the sign ordinance.

The Jellingers nevertheless argue that the dog sign is an informational-directional sign. An informational-directional sign is "any sign giving information to employees, visitors or delivery vehicles, but containing no advertising; such sign may include name or business, but must predominantly represent a directional or informational message." ACO, § 78-512. The Jellingers argue that the dog sign is informational in nature and targets visitors and delivery drivers, fitting within this definition. We are not persuaded. In order to be an informational-directional sign, a display must first meet the definition of "sign." But as stated above, the dog sign is not in view of the general public because it is located on a private drive 386 feet from the nearest public street, and is therefore not a sign in the first place. Further, informational-directional signs target a broader subset of the general public than the few delivery drivers, neighbors, and guests who will use the private drive and see the dog sign. The dog sign is not an informational-directional sign, and we therefore conclude that the district court did not err in granting summary judgment to respondents as to the dog sign.

## V. We decline to reach the Weavers' request for attorney fees.

In their appellate brief, the Weavers request attorney fees as compensation for frivolous and vindictive litigation. We decline to reach this issue.

Under Minn. R. Civ. App. P. 139.05, subd. 1, "a party seeking attorney[] fees on appeal shall submit such a request by motion under Rule 127." *See* Minn. Stat. § 645.44, subd. 15 (2018) (providing that "shall" is mandatory). Rules 139.03 and 139.05 impose a 14-day limitation for submitting this request to the court of appeals. Minn. R. Civ. App. P. 139.05, subd. 1 (providing that, "all motions for fees must be submitted no later than within the time for taxation of costs"); Minn. R. Civ. App. P. 139.03, subd. 1 (providing that, "[a] prevailing party seeking taxation of costs and disbursements shall file and serve a notice of taxation of costs and disbursements within 14 days of the filing of the court's order or decision"). If a party has appropriately made a request, we may award attorney fees on appeal when a statute enables it or a contract authorizes it, see *Barr/Nelson, Inc. v. Tonto's, Inc.*, 336 N.W.2d 46, 53 (Minn. 1983), or as a sanction, Minn. R. Civ. App. P. 139.05 1998 comm. cmt. Because the Weavers have not followed the procedure established by the appellate rules, we decline to reach their request for attorney fees.

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