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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1557**

Peter Stalland, et al.,
Appellants,

vs.

City of Scandia,
Respondent.

**Filed August 16, 2021
Affirmed
Gaïtas, Judge**

Washington County District Court
File No. 82-CV-19-3916

Matthew Anderson, Anderson Law Group PLLC, St. Paul, Minnesota (for appellants)

Paul A. Merwin, League of Minnesota Cities, St. Paul, Minnesota (for respondent)

Considered and decided by Gaïtas, Presiding Judge; Worke, Judge; and Johnson,
Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

In this action for judicial review of a municipal zoning decision, appellants—the developer and individual residents of Tii Gavo, a housing development—appeal the district court’s grant of summary judgment to respondent City of Scandia. They contend that the city council improperly denied their application to increase the number of boat slips in Tii

Gavo’s marina and that the district court erred in affirming the city’s decision on summary judgment. We affirm.

FACTS

Tii Gavo is a planned unit development (PUD) approved by the City of Scandia. A PUD is a type of development that allows for “flexibility from the strict application of zoning standards in exchange for an improved design benefiting the public.” Scandia, Minn., Dev. Code, Ch. 2, § 5.1(6) (2021). The city authorizes PUDs by issuing a conditional use permit (CUP). Scandia, Minn., Dev. Code, Ch. 2, § 7.2 (2021). The city issued a CUP for Tii Gavo and executed a corresponding development agreement¹ with its developer in 2007.

The Tii Gavo development currently has 29 lots for homes, although the CUP permits up to 37 residential lots. Residents of Tii Gavo have access to nearby Big Marine Lake. The Tii Gavo Community Association owns a waterfront lot with shoreline along Painted Turtle Bay. As part of the Tii Gavo development project, a 900-foot channel was dredged to connect this bay to Big Marine Lake, a venture that required the approval of the Department of Natural Resources (DNR). Currently, the waterfront lot on Painted Turtle Bay has a communal dock with 19 boat slips for Tii Gavo residents. This is the maximum number of boat slips allowed under the development agreement and the CUP.

¹ Development agreements are contracts between municipalities and developers “embodying the terms and conditions of [a city’s] approval” of a request to subdivide land for development, and cities can “enforce such agreements and conditions by appropriate legal and equitable remedies.” Minn. Stat. § 462.358, subd. 2(a) (2020).

In April 2019, several homeowners in the Tii Gavo development sought to amend the development agreement and CUP to allow 10 more boat slips.² They submitted a two-page application form along with a few attachments, including a diagram of the proposed dock expansion and a report prepared by an environmental consultant. Their environmental consultant, who provides aquatic-weed-control services to Tii Gavo, opined that expanding the dock to add additional boat slips would not affect the high-quality natural state of the bay and would not increase watercraft use to any significant level.

Upon receiving the homeowners' application, the city's planning commission visited the site of the proposed dock expansion, and then scheduled a meeting for May 2019. Before the meeting, the commission received several written submissions, including comments from the DNR and the Carnelian-Marine-St. Croix Watershed District (the watershed district), along with a detailed report from the city planner.

The DNR's submission recommended denying the homeowners' application for additional boat slips. According to the DNR, the number of boat slips was limited during the PUD approval process as a condition for the developer's proposed channel between the bay and the lake. The agreed-upon restriction on boat slips was intended "to protect, in the long term, the ecological resources in the bay from overuse," as the bay contains "high value aquatic plants that provide fish and wildlife habitat."

Similarly, the watershed district's submission emphasized the original negotiations that resulted in the PUD's approval, and recommended denial of the expansion request.

² The Tii Gavo parties also submitted an application for additional boat slips in 2018 but withdrew it before any decision was issued.

The watershed district relayed that “[a] key factor in these negotiations was the agreement to lower the impact of individual docks on the main body of the Lake while balancing the potential for ecological damage.”

Likewise, the city planner’s report recommended denying the request for additional boat slips. The city planner’s submission discussed the applicable regulations and standards in effect when the city council issued the CUP in 2007 and when the homeowners applied to amend the CUP to add more boat slips. According to the city planner, in 2007, shoreland regulations limited the number of docking facilities in a PUD to the number of permissible riparian lots in the development. Tii Gavo had 19 permissible riparian lots and 9 nonriparian lots under traditional zoning regulations, for a total of 28 lots. Tii Gavo’s CUP allowed for 37 lots, though, as Tii Gavo’s cluster-development approach called for smaller lots but left land open for communal space and conservation, including a buffer zone along the shoreline.

