STATE OF MINNESOTA

IN SUPREME COURT

A19-1700
A19-1701
A19-1702
A19-1703

Court of Appeals Hudson, J.

State of Minnesota,

Appellant,

vs.

Filed: December 30, 2020
Office of Appellate Courts

Guy Gerald Sanschagrin,

Respondent (A19-1700),

Kristine Knudson Sanschagrin,

Respondent (A19-1701),

Jeffery Lowell Cameron,

Respondent (A19-1702),

Linda Kay Cameron,

Respondent (A19-1703).

Keith Ellison, Attorney General, Saint Paul, Minnesota;

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

Timothy J. Keane, Leland P. Abide, Kutak Rock LLP, Minneapolis, Minnesota for appellant.

Wynn C. Curtiss, Chestnut Cambronne, PA, Minneapolis, Minnesota, for respondents.

Susan L. Naughton, Saint Paul, Minnesota, for amicus curiae League of Minnesota Cities.

S Y L L A B U S

A letter contesting a notice of zoning violation is not a "request" as defined in Minn. Stat. § 15.99, subd. 1(c) (2020), because it is not on an agency application form and does not clearly identify a request for governmental approval of an action. Therefore, the automatic approval provision in Minn. Stat. § 15.99, subd. 2(a) (2020), does not apply to respondents' letter contesting a notice of zoning violation.

Reversed.

O P I N I O N

HUDSON, Justice.

In this case we must decide whether a letter contesting a notice of zoning violation is a "request" as defined by Minn. Stat. § 15.99, subd. (1)(c) (2020), and therefore entitles respondent property owners to the benefit of the automatic approval provision in Minn. Stat. § 15.99, subd. (2)(a) (2020). The automatic approval provision in Minn. Stat. § 15.99, subd. 2(a), requires agencies to "approve or deny within 60 days a written request relating to zoning . . . for a permit, license, or other governmental approval of an action." Failure to deny such a request within 60 days "is approval of the request." *Id*. Here, four joint owners of an undeveloped lot on Lake Minnetonka received a notice of zoning violation

from the City of Shorewood after installing a dock on the lot. The property owners contested the zoning violation in a written letter to the city planning commission. The question presented is whether the owners' letter is a "request" that triggered the 60-day response deadline in Minn. Stat. § 15.99, subd. 2(a).

Respondents were criminally charged with violating section 1201.03, subdivisions 14.b and 14.e, of the Shorewood City Ordinances. They filed a pretrial motion to dismiss for lack of probable cause, asserting, among other arguments, that the City's failure to respond to the letter they sent in response to the notice of zoning violation resulted in the automatic approval of their dock. The district court agreed and granted the motion to dismiss, concluding that the City's failure to respond within 60 days to the letter constituted an automatic approval of respondents' use of a dock on their property, under Minn. Stat. § 15.99, subd. 2(a). The court of appeals affirmed. Because we conclude that the letter was not a "request" under Minn. Stat. § 15.99, subd. 1(c), and therefore the 60-day response deadline under subdivision 2(a) was not triggered, we reverse.

FACTS

Respondents Guy Gerald Sanschagrin, Kristine Knudson Sanschagrin, Jeffery Lowell Cameron, and Linda Kay Cameron (collectively, "the Owners") jointly own an undeveloped parcel of real property in the City of Shorewood, fronting Lake Minnetonka. In April 2017, the Owners installed a dock on the property. On May 11, 2017, the City issued a notice of zoning violation to the Owners, stating that the dock violated the Shorewood Code of Ordinances because the property lacked a "principal dwelling" and

because the Owners did not occupy the property.[1] The notice directed them to either remove the dock or appeal the order to the City Council in writing by May 17, 2017.

