STATE OF MINNESOTA
IN COURT OF APPEALS
A09-178

Ridge Creek I, Inc.,
Appellant,

vs.

City of Shakopee, Minnesota,
Respondent.

Filed January 19, 2010
Affirmed in part and reversed in part
Huspeni, Judge[*]

Scott County District Court
File No. 70-CV-07-19

Jack Y. Perry, Craig R. Baune, Briggs and Morgan, P.A., Minneapolis, Minnesota (for appellant)

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Paul D. Reuvers, Jason J. Kuboushek, Iverson Reuvers, L.L.C., Bloomington, Minnesota (for amicus curiae Association of Minnesota Counties)

Considered and decided by Wright, Presiding Judge; Larkin, Judge; and Huspeni, Judge.

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

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

HUSPENI, Judge

On appeal in this development dispute, appellant-developer argues that (1) respondent-city's failure to deny developer's wetland-permit applications resulted in automatic approval under Minn. Stat. §15.99 (2008), and (2) the city acted arbitrarily in denying developer's preliminary- and final-plat applications and imposing conditions on approval of a grading-permit application. We affirm in part and reverse in part.

FACTS

Appellant Ridge Creek I, Inc. (Ridge Creek) owns a property parcel within respondent City of Shakopee (the City) consisting of approximately 80 acres, with approximately 16.5 acres above a steep bluff adjacent to County Road 16 and 63 acres below the bluff. The property includes 3.52 acres of wetlands. Ridge Creek proposed to develop the property into approximately 153 residential lots.

On November 18, 2005, Ridge Creek filed a wetland-permit application and a preliminary-plat application with the City. Both the wetland-permit application and the preliminary-plat application were included in the same proposed development package. On December 1, 2005, the City informed Ridge Creek by letter that additional time would be needed for the City to complete review of the preliminary-plat application, and "[t]herefore, the total review period for this application shall be 120 days."

In a December 8, 2005 letter, the City informed Ridge Creek that the public hearing on the preliminary-plat application was being rescheduled from January 5 to February 9, 2006, to enable the Environmental Advisory Committee (EAC) and the Park

and Recreation Advisory Board (PRAB) to conduct their reviews prior to planning commission review.

By letter dated December 20, 2005, the City notified Ridge Creek of substantive suggestions for revisions to the preliminary plat. The suggestions, clearly encompassing wetlands issues, included: "Consolidation of the ponding/mitigation areas into one location on each side of Crossings Boulevard. Large ponding/mitigation areas are preferred to more numerous and smaller areas. . . . Recommend utilizing areas adjacent to channel for one large wetland mitigation site."

On January 4, 2006, Ridge Creek submitted its wetland delineation for the subject property. The following day, the City wrote to Ridge Creek requesting "that the ponding areas either be combined to reduce the overall number of ponds or justification be provided as to why you believe this is not workable." On January 11, 2006, a letter with the subject heading "Preliminary Plat," was sent by the City to Ridge Creek requesting that Ridge Creek submit revised plans following review by City staff, EAC, and PRAB and also requesting an extension beyond the March 18 (120-day) deadline indicated in the December 1, 2005 correspondence.

By letters dated January 19 and 25, 2006, the City notified Ridge Creek that the EAC and PRAB had recommended approval of the preliminary plat subject to conditions. One of the conditions specifically addressed wetland management, and indicated that the "Environmental Advisory Committee recommends that [Ridge Creek] extend the

required 5-year maintenance and monitoring period an additional 5-years to ensure the establishment of native vegetation within the wetland mitigation sites."[1]

On January 25, 2006, Ridge Creek faxed a proposed design for Ridge Creek ponding areas and the next day sent an e-mail to the City project engineer explaining why Ridge Creek preferred to keep both ponds on the north side of Crossings Boulevard, mentioning contacting someone about buying wetland credits, addressing other issues relating to the preliminary plat, and indicating a willingness to work out a compromise with the City. The e-mail suggested a "meeting to discuss all these issues with the creek, the park and ponds."[2]

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[1] Joe Swentek, a project engineer for the City, submitted an affidavit, filed in the district court February 15, 2007, stating in part:

> On January 24, 2006, [Ridge Creek] attended a Technical Evaluation Panel ("TEP") meeting. The TEP accepted [Ridge Creek's] wetland delineation report, which was submitted to the City on January 4, 2006, and determined that wetlands could be mitigated completely onsite, completely offsite or some combination thereof. The TEP left the final decision regarding onsite or offsite wetland mitigation to the City in its capacity as the Local Government Unit.

