

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1636**

Robert Sanden, et al.,
Respondents,

vs.

Jerame Tysdal, et al.,
Appellants,

Otter Tail Township,
Respondent.

**Filed September 23, 2024
Affirmed
Bratvold, Judge**

Otter Tail County District Court
File No. 56-CV-20-1772

Jack M. Buck, Steven F. Lamb, Vogel Law Firm, Fargo, North Dakota (for respondents Robert Sanden, et al.)

Matthew P. Franzese, Wheaton, Minnesota (for appellants)

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Considered and decided by Harris, Presiding Judge; Bratvold, Judge; and Cleary, Judge.*

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

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

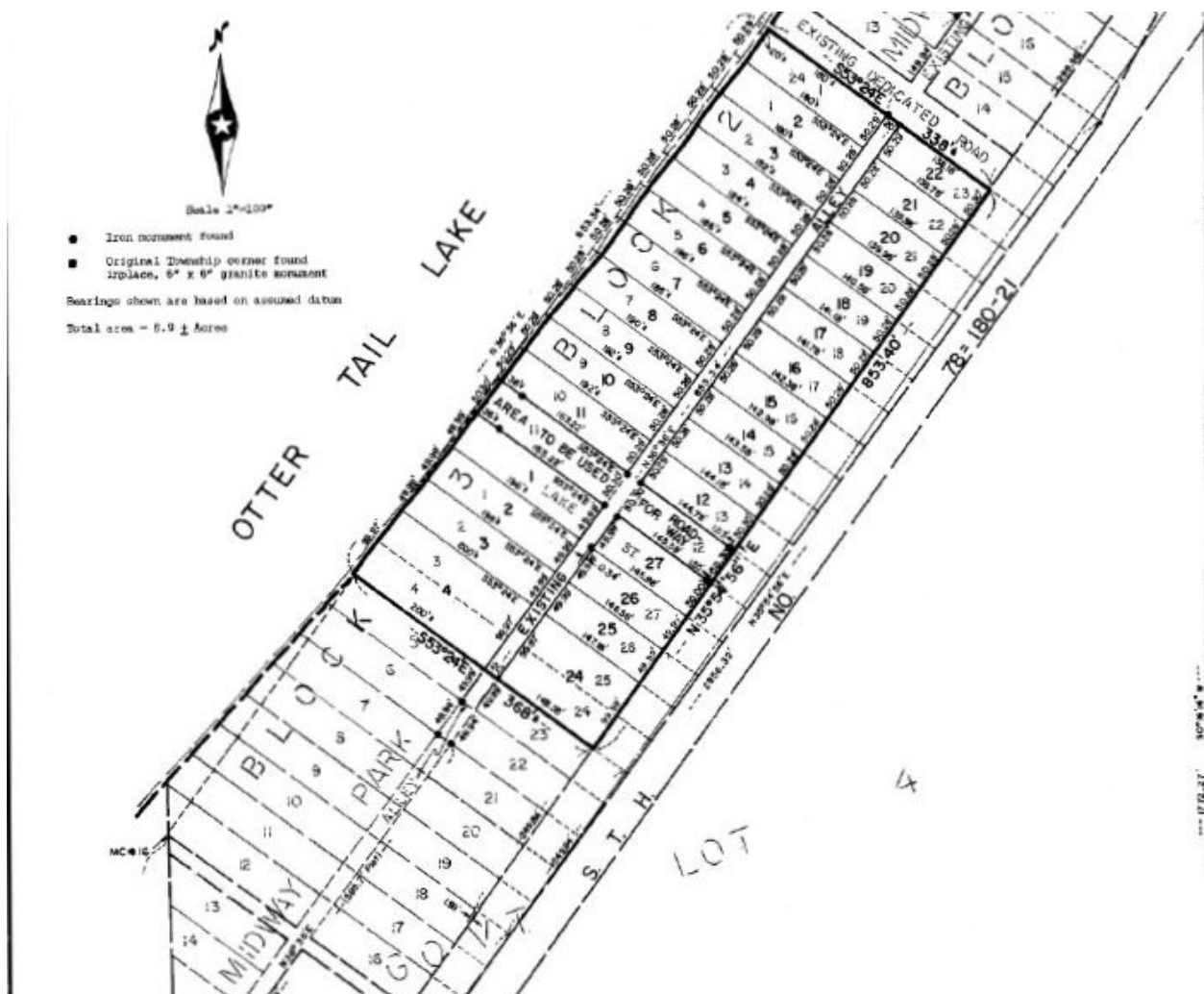
Appellants Jerame and Suzanne Tysdal own two adjacent lots in the Midway Park subdivision. Both lots abut Lake Street, which has a cartway easement providing public access to Otter Tail Lake. Respondents are neighboring landowners who sued the Tysdals and respondent Otter Tail Township (the township), seeking declaratory relief related to Lake Street. The Tysdals, in turn, counterclaimed against respondent neighbors and cross-claimed against the township for declaratory relief. The Tysdals now appeal from the district court's final judgment, issued after a bench trial, granting declaratory relief to respondent neighbors and ordering the Tysdals to remove part of a retaining wall that extended onto Lake Street and restore a concrete slab used to launch boats.

