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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0496**

Thomas A. Ruether, et al.,
Appellants,

vs.

Kathleen Mimbach Living Trust, et al.,
Respondents,

City of Rockville,
Defendant.

**Filed December 17, 2018
Affirmed; motion denied
Hooten, Judge**

Stearns County District Court
File No. 73-CV-16-3360

Arlo H. Vande Vegte, Arlo H. Vande Vegte, P.A., Long Lake, Minnesota; and

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Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

In this appeal and cross-appeal arising from a dispute between neighboring lakefront property owners, appellants allege that the district court erred by: (1) failing to conclude that respondents' building permits and variance for reconstruction of their home were void because of misrepresentations on respondents' building applications; (2) failing to find that the reconstructed home violated the city's side-yard setback, height, and expansion requirements; and (3) vacating a permanent injunction requiring the demolition of the reconstructed home under Minn. R. Civ. P. 60.02 following an amendment to the city's zoning code. Because we conclude that the district court's legal determinations were correct and that the vacation of the permanent injunction was not an abuse of discretion, we affirm. Respondents' cross-appeal challenging the district court's grant of partial summary judgment in favor of appellants is therefore rendered moot.

FACTS

Respondent Kathleen Mimbach Living Trust owns real property located on Grand Lake in Rockville, Minnesota. Respondent Matt Mimbach is a trustee of the living trust. In November of 2015, respondents began the process of reconstructing their home. Shortly after, appellants Thomas and Holly Reuther, who own a home immediately adjacent to respondents' property, attempted to get the City of Rockville to prevent respondents from rebuilding their home. After this failed, appellants filed a complaint with the district court, alleging claims against respondents and the City of Rockville for failing to enforce zoning ordinances. Although the current zoning code requires that lots be at least 120 feet wide

(depending on usage), respondents' property is only 50 feet wide. The property is however a "legal non-conforming lot" because it existed before the current zoning scheme took effect.

Cross-motions for summary judgment were filed by all parties. The district court granted summary judgment for the City of Rockville and dismissed the city from the case. It also granted partial summary judgment for both appellants and respondents, including a ruling that the reconstructed building violated Rockville, Minn., Zoning Code § 14, subd. 9 (effective Apr. 16, 2003) by expanding the floor area of the building by more than 25%.¹

The parties proceeded to a bench trial on the sole issue of whether permanent injunctive relief was appropriate. The district court found in favor of appellants and issued an order "enjoining [respondents] from maintaining the structure built in violation of Rockville zoning code."

After this ruling, the Rockville City Council amended the section of the zoning code upon which the district court based its grant of injunctive relief. The amendments included a recitation that the city council was amending the ordinance because it had "been made aware of a recent court ruling where the court applied Section 14, Subdivision 9 of the Zoning Code in a manner that was not intended by the City."

¹ The district court also granted summary judgment for appellants on their claim that respondents violated Rockville, Minn., Zoning Code § 32, (effective Apr. 16, 2003) by building their deck approximately two feet beyond the 50-foot alternate-minimum setback. However, the district court ruled in its order granting respondents' 60.02 motion that this violation was insufficient to grant appellants injunctive relief and simply ordered respondents to abate this violation. Neither party appeals from the ruling ordering respondents to abate the less than two-foot setback violation.

Respondents subsequently filed a timely Minn. R. Civ. P. 60.02 motion for relief from final judgment, asking the district court to vacate the permanent injunction. The district court found that the amendment, which merely clarified the ordinance, applied retroactively and granted respondents' motion for relief from the judgment. Appellants appealed from the order granting the rule 60.02 motion and the portion of the order granting partial summary judgment in respondents' favor, and respondents cross-appealed the district court's grant of partial summary judgment in appellants' favor.

DECISION

1. The district court did not err in granting partial summary judgment to respondents.

“On appeal from summary judgment, we review whether there are any genuine issues of material fact and whether the district court erred in its application of the law.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002). “We view the evidence in the light most favorable to the party against whom summary judgment was granted.” *Id.* at 76–77. We review de novo the district court's application of the law and whether a genuine issue of material fact exists. *Id.* at 77.

