*This opinion is nonprecedential except as provided by*
*Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A21-0248**

Steven W. Trisco, et al.,
Appellants,

vs.

County of Douglas,
Respondent.

**Filed January 10, 2022**
**Affirmed**
**Johnson, Judge**

Douglas County District Court
File No. 21-CV-20-711

Kristian L. Oyen, Oyen Law Firm, Savage, Minnesota (for appellants)

Scott T. Anderson, Elizabeth J. Vieira, Rupp, Anderson, Squires & Waldspurger, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Jesson, Judge; and Kirk, Judge.*

**NONPRECEDENTIAL OPINION**

**JOHNSON**, Judge

Two farmers applied for a conditional use permit that would allow them to significantly expand their livestock operation. When the county's planning commission

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

was prepared to consider their application, the farmers requested that the commission postpone its consideration of their application until its next meeting. Before the next meeting, they again requested that the commission postpone its consideration of their application. After the county denied the application, the farmers petitioned the district court for a writ of mandamus to compel the county to grant their application on the ground that it should be deemed automatically approved because the county did not rule on the application within 60 days, as required by statute. The district court denied the mandamus petition. We conclude that, because the county delayed its consideration of the application at the farmers' request, they are equitably estopped from seeking to prove that they are entitled to automatic approval of their application. Therefore, we affirm.

**FACTS**

Steven W. Trisco owns rural property in Douglas County on which he and his son, Orry Trisco, operate a feedlot with 55 dairy cattle and 26 beef cattle. On November 8, 2019, the Triscos applied to the county for a conditional use permit (CUP) that would allow them to significantly expand their existing operation by adding two new barns that could contain as many as 4,800 hogs.

Approximately a month later, on December 3, 2019, the Triscos informed the county's feedlot coordinator, Mark Koep, that they had changed their plans and wished to build only one new barn for as many as 2,400 hogs. At that time, the Triscos' CUP application was on the agenda of the December 10, 2019 meeting of the county's planning advisory commission. To allow the commission to be prepared for that meeting, Koep asked the Triscos to provide information about their revised plans within one day. Orry

Trisco responded by stating that, rather than rushing to provide information, he would prefer that the commission's consideration of the CUP application be postponed to a later meeting. Koep suggested that the Triscos ask the commission to table their CUP application so that the Triscos would have more time to provide the requested information about their revised plans. That evening, Orry sent an e-mail message to Koep in which he stated: "I would like to table to the next meeting. I am only doing 1 barn of 2400 pigs." Koep responded two days later, stating that the matter would be rescheduled and that Orry need not attend the December 10, 2019 commission meeting.

Orry nonetheless attended the December 10, 2019 commission meeting and orally requested that the commission table his and his father's application "until the next meeting." A motion to table was made, seconded, and approved. A member of the public asked when the Triscos' application would be considered. A county staff person stated that the next meeting was scheduled for January 28, 2020, and that the commission generally meets on the second and fourth Tuesdays of each month. On the next day, December 11, 2019, county staff extended the statutory 60-day review deadline by an additional 60 days. The county claims that it sent documentation of the extension to both Steven and Orry. But the Triscos claim that they did not receive notice of the extension and were unaware of it until almost three months later.

In January 2020, Orry and Koep were in frequent communication concerning the Triscos' application. On January 21, 2020, Koep informed Orry by text that the January 28, 2020 commission meeting would not occur because there was an insufficient number of land-use applications to be considered and that the next commission meeting would be

held on February 11, 2020. Orry responded by writing that he could not attend on that date. Koep asked whether Orry could attend by telephone or whether Steven Trisco could appear instead of Orry. Orry answered in the negative and asked Koep, "Can u set it for Feb 25th?" Koep later informed Orry by text that the Triscos' application would be considered by the commission at its February 25, 2020 meeting. Orry acknowledged the message and responded, "Thank you."

At the February 25, 2020 commission meeting, Orry described the Triscos' expansion plans. Commission members asked two questions and opened the hearing for public comment. Sixteen members of the public commented on the Triscos' expansion plans; all expressed opposition. County staff proposed some changes to the permit's conditions to address concerns. The commission approved the Triscos' CUP application, subject to 15 conditions, by a 4-1 vote.

The Triscos' application came before the county board of commissioners on March 3, 2020. The board voted unanimously to deny the application. At its March 17, 2020 meeting, the board approved a seven-page resolution with extensive findings of fact. The board found, among other things, that the Triscos' proposal was not sufficiently compatible with adjacent land uses, was not reasonably related to existing land uses in the area, and was not consistent with the purposes of the county's zoning ordinance or its land-use plan.