On May 13, 2017, the Owners responded to the City by letter. They asserted that the city code only prohibited "permanent" or "floating" docks on unoccupied property and they had installed a "seasonal" dock as defined in the code of ordinances for the Lake Minnetonka Conservation District (LMCD code).[2] Asserting that the more-restrictive LMCD code controlled when the city code was silent, the Owners asserted that their dock did not violate the City's zoning code.

The Shorewood City Council scheduled the Owners' appeal to be heard at the council meeting on June 12, 2017. At the meeting, the City Council considered the Owners' request for additional time to review the City's position regarding their appeal. The City Council approved a motion referring the Owners' appeal back to the City Planning Commission for the formal appeal process and further review of city regulations and ordinances.

One month later, on July 12, 2017, the City notified the Owners that it had withdrawn its notice of violation and that all pending hearings related to the Owners' appeal were cancelled. The City noted that should it decide in the future to pursue a

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[1] The Owners' homes are near the property itself, but are not located directly on the lake.

[2] Under the LMCD Code, a "seasonal dock" means "any dock which is so designed and constructed that it may be removed from the Lake on a seasonal basis. All components such as supports, decking and footings must be capable of removal by manual means without use of power equipment, machines or tools other than handheld power tools." Lake Minnetonka Conservation District Code of Ordinances art. 1, § 3.01, subd. 89 (2019).

violation of the city code, notice of such violations would be provided. The Owners continued to use the dock unimpeded for the rest of the season, removing it entirely from the property in the fall of 2017.

At meetings in late July 2017, the City Council considered amendments to the ordinances that govern use of docks by residents, and adopted an amended ordinance. As affecting the Owners' property, the amended ordinance prohibited the use of any dock—permanent, seasonal, or otherwise—because there was no principal dwelling on the property and the lot was too small to host any dwelling.

In the spring of 2018, the City sent the Owners a letter, reminding them that under the amended city code, a dock could not be installed on their property. Subsequently, the City issued a notice requiring the Owners to remove dock sections and equipment stored on the property in violation of the city code. The Owners responded by notifying the City that they had removed some non-dock materials, but otherwise asserted that storage of the dock sections was a permitted non-conforming use and that the 2017 amended ordinance did not apply to their property. The City did not respond.

In June 2018, the Owners again installed the dock on the property. The City then issued a notice to the Owners, stating that the dock violated the amended city code. Again, the Owners submitted a written response to the City, asserting that the City was mistaken in its conclusions, noting again that the amended ordinances did not apply to their property, and asking the City to withdraw the violation notice. The City did not respond to this letter. The Owners' attorney then submitted a letter to the City to restate their appeal, contending that the dock was a legal nonconforming use of the property. The City declined to hear the

Owners' appeal, deeming it untimely. Finally, in September 2018, the Owners were charged by criminal complaint with two misdemeanor violations of the city code.

The Owners moved to dismiss the charges for lack of probable cause. They asserted, among other arguments, that the City's first notice on May 11, 2017, was a "zoning decision" and that their appeal letter of May 13, 2017, was a "written application relating to zoning" under Minn. Stat. § 15.99, subd. 1(c). Therefore, under Minn. Stat. § 15.99, subd. 2(a), the Owners argued, the City's failure to approve or deny their request to withdraw the violation notice within 60 days resulted in the automatic approval of their use of a dock on the property.

The district court granted the Owners' pretrial motion to dismiss. The court agreed that the City's first notice was a zoning decision, and the Owners' May 2017 appeal letter in response to that notice, "[f]airly read," could only be viewed as a request by the Owners for the City to withdraw its determination that the dock violated the City's zoning code. The district court further concluded that, because the City's withdrawal of the first notice was not an approval or denial of the Owners' dock, the Owners' request for zoning action was automatically approved by operation of law under Minn. Stat. § 15.99, subd. 2(a). The City appealed.

