STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0992

City of Shorewood,
Respondent,

vs.

Guy Gerald Sanschagrin, et al.,
Appellants.

Filed March 14, 2022
Reversed and remanded
Rodenberg, Judge[*]

Hennepin County District Court
File No. 27-CV-19-15159

Timothy J. Keane, Leland P. Abide, Kutak Rock LLP, Minneapolis, Minnesota (for respondent)

Wynn Curtiss, Chestnut Cambronne PA, Minneapolis, Minnesota (for appellants)

Considered and decided by Bryan, Presiding Judge; Jesson, Judge; and Rodenberg, Judge.

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

NONPRECEDENTIAL OPINION

RODENBERG, Judge

Appellants Guy Gerald Sanschagrin, Kristine Knudson Sanschagrin, Jeffery Lowell Cameron, and Linda Kay Cameron appeal from the district court's order granting partial summary judgment and injunctive relief in favor of respondent City of Shorewood (the city). Appellants argue that (1) the district court erred in determining as a matter of law that their dock violated city ordinances; (2) summary judgment should not have been granted because there exist disputed issues of material fact; and (3) the district court should not have granted injunctive relief. Because Shorewood, Minn., Code of Ordinances (SCO) § 1201.03(14)(b) (2006) (2006 code[1]) was in effect before and during April 2017, it is controlling, and because appellants installed a dock in April 2017 that was lawful under the 2006 code, we reverse and remand for further proceedings.

FACTS

In September 2016, appellants purchased from the city an undeveloped parcel of real property (the property) in Shorewood, Minnesota, located on the shore of Lake Minnetonka. The city had purchased the property from the state, which had acquired title through tax forfeiture. There is no dwelling on the property and the parties agree that the parcel is too small to accommodate a dwelling that complies with the applicable ordinances and laws.

[1] In this opinion, we follow the terminology used by the parties' briefs and the district court's orders that refer to the pre-2017 code as the "2006 code." There were amendments to the code between 2006 and 2017, but those amendments have no bearing on the issues in this appeal.

Appellants installed a dock on the property in April 2017. As discussed in more detail below, the dock was not a floating dock and was designed to be removed from the lake before the winter months and then reinstalled after ice-out the succeeding spring. On May 11, 2017, the city issued a notice of zoning violation to appellants, and instructed appellants to remove the dock. Appellants replied to the city's notice with a notice of appeal. Appellants informed the city that, before installing the dock, they had "thoroughly reviewed the relevant codes to make sure the dock would comply with the [city] code provisions." In June, the city scheduled a hearing. The city postponed this hearing so it could review its zoning ordinances related to the installation of docks. The city then informed appellants that it had withdrawn the citation for the zoning violation and cancelled the hearing. In July, the city amended the 2006 code concerning dock regulations, Shorewood, Minn., Code of Ordinances (SCO) § 1201.03(14)(b) (2017) (2017 amendments).

In June 2018, the city cited appellants for a zoning violation for having installed a dock on the property in 2017 and again in 2018. The city declined to hear appellants' appeal as untimely and charged appellants criminally for code violations. The district court dismissed the complaint on procedural grounds. On appeal we affirmed the district court. *State v. Sanschagrin*, No. A19-1700, 2020 WL 1673741, at *1 (Minn. App. Apr. 6, 2020), *rev'd*, 952 N.W.2d 620. When it later reversed, the supreme court remanded to the district court to reinstate the city's complaint for further proceedings. *Sanschagrin*, 952 N.W.2d at 629.

In July 2019, and while the criminal case was making its way through the courts, the city sued appellants in this case, seeking to enjoin their installation and maintenance of a dock on the property. The district court granted partial summary judgment and temporary injunctive relief to the city.

This appeal followed.

DECISION

Appellants argue that the district court improperly granted partial summary judgment in favor of the city because the district court erroneously concluded that the 2006 code prohibited the installation of a dock on the property. They further contend that, because their dock was a legal dock under the 2006 code and was first installed before the 2017 amendments, injunctive relief should not have been granted to the city based on the 2017 amendments.

