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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0993**

Ryan Carlson, et al.,
Appellants,

vs.

Township of Livonia,
Respondent.

**Filed April 12, 2021
Reversed and remanded
Connolly, Judge**

Sherburne County District Court
File No. 71-CV-20-23

Stuart T. Alger, Faegre Drinker Biddle & Reath, LLP, Minneapolis, Minnesota (for appellants)

Kenneth H. Bayliss, III, Paul E. Darsow, Quinliven & Hughes, P.A., St. Cloud, Minnesota;
and

Bradley A. Kletscher, Barna, Guzy & Steffen, Ltd., Minneapolis, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

This appeal arises from a dispute between appellant-homeowners and respondent-township over appellants' installation of a dock on a lake that is adjacent to a minimum-maintenance road that separates appellants' property from the lake. Appellants challenge the district court's grant of summary judgment in favor of the township on two of appellants' claims, as well as the township's counterclaim, arguing that the district court erred by concluding that (A) respondent, and not appellants, own fee title to the minimum-maintenance road; (B) appellants do not have riparian rights in the lake; and (C) the township has authority to enforce the restrictive covenants prohibiting the installation of docks on the lake. Appellants also contend that the district court erred in dismissing their two remaining claims for failure to state a claim on which relief can be granted. Because the district court erred in concluding appellants do not own fee title to the minimum-maintenance road, and the township has no authority to enforce the covenant restricting the placement of docks on the lake, we reverse and remand.

FACTS

Appellants Ryan and Tanya Carlson (the "Carlsons") own fee title to real property (the "property") located in respondent Township of Livonia (the "township"). The property is part of the residential housing development known as The Woods at Lake Fremont (the "development"), and is legally described as LOT 12, BLK 6, The Woods at Lake Fremont, Sherburne County, Minnesota. At the western edge of the property lies 120th Street Northwest (the "street"), and the shoreline of Lake Fremont (the "lake") lies

adjacent to the street to the west. There is no property between the edge of the street and the lake, and the street lies between numerous other parcels and the lake. The street has been designated a minimum-maintenance road, is not paved, and is used by the public for, among other things, ingress and egress.

In May 2003, a development meeting was held regarding a proposed development of a plat of land located in the township, which would eventually become the development. Representatives from Lake Fremont LLC (the “developer”), the township, and the Sherburne County Board of Commissioners were present at the meeting. At the meeting, a representative of the developer stated that the design for the development included a public right-of-way along the lake. This public right-of-way, which later became the street, was meant to remove the possibility of private docks along the shoreline.

In June 2003, a county planning advisory commission meeting was held where a representative of the developer again indicated that none of the lots in the development would have direct access to the lake. Instead, the 33 feet consisting of the street would be dedicated to the township.

The township and the developer executed and recorded a Developer’s Agreement on October 23, 2003. The Developer’s Agreement was conditioned, in relevant part, on the developer’s conveyance to the township “by quit claim deed its interest in all property between the plat boundary and the water line of [the lake].” The purpose of this conveyance was to provide “assurance of adequate right of way for [the street] to eliminate any remnant parcels outside of the right of way on the water side of [the street] along [the

lake].” The Developer’s Agreement also provided that its terms would “be binding upon all future owners of all or any part of the [development].”

The development plat was executed on October 27, 2003, and used the following language to transfer land for highways, roads, and streets:

[The developer] [h]as caused the same to be surveyed and platted as [the development] and do hereby donate and dedicate to the County of Sherburne in fee title for public use forever County Highway No. 39 as shown on this plat. Also dedicating to the County of Sherburne the right to limit access to said County Highway No. 39 as shown on this plat. Also dedicating to the [t]ownship . . . for public use forever the Avenues, and Streets and also dedicating to the public use forever the easements as shown on this plat for drainage and utility purposes only.

On November 7, 2003, the developer executed a declaration of covenants, conditions, restrictions, and easements for the development. The restrictions included the following:

Section 14. Restricted Access. For Lots 1 through 6, inclusive, Block 5 and Lots 1 through 6, inclusive, and Lots 11 and 12, all of Block 6, shall have the following additional restrictions:

- (a) No driveway access shall come from the [street] that is adjacent to [the lake].
- (b) No docks are permitted along the shoreline of [the lake].