The court of appeals affirmed. *State v. Sanschagrin*, No. A19-1700, 2020 WL 1673741, at *1 (Minn. App. Apr. 6, 2020).[3] Relying on our decision in *500, LLC v.*

[3] The court of appeals found that dismissal of the City's complaint met the critical-impact test for a pretrial appeal. *Sanschagrin*, 2020 WL 1673741, at *2. This conclusion is not challenged by the Owners and thus is not at issue here.

City of Minneapolis, 837 N.W.2d 287 (Minn. 2013), the court of appeals concluded that the first appeal letter "met all of the plain-language requirements for a zoning request" under section 15.99, subdivision 1(c), because it was "related to" and had "a connection to zoning." *Sanschagrin*, 2020 WL 1673741, at *3. The court also held that the Owners' letter "contained an implicit request for Shorewood to approve their interpretation of the zoning ordinance's inapplicability" that properly invoked section 15.99. *Id.* Finally, the court agreed that the City's failure to approve or deny the Owners' request resulted in the approval of that request as a matter of law. *Id.*

ANALYSIS

We are required here to consider the applicability of the automatic approval provision of Minn. Stat. § 15.99, subd. 2(a), to the Owners' letter in response to the City's notice of zoning violation. To do so, we must determine whether the Owners' May 2017 letter in response to the City's first violation notice was a request, which is defined in Minn. Stat. § 15.99, subd. 1(c), as a "written application related to zoning . . . for a permit, license, or other governmental approval."

When interpreting a statute, we "first determine whether the statute's language, on its face, is ambiguous." *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). A statute is ambiguous "when the language therein is subject to more than one reasonable interpretation." *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999). If the statute is ambiguous, then we may "go beyond the language at issue to ascertain the intent of the Legislature." *Johnson v. Cook County*, 786 N.W.2d 291, 293−94 (Minn. 2010). In determining whether a statute is ambiguous, we construe statutes as a

whole so that statutory language is understood in context. *State v. Bowen*, 921 N.W.2d 763, 765 (Minn. 2019). If the language of the statute is unambiguous, we apply its plain meaning. *Am. Tower, L.P.*, 636 N.W.2d at 312.

We turn to whether the Owners' first appeal letter was "request," that is, "a written application relating to zoning" that triggered the 60-day time period and automatic approval provision of Minn. Stat. § 15.99, subd. 2(a). In *500, LLC*, we said that the phrase, "a written request relating to zoning," is unambiguous and "refers to a written request that has a connection, association, or logical relationship to the regulation of building development or the uses of property." 837 N.W.2d at 291. At issue there was an application for a certificate of appropriateness, which was submitted to a heritage-preservation commission by a developer. *Id*. at 288–89. The parties agreed that the developer's application for a certificate of appropriateness was a "written request" under Minn. Stat. § 15.99, subd. 2(a). *Id.* at 290.

Relying on our decision in *500 LLC*, the court of appeals in this case held that the term "request," defined as "a written application related to zoning," Minn. Stat. § 15.99, subd. 1(c), is also unambiguous. *Sanschagrin*, 2020 WL 1673741, at *2. Then, the court held that the Owners' first appeal letter met all the plain-language requirements of a "request" related to zoning and concluded that the district court correctly dismissed the charges against the Owners for lack of probable cause. *Id.* at *3. The Owners urge us to adopt this reasoning, arguing that our decision in *500, LLC* controls the outcome of this appeal.

The reliance on *500, LLC* is misplaced. The specific question in *500, LLC* was whether an application to a heritage-preservation commission for a certificate of appropriateness qualified as "a written request relating to zoning" governed by Minn. Stat. § 15.99, subd. 2(a). 837 N.W.2d at 288. We did not consider whether a "written request" had been made; that point was undisputed—the question before us was simply whether the request was "relat[ed] to zoning." *See 500, LLC*, 837 N.W.2d at 290 ("The parties disagree only about whether an application for a certificate of appropriateness 'relat[es] to zoning' under Minn. Stat. § 15.99, subd. 2(a)." (alteration in original)). Consequently, our interpretation of section 15.99 in *500, LLC* focused exclusively on the terms "relating to" and "zoning" in subdivision 2(a), which were (and remain) undefined in the statute. *Id.* at 290–91.