"The district court shall grant 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." *Fletcher Props., Inc. v. City of Minneapolis*, 931 N.W.2d 410, 417 (Minn. App. 2019) (quotation omitted), *aff'd*, 947 N.W.2d 1 (Minn. July 29, 2020). On appeal from summary judgment, a reviewing court must determine "whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). We review both questions de novo, viewing "the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

Section 1201.03, subdivision 14(b), of the 2006 code provides that "[d]ocks and wharves, permanent or floating, shall not be built, used or occupied on land located within the R Districts until a principal dwelling has been constructed on the lot or parcel."[2] This portion of the 2006 code was changed in 2017 to provide: "Docks shall not be built, used or occupied on land located within the R Districts without a principal dwelling on the lot or parcel to which it is accessory." SCO § 1201.03(14)(b) (2017).[3] The parties agree that the property is without a principal dwelling and is too small for a dwelling to be lawfully constructed.

I. Genuine issues of material fact

Appellants argue that the district court should not have granted the city's summary-judgment motion because genuine issues of material fact remain for trial. Appellants contend that the following material facts remain in dispute: (1) whether the 2006 code or the 2017 amendments applied to appellants' dock; (2) whether similarly situated docks existed in the city; and (3) whether the previous owner of the property installed a dock.

No genuine issue of material fact exists where "the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (quotation omitted). A material fact is one that will "affect the result or outcome of the case depending on its resolution." *Zappa v. Fahey*, 245 N.W.2d

[2] The term "R Districts" refers to parcels in a residential district. The property is located in a residential district.

[3] The record does not contain a copy of the 2006 code, and there are minor discrepancies in the language quoted in the parties' briefs and the district court's order. We rely on the version of section 1201.03, subdivision 14(b), quoted in and attached to the city's May 2017 violation notice, and quoted in appellants' letter responsive to that notice.

258, 259-60 (Minn. 1976). "[T]o raise a genuine issue of material fact[,] the nonmoving party must present more than evidence . . . [that would] permit reasonable persons to draw different conclusions." *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009) (quotation omitted).

A. Relevant code

Appellants argue that the 2006 code is controlling and that any subsequent amendments cannot constitutionally apply to their dock. "When a nonconforming use lawfully exists before an adverse zoning change takes effect, constitutional and statutory protections permit the use to continue." *Meleyco P'ship No. 2 v. City of W. St. Paul*, 874 N.W.2d 440, 443 (Minn. App. 2016).

Interpretation of zoning ordinances presents a question of law. *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). "When the material facts are not in dispute, we review the [district] court's application of the law de novo." *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007).

The question of which code provision applies to appellants' dock—the 2006 code or the 2017 amendments—presents no disputed issue of material fact. The question is purely one of law.

B. Similarly situated docks

Appellants argue that their dock is legally identical to other similarly situated docks in the city.[4] This, they argue, should have precluded the city's enforcement of the ordinance with respect to their property.

The city presented evidence concerning how it received and dealt with complaints from the community and explained that the city is a "complaint driven enforcement community." The city "only initiates enforcement [of code violations] in response to citizen complaints." The city received complaints from residents regarding the dock.

It stands to reason that there could exist nonconforming docks about which there have not been complaints. Appellants cite no authority—and we are aware of none—establishing that every other code violation must have been remedied before appellants' alleged code violation may be addressed. *See* Minn. Stat. § 462.357, subd. 1 (2020) (authorizing municipalities to "establish standards and procedures regulating" the use of land within their jurisdiction). Therefore, whether another prohibited dock is currently installed in the city is not material to the outcome of this appeal. *See McCavic v. De Luca*, 46 N.W.2d 873, 877 (Minn. 1951) (stating that "the validity of an ordinance is not affected by failure to enforce it or by its wrongful enforcement or by the fact that it is repeatedly violated").

[4] A photograph in the record shows two docks on a small peninsula. The caption beside the photograph states that "[t]his picture shows two docks on a single lot. In addition, one of these docks connects the shoreline at multiple points as shown by the red arrows."