The city planner explained that after Tii Gavo’s CUP was issued, the city had adopted a new shoreland ordinance governing watercraft storage in PUDs, which was similar to the one in effect in 2007. *See* Scandia, Minn., Dev. Code, Ch. 5 § 10.6 (2018). Under the new ordinance, “shore recreation facilities” in PUDs must be centralized and located in suitable areas, and “[t]he number of spaces provided for continuous beaching, mooring, or docking of watercraft must not exceed one for each allowable dwelling unit or site in the first tier.” *Id.*, § 10.61(E)(2). “First tier” sites are lots within 267 feet of the ordinary high water level of the lake. *See* Scandia, Minn., Dev. Code, Ch. 5, § 10.51

(2018). The city planner's report stated that only 17 lots in Tii Gavo qualify as "first tier" lots.

At the city planning commission's public meeting, the commission heard comments from several Tii Gavo homeowners, a representative of the developer, Tii Gavo's environmental consultant, a watershed-district manager, and the city planner. The commission then voted to recommend that the city council approve the request for additional boat slips, determining that the proposal seemed in line with the "spirit" of the shoreland ordinances.

A few weeks later, the city council held a public hearing on the matter. The city council received a packet of written materials concerning the proposed CUP amendment, including the application form, the planning commission minutes, an updated report from the city planner, the submissions provided to the planning commission by the DNR and watershed district, and several records from the original CUP approval. Many interested parties spoke at the public hearing, including the city planner, Tii Gavo's environmental consultant, watershed-district representatives, several Tii Gavo residents, a representative of the developer, and a homeowner on the lake. City councilmembers asked numerous questions and engaged in significant discussion and deliberation on the record.

During the public hearing, Councilmember Steve Kronmiller explained that he was quite familiar with the original negotiations around the Tii Gavo development, as he was a watershed district manager at the time. Kronmiller objected to the proposed CUP amendment, in part, based on the DNR's and watershed district's opposition to it. He noted that these two entities were heavily involved in the original development agreement and

CUP, including the express limitation on boat slips. Kronmiller was also concerned about setting a precedent that would allow Tii Gavo residents to request further increases in the number of boat slips as more residential lots were developed in the future. Other councilmembers similarly expressed concern about not “honor[ing]” the original, negotiated agreement for 19 boat slips and establishing a precedent that conceivably would encourage dock applications by owners of nonriparian properties. At the close of deliberations, the city council voted unanimously to deny the amendment application.

In August 2019, the homeowners, along with the Tii Gavo developer—who, collectively, are now appellants—filed a complaint in district court under Minnesota Statutes section 462.361 (2020),³ alleging first, that the city’s denial of the application for more boat slips was arbitrary, capricious, and unreasonable, and second, that the city violated their constitutional right to procedural due process. The district court permitted limited discovery beyond the municipal record, allowing appellants to depose a former city administrator, a former city planner, and the current city planner in pursuit of their due-process claim.

Following the close of discovery, appellants moved for partial summary judgment, asserting that the city’s decision was unreasonable, arbitrary, and capricious as a matter of law. The city moved for summary-judgment dismissal of both claims. After a hearing on

³ Minnesota Statutes section 462.361 provides that “[a]ny person aggrieved by an ordinance, rule, regulation, decision, or order of a governing body . . . may have such ordinance, rule, regulation, decision or order, reviewed by an appropriate remedy in the district court.”

the motions, the district court issued an order denying appellants' motion for summary judgment and granting the city's motion for summary judgment.

Appellants appeal the summary-judgment dismissal of their claims.

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." *Senogles v. Carlson*, 902 N.W.2d 38, 42 (Minn. 2017). Appellate courts review a grant of summary judgment de novo. *Commerce Bank v. W. Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015). "In conducting this review, [appellate courts] 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. Blake Sch.*, 920 N.W.2d 195, 201 (Minn. 2018) (quotation omitted).

Appellants challenge the district court's summary-judgment dismissal of their claim brought under section 462.361, subdivision 1.⁴ They first argue that summary judgment was improper because the city applied the incorrect shoreland ordinance to evaluate their application. They further contend that the city's decision should be reversed due to "procedural unfairness," or at minimum, that "technical defects" create genuine issues of material fact requiring a trial. We address each argument in turn.