The question here is different. At issue here is not whether the request "relates to zoning," but whether the Owners' letter was a "request" for "other governmental approval of an action" under subdivision 1(c). Unlike the terms "relating to" and "zoning" examined in *500, LLC*, the Legislature provided a specific definition for the term "request" in Minn. Stat. § 15.99, subd. 1(c). "When a word is defined in a statute, we are guided by the definition provided by the Legislature." *Wayzata Nissan, LLC* v. *Nissan N. Am., Inc.*, 875 N.W.2d 279, 286 (Minn. 2016). Statutory definitions are applied in their entirety and we "have no opportunity to ignore part of the legislature's definition." *State v. Peck*, 773 N.W.2d 768, 773 (Minn. 2009).

Thus, we now turn to the text of the statute and the statutory definitions therein. Under Minn. Stat. § 15.99, subd. 2(a), "[a]n agency[4] must approve or deny within 60 days a written request relating to zoning . . . for a permit, license, or other governmental approval of an action." The statute defines "request" as follows:

> "Request" means a written application related to zoning . . . for a permit, license, or other governmental approval of an action. A request must be submitted in writing to the agency on an application form provided by the agency, if one exists. . . . A request not on a form of the agency must clearly identify on the first page the specific permit, license, or other governmental approval being sought. No request shall be deemed made if not in compliance with this paragraph.

Id., subd. 1(c). "Failure of an agency to deny a request within 60 days is approval of the request." *Id.*, subd. 2(a). The 60-day timetable begins when the agency receives a written request containing all the necessary information and any applicable fee.[5] *Id*., subd. 3(a).

Under Minn. Stat. § 15.99, subd. 1(c), a "request" can be made in one of two ways: either (1) "on an application form provided by the agency" or (2) "not on a form of the agency." If a request is not made on the form of the relevant agency, then it "must clearly identify on the first page the specific permit, license, or other governmental approval being sought." *Id.*

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[4] The definition of "agency" includes "a statutory or home rule charter city, county, town . . . and any other political subdivision of the state." *Id.*, subd. 1(b). The City of Shorewood is an agency under this definition.

[5] At the court of appeals, the City argued that the Owners' first appeal letter did not qualify as a "request" because it did not include an applicable fee under section 15.99, subdivision 3(a). The court concluded that the City forfeited this argument on appeal because it did not raise the issue before the district court. *Sanschagrin*, 2020 WL 1673741, at *2 n.4. We agree.

The Owners' May 2017 letter was not a request made on an application form provided by the City; rather, it was a letter in response to a notice of zoning violation. Accordingly, the Owners were required to clearly identify "the specific permit, license, or other governmental approval being sought" on the first page of the letter. The first page of the Owners' letter included the following statements:

> "We respectfully appeal this order to the City Council per your direction, by this writing to you . . . and assume any order to remove the dock will be held in abeyance until this matter is ultimately resolved."
>
> "[W]e believe we are not in violation of the City's code."
>
> "[W]e have placed a seasonal dock at the property, which is neither permanent nor floating, and, therefore, our dock is not violation of 1201.03 Subd. 14. b."

The court of appeals determined that, taken together, these statements formed "an implicit request for Shorewood to approve their interpretation of the zoning ordinance's inapplicability." *Sanschagrin*, 2020 WL 1673741, at *3.

We disagree. The Owners' letter does not identify a specific license or permit that they sought from the City, nor do they contend that they requested a license or permit. We also reject the notion that the Owners' letter contained an "implicit request" for governmental approval. Such a concept is inconsistent with the plain language of a "request," which requires a "clear[]" identification of the "specific" governmental approval being sought. Minn. Stat. § 15.99, subd. 1(c). By definition, an implicit request is not clear or specific. *See Implied*, *Black's Law Dictionary* (11th ed. 2019) ("Not directly or clearly expressed; communicated only vaguely or indirectly."). The only possibility that remains

under the plain language of subdivision 1(c) is that the Owners' letter clearly identifies the specific "other governmental approval" sought.