C. Previous owners' use of the property

Appellants also argue that a previous owner of the property had installed a dock that was similar to the one that appellants installed in April 2017.

"An established nonconforming use runs with the land, and hence a change in ownership will not destroy the right to continue the use." 8A Eugene McQuillin, *The Law of Mun. Corp.* § 25.256, at 66 (3d rev. ed. 2020). "Moreover, we have long recognized that a subsequent property owner stands in the place of [its] predecessors for purposes of defining the scope of nonconforming-use rights." *AIM Dev. (USA), LLC v. City of Sartell*, 946 N.W.2d 330, 336 (Minn. 2020) (quotation omitted). A "fundamental principle" for a nonconforming use of land that is "lawfully existing at the time of an adverse zoning change may continue to exist until [it is] removed or otherwise discontinued." *Hooper v. City of St. Paul*, 353 N.W.2d 138, 140 (Minn. 1984).

Although there is some record evidence of a prior dock on the property, this evidence does not present a genuine issue of material fact precluding summary judgment if the dock that appellants installed in 2017 was prohibited under the 2006 code. The record reveals that, in May 1998, the city notified a previous owner of the property that an installed dock must be removed. In June 1999, the city sent another letter regarding the dock, which was not then extending into the lake, but was instead stored on the property. The city instructed the owner of the property that the disassembled dock could not be stored on the property and must be removed.

The record does not reveal what was done with this prior dock after 1999 and before appellants purchased the property in 2016. Even viewing the evidence "in the light most favorable" to appellants, *STAR Ctrs.*, 644 N.W.2d at 76-77, there remains a gap of some 17 years between evidence of the previous owner's dock and appellants' placement of a dock on the property in April 2017.

The previous owner's placement of a dock on the property years before appellants purchased the property creates no genuine issue of material fact concerning whether a prior nonconforming use existed when appellants acquired the property.

We see no genuine issue of material fact precluding summary judgment on the question of whether the dock that appellants installed in 2017 was prohibited under the then-existing 2006 code. That is a purely legal question.[5]

II. Application of the 2006 code

Local governments have authority to enact and change zoning ordinances, as well as to allow and terminate legal nonconforming uses. *White v. City of Elk River*, 840 N.W.2d 43, 49 (Minn. 2013). "A [legal] nonconforming use is a use of land that is prohibited under a current zoning ordinance but nonetheless is permitted to continue because the use lawfully existed before [an adverse zoning change] took effect." *Id.* "It is a fundamental principle of the law of real property that uses lawfully existing at the time

[5] As discussed below, resolution of this purely legal question presents additional factual questions the resolution of which exceeds our authority as an appellate court. Those residual factual questions are properly for the district court for resolution.

of an adverse zoning change may continue to exist until they are removed or otherwise discontinued." *AIM Dev.*, 946 N.W.2d at 336 (quotation and emphasis omitted).

Appellants argue that the district court's interpretation of the 2006 code was mistaken. As noted, we review legal questions de novo because "the interpretation of an existing ordinance is a question of law for the court." *Frank's Nursery*, 295 N.W.2d at 608. Courts construe an ordinance based on the principles of statutory construction. *Chanhassen Ests. Residents Ass'n v. City of Chanhassen*, 342 N.W.2d 335, 339 n.3 (Minn. 1984).

The interpretation of a city ordinance involves three principles of construction. *Frank's Nursery*, 295 N.W.2d at 608. "First, courts generally strive to construe a term according to its plain and ordinary meaning." *Id.* Second, zoning ordinances should be construed strictly against the city and in favor of the property owner." *Id.* Third, "[a] zoning ordinance must always be considered in light of its underlying policy." *Id.* at 609.

The 2006 code does not define the term "permanent" as that word is used in the 2006 code's definition of docks.