⁴ The Tii Gavo parties do not challenge the district court's summary-judgment dismissal of their constitutional due-process claim.

I. The city council’s denial of appellants’ application to amend the CUP and development agreement was not unreasonable, arbitrary, or capricious.

A “person aggrieved” by a city council’s land-use decision is entitled to appropriate judicial review in district court. Minn. Stat. § 462.361, subd. 1. The district court examines the municipal record and may allow the parties to supplement it with additional evidence, as was the case here. *See Swanson v. City of Bloomington*, 421 N.W.2d 307, 313 (Minn. 1988). The question before the reviewing court is “whether the zoning authority’s action was reasonable.” *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 416-17 (Minn. 1981); *see also Goerke Fam. P’ship v. Lac qui Parle-Yellow Bank Watershed Dist.*, 857 N.W.2d 50, 55 (Minn. App. 2014). “[T]he nature of the matter under review has a bearing on what is reasonable.” *Honn*, 313 N.W.2d at 417. “[I]n special use permit cases, ‘reasonableness’ is measured by the standards set out in the local ordinance.” *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 176 (Minn. 1982).

On appeal, the reviewing court considers the supplemented record and conducts an independent review of the zoning authority’s decision. *St. Croix Dev., Inc. v. City of Apple Valley*, 446 N.W.2d 392, 397 (Minn. App. 1989), *review denied* (Minn. Dec. 1, 1989); *see also VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 509 (Minn. 1983). The appellate court does not give “any special deference to the same review conducted by the [district] court.” *Nw. Coll. v. City of Arden Hills*, 281 N.W.2d 865, 868 (Minn. 1979) (quotation omitted).

Appellate courts reverse the zoning authority’s decision only if it is unreasonable, arbitrary, or capricious. *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75 (Minn.

2015). “There are two steps in determining whether a city’s denial was unreasonable, arbitrary, or capricious.” *Id.* First, the court determines whether “the reasons given by the city were legally sufficient.” *Id.* at 75-76. Second, “if the reasons given are legally sufficient, we must determine if the reasons had a factual basis in the record.” *Id.* at 76. The party challenging the zoning decision bears the burden of proving it was legally insufficient or factually unsupported. *Sagstetter v. City of St. Paul*, 529 N.W.2d 488, 492 (Minn. App. 1995). Appellate courts will “affirm a city’s decision to deny a conditional use permit if any one stated reason is sufficient.” *Roselawn Cemetery v. City of Roseville*, 689 N.W.2d 254, 260 (Minn. App. 2004).

Having established our standard of review, we next consider the city council’s decision to deny appellants’ application for more boat slips. Technically, appellants’ application was a request to amend the 2007 CUP establishing the Tii Gavo development. Scandia ordinances allow a conditional use permit holder to “propose amendments to the permit at any time, following the procedures for a new permit.” Scandia, Minn., Dev. Code, Ch. 1, § 8.7 (2021). The city planning commission reviews the amendment application and recommends approval or denial to the city council, which issues the final decision. *See id.*

In assessing a CUP request, the city council must consider several criteria. *Id.*, Ch. 1, §§ 8.1, .4 (2021). One criterion requires that “[t]he conditional use shall conform to the applicable regulations of the district in which it is located.” *Id.*, Ch. 1, § 8.4. Here, where the application involved a waterbody and the surrounding area, the parties agree that the city was required to evaluate applicable shoreland regulations and standards.

In its resolution denying the request for additional boat slips, the city council gave four specific reasons for its decision:

1. The expansion does not preserve natural resources as identified in the Comprehensive Plan, including Big Marine Lake and its natural habitats.
2. The expansion does not comply with the regulations of the Shoreland Management District and the Development Code.
3. The expansion does not comply with the performance standards for shore recreational facilities in the Shoreland Ordinance, a part of the Development Code.
4. The expansion has the potential to negatively impact natural habitats and vegetation communities in Big Marine Lake.

Appellants challenge the second and third reasons as legally insufficient, arguing that the city council applied the incorrect shoreland ordinance within the development code.