[2] In an affidavit filed in the district court February 15, 2007, R. Michael Leek, the community development director for the City, states in part:

> [Ridge Creek] attended a City Development Review Committee (DRC) meeting on February 1, 2006. Topics discussed at that meeting included onsite and offsite wetland mitigation. After this meeting, [Ridge Creek] agreed to extend the review period for the preliminary plat and wetland mitigation plan to May 2, 2006. [Ridge Creek] informed the committee that it would submit revised plans by February 22, 2006. At no time when extensions to the time limit for review were granted by [Ridge Creek] was any statement made, or other indication given, that the time to review the wetland application was not also extended as the plat was necessarily tied to any wetland mitigation. Had [Ridge

On about February 22, 2006, Ridge Creek submitted "revisions to the Ridge Creek Wetland Permit Application dated April 4, 2005." By letter dated March 2, 2006, the City notified Ridge Creek:

> The revised preliminary plat changes how you plan to mitigate wetlands. We consider this a substantial change over what the EAC reviewed previously. . . . Therefore, the revised preliminary plat will need to be reviewed by the EAC at their next meeting. Unfortunately . . . the next meeting is not scheduled until April 24, 2006.

The letter stated that the City needed to extend the review period until July 1, 2006. By letter dated March 10, 2006, Ridge Creek agreed to "extend the review time for plat approval for Ridge Creek to July 1st."

At an April 12, 2006 Development Review Committee (DRC) meeting, the City instructed Ridge Creek to mitigate its wetland impacts onsite next to the channel. On April 20, 2006, Ridge Creek sent an e-mail to the City project engineer seeking clarification of the location for a wetland area, and the next day asked him about buying wetland credits. April 24, 2006 correspondence on behalf of Ridge Creek to the City referenced information that the City would be providing about a mitigation plan for an "adjacent . . . development for guidance in developing a replacement plan that is satisfactory to the City."

> Creek] asserted that the extensions did not pertain to its entire application, including any wetland requests, City staff would have acted promptly on the wetland application to ensure timely approval or denial. . . .The City relied on the continued extension of deadlines and filing of amended applications by [Ridge Creek] to conclude that the City was well within any applicable § 15.99 deadlines.

At a June 6, 2006 City Council meeting, there was extensive discussion regarding the wetland mitigation plan for the Ridge Creek development. On June 7, 2006, Ridge Creek sent the City an e-mail asking the City "to grant [an extension until July 18] for the council to complete its decision on the Ridge Creek plat" and stating that Ridge Creek "will submit the site location for wetland mitigation in the Lower Minnesota . . . soon."

By letter dated June 30, 2006, the City notified Ridge Creek that no documentation regarding wetland mitigation had yet been received, that it appeared that there would be insufficient time for the City to complete its review, and that the City expected to recommend denial of the preliminary plat. On July 14, 2006, Ridge Creek submitted a revised wetland replacement plan and application proposing offsite wetland mitigation.

The City denied Ridge Creek's preliminary-plat application on July 18, 2006. One of the reasons stated for denial was that the wetland replacement plan had not been approved by the Local Government Unit. By letter dated August 28, 2006, Ridge Creek requested that the City review the Ridge Creek wetland mitigation proposal and reconsider the preliminary plat for approval. Review and reconsideration were not granted.

Ridge Creek sued the City seeking a writ of mandamus for automatic approval of the wetlands applications dated November 18, 2005, and February 22, 2006; seeking damages for delay under Minn. Stat. § 586.09 (2008); and seeking a declaratory judgment that the City's denial of a preliminary-plat application was arbitrary.