The Tysdals contend that the district court erred because it (1) lacked subject-matter jurisdiction, (2) made clearly erroneous factual findings, (3) declared that the fee owners of lots adjacent to Lake Street are "authorized to maintain the Lake Street easement," and (4) "lacked authority" to order the Tysdals to replace the concrete slab and remove a portion of their retaining wall based on a 2011 permit issued by Otter Tail County (the county), which is not a party. Because the district court had subject-matter jurisdiction, its factual findings are supported by the record evidence, and relevant statutes and common law support the relief granted by the district court, we affirm.

FACTS

These facts summarize the district court's findings of fact and are supplemented by the record when helpful to understand the issues on appeal.

The Midway Park subdivision is located on the southeastern shore of Otter Tail Lake (lake) in Otter Tail County; its plat was recorded in 1905. The plat “dedicate[s] to the public forever all the streets and alleys there shown.” The plat depicts two streets dividing three blocks of around 20 lots each. One dividing road is Lake Street, which is 50 feet wide, runs southeast to northwest, begins at State Highway 78, and terminates at the shore of Otter Tail Lake.¹ The plat map below is excerpted from an exhibit in the record.



¹ In 1982, a replat of Midway Park moved Lake Street 50 feet to the northeast and labeled it “area to be used for roadway.”

Respondent neighbors Menagh Trust, Robert and Patricia Sanden, and Don Nelson own lots in Midway Park. Menagh Trust has two lots that abut Lake Street on the south. In 2007, the Tysdals bought two lots that abut Lake Street on the north.²

At the time the Tysdals purchased their property in Midway Park, Lake Street “was covered mostly by a grassy surface” with “partial parallel gravel type tracks that would match the tire width of a vehicle.” At the end of Lake Street was a “10-foot by 10-foot concrete slab on the threshold between Lake Street and the beach.” Along the beach there was “an eight-inch-high railroad tie retaining wall that had rotted into the surface area of Lake Street.” The retaining wall extended onto Lake Street from the Tysdals’ lot.

In 2008, the Tysdals built a home on their lots and, because of this construction, “Lake Street’s grassy surface was damaged.”³

In 2011, the Tysdals “applied for and received a Grade and Fill Permit” from the county “to restore their property, including Lake Street.” The application described the proposed project: “Remove 4 inches of sandy soil and replace with black dirt and sod. Remove conc[rete] slab down by lake and replace with black dirt and sod. Repair existing

² This opinion uses first and last names to distinguish Jerame and Suzanne Tysdal or Robert and Patricia Sanden.

³ In 2009, 73 people petitioned the Otter Tail Township Board (the board) to “take control” of Lake Street to ensure the public’s “unimpeded ingress and egress to Otter Tail Lake.” The petition asked the board to “[r]emove all permanent manmade structures/items” and “[m]ove boat lifts and docks” from Lake Street, among other things. In a resolution, the board determined that “it is not in the best interests of the Town and its taxpayers to spend public funds to improve or maintain Lake Street” and that “[t]he obstructions complained about do not threaten the . . . public easements” and thus that “it is not necessary for [the board] to take action at this time to preserve the easements.”

retaining wall and re-build new with concrete footings.” The Tysdals’ application attached a drawing that included some written descriptions, for example: “area to be restored with grass,” “retaining wall,” “my existing conc[rete] slab,” and “center line of [the] platted easement/abutting property owners own to the center of easement as per Minnesota state law.”

The county issued a permit that authorized two projects: “(1) restore area on drawing received 9/12/11 with sod and (2) repair/replace existing block retaining wall—may add a concrete footing—both projects are to be done as per onsite discussion on 9/6/11.”

After receiving the permit, the Tysdals “recovered” Lake Street with “black dirt and sand and sodded both Lake Street and the rest of their property” and replaced “their retaining wall with cement blocks.” The district court found that the new retaining wall “continues for approximately eight feet past the right of way stake separating Lake Street” from the Tysdals’ lot “and onto Lake Street.” The Tysdals also removed the concrete slab located at the end of Lake Street.

In July 2020, respondent neighbors brought a declaratory-judgment action against the Tysdals and the township, seeking these declarations:

- a. Otter Tail Township opened Lake Street as a town road;
- b. The public had the right to use Lake Street for ingress and egress from Otter Tail Lake;
- c. The Tysdals had obstructed the public use of Lake Street;
- d. Lake Street must be restored at the Tysdals’ expense; and
- e. The Tysdals must be prohibited from impeding or obstructing the public use of Lake Street in the future.