The city council's resolution reflects that it applied chapter 5, section 10.61, of the Scandia Development Code, which specifically governs shore recreation facilities in PUDs. "Shore recreation facilities" are defined as "[s]wimming areas, docks, watercraft mooring areas and launching ramps and other water recreation facilities." Scandia, Minn., Dev. Code, Ch. 5, § 2.6(40) (2018). Section 10.61(E) requires that shore recreation facilities in PUDs be "centralized" and that "[t]he number of spaces for continuous beaching, mooring, or docking of watercraft must not exceed one for each allowable dwelling unit or site in the first tier." *Id.*, § 10.61(E)(2). Section 10.61(E) goes on to provide that "[l]aunching ramp facilities, including a small dock for loading and unloading equipment, may be provided for use by occupants of dwelling units or sites located in other

tiers.” Again, the city planner estimated in her report that only 17 lots in the Tii Gavo development qualified as first tier, and the Tii Gavo parties did not provide a competing number of first-tier lots or otherwise provide a calculation under the first-tier ordinance.

Appellants do not dispute that Tii Gavo is a PUD, and that the first-tier ordinance accordingly applies to their application. Instead, they argue that the first-tier ordinance “is not a boat slip limit at all, but a limit on the amount of spaces that can be designated for docking multiple watercraft.” They then argue that, because the first-tier ordinance does not limit the number of boat slips they can have, the city council should have applied the “controlled access lot formula” in Scandia, Minn., Dev. Code, Ch. 5, § 6.33(B) (2018),⁵ as they had urged it to do. Appellants assert that under the controlled access lot formula, they are entitled to 134 boat slips.

In considering appellants’ argument, we must first interpret the first-tier ordinance. “The interpretation and application of a city ordinance is a question of law, which we review de novo.” *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 307 (Minn. App. 2007). The rules governing statutory interpretation also apply to the interpretation of city ordinances. *Cannon v. Minneapolis Police Dep’t*, 783 N.W.2d 182, 192-93 (Minn. App. 2010). Therefore, to interpret an ordinance, we first look at its plain language to determine whether it is ambiguous. *Id.* at 193. We give an ordinance’s words and phrases their plain and ordinary meaning. *Christianson v. Henke*, 831 N.W.2d 532, 536-37 (Minn. 2013)

⁵ A controlled access lot is a “lot used to access public waters or as a recreation area for owners of nonriparian lots within the same subdivision containing the controlled access lot.” Scandia, Minn., Dev. Code, Ch. 5, § 2.6(11) (2018).

(quotation omitted). An ordinance is ambiguous only if it is susceptible to more than one reasonable interpretation. *See id.* “Multiple parts of [an ordinance] may be read together so as to ascertain whether the [ordinance] is ambiguous,” *id.*, and “[e]very law shall be construed, if possible, to give effect to all its provisions,” Minn. Stat. § 645.16 (2020).

As explained, the first-tier ordinance limits “[t]he number of spaces for continuous . . . docking of watercraft” in a PUD’s shore recreation facility to one space per first-tier dwelling unit. Scandia, Minn., Dev. Code, Ch. 5, § 10.61(E)(2). Appellants argue that because the terms “spaces” and “watercraft” are undefined in the ordinance, these terms are necessarily ambiguous. They then propose that “watercraft” should be read in the plural form. They also propose that “space” should be interpreted to mean “a continuous area or expanse which is free, available, or unoccupied.” *Oxford Dictionary* (online ed. 2021), <https://www.lexico.com/en/definition/space>. Under this reading, they argue, the first-tier ordinance allows a certain number of areas—unlimited in size—for docking multiple watercraft, and accordingly does not limit the number of boat slips in a PUD.

We disagree that the first-tier ordinance is ambiguous, and we reject appellants’ strained interpretation of its terms. An ordinance is not ambiguous simply because it does not define every term used; an ordinance is ambiguous when, read as a whole, it is subject to multiple *reasonable* interpretations. *See Christianson*, 831 N.W.2d at 536-37. “The meaning of a statutory phrase is dependent upon context.” *State v. Overweg*, 922 N.W.2d 179, 183 (Minn. 2019). And we “may look to dictionary definitions to determine the plain and ordinary meaning of a phrase.” *Id.*