The development plat and the Declaration of Covenants were both recorded on November 25, 2003.

In May 2005, the previous owners of the property were conveyed warranty deed of the property. A month later, the township’s board of supervisors adopted a resolution

accepting as town roads those roadways dedicated to the public within the plat of the development. And in May 2018, Outlot A, which is depicted on the plat of the development, was conveyed by limited warranty deed to the township.

The property was listed for sale on October 17, 2018. A listing for the property included the following information: (A) “Walk approx. 75’ to lake shore!”; and (B) “Lake/Waterfront Information” classified as “Lake View.” The next day, the Carlsons’ realtor asked the seller’s realtor whether the property included lakeshore and whether docks were permitted. The seller’s realtor responded that lakeshore was not part of the property and that the township did not allow docks.

The Carlsons purchased the property in November 2018. Five months later, the Carlsons placed a dock and boat along the shoreline of the lake adjacent to their property. The township subsequently informed the Carlsons by letter that their property did not include shoreline on the lake and requested that the Carlsons remove the dock as soon as possible. Later, on August 30, 2019, counsel for the township sent correspondence advising the Carlsons that, pursuant to Minn. Stat. § 505.01 (2002), the township owned the land along the lake. Ryan Carlson responded, stating that he “fully and completely intend[s] to place the dock back each and every year I live at the residence.”

In November 2019, the township erected a gate to temporarily close a portion of the street. The developer later executed a quit claim deed conveying to the township “[a]ll that part of the plat of [the development] located within [the street] and all property between [the street] and the water line of [the lake].” The quit claim deed was recorded on January 28, 2020.

In the meantime, on January 9, 2020, the Carlsons brought this declaratory-judgment action, claiming that under Minn. Stat. § 555.01 (2002), they own fee title to the street, which entitles them to exclusive riparian rights to the corresponding lakeshore. The Carlsons also challenged the designation of the street as a minimum-maintenance road, and claimed that the township was obligated to open and maintain the street. The township answered and counterclaimed, seeking to enjoin the Carlsons from placing a dock on the lake.

In February 2020, the township moved to dismiss counts III and IV of the Carlsons' complaint related to the township's designation and maintenance of the street. The Carlsons subsequently moved for summary judgment on all of the parties' claims, and the township later filed a cross-motion for summary judgment on the Carlsons' claims not addressed in the township's motion to dismiss, as well as the township's counterclaim.

Following a hearing, the district court determined that the township owned fee title to the street. The district court also determined that "[m]any of the parties' remaining arguments flow from this initial determination," and concluded that because the Carlsons do not own the street, they have no riparian rights to the lakeshore. The district court further determined that the Carlsons had notice of the covenant restricting their right to install a dock on the lake, that the Carlsons are bound by the covenant, and that the township had standing to enforce the covenant. With respect to counts III and IV of the Carlsons' complaint related to the township's designation and maintenance of the street, the district court relied upon its determination that the Carlsons did not own fee title to the street, and concluded that it did not have subject-matter jurisdiction to decide count III, and

that count IV failed to state a claim upon which relief could be granted. The district court, therefore, (1) denied the Carlsons' motion for summary judgment; (2) granted the township's motion for summary judgment related to its counterclaim and counts I and II of the Carlsons' complaint; and (3) granted the township's motion to dismiss counts III and IV of the Carlsons' complaint. This appeal follows.

DECISION

Summary judgment is "appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law." *Warren v. Dinter*, 926 N.W.2d 370, 374 (Minn. 2019) (quotation omitted). Appellate courts review the district court's decision de novo and "view the evidence in the light most favorable to the nonmoving party and resolve all doubts and factual inferences against the moving parties." *Fenrich v. The Blake Sch.*, 920 N.W.2d 195, 201 (Minn. 2018) (quotation omitted).

The Carlsons challenge the district court's summary-judgment decision, arguing that (A) under Minn. Stat. § 505.01, they own fee title to the street; (B) because they own fee titled to the street, they have exclusive riparian rights to the lakeshore; and (C) the district court erred by enjoining them from placing a dock on the lake.