A. The 2006 code is ambiguous concerning the dock types that are prohibited.

As noted, the foremost rule of construction is that "courts generally strive to construe a term according to its plain and ordinary meaning." *Id.* at 608. When interpreting an ordinance, courts first examine its language to determine if it is ambiguous. *Motokazie! Inc. v. Rice Cnty.*, 824 N.W.2d 341, 344 (Minn. App. 2012). An ordinance is ambiguous if there is "more than one reasonable interpretation." *Id.* (quotation omitted). If an ordinance is ambiguous, we "may apply the canons of statutory construction to determine

its meaning." *Id.* Under the canons of construction, we interpret the words used in an ordinance "according to their common approved usage." Minn. Stat. § 645.08(1) (2020). Appellate courts look to dictionary definitions to determine the common and approved meaning of undefined words. *Jaeger v. Palladium Holdings, LLC*, 884 N.W.2d 601, 605 (Minn. 2016). We must also avoid interpretations that would render a word or phrase "superfluous, void, or insignificant." *In re Admin. Ord. Issued to Wright Cnty.*, 784 N.W.2d 398, 403 (Minn. App. 2010) (quotation omitted).

We begin our analysis of the 2006 code by considering the relevant language, which reads: "Docks and wharves, permanent or floating, shall not be built, used or occupied on land located within the R Districts until a principal dwelling has been constructed on the lot or parcel." SCO § 1201.03(14)(b) (2006).

The parties each claim that the plain language of the 2006 code supports their argument concerning appellants' dock. The city argues that, because the property has no "principal dwelling"—and can never legally have a principal dwelling because of the small size of the parcel—no dock can exist on the property. Appellants argue that the 2006 code prohibits only "permanent or floating" docks on properties that contain no principal dwelling, but does not prohibit seasonal, non-floating docks.

We must therefore consider whether the words "permanent or floating" modify both "[d]ocks and wharves" or, instead, modify only "wharves." We conclude that the most reasonable interpretation is the former.

The phrase "permanent or floating," is set off by commas immediately following the phrase "[d]ocks and wharves" and constitutes an appositive that modifies the previous

phrase. "The Minnesota Supreme Court has held that appositive phrases set off by commas should be construed to modify only the immediately preceding noun, pronoun, or clause, unless it is clear that it was intended to apply to subsequent matter." *Walser Auto Sales, Inc. v. City of Richfield*, 635 N.W.2d 391, 396-97 (Minn. App. 2001) (quotation omitted), *aff'd mem.*, 644 N.W.2d 425 (Minn. 2002). Other authorities have written that, "[w]hen there is a straightforward, parallel construction that involves all nouns or verbs in a series," the modifier that follows "normally applies to the entire series." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 147 (2012).

Here, it seems clear to us that the phrase "[d]ocks and wharves" should be read together, by reason of the use of the word "and" to connect the two nouns that share the common restriction of, "not be[ing] built" under the conditions described by the 2006 code. SCO § 1201.03(14)(b) (2006). Application of the modifier to only a portion of the preceding phrase would not be reasonable. Had the city intended to prohibit all docks, and only "permanent or floating" wharves, the sentence could easily and understandably have been written to prohibit "all docks and permanent or floating wharves" on lots without a principal dwelling. *Id.* Set off by two commas, the words "permanent or floating" seem naturally to modify both the types of docks and the types of wharves that are prohibited. *Id.*

The parties agree that appellants' dock is not "floating," but they disagree concerning whether appellants' dock is "permanent." Like many, if not most, Minnesota docks, the one that appellants installed in 2017 and propose to continue using is a seasonal

dock that is removed before the lake freezes each year. The dock is put in place again after ice-out the following spring.

After reviewing the relevant language of the 2006 code, we conclude that there exists more than one reasonable interpretation of section 1201.03, subdivision 14(b), rendering this portion of the 2006 code ambiguous.

The term "permanent" is not explicitly defined by the 2006 code. We therefore apply the ordinary meaning of the word, using dictionary definitions.

"Permanent" is defined as "continuing or enduring without fundamental or marked change." *Merriam-Webster's Collegiate Dictionary* 922 (11th ed. 2014). "Permanent" is also defined as "[l]asting or remaining without essential change. Not expected to change in status, condition, or place." *The American Heritage Dictionary of the English Language* 1314 (5th ed. 2018). A third definition of "permanent" is "lasting or intended to last or remain unchanged indefinitely. Lasting or continuing without interruption." *Oxford Dictionary of English* 1323 (3rd ed. 2010). We consider each definition individually.