The district court did not err in its conclusion that the building permits and variance for the side-yard setback are legally valid.

Appellants claim that the building permits and variance for the side-yard setback are legally void because they were issued in violation of the City of Rockville zoning code and were acquired by fraud. The district court first found that the building permits are

valid in its order dismissing the City of Rockville from the lawsuit and granting partial summary judgment.²

While appellants do not appeal the portion of the district court's partial summary judgment order dismissing the city, appellants contest the portion of the order concluding that the building permits are valid, claiming that, based upon the findings in the permanent injunction order, the building permits and variance are void because of respondents' false and misleading applications. Appellants' argument is based upon the assumption that this court, in our review of the district court's partial summary judgment order, will consider facts that were not in the record when the district court granted partial summary judgment. But because we review a district court's grant or denial of summary judgment for error in its application of the law, it is axiomatic that we do not consider facts that were outside the record when the district court granted summary judgment because the district court could not have considered those facts when it made its decision. *Cf. Hasan v. McDonald's Corp.*, 377 N.W.2d 472, 473 (Minn. App. 1985) (ruling that a deposition accepted by the district court after a grant of summary judgment could not be considered on appeal). There is

² After the city was dismissed from the action, the district court held a bench trial on the sole issue of whether permanent injunctive relief was an appropriate remedy for respondents' violation of section 14, subdivision 9 of the City of Rockville zoning code. The district court granted appellants' request for a permanent injunction, enjoining respondents from maintaining the structure on the basis of city code building violations. In the permanent injunction order, the district court, in weighing the equities between the parties, found that respondents' application for the building permits contained false and misleading information regarding the side setback of the proposed construction. But, in the same order, the district court found that the city, when confronted by appellants with regard to the alleged inaccuracies in respondents' application, responded by indicating that it would likely issue a variance with regard to the side-yard setback on the basis that the structure "did not further encroach toward the lake and it was in the same footprint."

nothing in the record that indicates that at the time of the partial summary judgment motions, appellants presented any evidence that would support its claim that the building permits issued by the city are void because of misrepresentations in respondents' applications. See *Kletschka v. Abbott-Northwestern Hosp., Inc.*, 417 N.W.2d 752, 754 (Minn. App. 1988), *review denied* (Minn. Mar. 30, 1988) ("In order to successfully oppose a motion for summary judgment, appellant must extract specific, admissible facts from the voluminous record and particularize them for the trial judge.").

Even if we were to consider the additional findings of fact from the district court's bench trial, we hold that they are insufficient to support appellants' claim that the building permits and variance are void. The district court found that the city was aware or became aware of the mistaken side-yard setback in respondents' application and notwithstanding this knowledge, did not revoke respondents' building permit. Specifically, the district court found that the city had a drawing of respondents' old home in its zoning file that showed the actual side-yard setback of nine feet, which was less than the required ten-foot setback, and that the city, when confronted with appellants' concerns, indicated it was likely to issue a variance for the new structure proposed by respondents on the same site as the old home.

Even considering these additional facts, which appellants do not contest, the district court did not conclude in its permanent injunction order that the building permits are void because of respondents' alleged fraud. Under Minnesota law, a plaintiff must prove the following in order to establish a claim for fraud: (1) a false representation by a defendant about a past or present material fact susceptible of knowledge; (2) made with knowledge of the falsity of the representation or without knowledge of whether it was true or false; (3)

with the intention of inducing the plaintiff to act in reliance thereon; (4) that the representation caused the plaintiff to act in reliance thereon; and (5) that the plaintiff suffered pecuniary damages because of the reliance. *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 368 (Minn. 2009). At the time of the bench trial on the issue of permanent injunctive relief, the city, the alleged victim of this supposed misrepresentation, was no longer a party in the action. The city has not claimed at any time during the extended litigation of this case that it was misled, that it relied upon the alleged misstatements in respondents' application, or that it was damaged by any alleged misrepresentations made by respondents during the application process. When the city was confronted with the alleged misrepresentation it indicated that it would likely issue a variance to allow reconstruction of the old cabin with the same nine-foot side-yard setback. Under these uncontested facts, appellants are not able to meet their burden of proof in claiming that respondents fraudulently induced the city to issue building permits.³