On May 17, 2007, the district court granted summary judgment to Ridge Creek "as to the two Wetland Applications . . . and as a result of this decision, . . . for approval of the Preliminary Plat Application as well." In a memorandum incorporated into the May 17 order, the district court stated in part:

> [Ridge Creek] explains that Minn. Stat. § 15.99 subd. 3(f) has certain requirements for requesting an extension. . . . [Ridge Creek] claims that the City failed to extend as to the Wetland application due to the fact that it's a separate application and there are different procedures for review. And the City had only identified the Preliminary plat application in requesting an extension in the December 1, 2005 letter.
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> Here, the City claims that they considered the application incomplete because they received additional information at a later date that reset the time deadlines. However, the City did not specifically put into writing what documents it considered were missing. . . .
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> . . . .
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> . . . The resolution denying the plat application made four specific findings: 1) the wetland mitigation was to occur either offsite within the Lower Minnesota Watershed District (LMWD) or on-site; 2) the applicant refused to pay for grading the new alignment of the Spring Lake-Prior Lake Outlet Channel; 3) the requirement that all grading be done in one phase and not incrementally as suggested by the applicant; and 4) the applicant had not addressed issues raised from the previous applications. From this Court's determination concerning the "automatic approval" of the Wetland applications, #1 and #4 have already been rendered moot. Additionally, at the hearings [Ridge Creek] claimed that is has already agreed to pay for the grading and will do it in one phase.[3]

[3] The district court did not address Ridge Creek's damage claim in the May 17, 2007 order. Ridge Creek's appeal of the partial summary judgment resulting from this order was dismissed by this court as premature.

Ultimately, Ridge Creek submitted final-plat applications for Ridge Creek Bluff (bluff project) to create 42 single family lots and one outlot on 16.53 acres of the property and for Ridge Creek (creek project) to create 42 single family lots and four outlots on 62.99 acres. The City Council denied the final-plat applications because the preliminary plat had not been approved, and also made detailed findings on the plats' noncompliance with City code requirements. Ridge Creek then brought a second action against the City seeking a declaratory judgment that the denial of the final-plat application was arbitrary. The district court consolidated the two cases.

Ridge Creek also submitted a grading-permit application, which the City approved with conditions. Ridge Creek brought a third action against the city seeking a declaratory judgment that the conditions imposed on the grading permit were arbitrary. The district court consolidated the third action with the previous two, noting that the action arising out of the denial of the grading permit involved the same parties, the same project and the same broad issues.

On July 28, 2008, the district court judge who had issued the May 17, 2007 order issued another order that granted partial summary judgment to the City, dismissed Ridge Creek's damages claim on the basis that Minn. Stat. § 586.09 does not create an independent basis for damages, and denied summary judgment on Ridge Creek's claim that the final-plat approval was arbitrarily denied by the City on the basis of Ridge Creek's failure to comply with City regulations. In a memorandum incorporated into its July 28, 2008 order, the district court stated in part:

> The reasons the [City] did not approve the final plat application were (1) that it was premature because [the City] had not approved a preliminary plat and (2) because the final plat failed to comply with numerous subdivision regulations.
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> . . . .
>
> . . . Whether it does or not, and whether the [City's] denial of the final plat is unreasonable, arbitrary or capricious, are issues to be tried.[4]

On November 24, 2008, the parties entered into a stipulation stating in relevant part:

> WHEREAS, Ridge creek maintains that the relevant issue in determining whether City's denials of the Final Plat Application and Grading Permit Application were arbitrary, capricious and unreasonable is whether the applications substantially complied with the preliminary plat, which Ridge Creek asserts was approved by the order that this Court entered on May 17, 2007. Ridge Creek further asserts that it would be impossible for it to substantially comply with both the Preliminary Plat and all of City's subdivision requirements. In contrast, City maintains that it was permitted to deny the Final Plat Application if it violated City ordinances in any respect, regardless of whether the Final Plat Application substantially conformed to the Preliminary Plat;
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> WHEREAS, City and Ridge Creek agree that the Final Plat Application and the Grading Permit Application do not comply in some respects to City's ordinances and, therefore, agree that a trial on that issue is unnecessary; and
>
> WHEREAS, City and Ridge Creek agree that [the district court] should enter a final judgment in accordance with this stipulation to allow the parties to file their respective

[4] On October 13, 2008, the district court judge who issued the May 17, 2007 and July 28, 2008 orders denied Ridge Creek's motion to certify as important and doubtful the questions of whether Minn. Stat. § 586.09 creates a substantive cause of action for damages and whether a final-plat application can be denied based on alleged violations of subdivision requirements that were approved in a corresponding preliminary plat.