Employing *Merriam-Webster's* definition of "permanent," appellants' "seasonal" dock might nevertheless be considered "permanent" because it is "continuing or enduring" and designedly so. *Merriam-Webster's*, *supra*, at 922. The 2006 code does not separately define the term "seasonal" as it pertains to docks.

Due to Minnesota's climate, docks by their nature are subject to damage if left in a lake through the winter months and until the ice goes out in the spring. Therefore, docks are often temporarily removed during the winter months. But the temporary removal is not designed to effectuate a "fundamental or marked change" to the docks. *See id.* To the

contrary, the temporary removal is to ensure that the dock is not destroyed and can be used again during the summer months. To this point, the dock in question here is one that appellants intend will continue and endure and will not be fundamentally changed by the seasonal freezing of Lake Minnetonka. This definition might conceivably be employed to conclude that appellants' dock is in some sense "permanent."

But appellants' dock is not "permanent" under the *American Heritage Dictionary* definition. Appellants' dock is "expected to change in status, condition, or place." *American Heritage*, *supra*, at 1314. As discussed, many docks in Minnesota are designed to be removed during the winter months. There are, of course, docks that are designedly "permanent," such as was the case in the recent *Dock* case, discussed below. *City of Waconia v. Dock*, No. A19-1099, 2020 WL 1909700, at *1 (Minn. App. Apr. 20, 2020), *aff'd in part*, *rev'd in part*, 961 N.W.2d 220 (Minn. June 16, 2021). Appellants' dock is nothing like that one. Being a dock designed to allow annual removal, appellants' dock is not one that can be considered to be "[l]asting or remaining without essential change." *American Heritage*, *supra*, at 1314.

The *Oxford Dictionary* definition of "permanent" is similar to the *American Heritage Dictionary* definition. The *Oxford Dictionary* places an added requirement that something is "permanent" if it "last[s] or [is] intended to last or remain unchanged indefinitely." *Oxford Dictionary*, *supra*, at 1323. There is no dispute that appellants' dock does not "remain unchanged indefinitely" or continue "without interruption," being designed, as it is, to be removed each fall and reinstalled the following spring. *See id.*

In *Dock*, we analyzed the City of Waconia's ordinances governing the construction of a permanent dock. 2020 WL 1909700, at *6-7. There, the "roughly-200-foot-long dock" was "advertised as permanent" by the company hired to build and install the dock. *Id.* at *2. Documents generated by the builder described the dock's foundation as being set on permanently embedded steel pilings, the dock was designed and constructed to remain in the water year-round, and the dock had a 25-year warranty. *Id.* The builder stated that removal of the dock could be accomplished with "approximately six to eight people" working for "seven to ten days," and would cost "a couple hundred thousand dollars" to reinstall the next spring. *Id.*

In the *Dock* case, a "permanent" dock was defined by Waconia's ordinance as being "any [d]ock that is not a [s]easonal [d]ock and is supported by pilings, retaining wall or other materials and associated with a permanent foundation that is either resting or embedded in the lake bottom and is designed to make relocation impracticable." *Id.* A seasonal dock was defined as "any [d]ock which is so designed and constructed that it may be removed from the [p]ublic [w]aters on a seasonal basis." *Id.*

The City of Waconia intentionally distinguished seasonal or temporary docks from permanent docks by using ordinance definitions focused on the duration a dock was intended to remain installed and how difficult it would be to remove the dock.

Here, the city's 2006 code contained no such definitions. It prohibited "[d]ocks and wharves, permanent or floating" on parcels without a residence. SCO § 1201.03(14)(b) (2006). We cannot disregard the words "permanent or floating." *See Admin. Ord. Issued to Wright Cnty.*, 784 N.W.2d at 403 (stating that in interpreting ordinances we must give

effect to all words, phrases, and sentences). Each word must mean something. And the city chose to use those words. Instead of offsetting the durational term "permanent" with another durational term such as "temporary" or "seasonal," the city chose to employ the term "floating."