Even more significantly, appellants do not attempt to explain how they would be entitled to relief when they were not parties to the application process and the city's issuance of building permits. Because appellants did not brief or argue how they met this

³ While appellants do cite to evidence in the record tending to show that there was a dispute with respondents about the parties' relative knowledge of the location of the property line, this does not create a genuine issue of material fact about the validity of the permits. A genuine issue of material fact does not exist when "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) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986)). And here, no rational trier of fact could find that respondents committed fraud against appellants when appellants do not even claim that they relied on any statements made by respondents.

burden in establishing respondents' alleged fraud, we decline to further address appellants' general assertion that the building permits are void. *See State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (noting that appellate courts decline to reach issues that are inadequately briefed).⁴

The district court did not err in its conclusion that respondents did not violate the City of Rockville's zoning code for height and permitted expansion, and that respondents' single variance is sufficient.

Appellants argue that the district court erred in its interpretation of the zoning code regarding the allowable height of the reconstructed building, and that it applied the wrong definition of "height" from the zoning code. This is important because Rockville, Minn., Zoning Code § 32, subd. 10(j) (effective Apr. 16, 2003), limits structures to 30 feet "in height of building." And whether respondents' reconstructed home violates this height restriction depends on how the term "height of building" is defined. As a question of law, we review the district court's determination de novo. *See STAR Ctrs., Inc.*, 644 N.W.2d at 77. A statute is ambiguous if it is reasonably susceptible to more than one meaning. *Figgins v. Wilcox*, 879 N.W.2d 653, 656 (Minn. 2016).

The City of Rockville's zoning code provides specific definitions for the terms "building height" and "height." Rockville, Minn., Zoning Code § 8, subd. 2 (effective Mar. 18, 2009). "BUILDING HEIGHT" means the vertical distance measured from the average

⁴ Finally, appellants argue that the district court erred in granting partial summary judgment to respondents on their nuisance claim because there were genuine issues of material fact. Appellants failed to make this argument below in their motion opposing respondents' motion for summary judgment and so this argument is forfeited. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

ground level adjoining the building to the highest point of the roof surface if a flat roof, to the deck line of mansard roofs, and to the mean height level between eaves and ridge of gable, hip and gambrel roofs.” Rockville, Minn., Zoning Code § 8, subd. 2. “HEIGHT,” on the other hand, is defined as “the vertical distance measured from the grade adjoining the subject, structure or improvement to the highest point of the same.” *Id.* The parties agree that if the term “building height” applies, respondents should prevail (because their house would be considered less than 30 feet tall), and if the term “height” applies, appellants should prevail (because the house would be considered more than 30 feet tall).

Appellants argue that the district court erred in its analysis because the rule of statutory construction—that more specific terms control over general terms—only applies to ambiguous statutes and the zoning code’s use of “height of building” unambiguously requires the use of the definition of “height” rather than “building height.” We disagree.

First, we conclude that Rockville, Minn., Zoning Code § 32, subd. 8 is ambiguous. The term at issue in the ordinance is “height of building,” a term that is not explicitly defined. And applying the definitions of both “building height” and “height” could be reasonable. *See Figgins*, 879 N.W.2d at 656 (holding that a statute is ambiguous when it is reasonably susceptible to more than one meaning). Because the statute is ambiguous, rules of statutory interpretation apply. *Id.* Under these rules, the more specific “building height” definition applies rather than the general “height” definition. Minn. Stat. § 645.26, subd. 1 (2018). And further, ambiguous zoning ordinances should be construed “in favor of the property owner.” *Frank’s Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980).