A. Fee title to the street

At the time the development plat was executed and recorded, Minnesota law provided:

Plats of land may be made in accordance with the provisions of this chapter, and, when so made and recorded, every donation to the public or any person or corporation noted thereon shall operate to convey the fee of all land so donated, for the uses and purposes named or intended, with the same

effect, upon the donor and the donor's heirs, and in favor of the donee, as though such land were conveyed by warranty deed. Land donated for any public use in any municipality shall be held in the corporate name in trust for the purposes set forth or intended.

Minn. Stat. § 505.01.

The Carlsons argue that prior precedents applying section 505.01, and its statutory predecessors, stand for the proposition that “a street created by dedication in a plat conveys to the recipient of the dedication a terminable easement interest only in the street, and the fee interest in the street passes to lot owners abutting the street.” We agree. In *Betcher v. Chicago, Milwaukee & St. P. Ry. Co.*, a railroad company sought to build railroad tracks on a piece of land along the Mississippi River that was, at one time, dedicated to public use as a steamboat landing, and a private individual claimed that he owned fee title to the disputed property. 124 N.W. 1096, 1097 (Minn. 1910). The plaintiff sought to recover the tract of land that the defendant railroad company possessed after the town of Red Wing declared the tract vacated and permitted the railroad company to use it. *Id.* The railroad company argued that the plat, which labeled the tract of land “Steamboat Landing,” conveyed fee title to the town and that the company “was in the possession of the premises for railroad purposes with the acquiescence of the owner [town].” *Id.* The plat did not contain any other dedication, grant, or donation language concerning the disputed property. *Id.* at 1098-99.

On appeal, the supreme court recognized that Minn. Rev. Stat. (Terr.) ch. 31, § 5 (1851),¹ relating to town plats, was in force when the town plat was created. *Id.* The supreme court stated that “[t]his statute, without substantial change of language, has been in force in this state ever since the organization of the territory of Minnesota.”² *Id.* at 1099 (footnoted added). The supreme court then stated that

¹ This statute provides:

When the plot or map shall have been made out and certified, acknowledged and recorded as required by this chapter, every donation or grant to the public or any individual or individuals, religious society or societies, or to any corporation or body politic, marked or noted as such on said plot or map shall be deemed in law and equity a sufficient conveyance to vest the fee simple of all such parcel or parcels of land, as are therein expressed, and shall be considered to all intents and purposes a general warranty against such donor or donors, their heirs or representatives to said donee or donees, grantee or grantees, or his, her or their use, for the uses and purposes whatever; and the land intended to be for the streets, alleys, ways, commons or other public uses in any town or city or addition thereto, shall be held in the corporate name thereof, in trust to, and for the use and purposes set forth and expressed or intended.

Minn. Rev. Stat. (Terr.) ch. 31, § 5.

² At the time *Betcher* was decided, Minn. Rev. Stat. (Terr.) ch. 31, § 5, was codified at Minn. Rev. Laws § 3365 (1905), and provided:

Plats of land may be made in accordance with the provisions of this chapter, and, when so made and recorded, every donation to the public or any person or corporation noted thereon shall operate to convey the fee of all land so donated, for the uses and purposes named or intended, with the same effect, upon the donor and his heirs, and in favor of the donee, as though such land were conveyed by warranty deed. Land donated for any public use in any municipality shall be held in

it has been the uniform holding of this court that the dedication of land, pursuant to [Minn. Rev. Stat. (Terr.) ch. 31, § 5 (1851)] to the public for streets, alleys, and public grounds, does not pass the fee-simple title thereto, but only such an estate as the purpose of the trust requires, and that the fee, subject to the public easement, remains in the dedicator and his grantees.

Id. The court concluded that “[i]t follows that the fee to the tract in question never was in the municipality, but remained in the owner of the lots abutting thereon, subject to the public easement.” *Id.*