Under a different section of the 2006 code, the city provides by ordinance that "[n]o boat . . . or structure tied or connected to a dock or wharf located within the city limits shall be used as a permanent, temporary, or seasonal residence." SCO § 1201.03(14)(d) (2006). The language of subdivision 14(d) expressly offsets the durational term "permanent" with other durational terms, clearly evidencing an intent to encompass all types of residences. The city did not do this in section 1201.03, subdivision 14(b). On balance, and employing dictionary definitions of the term "permanent" in the absence of any definition of "permanent" in the ordinance, the language of the 2006 code prohibiting "[d]ocks and wharves, permanent or floating" is ambiguous as it applies to docks. SCO § 1201.03(14)(b) (2006).

B. We must construe ordinances in favor of the property owner.

The second construction principle of *Frank's Nursery* requires courts to construe an ordinance "strictly against the city and in favor of the property owner." *Frank's Nursery*, 295 N.W.2d at 608.

Under Minn. Stat. § 645.08(1), "words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, or are defined in this chapter, are construed according to such special meaning or their definition[.]" We have already

identified and discussed three dictionary definitions of the word "permanent." *Frank's Nursery* requires that we interpret the ambiguous language of the 2006 code in favor of appellants, the property owners here. 295 N.W.2d at 608. In doing so, we must select a definition of "permanent" that is the "least restrictive upon the rights of the property owner[s]." *Id.* at 608-09. This principle of construction favors appellants.

Under several well-established dictionary definitions, appellants' dock is not one that is "permanent." All agree that the dock is not "floating." Accordingly, the dock is not prohibited by the 2006 code which prohibits "[d]ocks and wharves, permanent or floating" on parcels such as this one.

C. Underlying policy

The third principle of *Frank's Nursery* requires courts to consider the ordinance "in light of its underlying policy." *Id.* at 609. To implement this principle of construction, the intent of the city during the enactment of the ordinance must be ascertained. *Id.* The city argues that the underlying policy of the 2006 code was to prohibit the installation of docks on properties that have no dwelling on them. The city's argument finds factual support in the record. There are three documented instances of the city attempting to prohibit previous owners of the property from installing or storing a dock on the property.

In 1987, N.S., the then-owner of the property, applied for a conditional use permit and variances to, among other things, install a dock on the property. The city denied the request. In 1998, the city informed J.B., the then-owner of the property, that he must remove a dock from the property because installation of the dock violated city code. The

city later informed J.B. that he had to remove the dock that was being stored on the land of the property or be in violation of the city code.

These instances, the city argues, demonstrate that the 2006 code was intended to preclude docks such as the one that appellants placed on the property in 2017.

It seems likely that the city's intention in the 2006 code was to prohibit the installation of a dock on small parcels such as this one. The small size of the property precludes a dwelling from being constructed on it and therefore, the city argues, the policy underlying the 2006 code intended that no docks may be constructed on the property. And a policy prohibiting docks on very small parcels like this seems reasonable. Many Minnesotans want access to the waters of this state. But a proliferation of docks extending into a lake from small parcels of land in a residential district could well be something that a city may reasonably want to discourage.

The city's policy argument is reasonable. But tellingly, after appellants placed a dock on the property in 2017, the city acted quickly to make clear the policy of prohibiting *any* docks on parcels such as this one. We respect the city's representations concerning the intent and purpose of the 2006 code, but applying Minnesota Supreme Court precedent, as we must, the policy arguments cannot overcome the language of the 2006 code itself as it existed when appellants first installed the dock on the property. *See Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003) (stating that the court of appeals is bound by supreme court precedent).

Under the 2017 amendments, "[d]ocks shall not be built, used or occupied on land located within the R Districts without a principal dwelling on the lot or parcel to which it

is accessory." SCO § 1201.03(14)(b) (2017). The timing of the 2017 amendments suggests that the city understood that the 2006 code was not as restrictive as the city now contends it to have been. In *Frank's Nursery*, the Roseville city council attempted to add a definition to the ordinance that would prevent Frank's from constructing a lawn and garden center. 295 N.W.2d at 609 ("While these circumstances are not dispositive, they justify giving less weight to the city's present interpretation than might otherwise be accorded."). Here, the 2006 code provision was ambiguous. The city appears to have realized just that in 2017. Under *Frank's Nursery*, we must resolve ambiguity in favor of the landowner. And until the 2017 amendments, regardless of the city's policy preferences, the 2006 code did not unambiguously prohibit docks such as this one on properties without a residence.