The Tysdals' answer denied the allegations and included a counterclaim and cross-claim seeking a declaration that

Lake Street was not a town road, that [the] township is not the road authority of Lake Street, that [the] township had abandoned any interest in Lake Street, that [the Tysdals] were the fee owners of the northerly half of Lake Street, and that only the adjoining landowners had the right to maintain Lake Street.

The township also answered, denying allegations and asserting defenses.

In spring 2021, the Tysdals and the township moved for summary judgment, which respondent neighbors opposed. The district court granted in part and denied in part the motions for summary judgment, determining that the township “did not abandon any of its interest in Lake Street as an unopened public cartway”; the Tysdals “are the fee owners of the northerly half of Lake Street” and “their rights are limited to the public road easement”; “[t]he public has the right to use Lake Street for ingress and egress to Otter Tail Lake”; and “only the adjoining property owners . . . can maintain Lake Street,” among other things.

The remaining issues for trial were “whether [the Tysdals had] unlawfully obstructed Lake Street” in a manner incompatible with the public’s use of its easement and “must restore Lake Street” and “the issue of maintenance” of Lake Street, as requested by the Tysdals. These witnesses testified at trial: the Sandens, the executor of Menagh Trust, Jerame Tysdal, the township clerk, and the board supervisor.

After a two-day bench trial, the district court entered its findings of fact, conclusions of law, and order for judgment. The district court first found that the public used Lake Street to access the lake, specifically finding that the “snowmobilers will frequent Lake

Street as an access point” to the lake and that, “in the winter,” the public uses Lake Street “to transport fish houses on and off of the lake.” The district court also found that the concrete slab that the Tysdals removed “was an obvious aid to access the lake when launching or retrieving watercraft.”

As for respondent neighbors’ claims, the district court determined that “the character of [the Tysdals’] use of Lake Street has constituted an obstruction to the public’s ingress and egress rights to Otter Tail Lake.” The district court found that the Tysdals “did not receive a permit to remove the concrete slab” and had placed “objects and items” that “obstructed” Lake Street, including the concrete retaining wall that extended onto Lake Street. The district court also found that “the portion of the retaining wall on Lake Street constitutes a potential hazard to snowmobilers.” The district court also found that the Tysdals had obstructed Lake Street by placing “objects and items” such as “large snow piles, boat lifts, and other personal tangible property” on it.

The district court ordered the Tysdals to “remove the portion of the block retaining wall extending onto Lake Street,” “restore the 10-foot by 10-foot concrete slab to its original position on Lake Street,” and “refrain from impeding or obstructing in any way the public right and use of Lake Street” by “placing any natural conditions or unattended objects in the roadway.” The district court also declared certain rights, as requested: first, that the “only private property owners who own land adjacent to Lake Street are Lake Street’s fee owners . . . Menagh Trust” and the Tysdals; and second, “the fee owners of

Lake Street along with their successors and assigns are . . . authorized to maintain the Lake Street easement.”⁴

The Tysdals appeal.

DECISION

The Tysdals’ brief to this court presents six issues, and some overlap, so this court has restated the issues as appropriate.

I. The district court had subject-matter jurisdiction to issue a declaratory judgment.

For the first time on appeal, the Tysdals argue that the “district court did not have subject matter jurisdiction to hear this matter because [respondent neighbors] failed to first seek relief from Otter Tail County, who had issued the Grade and Fill Permit at issue.” “[L]ack of subject matter jurisdiction may be raised at any time by the parties or sua sponte by the court, and cannot be waived by the parties.” *Dead Lake Ass’n v. Otter Tail County*, 695 N.W.2d 129, 134 (Minn. 2005).

“Subject-matter jurisdiction refers to a court’s authority to hear and determine a particular class of actions and the particular questions presented to the court for its decision.” *Zweber v. Credit River Twp.*, 882 N.W.2d 605, 608 (Minn. 2016) (quotation omitted). “A claim of failure to exhaust administrative remedies may raise an issue of subject-matter jurisdiction.” *Centra Homes, LLC v. City of Norwood Young America*,

⁴ As discussed below, the district court cited and relied on Minn. Stat. § 164.08, subd. 3 (2022), which provides: “When a cartway is not maintained by the town, one or more of the private property owners who own land adjacent to a cartway . . . may maintain the cartway.”

834 N.W.2d 581, 585 (Minn. App. 2013). “If the district court did not have jurisdiction to decide the declaratory-judgment action, its action is void and this court cannot review the district court’s decision.” *Carlson v. Chermak*, 639 N.W.2d 886, 889 (Minn. App. 2002). Whether a court has subject-matter jurisdiction is a question of law that appellate courts review de novo. *Tischer v. Hous. & Redev. Auth. of Cambridge*, 693 N.W.2d 426, 428 (Minn. 2005).

The Tysdals argue that respondent neighbors’ action challenges the 2011 permit issued by the county and that a relevant ordinance⁵ requires any permit challenger “to first appeal to the County’s Board of Adjustment.” Thus, according to the Tysdals, “only if [their] appeal was denied could [respondent neighbors] file an action in District Court.” The Tysdals contend that the failure to follow this process deprived the district court of subject-matter jurisdiction.