Appellants also argue that because applying the term “height” would be more restrictive in this case than the term “building height,” the court is obliged to apply the more restrictive term under Rockville, Minn., Zoning Code § 32, subd. 2. This section requires that “[i]f the district standards are conflicting, the more restrictive standards shall apply.” Rockville, Minn., Zoning Code § 32, subd. 2. But section 32, subdivision 2 relates to conflicting standards when real property is part of both a typical “zoning district” and an overlapping “Shoreland Overlay District.” Rockville, Minn., Zoning Code § 32, subds. 1-2. The full text of section 32, subdivision 2 makes no attempt to generally regulate, as appellants seem to claim, that whenever there could be two interpretations of an ordinance that the more restrictive interpretation should apply. Appellants make a strained argument in their reply brief that “building height” applies to zoning districts generally, while “height” specifically applies only within shoreland overlay districts, such that the more restrictive “height” should apply here. But there is no indication that the drafters of the code definitions intended “height” to be a term of art that only applies in shoreland overlay districts. And this is what would be required for there to be a conflict between the regular district and the shoreland overlay district requirements such that the directive in section 32, subdivision 2 would apply.

We therefore hold that the district court did not err by holding that the term “height of building” in Rockville, Minn., Zoning Code § 32, subd. 10 should be interpreted according to the statutory definition of “building height,” and that respondents’ home does not violate this section.

Appellants also argue that the district court erroneously applied the zoning ordinances regulating the requisite distance between the lake and respondents' house. Specifically, they argue that the district court erroneously found the alternate-minimum 50-foot setback was required, and that the court should have imposed either a 75-foot setback, or some lesser amount based on the "established building line." This argument is undeveloped and incomplete, and references an earlier discussion contained in the facts section of appellants' brief. The entirety of this argument is less than one page long, and contains no legal citations that address the soundness of the district court's ruling. We affirm the district court, and dismiss this argument as inadequately briefed. *See McKenzie v. State*, 583 N.W.2d 744, 746 n.1 (Minn. 1998) (applying the rule that arguments not briefed are forfeited in an appeal in which the appellant "allude[d] to" an issue but "fail[ed] to address them in the argument portion of his brief"). Furthermore, while appellants did challenge the underlying legal determination made at summary judgment, we note that they did not appeal the district court's implicit re-affirmance of that ruling in the order granting respondents' rule 60.02 motion. *Cf. In re State & Regents Bldg. Asbestos Cases*, 435 N.W.2d 521, 522 (Minn. 1989) ("[A]n order vacating an appealable final judgment is appealable itself.").

Appellants next argue that even if respondents' variance with respect to the substantive zoning ordinance is valid, there is an underlying ordinance regarding expansion of non-conforming structures that respondents violated. Appellants cite to Rockville, Minn., Zoning Code § 14, subd. 4.1 (effective Apr. 16, 2003), which reads, "A nonconforming structure may not be enlarged or altered in a way which increases its non-

conformity.” They argue that under this ordinance, even if respondents’ variance for the side-yard expansion is valid, the expansion is invalid because respondents did not also get a variance for the same expansion under section 14, subdivision 4.1.

Respondents argue that this issue is not properly before this court because the district court never ruled on the issue. Appellants argue that they raised the issue in their motion for summary judgment, and assert that it is sufficient to preserve the argument for appeal. We agree with appellants on this point. This is not a case such as *Thiele v. Stich* where a litigant pursued the “same general issue litigated below but under a different theory.” 425 N.W.2d at 582. Instead, appellants are pursuing the same argument on appeal that they made to the district court. By not addressing appellants’ argument, the district court implicitly rejected it. See *Fraser v. Fraser*, 702 N.W.2d 283, 292 (Minn. App. 2005), review denied (Minn. Oct. 18, 2005).

However, when addressed on its merits, this argument fails. The only way in which the house is a nonconforming structure is that it violates the side-yard setback requirements, which is excused through a variance. And because the reconstructed house is built on the same footings, it does not increase this non-conformity. Therefore, we hold that the reconstructed house does not violate section 14, subdivision 4.1’s prohibition against increasing non-conformities.