Applying the *Frank's Nursery* factors, we reverse the district court's grant of summary judgment in favor of the city. When appellants first placed their dock on the property in 2017, the dock was not prohibited by the 2006 code. When the code was amended in 2017, appellants' dock was a preexisting nonconforming use. The city may not zone out of existence the dock which was legally placed before the amendments. *See Meleyco P'ship No. 2*, 874 N.W.2d at 443 ("When a nonconforming use lawfully exists before an adverse zoning change takes effect, constitutional and statutory protections permit the use to continue.").

III. The removal of appellants' dock each autumn does not create a new dock each succeeding season.

The district court identified an alternative basis for granting the city's motion for partial summary judgment. The district court determined that even if appellants' "dock is

seasonal . . . each year [the] dock is removed before the lake freezes and [the] dock is installed when the ice has thawed. Each year there is a new dock." Using this reasoning, the district court concluded that, even if appellants' dock were allowed under the 2006 code when it was installed in 2017, its removal each year would result in "a new dock" being installed by appellants in the following season.

This cannot be the case. If we were to approve of this line of reasoning, seasonal docks could be zoned out of existence by a municipality amending an ordinance or code in the winter months. Reinstalling a seasonal dock in the spring after ice-out does not create a new dock.

From all appearances in the record, appellants have installed the same dock since 2017. If that is true, appellants' dock cannot be considered "a new dock" each spring. It is the original dock, which was not prohibited under the 2006 code, reinstalled each year. The grant of summary judgment in favor of the city is reversed.

Because we reverse the district court's grant of summary judgment in favor of the city, we also reverse the grant of injunctive relief, which was premised on the conclusion that appellants' dock was prohibited as a matter of law.

Under Minn. Stat. § 462.362 (2020), "A municipality may . . . enforce any provision of sections 462.351 to 462.364 or of any ordinance adopted thereunder by mandamus, injunction, or any other appropriate remedy in any court of competent jurisdiction." But, as discussed, the applicable 2006 code prohibited only "permanent or floating" docks on parcels such as this property. SCO § 1201.03(14)(b) (2006). Because appellants' dock was not prohibited when installed in 2017, the city is not entitled to injunctive relief.

As previously discussed, a legal nonconforming use of property may continue, but cannot be expanded. *See id.* Here, appellants were entitled to continue to maintain their dock on the property after 2017 as a legal nonconforming use. But they may not expand their nonconforming use. Should the nonconforming use be expanded or end—for any reason—then, under the 2017 amendments, the nonconforming use cannot lawfully be resumed. *See Hooper*, 353 N.W.2d at 140. As discussed below, this leaves residual questions of fact for resolution.

IV. The district court must resolve residual fact issues on remand.

On remand, it remains to be determined whether, as a factual matter, appellants' legal nonconforming use has been continued each season (which factual question we cannot determine on appeal) and whether there has been any expansion of the nonconforming use. *See* Minn. Stat. § 462.357, subd. 1e(a) (2020) (stating that "the lawful [nonconforming] use or occupation of land or premises existing at the time of the adoption of an additional control . . . may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion"); *AIM Dev.*, 946 N.W.2d at 336-39 (analyzing whether proposed changes to a legal nonconforming use was an expansion of the use). These are questions for resolution by the district court in the first instance on remand.

In sum, we reverse the district court's grant of partial summary judgment and injunctive relief in favor of the city premised on the conclusion that the 2006 code prohibited this dock when it was first installed in April 2017. On remand, the district court shall address any remaining legal or factual issues including, but not limited to, whether

appellants' legal nonconforming use has been discontinued, expanded, or materially changed since the initial lawful installation in 2017.

Reversed and remanded.