Caselaw, decided both before and after *Betcher* was decided, has acknowledged that notwithstanding the statutory language of Minn. Stat. § 505.01, our courts have held that a dedication donee does not own the dedicated property in fee simple, but that the donee receives only the estate necessary to fulfill the purposes of the dedication. *Headley v. City of Northfield*, 35 N.W.2d 606, 609 (Minn. 1949). For example, *City of Winona v. Huff*, decided almost 50 years before *Betcher*, involved a statutory dedication by a plat under Minn. Rev. Stat. (Terr.) ch. 31, § 5, of a public square for public use. 11 Minn. 119, 127 (Minn. 1866). The supreme court held that where the owner of land dedicates on a plat thereof a public square for public use, the dedication operates to reserve to the owner the fee to the public square and to grant to the municipality, wherein it is situated, in trust for the benefit of the public at large only such estate or interest therein as the purposes of the trust require. *Id.* at 136-37; *see also Schurmeier v. St. Paul & P. R. Co.*, 10 Minn. 82, 104-06 (Minn. 1865) (stating that under a statutory dedication, the fee simple to the land

the corporate name in trust for the purposes set forth or intended.

dedicated to the public for streets and alleys, does not pass, but only such an estate or interest as the purposes of the trust require).

Similarly, in *Etzler v. Mondale*, decided over 50 years after *Betcher*, the supreme court acknowledged that “the legal effect of a plat dedication is a conveyance in trust to the municipality of a terminable easement only, in any area designated in the plat for public use, and the fee title thereto remains in the dedicator, subject to the easement.” 123 N.W.2d 603, 610 (Minn. 1963); *see also Larson v. Sando*, 508 N.W.2d 782, 787 (Minn. App. 1993) (reciting the rule that “[o]nce land is formally dedicated, the government does not own the land in fee simple with right of alienation, but in trust for a specific use”), *review denied* (Minn. Jan. 21, 1994). And, most recently, the supreme court acknowledged that in construing the version of section 505.01 in effect at the time the Carlsons’ property was platted, “we stated that ‘the legal effect of a plat dedication is a conveyance in trust to the municipality of a terminable easement only, in any area designated in the plat for public use, and the fee title thereto remains in the dedicator, subject to the easement.’” *Bolen v. Glass*, 755 N.W.2d 1, 4 (Minn. 2008) (quoting *Etzler*, 123 N.W.2d at 610).

The aforementioned caselaw supports the Carlsons’ position that a dedication donee does not own the dedicated property in fee simple, but instead receives only the estate necessary to fulfill the purposes of the dedication. *See Denman v. Gans*, 607 N.W.2d 788, 795 (Minn. App. 2000) (“Notwithstanding th[e] statutory language [of Minn. Stat. § 505.01], our courts have held that a dedication donee does not own the dedicated property in fee simple, but that the donee receives only the estate necessary to fulfill the purposes of the dedication.”), *review denied* (Minn. June 27, 2000). In fact, the legislature appears

to have codified this rule when it amended section 505.01 in 2007. *See* 2007 Minn. Laws ch. 73, §1, at 1. The statute as amended, which remains the same today, provides:

Plats of land may be made in accordance with the provisions of this chapter, and, when so made and recorded, every donation of a park to the public shall operate to convey the fee of all land so donated, for the uses and purposes named or intended, with the same effect, upon the donor and the donor's heirs, and in favor of the donee, as though such land were conveyed by warranty deed. Land donated for any public use in any municipality shall be held in the corporate name in trust for the purposes set forth or intended. *A street, road, alley, trail, and other public way dedicated or donated on a plat shall convey an easement only. Easements dedicated or donated on a plat shall convey an easement only.*

Minn. Stat. § 505.01, subd. 1 (2020) (emphasis added).

The township vigorously argues that the Carlsons' reliance on the aforementioned caselaw is misplaced because it "rests on a tortured reading and application of distinguishable cases." We acknowledge that the caselaw cited by the Carlsons is factually distinguishable. But these cases all stand for the general rule that the legal effect of a plat dedication is a conveyance in trust to the municipality of a terminable easement only, in any area designated in the plat for public use, and the fee title thereto remains in the dedicator, subject to the easement. *See Bolen*, 755 N.W.2d at 4.

The district court acknowledged the general rule cited by the Carlsons, but concluded that it "does not apply to the present circumstances" because caselaw "states [that] the donee of a dedication receives the estate or interest required for the purpose of the trust." The district court determined:

Because the purpose of dedicating [the street] required a greater interest in the underlying land, [the township] received

more than a terminable easement held in trust. Stated another way, due to the purpose and public use [the street] would be put to, [the township] took fee title to the [street].