Appellants finally claim that the respondents’ single variance is insufficient to sanction the violations of: Rockville, Minn., Zoning Code § 14, subd. 4.1 (prohibiting expansion of nonconforming structures in ways that increase the nonconformity), subd. 9 (prohibiting expansion of floor area of more than 25% of structures on nonconforming

sites), and § 32, subd. 11 (regulating departure from setback requirements), and that respondents failed to apply for the necessary variances to these sections. But the district court found, and respondent continues to argue, that these sections are not applicable at all. If there is no violation, there was never any need for respondent to apply for variances. This argument is therefore derivative, and since appellants have not established a violation of any of these sections, must necessarily fail.⁵

2. The district court did not err in granting respondents’ rule 60.02 motion.

As mentioned above, the district court granted appellants’ partial summary judgment on the claim that respondents violated Rockville, Minn., Zoning Code § 14, subd. 9 by expanding their house more than 25%. Following this, the parties proceeded to a bench trial on the sole issue of whether permanent injunctive relief was an appropriate remedy for this violation. The district court initially concluded that injunctive relief was an appropriate remedy and enjoined respondents from maintaining the new structure built on their property. Shortly after, the City of Rockville opened up a notice-and-comment period on a proposed amendment of section 14, subdivision 9 of the zoning code. After the amendment passed, respondents filed a motion under Minn. R. Civ. P. 60.02 with the district court for relief from judgment.

⁵ Appellants argue that the variance is “legally irreconcilable with Section 14, Subd. 4.1 and could not be lawfully given.” But appellants do not cite to any legal authority supporting this argument, or even explain why the variance is “legally irreconcilable.” And Minnesota law allows for municipalities to issue variances when their own ordinances prohibit expansion of non-conforming structures. *See Krummenacher v. City of Minnetonka*, 783 N.W.2d 721, 726 (Minn. 2010). We reject this argument as not being properly developed and thus not properly before this court. *See Wintz Parcel Drivers, Inc.*, 558 N.W.2d at 480.

“The decision to vacate judgment under rule 60.02 rests within the district court’s discretion and will not be reversed absent an abuse of that discretion.” *Meyer v. Best W. Seville Plaza Hotel*, 562 N.W.2d 690, 694 (Minn. App. 1997), *review denied* (Minn. June 26, 1997). But we will reverse if the district court “acts under a misapprehension of the law” or makes clearly erroneous factual findings. *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016) (quotation omitted).

Retroactivity

Appellants argue that the district court should not have retroactively applied the amendment to Rockville, Minn., Zoning Code § 14, subd. 9. After the district court enjoined respondents from maintaining the newly reconstructed home, the Rockville City Council amended section 14, subdivision 9 of their zoning code. The original ordinance read as follows: “[n]o structure existing at this Ordinance’s adoption may be expanded, enlarged, or reconstructed to increase its floor area by twenty-five percent (25%) or more without bringing the site into compliance with this Ordinance’s requirements.” Rockville, Minn., Zoning Code § 14, subd. 9. The ordinance was amended to add the following language:

The term “site” as used in this Subdivision does not include a legal, non-conforming lot of record in existence when this Code was adopted, and this Subdivision does not apply to a situation where a structure on such a legal, non-conforming lot is being expanded, enlarged or reconstructed to increase the structure’s floor area by twenty-five percent (25%) or more.

Rockville, Minn., Zoning Code § 14, subd. 9 (effective Dec. 19, 2017).

There were also two notable recitals in the adopting resolution:

WHEREAS, the City Council has been made aware of a recent court ruling where the court applied Section 14, Subdivision 9 of the Zoning Code in a manner that was not intended by the City; and

WHEREAS, the City Council desires to amend the Zoning Code to clearly reflect that Section 14, Subdivision 9 was not intended to require that lawful, nonconforming lots of record in existence when the Zoning Code was enacted in 2003 be brought into dimensional conformity with the building lot area, lot width, lot depth, or lot frontage requirements in the Zoning Code as a condition of expanding, enlarging, or reconstructing a structure on such a lot[.]