Respondent neighbors and the township disagree. The township argues that the ordinance cited by the Tysdals “governs the procedure for an administrative appeal within the county’s administrative structure, it does not determine . . . subject matter jurisdiction”; that their lawsuit was “not a challenge to the permit,” but to the Tysdals’ “use of Lake

⁵ The Tysdals cite a shoreland ordinance that provides, in relevant part, that the county administrative officer “[m]ay issue grade/fill permits” and that the county “board of adjustment shall hear and decide appeals from . . . any order, requirements, decisions or determinations made by any administrative officer charged with enforcing” the ordinance. The shoreland ordinance also provides that an appeal “shall be taken . . . within 10 days from the date on which the appellant was notified in writing by the [administrative] officer making such decision of the decision” and that the board’s determination in an appeal “shall be final unless appealed to the District Court in Otter Tail County by a person having an interest affected by such decision.”

Street”; and that the Tysdals’ “action in removing the concrete slab was done without a permit.” Respondent neighbors argue that “the district court had jurisdiction pursuant to” the Minnesota Uniform Declaratory Judgments Act (MUDJA), Minn. Stat. § 555.01 (2022).

Although the district court did not address subject-matter jurisdiction, its findings of fact, conclusions of law, and order addressed the Tysdals’ argument that “the proper procedure” for respondent neighbors to challenge the permit “is through the appellate process delineated in . . . [the shoreland] ordinance.” The district court determined that the MUDJA “authorizes the Court to determine the rights, status, and legal relations of the parties,” that its purpose “is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations,” and that it should “be liberally construed and administered.” The district court also observed that it “has the equitable power to determine the fair extent of an easement when the parties are unable to agree,” citing *Larson v. Amundson*, 414 N.W.2d 413, 417 (Minn. App. 1987).

We conclude that the district court had subject-matter jurisdiction. First, respondent neighbors’ lawsuit did not challenge the 2011 permit issued to the Tysdals. Rather, respondent neighbors sought a declaration that “the public had the right to use Lake Street for ingress and egress from Otter Tail Lake”; the Tysdals “obstructed the public use of Lake Street”; the Tysdals are “prohibited from impeding or obstructing the public use of Lake Street”; and the Tysdals must “restore Lake Street.” It is correct that respondent neighbors contended that the 2011 permit did “not authorize [the Tysdals] to remove the concrete slab” and that the Tysdals did not properly “restore the driving surface” of Lake

Street as authorized by the permit. Thus, respondent neighbors contended that the Tysdals did not comply with the permit as part of a larger dispute that is an appropriate subject for declaratory relief.

Second, the district court exercised its “equitable power to determine the fair extent of an easement.” *Larson*, 414 N.W.2d at 417. Here, one issue was whether the Tysdals had infringed on the public’s easement rights by obstructing Lake Street and removing a concrete slab. The district court determined that the public “has the right to use Lake Street for ingress and egress to Otter Tail Lake” and that the Tysdals’ “use of Lake Street . . . obstructed [the public’s] easement.” Accordingly, the district court acted within its power to decide the parties’ rights regarding the easement.

II. The district court did not err in its findings of fact.

The Tysdals challenge the district court’s factual findings, arguing that the record does not support the district court’s findings about the retaining wall, the concrete slab, and the Tysdals’ obstruction of the public’s easement access to Lake Street. Appellate courts “review the district court’s factual findings for clear error.” *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013); *accord* Minn. R. Civ. P. 52.01. “[F]indings are clearly erroneous when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re. Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). Appellate courts “will not conclude that a factfinder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed.” *Id.* (quotation omitted). “We review findings of fact in the light most favorable to the district court’s decision.”

Quinn v. LMC NE Minneapolis Holdings, LLC, 972 N.W.2d 881, 885-86 (Minn. App. 2022) (quotation omitted), *rev. granted* (Minn. June 29, 2022) *and appeal dismissed* (Minn. Feb. 17, 2023).

We begin with some important background. The public’s right to lake access is central to this appeal. “The public rights in the[] lakes, with which this state abounds, are of great value and importance,” and the supreme court “has always been zealous in protecting them.” *Application of Baldwin*, 15 N.W.2d 184, 186 (Minn. 1944) (quotation omitted). If a dedication of land to the public “is for the purpose of passage, and goes to the water, the conclusion—there being no indication of a contrary intention—is inevitable that the grant or dedication was intended to enable the public to get to the water for the better enjoyment of the public right of navigation.” *Village of Wayzata v. Great N. Ry. Co.*, 52 N.W. 913, 914 (Minn. 1892).