The Carlsons challenge this determination, arguing that while caselaw provides that the “public obtains the estate or interest the public use requires, the appellate courts have never held that it follows that the estate the public use requires may encompass the fee interest.” (Emphasis omitted.) We agree. As stated above, the supreme court has recognized that where the owner of land dedicates on a plat thereof property for public use, the dedication operates to reserve to the owner the fee to the property and to grant to the municipality, wherein it is situated, in trust for *the benefit of the public at large only such estate or interest therein as the purposes of the trust require*. *Headley*, 35 N.W.2d at 608; *Huff*, 11 Minn. at 136-37. “[D]ifferent purposes may require different interests or estates to support them.” *Headley*, 35 N.W.2d at 609 (quotation omitted). But although the estate or interest as the trust requires passes to the public, and may be improved, the “fee remains in the owners of the land.” *Id.* (quotation omitted).

Here, the development plat dedicated the street to the township “for public use forever.” And as the district court noted, “[p]ublic use is not defined within the plat.” It is conceivable that dedication of a street for public use along a shoreline could encompass circumstances that would prohibit a landowner’s use of the shoreline, including the placement of a dock on the shoreline. But the plat indicates no such public use. Moreover, neither the district court, nor the township, points to any caselaw indicating that, in such situations, fee title to the dedicated land passed to the donee. Thus, although the dedication

of the street passed to the township an interest in the street in trust for public use, the fee remained in the landowner.

The plain language of the plat also demonstrates that fee title of the street remained with the owner of the property. The plat states that the developer “donate[d] and dedicate[d] to the County of Sherburne *in fee title* for public use forever County Highway No. 39 as shown on this plat.” (Emphasis added.) This plain and unambiguous language demonstrates that fee title to County Highway No. 39 was donated and dedicated by the developer to Sherburne County. But significantly absent from the plain language of the plat is a donation and dedication of the *fee title* to the Avenues and Streets in the plat. Rather, the plat states that the developer dedicated “to the [t]ownship . . . for public use forever the Avenues, and Streets.” Unlike the language conveying fee title of County Highway No. 39 to Sherburne County, there is no language conveying fee title to the street to the township. As the Carlsons point out, if the developer and the township intended that fee title to the street be conveyed to the township, the plat “could have provided that [the street] be dedicated and donated in fee, just as was accomplished in connection with County Highway No. 39.” (Emphasis omitted.) Although the district court referred to parol evidence demonstrating the parties’ intent to convey fee title to the street to the township, courts may consider parol evidence to construe a plat only when the plat is ambiguous or incomplete. *See Mollico v. Mollico*, 628 N.W.2d 637, 640 (Minn. App. 2001) (parol evidence is only admissible if the contract is ambiguous or incomplete). There is nothing ambiguous about the plat, it simply failed to convey fee title to the street to the township. Therefore, the district court erred by considering parol evidence of the parties’ intent.

The township further argues that the district court properly determined that there were “cogent reasons” not to apply the rule that fee title to the street remained with the Carlsons. To support its position, the township relies on *Wait v. May*, 51 N.W. 471 (Minn. 1892). In that case, there was a plat of land bordering on Lake Minnetonka. *Wait*, 51 N.W. at 471. A street was platted and dedicated along the margin of the lake. *Id.* Like here, lots were platted fronting on that street, with the street intervening between the lots and the lake. *Id.* The question presented was whether a lot owner, the subsequent grantee by deed of one of these lots, took, in connection therewith, the fee title to the whole of the street in front of his lot, with the riparian rights incident to ownership of a lot bordering on the lake. *Id.* at 472. In addressing this question, the supreme court recognized the general rule that the “center of the street or highway is the boundary line between adjoining proprietors, and hence each owns the fee to the center of the way.” *Id.* But the supreme court stated that this general rule “must yield when it appears that there is not only an absence of the foundation on which it rests, but cogent reasons why such a rule can have no application.” *Id.* The supreme court then determined that cogent reasons existed to deviate from the general rule, and held that such fee to the entire street in front of the lot, with the riparian rights, passed by the deed of the lot to this lot owner. *Id.* at 472-73.