Rockville, Minn., Ordinance No. 2017-87,
[https://www.rockvillecity.org/vertical/sites/%7BA5F773F8-CC22-42AE-ACDD-1276B47B1F88%7D/uploads/2017-87_Sec_14_Sub_9_Zoning_Ordinance_Amendment\(Structures_on_Non-confo.pdf](https://www.rockvillecity.org/vertical/sites/%7BA5F773F8-CC22-42AE-ACDD-1276B47B1F88%7D/uploads/2017-87_Sec_14_Sub_9_Zoning_Ordinance_Amendment(Structures_on_Non-confo.pdf)

The district court ruled that because the amendment merely served to “clarify existing law,” it should be applied retroactively. In a thorough analysis, the district court reasoned that the amendment was intended to clarify existing law even though it was not expressly labeled a “clarifying amendment” because: 1) the city council—through the recitals mentioned above—clearly and manifestly expressed its opinion that the section had been interpreted in a way that was not intended by the council, and 2) the amendment was adopted promptly following the district court’s original grant of injunctive relief.

In fact, the grant of injunctive relief by the district court was filed on September 13, 2017, and the Rockville City Council passed the amendment just three months later after a public hearing and comment period.⁶ The district court further reasoned that if it found the

⁶ The Rockville City Council passed the amendment on December 13, 2017 and it became effective on December 19, 2017. Rockville City Council Committee Meeting Minutes,

ordinance did not have retroactive effect, there would be nothing stopping respondents from tearing down the house and then rebuilding the same house in the exact same spot.

We agree with the district court on both points. The recitals obviously demonstrate that the city council intended the amendment to have retroactive effect. *See Nardini v. Nardini*, 414 N.W.2d 184, 196 (Minn. 1987) (applying a clarifying amendment to a statute retroactively because the legislature “clearly manifested its unmistakable intention” for courts to do so). We hold that the amendment clarifies the city council’s intent and is therefore retroactive based on the same reasoning as the district court.⁷

Substance of the amended law

Appellants next argue that if the amendment to Rockville, Minn., Zoning Code § 14, subd. 9 is applied retroactively, then Minn. Stat. § 462.357, subd. 1e (2018) prohibits respondents’ expansion of their property. Minn. Stat § 462.357, subd. 1e(a) prohibits expansion of structures that do not conform to local zoning ordinances. *Krummenacher*, 783 N.W.2d at 726. Subdivision 1e(b) allows for expansion of such structures when a municipal ordinance permits the owner to do so. Minn. Stat § 462.357, subd. 1e(b).

The rules that apply to the interpretation of a statute also apply to the interpretation of an ordinance. *Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 787 N.W.2d 523, 535

(Dec. 13, 2017), [https://www.rockvillecity.org/vertical/sites/%7BA5F773F8-CC22-42AE-ACDD-1276B47B1F88%7D/uploads/7_ba\)_12.13.17_City_Council_Meeting_Minutes.pdf](https://www.rockvillecity.org/vertical/sites/%7BA5F773F8-CC22-42AE-ACDD-1276B47B1F88%7D/uploads/7_ba)_12.13.17_City_Council_Meeting_Minutes.pdf)

⁷ Appellants also argue that the amendment results in a substantive change to the law, and that it therefore cannot be applied retroactively. But appellants did not raise this argument to the district court and therefore the issue is not properly before this court. *Thiele*, 425 N.W.2d at 582.