Section 15.99 does not define the phrase "governmental approval," though it could mean something other than a permit or license. *See, e.g.*, *State v. Nelson*, 842 N.W.2d 433, 437–38 (Minn. 2014) (holding that "care" and "support" have distinct definitions to avoid rendering either term superfluous in the statute at issue). When interpreting statutes, the canon against surplusage "favors giving each word or phrase in a statute a distinct, not identical, meaning." *State v. Thonesavanh*, 904 N.W.2d 432, 437 (Minn. 2017). In a legal sense, "approval" means "[t]o give formal sanction to; to confirm authoritatively." *Approval*, *Black's Law Dictionary* (8th ed. 2004). Under a broad reading of the phrase "governmental approval," the Owners' letter asking the City to give formal sanction to their interpretation of the city code could be seen as a request for "governmental approval" within the meaning of subdivision 1(c).

On the other hand, the meaning of the phrase "other governmental approval" could also be derived by looking at its use in the context of accompanying statutory language. *See State v. Suess*, 52 N.W.2d 409, 415 (Minn. 1952) ("[T]he meaning of doubtful words in a legislative act may be determined by reference to their association with other associated words and phrases."). Therefore, one could narrowly interpret the phrase "other governmental approval" to be analogous to a zoning permit or license.

Either one of these interpretations is reasonable depending on whether one focuses on the definition of "approval" or its position in relation to the neighboring words "permit" and "license" in the statute. Because the phrase "other governmental approval" is open to

multiple reasonable interpretations, we find this phrase to be ambiguous. We therefore turn to the canons of statutory construction to ascertain and effectuate the Legislature's intent. *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017); *see* Minn. Stat. § 645.16(4) (2020). In so doing, we conclude that the statute should be narrowly construed against the application of the automatic approval penalty for several reasons. *See Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 543 (Minn. 2007) (noting that several rules of construction favored a narrow construction of the subdivision 2(a) automatic approval provision).

First, the canon of *ejusdem generis* suggests that the phrase "other governmental approval" must be akin to a zoning permit or a license. *Ejusdem generis*, *Black's Law Dictionary* (11th ed. 2019) (a Latin phrase meaning "of the same kind or class"). We have recognized that "where words particularly designating specific acts or things are followed by and associated with words of general import," the rule of *ejusdem generis* states that "the latter are generally to be regarded as comprehending only matters of the same kind or class as those particularly stated." *State v. End*, 45 N.W.2d 378, 381 (Minn. 1950) (citations omitted) (internal quotation marks omitted). "The princip[le] underlying [the] rule of *ejusdem generis* is that the legislature had in mind things of the same kind and was speaking of them as a class." *Foley v. Whelan*, 17 N.W.2d 367, 371 (Minn. 1945) (italics added). Here, the specific terms "permit" and "license" inform the meaning of the more general term "other governmental approval" contained within the same class of terms.

A "permit" is defined as "[a] certificate evidencing permission; an official written statement that someone has a right to do something." *Permit*, *Black's Law Dictionary* (11th

ed. 2019). Similarly, a "license" is defined as "[t]he certificate or document evidencing such permission." *License*, *Black's Law Dictionary* (11th ed. 2019). Therefore, using the canon of *ejusdem generis*, we interpret the phrase "other governmental approval" to likewise refer to the official permission that a person must seek and receive from an agency *before* undertaking the specific action that the person proposes to pursue. Under this interpretation, it is evident that the phrase "other governmental approval" envisions a prospective request for agency permission, rather than retroactive approval by the government of a person's unilateral action or view of the law. This interpretation of "other governmental approval" is also consistent with other provisions of section 15.99, which incorporate variations of the term "application." Section 15.99 includes ten references to the "applicant" and includes a subdivision entitled "Application; extensions." Minn. Stat. § 15.99, subd. 3 (2020). The interpretation of "governmental approval" as analogous to a formal application is relevant when viewing the statute in its entirety and construing it to give effect to all its provisions. *See* Minn. Stat. § 645.16 (2020).