The township’s reliance on *Wait* is misplaced for three reasons. First, the supreme court’s reference to “cogent reasons” to deviate from a general rule of law was not a deviation from the general rule of law as stated in section 505.01, or its predecessors. *See id.* at 472. In fact, *Wait* does not address the language of section 505.01, or its predecessors. Second, *Wait* supports the Carlsons’ position that they own fee title to the street and the

corresponding riparian rights because the supreme court ultimately determined that fee to the entire street in front of the lot, along with the riparian rights, passed to the landowner. *See id.* at 472-73. And third, we see no reason to consider “cogent reasons” to deviate from the general rule of law as stated in section 505.01, and interpreted by our supreme court. As stated above, the plat is unambiguous. Because the plat is unambiguous, it is improper to consider “cogent reasons” to deviate from the plain language of the plat. *See Mollico*, 628 N.W.2d at 640.

Finally, the township argues that “[i]f the Carlsons were correct in arguing that fee title to [the street] did not pass statutorily from the Developer to the Township, then fee title remains with the Developer,” and later passed to the township by way of the January 2020 quit claim deed. To support its position, the township cites the language from *Betcher*, stating that

[i]t has been the uniform holding of this court that the dedication of land, pursuant to this statute, to the public for streets, alleys, and public grounds, does not pass the fee-simple title thereto, but only such an estate as the purpose of the trust requires, and that the fee, subject to the public easement, remains in the dedicator and his grantees.

124 N.W. at 1099. The township argues that if, under section 505.01, the developer retained fee title to the street, *Betcher* “dictates that fee title to the [street] remain[ed] in the Developer and its grantees,” the grantee being the township “by virtue of the quit claim deed, executed January 21, 2020, and recorded a week later.”

We are not persuaded. As a general rule, the owner of the land at the time it was platted becomes “entirely disassociated” with the land’s title and has no interest in the fee

title to the street when the land passes to a subsequent owner. *White v. Jefferson*, 124 N.W. 373, 374-75 (Minn. 1910). In other words, when a platter dedicates a road within a plat, the law presumes that the platter intends to part with title to the land underlying the road in favor of the landowner (or landowners) whose property abuts the road. *See Drake v. Chicago, Rock Island & Pac. Ry. Co.*, 162 N.W. 453, 454 (Minn. 1917). But this rule is subject to an exception when the express written intent of the grantor is that the fee not belong to subsequent owners of abutting lots. *See id.* (“Every intendment favors ownership in the abutters rather than a reservation of title in the platter, and to constitute such a reservation there must be something equivalent to an express declaration.”).

Here, the plain language of the plat demonstrates that fee title to the street was not conveyed to the township and, therefore, fee title to the street remained with the developer. The fee to the street then passed to the subsequent landowners and, later, to the Carlsons, when they purchased the property. *See White*, 124 N.W. at 374-75. Moreover, the plat contains no express declaration that the developer reserved or conveyed fee title to the street. Therefore, the January 2020 quitclaim deed that purported to convey fee title to the street to the township was invalid because the developer did not have fee title to the street when it executed the January 2020 quit claim deed.

In sum, the plat unambiguously failed to convey fee title to the street to the township. Without such a conveyance, the rule set forth in Minn. Stat. § 505.01, as interpreted by our supreme court, is dispositive. Under that rule, the plat’s dedication of the street to the township conveyed only a terminable easement to the street, and fee title to the street remained with the developer, and ultimately passed to the Carlsons when they

purchased the property. Accordingly, the district court erred by concluding that the Carlsons did not own fee title to the street.

B. Riparian rights

Riparian rights are the rights to reasonably use the surface of waters abutting a parcel of real property. *Johnson v. Seifert*, 100 N.W.2d 689, 696-97 (Minn. 1960). These rights “rest entirely upon the fact of title in the fee to the shore land.” *Sanborn v. People’s Ice Co.*, 84 N.W. 641, 642 (Minn. 1900). Here, because the district court erred in concluding that the Carlsons did not own fee title to the street, the district court improperly determined that the Carlsons do not have riparian rights to the lake. Therefore, the district court erred by denying the Carlsons’ motion for summary judgment and granting the township’s motion for summary judgment related to counts I and II of the Carlsons’ complaint.