A property owner’s rights related to an abutting street are also at issue. An abutting property owner “owns to the center of the street, subject to the easement of the public, and may use it for a purpose compatible with the free use by the public of its easement.” *Kelty v. City of Minneapolis*, 196 N.W. 487, 487 (Minn. 1923); *see Foote v. City of Crosby*, 306 N.W.2d 883, 885 (Minn. 1981) (“The rule is that an abutting owner may use his 1/2 of the roadway in any manner compatible with use by the public of its easement.”). Whether an abutting owner’s “use is compatible, or is an obstruction, depends upon the character of the use by the abutter and the character of the street.” *Kelty*, 196 N.W. at 487.

With this background in mind, we consider the Tysdals’ three challenges to the district court’s findings of fact and legal determinations.

A. Retaining Wall

The Tysdals argue that “there is no evidentiary support for the [district] court’s finding of fact that the retaining wall constitutes a danger to the public” because respondent neighbors could not identify “even one incident . . . that shows the retaining wall” endangered someone. Respondent neighbors argue that the district court’s finding is supported by the evidence and that courts are not “obligated to wait until a catastrophic injury or death occurs” to determine something “constitutes a safety hazard.”

The district court found that the Tysdals’ “retaining wall continues for approximately eight feet past the right of way stake” onto Lake Street and that this portion of the retaining wall “constitutes a potential hazard to snowmobilers who travel across Lake Street.” The district court also found that the public uses Lake Street to “launch and retriev[e] . . . watercraft and fish houses from Otter Tail Lake.” The district court determined that, by extending into Lake Street, the retaining wall constitutes “a danger to the public who seek to exercise their ingress and egress rights on Lake Street.”

The Tysdals do not challenge the district court’s findings that their retaining wall extended onto Lake Street and that the public uses Lake Street to access the lake, along with their snowmobiles, watercraft, and fish houses. Based on our review, the record supports the district court’s finding that the retaining wall is a danger to members of the public using Lake Street. The township clerk testified that the township was concerned about the “safety” of the retaining wall extending into Lake Street. The board supervisor testified that the retaining wall “could be a hazard for snowmobiles.” And Robert Sanden testified that the retaining wall was “a safety concern” because, if a snowmobiler does not

know the retaining wall extends into Lake Street, they could “run into it,” causing “a serious injury.”

The Tysdals argue that the district court’s findings were based on speculation, citing *Rinn v. Minnesota State Agricultural Society*, 611 N.W.2d 361 (Minn. App. 2000), and *Adler v. Interstate Power Co.*, 230 N.W. 486 (Minn. 1930). While the cited caselaw establishes that speculation is not evidence, it does not otherwise support the Tysdals’ argument on appeal.

In *Rinn*, we affirmed the district court’s grant of summary judgment to the Minnesota State Fair (the Fair), determining that the Fair did not have actual or constructive notice of a puddle that caused a patron to fall. 611 N.W.2d at 362, 365. We determined that the injured patron did not meet her burden as plaintiff to prove the Fair had constructive knowledge of the hazardous condition. *Id.* at 365. The patron “did not present any evidence showing who made the puddle, what the liquid was,” how long the puddle existed, or that the Fair staff had notice of it. *Id.* We stated that “speculation as to who caused the dangerous condition, or how long it existed, warrants judgment” for the Fair. *Id.*

In *Adler*, the supreme court reversed an agency order denying compensation to the widow of a deceased power-plant worker who “was subjected to the fumes of . . . coal” while working. 230 N.W. at 486. The supreme court determined that, while a plaintiff may not “rest a recovery merely on speculation,” the expert’s opinion that the worker died from “inhalation or injection of some poisonous substances, presumably derived . . . from coal,” was “not disputed” and that no other cause of death “was suggested.” *Id.*

These cases do not undermine the district court's findings here. In *Rinn*, the patron offered no evidence that the Fair had constructive knowledge of the hazard. 611 N.W.2d at 365. Similarly, in *Adler*, there was no evidence about an alternative cause of death. 230 N.W. at 486. Here, however, the record includes evidence that the retaining wall poses a danger to the public. The Tysdals cite no caselaw indicating that a condition is dangerous only if there is evidence of actual harm. Thus, the district court did not clearly err by finding that the Tysdals' retaining wall endangers the public's use of Lake Street to access the lake.

B. Concrete Slab

The Tysdals argue that the district court clearly erred by finding that the 2011 permit did not authorize the removal of the concrete slab. Respondent neighbors and the township disagree, arguing that the 2011 permit "does not state that appellants are authorized to remove the concrete slab."

The district court found that, when the Tysdals purchased their property in 2007, there was "a 10-foot by 10-foot concrete slab on the threshold between Lake Street and the beach" that "was an obvious aid to access the lake when launching or retrieving watercraft." The district court found that the Tysdals "removed the concrete slab located on Lake Street" and "did not receive a permit to remove the concrete slab."

The record includes the Tysdals' application for a permit, which asked to "[r]emove conc[rete] slab down by lake and replace with black dirt and sod." The application also included a drawing with text marking "my existing conc[rete] slab." The county issued the 2011 permit authorizing the following work: "(1) restore area on drawing received 9/12/11

with sod and (2) repair/replace existing block retaining wall—may add a concrete footing—both projects are to be done as per onsite discussion on 9/6/11.”