> appeals before the Court of Appeals rather than holding a trial on the issues identified above.

Based on the stipulation, judgment was entered dismissing the claims arising out of the denial of the final-plat and grading-permit applications. This appeal followed.

D E C I S I O N

I.

Minn. Stat. § 15.99, subd. 2(a) (2008) critically impacts our discussion of the first issue we must address: Was the district court correct in the determination it made in May, 2007 regarding the wetlands-permit applications and the City's denial of preliminary-plat approval?[5] Section 15.99, subd. 2(a) requires that an agency "approve or deny within 60 days a written request relating to zoning . . . for a permit, license or other governmental approval of an action. Failure of an agency to deny a request within 60 days is approval of the request." The legislature enacted section 15.99 to establish 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); *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).

The wetland-permit applications at issue in this case are written requests related to zoning under Minn. Stat. § 15.99, subd. 2(a). *See Calm Waters, LLC v. Kanabec County Bd. of Comm'rs*, 756 N.W.2d 716, 719 (Minn. 2008) (assuming, without deciding, that a subdivision application constitutes "written request relating to zoning" within meaning of

[5] Review of issues addressed in this order (and in the resulting judgment entered June 27, 2007) was preserved in this court's order of September 18, 2007 dismissing the first appeal as premature.

60-day rule under Minn. Stat. § 15.99, subd. 2(a)); *Advantage Capital Mgmt. v. City of Northfield*, 664 N.W.2d 421, 427 (Minn. App. 2003) (explaining that a site-plan application is a request related to zoning), *review denied* (Minn. Sept. 24, 2003); *see also Breza v. City of Minnetrista*, 725 N.W.2d 106, 112 (Minn. 2006) (concluding that Minn. Stat. § 15.99 applies to an application under the Wetland Conservation Act).

The City argues that the district court erred in declaring in the May 17, 2007 order that section 15.99 applied and resulted in automatic approval of the wetland-permit applications. Instead, argues the City, Ridge Creek is equitably estopped from arguing the application of this statute. Our careful review of the record convinces us that the City's argument is a valid one, and that equitable estoppel applies to the facts in the record before us.

"This court determines de novo whether equitable estoppel applies to a party's conduct." *Lucio v. Sch. Bd. of Indep. Sch. Dist. No. 625*, 574 N.W.2d 737, 740 (Minn. App. 1998), *review denied* (Minn. Apr. 30, 1998).

> The doctrine of [equitable estoppel] is founded in justice and good conscience and is a favorite of the law. It arises when one by his acts or representations, or by his silence when he ought to speak, intentionally or through culpable negligence, induces another to believe certain facts to exist, and such other rightfully acts on the belief so induced in such manner that if the former is permitted to deny the existence of such facts it will prejudice the latter.

In re Estate of Peterson, 203 Minn. 337, 343, 281 N.W. 275, 278 (1938). "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).

In ruling that Ridge Creek's wetland-permit applications were approved by operation of Minn. Stat. § 15.99, the district court relied in part on *N. States Power v. City of Mendota Heights*, 646 N.W.2d 919, 926 (Minn. App. 2002). We conclude that this reliance was misplaced. In *N. States Power*, this court determined that equitable estoppel did not apply because the city never formally sought the developer's approval of additional extensions, the city had carefully documented prior extensions in writing, and the city could not prove reasonable reliance by either seeking the developer's approval of another extension or acting on the permit application. 646 N.W.2d at 926. *Mendota Heights* was based on the facts of the case and does not hold or imply that equitable estoppel cannot apply in a section 15.99 proceeding. To the contrary, the case implies that equitable estoppel may apply to defeat a claim of automatic approval under section 15.99 provided that all of the elements of equitable estoppel are established. We conclude that all elements of equitable estoppel were established in this case.