The Triscos did not seek judicial review of the board's decision by filing in this court a petition for writ of certiorari. *See* Minn. Stat. § 606.01 (2020) (providing that petitions for writ of certiorari must be filed in court of appeals); *Neitzel v. County of Redwood*, 521 N.W.2d 73, 75-76 (Minn. App. 1994) (holding that, in absence of statute

authorizing judicial review, applicant challenging denial of CUP for feedlot may obtain judicial review by writ of certiorari in court of appeals), *rev. denied* (Minn. Oct. 27, 1994); Douglas County, Minn., Zoning Ordinance § VII(G)(2)(b) (2018) (allowing appeal from board of commissioner's decision regarding CUP application to court of appeals by writ of certiorari). Instead, the Triscos challenged the board's decision by filing in the district court a petition for writ of mandamus. *See Kramer v. Otter Tail County Bd. of Commissioners*, 647 N.W.2d 23, 27 (Minn. App. 2002) (affirming issuance of writ of mandamus because county board failed to approve or deny zoning application within 60-day period in section 15.99). The Triscos sought an order requiring the county board to grant their CUP application on the ground that the county did not rule on the application within 60 days, as prescribed by statute.

In September 2020, the Triscos moved for partial summary judgment on the question whether their application was denied within the statutory 60-day period. In its memorandum of law in opposition to the Triscos' motion, the county asked the district court to grant summary judgment in favor of the county. In December 2020, the district court filed a 27-page order in which it denied the Triscos' motion on multiple grounds. The district court reasoned that the Triscos could not prove that the county violated the statutory 60-day rule because the Triscos did not submit to the court a complete copy of their application, because the application was not complete when it was first filed with the county, and because the application was not complete until Orry provided additional information about the Triscos' revised plans in late January 2020. The district court also reasoned that the Triscos waived their right to a decision within 60 days and are equitably

estopped from insisting on compliance with the statutory 60-day period. The district court ordered summary judgment in favor of the county. The Triscos appeal.

**DECISION**

The Triscos argue that the district court erred by denying their partial summary-judgment motion, granting the county's request for summary judgment, and denying their petition for a writ of mandamus.

A district court must grant a motion for summary judgment "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the non-moving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). A district court also may grant summary judgment for a nonmovant after giving the movant notice and an opportunity to respond. Minn. R. Civ. P. 56.06(a). This court applies a *de novo* standard of review to the district court's legal conclusions on summary judgment and views the evidence in the light most favorable to the party against whom the motion was granted. *Commerce Bank v. West Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

"The writ of mandamus may be issued to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." Minn. Stat. § 586.01 (2020). "Mandamus is an extraordinary remedy that is available only to compel a duty clearly required by law." *Northern States Power Co. v. Minnesota Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004) (citation omitted). To obtain a writ of mandamus, a petitioner must prove that the

respondent has "(1) failed to perform an official duty clearly imposed by law; (2) that, as a result, the petitioner suffered a public wrong specifically injurious to the petitioner; and (3) that there is no other adequate legal remedy." *Id.* (citations omitted).

The Triscos' mandamus claim is based on a statute that imposes "deadlines for local governments to take action on zoning applications." *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 540 (Minn. 2007). Under the statute, counties and certain other government agencies "must approve or deny within 60 days a written request relating to zoning" and similar matters. Minn. Stat. § 15.99, subd. 2(a) (2020). The 60-day period begins when the agency receives a written application containing all information required by law, rule, ordinance, or agency policy. *Id.*, subd. 3(a). If an application is incomplete, and if the agency gives written notice of its incompleteness within 15 days, the 60-day limit may be restarted. *Id.* An agency may unilaterally extend the 60-day period by an additional 60 days if it provides written notice to the applicant prior to the end of the initial 60-day period. *Id.*, subd. 3(f). The statute prescribes a strict remedy for a violation of the 60-day deadline: "Failure of an agency to deny a request within 60 days is approval of the request." *Id.*, subd. 2(a).

The Triscos make multiple arguments for reversal. They argue that their application was complete at all times and that their amendment was not a material change requiring an extension of the 60-day period. They also argue that they did not knowingly waive their right to a decision within 60 days and that they should not be equitably estopped from seeking strict compliance with section 15.99.

In response, the county argues that the district court did not err and that its decision can be affirmed on any one of multiple grounds. First, the county argues that the Triscos cannot establish error because they did not submit their original application into evidence. Second, the county argues that the Triscos' original CUP application was incomplete because it lacked required information. Third, the county argues that the Triscos effectively amended the application when they changed their plans, which extended the 60-day period. Fourth, the county argues that it unilaterally extended the 60-day period by an additional 60 days, as allowed by statute. Fifth, the county argues that the Triscos waived their right to strict compliance with the statutory period. Sixth, the county argues that the Triscos are equitably estopped from seeking automatic approval. And seventh, the county argues that the Triscos cannot establish the third requirement of mandamus relief because they have an adequate remedy at law, namely, judicial review by writ of certiorari.