At trial, Jerame Tysdal was asked on cross-examination whether the permit “says anything about removing the concrete slab.” Jerame responded, “I don’t see anything on the page one [of the permit].” Jerame also testified that, if the county did not approve his request to remove the concrete slab, “they would have crossed that out and initialed it.”

The Tysdals make two arguments about the concrete slab. First, they argue for the first time on appeal that, because the 2011 permit does not “indicate that [the Tysdals’] request to remove the concrete slab was ever denied” or “list[] the reasons for the denial,” the Tysdals were authorized to remove the concrete slab under Minn. Stat. § 15.99, subd. 2 (2022). Section 15.99, subdivision 2(a), provides:

[A]n agency must approve or deny within 60 days a written request relating to zoning, septic systems, watershed district review, soil and water conservation district review, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action. Failure of an agency to deny a request within 60 days is approval of the request. If an agency denies the request, it must state in writing the reasons for the denial at the time that it denies the request.

At oral argument, this court questioned whether we could consider this issue for the first time on appeal. The Tysdals subsequently submitted a letter, citing supplemental authority in support of their “contention that [we] can consider the applicability of Minn. Stat. § 15.99, subd. 2, for the first time on appeal.” The Tysdals rely on four cases to support their argument that we may consider an issue raised for the first time on appeal in the interest of justice. *E.g.*, *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 875 (Minn.

2010). Respondent neighbors’ responsive letter cites other cases in which Minnesota appellate courts have declined to consider issues raised for the first time on appeal. *E.g.*, *Leuthard v. Indep. Sch. Dist. 912-Milaca*, 958 N.W.2d 640, 649 (Minn. 2021).

Minnesota Rule of Civil Appellate Procedure 103.04 provides that appellate courts “may review any other matter as the interest of justice may require.” We may consider an issue not raised below “when the issue is plainly decisive of the entire controversy on its merits, is raised prominently in the briefing, does not prejudice either party, or involves a question of law not dependent on new or controverted facts.” *Miller v. Soo Line R.R.*, 925 N.W.2d 642, 653 (Minn. App. 2019) (quotations omitted).

The section 15.99 issue does not fare well under the relevant considerations. First, the applicability of section 15.99 was not raised “prominently” in the parties’ briefs; the Tysdals’ brief devotes one paragraph to the issue, and it was not briefed by respondent neighbors. Second, resolution of this issue depends on new or controverted facts surrounding the Tysdals’ interactions with the county during the permitting process, and the county is not a party to this appeal.

Third, we question whether section 15.99 applies because it is not clear that the county failed to deny the Tysdals’ request to remove the concrete slab. It is undisputed that the county responded to the Tysdals’ application by issuing the 2011 permit, which authorized two projects and did not authorize removal of the concrete slab as mentioned in the Tysdals’ application. Thus, the county took action on the Tysdals’ application for a permit. *See Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 543 (Minn.

2007) (stating that the purpose of section 15.99, subdivision 2, “was to establish deadlines for local governments to take action on zoning applications” (quotation omitted)).

Also, the 2011 permit appears to have implicitly denied the Tysdals’ request to remove the concrete slab, which does not appear to support relief under section 15.99. The supreme court has held that “failure to timely provide an applicant with a written statement of the reasons for denying an application regarding zoning . . . does not trigger the automatic approval penalty of [section 15.99,] subdivision 2(a), which only applies to the failure to timely deny the application.” *Id.* at 544. In sum, the interests of justice do not warrant consideration of the section 15.99 issue for the first time on appeal.

Second, the Tysdals argue that the record shows the district court erred by determining that the Tysdals’ removal of the concrete slab was unauthorized. The Tysdals’ brief to this court claims that Jerame Tysdal testified “he had thoroughly discussed his intent to remove the concrete slab with a representative of the county before doing so” and that a “county inspector came to [the Tysdals’] property after the work was completed but made no complaint about the concrete slab being removed.”

The record does not support the claim made in the Tysdals’ brief. The Tysdals offered no evidence that Jerame Tysdal discussed the removal of the concrete slab with the county representative. Also, Jerame Tysdal testified that county officials visited on “several occasions . . . mostly after construction” of the Tysdals’ home finished in 2009, but Jerame Tysdal did not testify that the county visited the property after the concrete slab was removed.

In their reply brief, the Tysdals argue that a 2012 order by the board, which stated that “an adjacent landowner was granted a grade and fill permit to place sod where a minimal gravel road and cement pad had existed,” is evidence that the permit authorized the Tysdals to remove the concrete slab.⁶ The board’s 2012 order was received into evidence at trial along with the 2011 permit and other evidence summarized above. Appellate courts may not “reweigh the evidence when reviewing for clear error” and will not conclude that a finding was clearly erroneous unless it is “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Kenney*, 963 N.W.2d at 221 (quotation omitted).