Promises or inducements

Affirmative promises or inducements are not required to establish misrepresentation for purposes of equitable estoppel; silence or omission may be sufficient, and fraud or intent to deceive is not required. *Pollard v. Southdale Gardens of Edina Condo. Ass'n, Inc.*, 698 N.W.2d 449, 454 (Minn. App. 2005).

Ridge Creek argues that the requests for deadline extensions referred only to the preliminary plat and, therefore, were insufficient to extend the deadlines for the wetland-

permit applications submitted on November 18, 2005 and February 22, 2006. Our review of the record as a whole, however, convinces us that the extensive coorespondence and interaction between the City and Ridge Creek through the weeks, months, and even years preceding commencement of this litigation reveal the fatal flaw in Ridge Creek's argument that equitable estoppel is not applicable here. While the written requests for deadline extensions specifically referred only to the preliminary plat, the preliminary-plat and November 18 wetland-permit applications were submitted together and were the subject of the same extensive negotiations between the parties. The December 20, 2005 and January 5, 2006 letters from the City to Ridge Creek request changes to the proposed wetland ponding/mitigation areas. Even if events occurring after expiration of the January 17, 2006 deadline cannot be relied on to restart the 60-day period once it expired, those later occurring events are relevant to showing the parties' understanding prior to expiration of the deadline. The January 11, 2006 request for an extension refers to review by EAC and PRAB, and the January 19 and 25, 2006 letters sent by the City to Ridge Creek following that review specifically address wetland management, showing that wetland management was subject to the revision process referred to in the January 11 request for a deadline extension. This course of conduct, the City requesting deadline extensions and Ridge Creek continuing to negotiate on and submitting revisions to its wetland-management plan, continued through the City's denial of Ridge Creek's preliminary-plat application on July 18, 2006.

Because it was clear before the January 17, 2006 deadline expired that the negotiations included wetland management, Ridge Creek's failure to advise the City that

it considered the wetland-permit applications to be separate from the preliminary-plat application rather than part of the same negotiation process, was a material omission sufficient to establish the misrepresentation element of equitable estoppel.

Reasonable and detrimental reliance

Ridge Creek argues that the record contains no evidence of reliance by the City. We disagree. The record amply demonstrates that City staff would have acted promptly on the wetland-permit applications to ensure timely approval or denial if Ridge Creek had not remained silent and had not continued to communicate by its actions and words that it understood the scope of the City's requests for extensions and the resulting negotiations encompassed both the preliminary-plat and the wetland-permit applications. The record demonstrates the City reasonably relied on Ridge Creek's representations, actions, words, and negotiations, and in so doing the City lost the opportunity to protect its wetlands areas from degradation.

We conclude that the district court erred by declining to apply equitable estoppel to bar automatic approval of the wetland-permit applications. Automatic approval was improvidently granted.

II.

The next question we must answer is whether the district court erred in its May 17, 2007 order judicially approving the preliminary-plat application. "In reviewing actions by a governmental body, the appellate court focuses on the proceedings before the decision-making body, not the findings of the [district] court." *Trisko v. City of Waite Park*, 566 N.W.2d 349, 352 (Minn. App. 1997), *review denied* (Minn. Sept. 25, 1997).

On appeal from a district court's decision reviewing a zoning authority's decision, this court "independently reviews the record which was before the [district] court together with the [zoning authority's] decision without affording any special deference to the [district] court's review." *Id.* (quotation omitted).

> We review a municipal body's land use decision to determine whether it was unreasonable, arbitrary, or capricious. When a [zoning authority] states its reasons for denying the permit, we limit our review to the legal sufficiency and the factual bases for those reasons. . . . [A] city's denial of a land use request is not arbitrary when at least one of the reasons given for the denial satisfies the rational basis test.