We begin by considering the issue of equitable estoppel, which provides the most straightforward and logical means of resolving the appeal. Equitable estoppel "is intended to prevent a party from taking unconscionable advantage of his own wrong by asserting his strict legal rights." *Northern Petrochemical Co. v. U.S. Fire Ins. Co.*, 277 N.W.2d 408, 410 (Minn. 1979). "A party seeking to invoke the doctrine of equitable estoppel has the burden of proving three elements: (1) that promises or inducements were made; (2) that it reasonably relied upon the promises; and, (3) that it will be harmed if estoppel is not applied." *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 919 (Minn. 1990) (citing *Northern Petrochemical Co.*, 277 N.W.2d at 410). Because the underlying facts are not in dispute, we apply a *de novo* standard of review to the district court's determination that the

Triscos are equitably estopped. *Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 819-22 (Minn. 2016); *L & H Transp., Inc. v. Drew Agency, Inc.*, 403 N.W.2d 223, 227 (Minn. 1987).

The district court reasoned that the Triscos are equitably estopped from seeking to prove that the county violated the 60-day statute because Orry asked the planning commission to not consider the Triscos' application at the December 10, 2019 meeting and to table it until "the next meeting." The Triscos challenge the district court's ruling on two grounds.

First, the Triscos contend that the statements by Orry on which the district court relied are not "misrepresentation[s] of material fact." For this contention, the Triscos rely on this court's opinions in *Alwes v. Hartford Life & Acc. Ins. Co.*, 372 N.W.2d 376 (Minn. App. 1985), and *Northern States Power Co. v. City of Mendota Heights*, 646 N.W.2d 919 (Minn. App. 2002), *rev. denied* (Minn. Sept. 25, 2002). In *Alwes*, we described the first element of equitable estoppel as requiring proof of a "misrepresentation of a material fact." 372 N.W.2d at 379 (citing *Transamerica Ins. Group v. Paul*, 267 N.W.2d 180, 183 (Minn. 1978)). In *Northern States Power*, in which we discussed equitable estoppel in the context of the 60-day rule of section 15.99, we described it in the same way. 646 N.W.2d at 925 (citing *Hydra-Mac*, 450 N.W.2d at 919, and *Transamerica*, 267 N.W.2d at 183).

Other opinions concerning equitable estoppel, however, have described the doctrine more broadly. In *Transamerica*, the supreme court stated that equitable estoppel could be based on either "the voluntary conduct of a party," a party's "acts or representations," a party's "misrepresentation of material fact," or a party's "silence when he ought to speak."

267 N.W.2d at 183. In *Northern Petrochemical*, the supreme court stated that equitable estoppel could be based on a party's prior "representations or inducements." 277 N.W.2d at 410. Thus, a "misrepresentation of material fact" is not the only type of statement or conduct that may give rise to equitable estoppel.

Orry's multiple statements to Koep about the timing of the planning commission's consideration of the Triscos' application satisfy the requirements of the caselaw described above. On December 3, 2019, Orry told Koep in a telephone call that, rather than provide Koep with additional information about the Triscos' revised plans within one day, he wanted the commission to postpone its consideration of the application to a later meeting. Later that day, he followed up with an e-mail message to Koep in which he stated, "I would like to table to the next meeting." Consistent with Orry's request, the matter was removed from the agenda of the commission's December 10, 2019 meeting. Nonetheless, Orry attended that meeting and orally requested that the commission table the matter "until the next meeting." As requested by Orry, the commission tabled the matter to the next meeting. On January 21, 2020, Orry sent Koep a text message stating that he could not attend the next commission meeting on February 11, 2020, and asked Koep, "Can u set it for Feb 25th?" As requested by Orry, the county rescheduled the matter to the commission's subsequent meeting on February 25, 2020. The commission recommended approval of the application at that meeting, and the matter was considered by the county board one week later on March 3, 2020.

This evidence shows that Orry made multiple "representations" concerning his preference for when the county's planning commission should consider the CUP

application. *See Northern Petrochemical*, 277 N.W.2d at 410; *Northern States Power*, 646 N.W.2d at 925. His representations "induced" the county to postpone the commission's consideration of the application. *See Northern Petrochemical*, 277 N.W.2d at 410. His verbal actions are the type of "voluntary conduct" that can be the basis of a finding of equitable estoppel. *See id.* Accordingly, the evidence supports the district court's determination that the county established the first requirement of the doctrine of equitable estoppel.

Second, the Triscos contend that the county did not rely on Orry's request that the commission postpone its consideration of the Triscos' application. To the contrary, the evidence clearly shows that the county's planning commission postponed its consideration because of Orry's requests. This is evident from the written correspondence between Orry and Koep as well as the transcript of the December 10, 2019 commission meeting, at which Orry orally requested that the matter be postponed, which prompted the commission members to make, second, and approve a motion to table. The causal connection could not be more clear.

Thus, the district court did not err by concluding that the Triscos are equitably estopped from seeking to prove that they are entitled to automatic approval of their CUP application on the ground that the county did not rule on the application within 60 days. In light of that conclusion, the Triscos cannot satisfy the first requirement of mandamus relief: that the county "failed to perform an official duty clearly imposed by law." *See Northern States Power*, 684 N.W.2d at 491. Because the doctrine of equitable estoppel is a sufficient

basis for affirming the district court's judgment, we need not consider the parties' other arguments.

**Affirmed.**