(Minn. 2010). To interpret a statute or an ordinance, we first assess whether the “language, on its face, is clear or ambiguous.” *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). If the language is “clear and free from all ambiguity,” the plain meaning controls and is not “disregarded under the pretext of pursuing the spirit.” Minn. Stat. § 645.16 (2018). But if a statute or ordinance has more than one reasonable interpretation, it is ambiguous and we apply canons of statutory construction to determine its meaning. *See State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017). Each statute or ordinance is to be “construed, if possible, to give effect to all its provisions.” *See* Minn. Stat. § 645.16 (referring to statutes); *Eagan Econ. Dev. Auth.*, 787 N.W.2d at 535 (the same rules of interpretation apply to ordinances as apply to statutes). Ordinances are to be “broadly and practically construed.” *Calm Waters, LLC v. Kanabec Cty. Bd. of Comm’rs*, 756 N.W.2d 716, 721 (Minn. 2008). It is also our duty to “construe statutes and ordinances to avoid absurd restrictions or results.” *Smith v. Barry*, 17 N.W.2d 324, 327 (Minn. 1944).

Here, as applied retroactively, Rockville, Minn., Zoning Code § 14, subd. 9 is ambiguous because it could be interpreted to either prohibit or allow for respondents’ expansion of their property under the requirement of Minn. Stat. § 462.357, subd. 1e(b).⁸ Therefore, we apply canons of construction to determine its meaning. *See Vasko*, 889 N.W.2d at 556.

⁸ Though the parties do not precisely frame the issue as such, we have a duty to resolve cases in accordance with the law. *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990).

Appellants argues that, as amended, section 14, subdivision 9 does not apply at all to respondents' property, and therefore cannot meet the ordinance requirement of Minn. Stat. § 462.357, subd. 1e(b). But this interpretation requires reading one line of the ordinance in isolation and not considering the entirety of the ordinance, as Minnesota law requires. *See Eagan Econ. Dev. Auth.*, 787 N.W.2d at 535 (interpreting a set of subsections of a municipal resolution within the context of the entire resolution). As set forth above, the city council clearly intended for the amendment to permit respondents' expansion. This is clear from the recital noting "a recent court ruling," and from the substance of the clarification itself. It would be absurd to suggest that the city council passed an amendment to their zoning code to clarify that the code did not prohibit respondents' expansion, and then in the same breath conclude that the zoning code is insufficient to permit the very same expansion.

Therefore, we affirm the district court's rejection of appellants' argument on the ground that, as amended, Rockville, Minn., Zoning Code § 14, subd. 9 authorizes respondents' expansion.⁹ Based on this record and our conclusions of law, appellants have

⁹ Appellants argue that equitably, granting the Minn. R. Civ. P. 60.02 motion was an abuse of discretion. The only legal citations appellants support this assertion with is a reference to the general principle in *Baart v. Martin* that "fraud vitiates [every] transaction." 108 N.W. 945, 951 (Minn. 1906). But "on appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it." *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464–65 (Minn. 1944). Appellants do not support their position with a cogent argument or with applicable legal citation. And inadequately briefed issues are not properly before an appellate court. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982).

failed to meet their burden of establishing that they are entitled to equitable relief. The district court did not abuse its discretion in granting respondents' 60.02 motion.

DNR requirement

Finally, appellants argue that because the amendment to Rockville, Minn., Zoning Code § 14, subd. 9 was not submitted to the Department of Natural Resources (DNR) before the City of Rockville adopted it, so “the ordinance fails to meet statutory preconditions.” Minn. Stat. § 103F.221, subd. 1(a) (2018) requires that “[a] municipality having shoreland within its corporate boundaries must submit ordinances or rules affecting the use and development of its shorelands to the commissioner for review.” Appellants argue that the amendment cannot have legal effect because the City of Rockville did not submit the amendment to the DNR before passing it.

But because appellants never presented the issue to the district court, this issue is not properly before this court. *See Thiele*, 425 N.W.2d at 582. And generally, “litigants are bound [on appeal] by the theory or theories, however erroneous or improvident, upon which the action was actually tried below.” *Annis v. Annis*, 84 N.W.2d 256, 261 (Minn. 1957).¹⁰

Affirmed.

¹⁰ Because we affirm the district court's grant of respondents' 60.02 motion vacating the injunction, there is no further relief available to respondents. We therefore dismiss respondents' cross-appeal and deny the pending motion to strike respondents' reply brief as moot.