Id. (citations omitted).

To facilitate judicial review, a zoning body must "have the reasons for its decision recorded or reduced to writing and in more than just a conclusory fashion." *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 416 (Minn. 1981). This court on occasion has upheld a zoning decision on the ground that a rational basis existed despite conclusory findings. *See, e.g., City of Mounds View v. Johnson*, 377 N.W.2d 476, 479 (Minn. App. 1985), *review denied* (Minn. Jan. 23, 1986). The absence of adequate findings creates a presumption that the municipality's actions were arbitrary or capricious and shifts the burden of proof to the municipality. *White Bear Rod & gun Club v. City of Hugo*, 388 N.W.2d 739, 742 n.4 (Minn. 1986).

The July 18, 2006 resolution of the City states the following reasons denial of the preliminary-plat application:

> The proposed plat does not meet the requirements identified by the Environmental Advisory Committee (EAC) regarding wetland mitigation. . . .
>
> The applicant has communicated that he is unwilling to contribute, as a part of his overall grading plan, the cost of grading the new alignment of the Spring Lake-Prior Lake Outlet Channel as approved by the Watershed District/City of Shakopee and as shown in the submitted preliminary plat.
>
> The applicant desires to complete site grading on the subject site in an incremental fashion. The city of Shakopee would require that site grading occur in one phase over the entire development area, and that the developer should provide a direct haul route on the subject site for trucks bringing in fill, in order to avoid undue wear on newly constructed, adjacent City streets.
>
> That the review deadline is imminent and the applicant has not addressed the outstanding and significant issues identified by the City of Shakopee.

The district court concluded that the wetland-permit applications had been automatically approved, and, therefore, reasons one and four were moot. Because we are reversing the district court's determination that the wetland-permit applications were automatically approved, the failure of the preliminary plat to meet wetlands mitigation requirements, along with the other reasons stated by the City, provide a sufficient basis for denial of the preliminary-plat application. Judicial approval of the preliminary-plat application was not justified.

IV.

> Following preliminary approval the applicant may request final approval by the municipality, and upon such request the municipality shall certify final approval within 60 days if the applicant has complied with all conditions and requirements of applicable regulations and all conditions and requirements upon which the preliminary approval is expressly conditioned either through performance or the execution of appropriate agreements assuring performance.

Minn. Stat. § 462.358, subd. 3b (2008).

In November 2008, the district court acknowledged the parties' stipulation and dismissed the pending actions in that court "on the grounds that Ridge Creek's Final Plat Application does not comply with City's ordinances in some respects and . . . on the grounds that Ridge Creek's Grading Permit Application does not comply with City's ordinances in some respects." Inasmuch as we have determined earlier in this opinion that judicial approval of the preliminary-plat application was not justified, the need to address Ridge Creek's argument that final-plat approval was required once the district court approved the preliminary plat is questionable at best. Nonetheless, in the interests of fully analyzing all issues presented, we shall address the argument presented by Ridge Creek.

Minn. Stat. § 462.358, subd. 3b, sets forth two conditions for final-plat approval. One is that the final plat comply with all conditions and requirements on which the preliminary approval was conditioned. The second is that it comply "with all conditions and requirements of applicable regulations." Because Ridge Creek stipulated that its final plat did not comply with city regulations, the second condition is not met.

In attempting to overcome compliance with the requirements of section 462.358, subd. 3b, Ridge Creek relies on *Semler Constr. Inc. v. City of Hanover*, 667 N.W.2d 457 (Minn. App. 2003), *review denied* (Minn. Oct. 29, 2003), and argues that final-plat approval was required once the district court approved the preliminary plat. *Semler* is distinguishable, however, in that it involved a building moratorium that was passed following preliminary-plat approval by the City. Minn. Stat. § 462.355, subd. 4 (2002), prohibits applying a moratorium to development projects that have received preliminary approval.

Ridge Creek stipulated here that the final-plat and grading-permit applications did not comply with City ordinances, and asserts that substantial compliance with both the preliminary plat and City subdivision requirements would be impossible. But having opted to enter into the stipulation in order to allow the parties to present their positions to this court rather than proceeding to trial, Ridge Creek cannot rely on a claim of impossibility to justify approval of the final plat.