Thus, based on the record, we conclude that the district court did not clearly err by finding that the permit did not authorize the Tysdals to remove the concrete slab.

C. Obstruction of the Public’s Easement Access to the Lake

The Tysdals argue that the district court clearly erred by finding that the concrete retaining wall and the Tysdals’ boat lift obstructed the public’s easement-access rights. The township argues that record evidence supports the district court’s finding and that the Tysdals “do not identify any caselaw that suggests that, so long as use of the public’s easement is not wholly foreclosed,” the retaining wall and boat lift are “compatible” uses.

As mentioned above, an abutting property owner may use their half of the street “in any manner compatible with use by the public of its easement.” *Foote*, 306 N.W.2d at 885;

⁶ In 2012, the board received a complaint that Lake Street was “impassable.” After a public hearing, the board issued an order determining that Lake Street was “passable,” noted that it had “considered this matter in the past,” and adopted its 2009 resolution.

accord Kelty, 196 N.W. at 487. Whether an abutting owner’s “use is compatible, or is an obstruction, depends upon the character of the use by the abutter and the character of the street.” *Kelty*, 196 N.W. at 487.

The district court found that Lake Street is “used as a public access to Otter Tail Lake” and that this use includes “the launch and retrieval of watercraft and fish houses” and serves “as an access point for snowmobile operators.” The district court found that the Tysdals’ removal of the concrete slab made it “nearly impossible to launch or retrieve a boat” and that the Tysdals obstructed Lake Street with “objects and items” including “boat lifts” and the “retaining wall” that extends “eight feet past the right of way stake.” The district court found that “the character of [the Tysdals’] use of Lake Street has constituted an obstruction to the public’s ingress and egress rights to Otter Tail Lake” and “the Lake Street easement” and that the Tysdals’ use of Lake Street served to “portray to the public that Lake Street was private property not for public use.”

In their brief on appeal, the Tysdals do not dispute that the public uses Lake Street to access Otter Tail Lake or that their boat lift and retaining wall extend past the right-of-way marker on Lake Street. Rather, the Tysdals argue that the district court erred by determining that the character of their use of Lake Street was incompatible with the public’s use because there is no evidence “that someone could not access the lake.” But the Tysdals fail to cite caselaw indicating that the district court must find that the public is completely unable to access the lake in order to find that the Tysdals’ use obstructs the public’s easement access.

The Tysdals cite three cases, all of which are distinguishable: *Bolen v. Glass*, 755 N.W.2d 1 (Minn. 2008), *Kochevar v. City of Gilbert*, 141 N.W.2d 24 (Minn. 1966), and *McLafferty v. St. Aubin*, 500 N.W.2d 165 (Minn. App. 1993).

In *Bolen*, Glass obtained a permit to add “gravel to a platted but undeveloped street adjoining his property.” 755 N.W.2d at 2. Glass’s neighbors sued because the “gravel extended onto parts of the street where his neighbors . . . own the underlying fee.” *Id.* The supreme court reversed the judgment for the neighbors, determining that the city “had the authority to issue a permit providing for the construction of private improvements on” the platted street. *Id.* at 5-6. But in *Bolen*, unlike here, there was no assertion that Glass’s use of the street obstructed public use or that it was not authorized by the permit.

In *Kochevar*, the city removed plaintiffs’ wall and fence that encroached “2 or 3 feet” into an abutting 20-foot alley. 141 N.W.2d at 25-26. The supreme court concluded that, “where the encroachment is not clearly an obstruction to the public’s use of the easement, there must be an adjudication that it is before it can be removed, and its taking without an adjudication that it could be lawfully done is compensable.” *Id.* at 27. The supreme court affirmed the district court’s determination that the city “had followed an improper procedure which resulted in damage” to the plaintiffs and concluded that “there should have been no action taken” by the city “prior to an adjudication that the removal was necessary because the city intended to improve the alleyway for the benefit of the public.” *Id.* at 26-27. *Kochevar* is distinct, however, because it involved a city’s removal of property encroaching on an easement and the city did not follow proper procedures.

Here, respondent neighbors sought a declaratory judgment from the district court regarding the Tysdals' obstruction of the public easement.

In *McLafferty*, owners of private property abutting a lake were “subject to a street easement” running “along the shore” of the lake. 500 N.W.2d at 166. The property owners brought “a quiet title action to clarify their rights,” and the district court determined that the city’s riparian rights were “paramount” and that the property owners’ docks and manmade beaches were “incompatible with the city’s exercise of its riparian rights.” *Id.* We reversed, concluding that the “city’s current exercise of riparian rights is insufficient to require the property owners to cease exercise of their own riparian rights” where “the city is not actively asserting any particular riparian right for the public’s benefit.” *Id.* at 168-69. *McLafferty* is also distinguishable because it involved a city’s assertion of exclusive riparian rights based on an easement. And in *McLafferty*, we expressly distinguished the case from an issue of “riparian rights when a street provides ingress and egress to a body of water.” *Id.* at 167.