Here, within the context of the first-tier ordinance, it is clear that a “space” refers to a docking, mooring, or beaching space for one watercraft. *See Merriam-Webster’s Collegiate Dictionary* 1194 (11th ed. 2014) (defining “space” in reference to a parking space: “an extent set apart or available <parking>”); *The American Heritage Dictionary of the English Language* 1676-77 (5th ed. 2018) (defining space to include “[a]n area provided for a particular purpose: a parking space”). The alternative interpretation proposed by appellants is not reasonable, as it essentially renders the ordinance meaningless. Moreover, appellants’ interpretation of section 10.61(E)(2) appears to ignore the preceding ordinance provision, section 10.61(E)(1), which provides that the shore recreation facilities—including docks—in PUDs must be “centralized.” Appellants would interpret “space” to give each first-tier unit its own expansive area for storage of multiple watercraft, which is inconsistent with the centralized docking arrangement called for in section 10.61(E)(1). Reading the provisions of the ordinance together, *see Christianson*, 831 N.W.2d at 536-37, “space,” in this context, cannot mean anything other than a docking space for one watercraft.

Ultimately, appellants have not shown, through their interpretation of the first-tier ordinance, that the city council based its decision on an error of law and thereby made an arbitrary and capricious decision. *See Krummenacher v. City of Minnetonka*, 783 N.W.2d 721, 727, 732-33 (Minn. 2010) (explaining that a city’s decision is arbitrary and capricious if based on a mistake as to the applicable law). The first-tier ordinance expressly applies to shore recreation facilities in PUDs, and appellants did not submit any information to the city council suggesting that the first-tier ordinance allows boat slips beyond the 19 that the

development already has. *See Roselawn Cemetery*, 689 N.W.2d at 259-60 (explaining that it is the responsibility of the applicant to show that the applicable standards and criteria stated in the ordinance are satisfied). And we note that even if the city council did err as to the boat-slip calculation under shoreland ordinances, appellants have not, on appeal, argued that the city council's other reasons for denying the CUP amendment were insufficient. *See id.* Our review satisfies us that the city's reasons for its decision were legally sufficient and supported by the record, and that the decision was accordingly reasonable. *See RDNT*, 861 N.W.2d at 75. The district court did not err in granting summary judgment in favor of the city.

II. The district court did not err in rejecting appellants' claims of procedural unfairness.

Appellants next argue that "technical defects" in the city council's consideration of their application to amend the CUP created procedural unfairness that requires reversal of the city's decision. They do not, however, challenge the district court's summary-judgment dismissal of their constitutional due-process claim; they instead assert that the alleged technical defects rendered the council's decision unreasonable, arbitrary, and capricious.

Appellants provide no caselaw that directly supports their procedural-unfairness argument. They instead cite a line of cases that address the doctrine of substantial compliance. The doctrine of substantial compliance, as explained in *City of Minneapolis v. Wurtele* in the context of an eminent-domain decision, provides that "[t]echnical defects in compliance [with statutory requirements] which do not reflect bad faith, undermine the purpose of the procedures, or prejudice the rights of those intended to be protected by the

procedures will not suffice to overturn governmental action, particularly where . . . substantial commitments have been made.” 291 N.W.2d 386, 391 (Minn. 1980); *see also City of Duluth v. State*, 390 N.W.2d 757, 772 (Minn. 1986) (explaining, also in an eminent-domain case, that procedural defects will not invalidate the city’s decision if they are insubstantial). This doctrine addresses whether a decision was “statutorily,” as opposed to “constitutionally,” sufficient. *See Wurtele*, 291 N.W.2d at 393. We “ha[ve] applied the doctrine of substantial compliance to actions where the government has acted on CUP applications and other zoning issues under directory statutes or ordinances.” *Manco of Fairmont, Inc. v. Town Bd. of Rock Dell Twp.*, 583 N.W.2d 293, 296 (Minn. App. 1998), *review denied* (Minn. Oct. 20, 1998); *see Chandler v. Kroiss*, 190 N.W.2d 472, 476-77 (Minn. 1971) (applying substantial-compliance doctrine to uphold village council’s actions regarding a special-use permit even though council failed to make required written findings and keep a record of its reasons for its decision as required by ordinance and caselaw).

Appellants argue that, based on this caselaw, we must reverse the city council’s decision if the city council failed to substantially comply with mandated procedures to the prejudice of appellants’ application for more boat slips. Assuming without deciding that this proposed interpretation of the substantial-compliance caselaw is correct, we conclude that the record nonetheless fails to support any of appellants’ alleged technical defects.