Second, when construing a statute to ascertain legislative intent, we consider "the object to be attained" and "the consequences of a particular interpretation." Minn. Stat. § 645.16(4), (6). Sanctioning an implicit request for governmental approval would undermine the objective of the statute, which is to "establish[ ] time deadlines for local governments to take action on zoning applications." *Am. Tower, L.P.*, 636 N.W.2d at 312. Requiring agencies to determine whether a request is an "implicit" one for zoning action would require agencies to make subjective decisions about whether a "request" subject to section 15.99 has been submitted. Such subjectivity would result in more, not less,

uncertainty in the time deadlines for zoning actions as agencies and property owners debate whether each correspondence in a zoning dispute contained an "implicit request" that triggered the automatic approval provision of section 15.99.

Finally, when interpreting ambiguous statutes, we are guided by the rule of statutory construction that presumes that "the legislature intends to favor the public interest as against any private interest." Minn. Stat. § 645.17(5) (2020). Construing "other governmental approval" to encompass any written submission that contests a zoning violation would inevitably complicate a municipality's ability to fulfill its responsibilities with respect to land use, while also risking inconsistent application of zoning laws. *See, e.g.*, *In re Stadsvold*, 754 N.W.2d 323, 329 (Minn. 2008) (explaining that zoning laws control land use and development for public purposes). Because zoning ordinances regulate a vast array of permitted and unlawful property uses, the automatic, though inadvertent, approval of a less-than-explicit request to approve nonconforming uses could have a far-reaching impact across the state. Here, the public interest in the predictable and consistent application of the legislatively-created automatic approval provision outweighs the Owners' private interest in securing automatic approval of a dock installation based on their interpretation of the regulations governing the use of docks in the city of Shorewood. *See Hans Hagen Homes, Inc.*, 728 N.W.2d at 543 (stating that the public interest in the process for amending zoning ordinances favors a "narrow construction of the automatic approval penalty" over private interests in automatic approval). *But see Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980) (holding that "zoning

ordinances should be construed strictly against the city and in favor of the property owner").

We therefore conclude that the Owners' letter was not a "request" for "other governmental approval of an action" under Minn. Stat. § 15.99, subd. 1(c). Thus, the automatic approval provision in section 15.99, subdivision 2(a) does not apply, and the district court erred by granting the Owners' pretrial motion to dismiss the charges. Our decision does not preclude the Owners from pursuing their alternative challenges to the City's charges and the amended ordinance. We merely hold that the Owners' interpretation of section 15.99 fails as a matter of law because their May 2017 letter contesting the City's notice of zoning violation was not a "request" for "other governmental approval of action" as defined in Minn. Stat. § 15.99, subd. 1(c).[6]

CONCLUSION

For the foregoing reasons, we reverse the court of appeals and remand to the district court to reinstate the City's complaint and for further proceedings.

Reversed.

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[6] The City argues that, assuming a proper request was made, its withdrawal of the notice of violation within the 60-day time period ended the City's enforcement action and effectively rendered moot the Owners' request for zoning action. Because we hold that the Owners' first appeal letter was not a "request" under Minn. Stat. § 15.99, subd. 1 (c), we do not need to reach this issue. *See Lipka v. Minn. Sch. Emps. Ass'n, Local 1980*, 550 N.W.2d 618, 622 (Minn. 1996) ("[J]udicial restraint bids us to refrain from deciding any issue not essential to the disposition of the particular controversy before us.").