Accordingly, the district court did not err by finding that the Tysdals’ use of Lake Street obstructed the public’s easement access to the lake.

III. The district court did not err in declaring that adjacent property owners of Lake Street and their successors and assigns have a right to maintain the entirety of Lake Street.

The Tysdals argue that the district court erred by “ordering that adjacent property owners on both sides of Lake Street may provide maintenance to it, instead of ordering that each party should only maintain” the part of Lake Street for which “they own the

underlying fee interest.” Respondent neighbors argue that the district court correctly interpreted Minn. Stat. § 164.08, subd. 3.

Section 164.08, subdivision 3, provides that, “[w]hen a cartway is not maintained by the town, one or more of the private property owners who own land adjacent to a cartway . . . may maintain the cartway.” The district court found that Lake Street is “an unopened cartway” that “is not maintained by Otter Tail Township” and that Menagh Trust and the Tysdals—who own land adjacent to Lake Street—“are Lake Street’s fee owners.” The district court declared that “the fee owners of Lake Street along with their successors and assigns are hereby authorized to maintain the Lake Street easement.”

The Tysdals argue that, under Minn. Stat. § 164.08, subd. 3, they and Menagh Trust “are only able to provide maintenance to their half of Lake Street that directly abuts their property.” The Tysdals do not challenge the district court’s findings that the township does not maintain Lake Street or that Menagh Trust and the Tysdals are the adjacent fee owners of Lake Street. Respondent neighbors argue that “[t]here is not a single word or phrase in Minn. Stat. § 164.08, subd. 3, that would somehow limit an adjacent property owner’s authority to only maintain a certain portion of the cartway,” and the township argues that the Tysdals’ interpretation of the statute would lead to “absurd or unreasonable results.”

Appellate courts review questions of statutory interpretation *de novo*. *Buzzell v. Walz*, 974 N.W.2d 256, 261 (Minn. 2022). The object of statutory interpretation “is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2022). “When legislative intent is clear from the statute’s plain and unambiguous language,” appellate courts “interpret the statute according to its plain meaning without resorting to

other principles of statutory interpretation.” *McBee v. Team Indus., Inc.*, 925 N.W.2d 222, 227 (Minn. 2019) (quotation omitted).

The plain language of Minn. Stat. § 164.08, subd. 3, provides that, when a town does not maintain a cartway, “the private property owners who own land adjacent” to the cartway “may maintain the cartway.” Appellate courts must apply the plain language of the statute and “may not add language to a statute.” *Energy Policy Advocates v. Ellison*, 980 N.W.2d 146, 156 (Minn. 2022) (quotation omitted). Likewise, appellate courts cannot add limiting language to a statute. *Gen. Mills, Inc. v. Comm’r of Revenue*, 931 N.W.2d 791, 800 (Minn. 2019) (declining to add limiting language to a statute in which the legislature used limiting language in one part but omitted it in another).

Because section 164.08, subdivision 3, states that adjacent property owners may maintain “*the* cartway” rather than the *portion* of the cartway that corresponds to their abutting property, we reject the Tysdals’ argument. (Emphasis added.) Thus, the district court did not err by determining that the Tysdals and Menagh Trust, along with their successors and assigns, have the right to maintain the Lake Street easement.

IV. The district court did not abuse its discretion by ordering the Tysdals to restore the concrete slab and remove a portion of the retaining wall.

The Tysdals argue that the district court “lacked authority” to order them “to reinstall the concrete slab” and remove the retaining wall because doing so “requires a permit, variance, or conditional use permit, or some other form of permission from the county.” The township argues that the district court was authorized to order equitable relief

and that “the appropriate regulatory authorities” are not prevented “from addressing . . . any other issue” related to the concrete slab or retaining wall.

The district court determined that “the Tysdals failed to comply with the permit when they removed the concrete slab” and must “restore the 10-foot by 10-foot concrete slab to its original position on Lake Street.” The district court also determined that the retaining wall “constitutes a danger to the public who seek to exercise their ingress and egress rights on Lake Street” and ordered the Tysdals to “remove the portion of the block retaining wall extending onto Lake Street.” Appellate courts review “a district court’s decision to award equitable relief for abuse of discretion.” *Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 819 (Minn. 2016) (quotation omitted).

We first conclude that the district court did not abuse its discretion in ordering equitable relief. We are not convinced by the Tysdals’ claim that the district court lacked authority to order them to remove a portion of the retaining wall and reinstall the concrete slab. The Tysdals provide legal authority only for the proposition that a “district court may only review the county’s determination under an arbitrary and capricious standard . . . or when there is a procedural defect.” This is the standard of review for a permitting decision. But, as discussed above, the district court was not reviewing the 2011 permitting decision. Thus, we also conclude that the district court acted well within its authority to award equitable relief.

Affirmed.