The legislature has granted cities the authority to adopt subdivision ordinances to "protect and promote the public health, safety, and general welfare[.]" Minn. Stat. § 462.358, subd. 1a (2008); *see also Almquist v. Town of Marshan*, 308 Minn. 52, 64, 245 N.W.2d 819, 825-26 (1976) (noting municipalities' authority to implement land-use planning in manner benefiting public good). Requiring approval of a final plat that does not comply with city ordinances would subvert this authority expressly conferred on cities by the legislature. Also, following preliminary approval, Minn. Stat. § 462.358, subd. 3b (2008), expressly conditions final-plat approval on compliance "with all

conditions and requirements of applicable regulations and all conditions and requirements upon which the preliminary approval is expressly conditioned[.]" Appellant's argument renders superfluous the regulation-compliance requirement. "A goal of any statutory interpretation is to avoid rendering portions of a statute superfluous." *In re Estate of Jobe*, 590 N.W.2d 162, 166 (Minn. App. 1999), *review denied* (Minn. May 26, 1999).

Amicus curiae Builders Association of Minnesota argues that *Semler* should be followed in this case because "[a]fter the preliminary plat is granted, significant activity commences, and property owners, developers, builders, financers, and even end-users act in reliance on the approval of the preliminary plat." An applicant for a land-use permit, however, is charged with knowledge of the relevant law. *Anderson v. City of Minneapolis*, 287 Minn. 287, 289, 178 N.W.2d 215, 217 (1970); *Stotts v. Wright County*, 478 N.W.2d 802, 805 (Minn. App. 1991) ("A property owner is charged with knowledge of whether a local zoning ordinance permits construction undertaken on the property."), *review denied* (Minn. Feb. 11, 1992). Accordingly, to the extent that a preliminary plat is noncompliant with city ordinances, a developer cannot rely on it to force approval of a final plat, and there is no claim before this court that appellant has been unfairly impacted by an ordinance change. *See Anderson*, 287 Minn. At 289, 178 N.W.2d at 217 (holding that a building-permit applicant was to be charged with knowledge of laws regulating permit and not entitled to damages resulting from city employee's mistaken issuance of building permit); *Yeh v. County of Cass*, 696 N.W.2d 115, 132 (Minn. App. 2005) (stating that "doctrine of vested rights exists to protect developers from changes in zoning laws aimed at frustrating development"), *review denied* (Minn. Aug. 16, 2005).

Appellant argues that numerous conditions imposed on the grading permit should be stricken because they either conflict with the preliminary-plat approval or otherwise lack a rational basis. These are fact issues, which, due to appellant's decision to not proceed to trial, are not properly before this court. *See Kucera v. Kucera*, 275 Minn. 252, 254, 146 N.W.2d 181, 183 (1966) (stating that appellate courts do not decide fact issues on appeal).

The district court, based on the parties' stipulation, properly dismissed Ridge Creek's claims that denial of the final-plat and grading-permit applications was arbitrary. And our decision here that equitable estoppel applies to the wetland-permit applications issue and that judicial approval of the preliminary-plat application was improvident renders inevitable our decision that denial of the final-plat application and grading-permit application by the City was not arbitrary.

Because we have determined that the district court erred in determining that the wetland-permit applications were automatically approved, we do not reach the issue of whether Ridge Creek was entitled to damages under Minnesota's mandamus statute, Minn. Stat. § 586.09 (2008). We note that Minnesota's appellate courts have not decided whether Minn. Stat. § 586.09 creates an independent cause of action for damages. In a recent case, this court noted that "the legislature modified the common-law mandamus action to include the automatic award of damages" but decided the case on immunity grounds and declined to address whether the property owner was entitled to recover

damages against the government under Minn. Stat. § 586.09. *Pigs R Us, LLC, v. Compton Twp.*, 770 N.W.2d 212, 216 (Minn. App. 2009).

Affirmed in part and reversed in part.