Appellants allege four specific technical defects:

1. Scandia staff told Plaintiffs to apply under the Controlled Access Lot formula, then recommended denial and ultimately denied the application pursuant to the First-Tier formula.

2. Scandia staff helped draft letters of opposition from the DNR and Watershed.
3. Scandia City Councilmembers mobilized opposition to the hearing.
4. Scandia City Councilmembers allowed their decisions to be affected by their conflicts of interest.

We address each alleged deficiency in turn.

1. City staff advice as to applicable boat-slip formula

Appellants first point to evidence in the record that former city staff members, specifically, a former city administrator and a former contracted city planner, initially believed that the controlled access lot formula governed the amount of boat slips in Tii Gavo. They assert that communications with these former staff members—which appear to have been made in the context of an earlier application that was withdrawn—resulted in a prejudicial “misdirection” as to which ordinance applied.

This argument—that information about applicable ordinances from former city staff created a “procedural defect”—fails as a matter of law. Minnesota Statutes section 462.3595, subdivision 1 (2020), provides that CUP applicants are responsible for showing that they meet the standards and criteria for approval. The statute “unambiguously places the burden on the applicant to prove the proposed use will conform to a city’s stated standards and criteria for the issuance of a conditional use permit.” *Roselawn Cemetery*, 689 N.W.2d at 259. And a “municipality cannot be estopped from correctly enforcing [an] ordinance even if the property owner relied to his detriment on prior city action.” *Frank’s Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 607 (Minn. 1980).

Appellants do not cite any statute, ordinance, or caselaw to support their position that misinformation from city staff—who, notably, are not the final decision-makers on CUP applications—can constitute a substantial procedural defect that serves as a basis to overturn a land-use decision. And appellate courts have rejected the argument that cities should be estopped from enforcing ordinances where permit applicants relied to their detriment on mistakes by city employees. *See N. Oaks v. Sarpal*, 797 N.W.2d 18, 22, 25-26 (Minn. 2011); *Mohler v. City of St. Louis Park*, 643 N.W.2d 623, 638 (Minn. App. 2002). We accordingly conclude that appellants’ procedural-unfairness argument based on the alleged misrepresentations fails as a matter of law.

Appellants separately argue that there are genuine issues of material fact regarding the representations of city staff, which should have precluded the district court’s grant of summary judgment. But because we have concluded that the staff members’ alleged misrepresentations cannot, as a matter of law, support appellants’ claim, there are no material fact questions regarding what the staff members told appellants about the applicable ordinances. The district court accordingly did not err by granting summary judgment. *See Senogles*, 902 N.W.2d at 42.

2. City staff correspondence with the DNR and watershed district

Appellants next argue that the current city planner engaged in unauthorized “ex parte communications” with the DNR and watershed district about the CUP amendment application. To support their position, they reference an email from a DNR representative to the city planner, which attached a draft comment letter and stated: “I’d like to discuss this with you, to make sure I’m correct in what I’ve said in the letter.” The city planner

testified in her deposition that she believed she had a follow-up conversation with the DNR representative, though she did not remember the content of any conversation. She also replied to the email, expressing concern about a sentence in the DNR’s draft letter, which stated that the Tii Gavo development agreement—and not the city’s controlled access lot ordinance—presently regulated the number of allowable slips. In spite of the city planner’s concern, however, the DNR retained the sentence in the letter that was ultimately submitted to the commission and council and emphasized that the development agreement should control.

Appellants do not point to any ordinance or statute that prohibits the communication that occurred between the city planner and DNR staff. They assert that the city ordinance “does not authorize communications beyond notice,” but the ordinance they reference merely provides that, “All notices of public hearings to consider . . . conditional uses under shoreland management controls must be sent to the [DNR] commissioner . . .” Scandia Dev. Code, Ch. 5, § 3.81 (2018). That the ordinance requires notice to the DNR under certain circumstances does not suggest that it forbids additional communication. And as the city asserts, “[i]t is entirely reasonable, as happened in this case, for the DNR to consult with city planners to make sure they understand and have correctly referenced city ordinances.”