C. Injunction prohibiting the Carlsons from installing a dock on the lake

The Carlsons challenge the district court’s grant of summary judgment in favor of the township, and against the Carlsons, on the township’s counterclaim that, under the restrictive covenants contained in the Declaration of Covenants, the Carlsons were prohibited from installing a dock on the lake. Minnesota law permits a municipality by ordinance to adopt “subdivision regulations establishing standards, requirements, and procedures for the review and approval or disapproval of subdivisions.” Minn. Stat. § 462.358, subd. 1a (2020). These “regulations may permit the municipality to condition its approval on compliance with other requirements reasonably related to the provisions of the regulations and to execute development contracts embodying the terms and conditions

of approval.” *Id.*, subd. 2a (2020). And “[t]he municipality may enforce such agreements and conditions by appropriate legal and equitable remedies.” *Id.*

Pursuant to section 462.358, subdivision 2a, the township adopted an ordinance, to “[s]ecure the rights of the public with respect to public lands and waters” and to “[s]et minimum requirements necessary to protect the public health, safety, comfort, convenience, and general welfare.” Livonia Township Subdivision Ordinance § 2F, G (2014). The ordinance also requires “developers to enter into development agreements with the Town, and related requirements and restrictions in order to promote the public health, safety, welfare, and finances of the Town.” *Id.* § 3C (2014). And the ordinance states that the township “may condition its approval of any subdivision” on certain requirements. *Id.* § 7 (2014).

The township argues that under its local ordinance, as authorized by section 462.358, it has the legal authority to enforce the covenant prohibiting the Carlsons’ placement of a dock on the lake. We disagree. The township may have authority to enforce a dock prohibition if a subdivision plan was conditioned on such a restriction. But the Developer’s Agreement here, as entered into by the township, is unambiguous, and contains no language stating that the Developer’s Agreement was conditioned upon the prohibition of the placement of docks on the lake. Nor does the Developer’s Agreement condition the subdivision approval on a requirement that the subdivision contain a covenant prohibiting docks on the lake. Moreover, there is no provision in the Livonia Township Subdivision Ordinance prohibiting the placement of a dock on the lake. Therefore, the township is without legal authority, under its local ordinance, to enforce the covenant

prohibiting the placement of docks on the lake, or otherwise prohibit the Carlsons' placement of a dock on the lake.

The township also contends that, as the owner of Outlot A, it has the authority to enforce the covenant prohibiting the placement of docks on the lake.³ To support its position, the township cites *Godley v. Weisman*, which provides that “[w]here there is a general building plan applicable to a number of adjacent or contiguous lots, and lots are conveyed according to such a plan, the grantee of any part of the land subject thereto has the right to enforce the restrictions against his neighbor.” 157 N.W. 711, 712 (Minn. 1916).

The township argues that, under *Godley*, it has the authority to “enforce the restrictive covenants against the Carlsons by virtue of its ownership of Outlot A, which is part of the same general building plan as the other properties [that] are part of the Development.” We disagree. The parties do not argue that there is an issue of fact concerning whether Outlot A is part of the same general plan of the development. Instead, the parties assert that the issue is a legal issue to be determined by the documents in the record. One of these documents is the declaration of covenants. The declaration of covenants, which applies to the development, is indicative of the general plan. It states that the “Property” is subject to the declaration, and then provides that “‘Property’ shall mean and refer to that certain real property described and defined in Exhibit 1.” Outlot A is not included in Exhibit 1. In fact, the declaration of covenants explicitly states that the

³ We note that the parties incorrectly phrase the issue as one of standing. See *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011) (“Standing is a jurisdictional doctrine, and the lack of standing bars consideration of [a] claim by the court.”).

“‘Property’ shall . . . *not include* any Lots or *outlots* within said subdivision not so expressly named.” (Emphasis added.) Thus, Outlot A is specifically excluded from the declaration.

Because Outlot A is explicitly excluded from the declaration of covenants, it is not part of the same general plan that is part of the development. And because Outlot A is not part of the same general plan of the development, the township has no authority to enforce the covenants set forth in the declaration. Accordingly, the district court erred by granting summary judgment in favor of the township on the township’s counterclaim.⁴

Reversed and remanded.

⁴ Because we conclude that the Carlsons own fee title to the street, and have riparian rights to the lake, we reverse the district court’s dismissal of the Carlsons’ remaining claims for failure to state a claim upon which relief can be granted, and remand for reconsideration of those claims in light of our decision.