Moreover, while appellants contend that the city planner “asked [the DNR representative] to change her letter so that it was consistent with the reasons for denial in her staff report,” the evidence in the record shows that the DNR did not change the letter or otherwise alter its recommendation. In sum, the record does not support a claim that

there was anything untoward or irregular about the city planner's communication with the DNR representative. And appellants have not shown any genuine issue of material fact relating to their claim of improper ex parte communications.

3. City councilmembers “mobilizing opposition”

Appellants next argue that the record shows procedural unfairness because City Councilmember Kronmiller and Mayor Maefsky formed an opinion on the boat-slip application before the public hearing and attempted to solicit support for their position. They point to an email in the record in which Kronmiller tells Maefsky that he is “attempting to get as many of the Watershed Managers who served at the time the development agreement was approved to attend [the public hearing.]” The city responds that a request for watershed managers to attend and give input at a public hearing is entirely appropriate and does not create any technical defect.

Again, appellants point to no ordinance or statute allegedly violated by the communication. Instead, they analogize this case to an unpublished opinion where this court held that the improper conduct of a councilmember—which included organizing and mobilizing community opposition to a proposed project and efforts to sway the opinions of other councilmembers before the council considered the project—showed that the council's decision relied on impermissible factors. *See Cont'l Prop. Grp., Inc. v. City of Minneapolis*, No. A10-1072, 2011 WL 1642510 (Minn. App. May 3, 2011).

But the case cited by appellants is not only nonprecedential, it is also distinguishable. *See Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993) (providing that unpublished opinions are not binding precedent). The facts in the record

do not suggest that Kronmiller and Maefsky tried to sway other councilmembers before the public hearing, or that they took on an activist role. While Kronmiller came to the hearing with his previous knowledge of the Tii Gavo development approval, which was based on his experience as a watershed manager, his involvement did not create a technical defect. Ultimately, appellants have not offered sufficient facts to show that city councilmembers relied on impermissible factors, and summary judgment was proper.

4. City councilmembers’ “conflicts of interest”

Lastly, appellants assert that two councilmembers “had conflicts of interest that affected their decision-making.” Specifically, they assert that two councilmembers own shoreline along Big Marine Lake, and that their shoreline ownership surely impacted their opinions that nonriparian lot owners should not receive docking spaces. Appellants cite no authority to support their position.

The Minnesota Supreme Court addressed a similar argument in *Lenz v. Cook Creek Watershed Dist.*, 153 N.W.2d 209, 219-20 (Minn. 1967). There, several watershed district members who issued the decision in question owned “a considerable amount of real estate in the district which [would] be substantially benefitted by the proposed [project].” *Lenz*, 153 N.W.2d at 219. The supreme court noted that “[t]here is no settled general rule as to whether such an interest will disqualify an official” and went on to consider five factors it determined were relevant. *Id.* The court concluded that the officials were not disqualified from participating in the decision, noting that there was an adequate procedure for reviewing any decision of the managers and that, when a large project proposal is before a

governing body, “there is a very good chance that . . . [the project] would necessarily benefit land owned by some or all of the Managers.” *Id.*

Here, as in *Lenz*, the councilmembers who live on the lake are not automatically disqualified from participating in any decision implicating the lake. Appellants offer no more than speculation to support their claim of an impermissible conflict, and “mere speculation is not enough to survive a summary judgment motion.” *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 376 (Minn. 2008) (quotation omitted). Accordingly, summary judgment was proper regarding this claim of procedural unfairness.

In sum, appellants have not pointed to legal standards and record evidence to support their contention that, due to substantial technical defects, the city council’s decision was arbitrary, capricious, or unreasonable. *See Wurtele*, 291 N.W.2d at 391. We accordingly conclude that the district court properly granted summary judgment in favor of the city.⁶

Affirmed.

⁶ Appellants include a section in their brief, after their argument on procedural unfairness, where they argue that genuine issues of material fact preclude summary judgment. They assert, in general terms, that the following material-fact issues exist: whether city officials “came to a consensus that the Controlled Access Lot formula did not apply,” whether the city council relied on the DNR’s letter to make its decision, whether Kronmiller and Maefsky “were trying to sway other councilmembers,” and whether impermissible ex parte communications occurred. We have already addressed these alleged fact issues within the discussion of procedural unfairness, and we will not repeat our conclusions here. Ultimately, appellants have not shown how any of the alleged fact issues are material, and summary judgment was accordingly proper. *See Senogles*, 902 N.W.2d at 42.