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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1009**

In the Matter of the Minnesota Racing Commission's Approval of Running Aces Casino,
Hotel & Racetrack's Amended Plan of Operation to Incorporate
Stadium Ultimate Texas Hold 'em.

**Filed August 24, 2026
Affirmed
Cochran, Judge**

Minnesota Racing Commission

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Considered and decided by Bentley, Presiding Judge; Ross, Judge; and Cochran,
Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this certiorari appeal, relator Shakopee Mdewakanton Sioux Community (the community) challenges respondent Minnesota Racing Commission's approval of a 2024 amendment to respondent Running Aces Casino, Hotel & Racetrack's plan of operation. The 2024 plan of operation amendment authorized Running Aces to replace an electronic table game called Stadium Three Card Poker with another electronic card game called

Stadium Ultimate Texas Hold 'em at Running Aces' card club. The present appeal involves the second time the community has challenged the commission's approval of an amendment to Running Aces' plan of operation. *See In re Minnesota Racing Comm'n*, No. A23-1738, 2024 WL 4259301, at *1 (Minn. App. Sept. 23, 2024) (*Minnesota Racing Comm'n I*) (challenging an earlier amendment to the plan of operation), *aff'd In re Minnesota Racing Comm'n's Approval of Running Aces Casino, Hotel & Racetrack's Request to Amend its Plan of Operation*, 30 N.W.3d 285 (Minn. 2026). Because we conclude the legal issues raised by the community in the current appeal are identical to those decided in *Minnesota Racing Commission I*, we conclude the community's challenge is barred by the doctrine of collateral estoppel. We therefore affirm the commission's approval of the 2024 amendment to the plan of operation.

FACTS

Running Aces operates a horse racing venue and an associated card club in Columbus, Minnesota. *Minnesota Racing Comm'n I*, 2024 WL 4259301, at *1. The Minnesota Racing Commission, among other functions, regulates card club operations at licensed horse racetracks in the state. *See* Minn. Stat. §§ 240.03, .07, subd. 3, .231; .30 (2024).

Regulation of Card Clubs at Licensed Racetracks

Before discussing the specific facts giving rise to the issues in this case, we provide an overview of regulation of card club operations under Minnesota law. Card clubs are facilities at licensed racetracks that may operate card games on up to 80 tables for the purposes of supporting horse racing and breeding industries. Minn. Stat. §§ 240.01,

subd. 4 (2024); 240.30, subds. 6-8. Such games include blackjack, poker, and baccarat. *Minnesota Racing Comm’n I*, 2024 WL 4259301, at *1. A licensed racetrack may operate a card club and offer card playing services to patrons only if the commission has authorized the racetrack to do so under a class B license *and* has approved a plan of operation for card playing activities at the card club. Minn. Stat. § 240.30, subd. 1. The plan of operation “must set forth all necessary details for conducting card playing activities,” including:

- (1) specifying and defining all card games to be played, including all governing aspects of each game;
- (2) time and location of card playing activities;
- (3) amount and method by which participants will be charged for card playing services;
- (4) arrangements to ensure the security of card playing activities;
- (5) designation of all licensed employees of the licensee who undertake supervisory positions related to card playing activities;
- (6) internal control systems for card playing activities; and
- (7) a plan for the training of card club personnel in identification of problem gamblers and appropriate action to prevent or control problem gambling.

Id., subd. 6(a). A licensed racetrack may amend the plan of operation for a card club only with the commission’s approval. *Id.*, subd. 7. Additionally, a licensed racetrack may not operate “video games of chance” or “gambling devices” at a card club and may only have 80 “tables used for card playing at the card club at any one time, other than tables used for instruction, demonstrations, or poker tournament play.” Minn. Stat. §§ 240.071 (providing that a licensed racetrack shall not operate video games of chance or other gambling devices), .30, subd. 8(1) (2024) (imposing an 80-table limit).

Electronic Table Games at Running Aces

With this legal framework in mind, we turn to the specific facts at issue in this case. In 2017, Running Aces first received approval from the commission to amend its plan of operation to include electronic table games (ETGs) at its card club. *In re Minnesota Racing Comm’n’s Approval of Running Aces Casino, Hotel & Racetrack’s Request to Amend its Plan of Operation*, 30 N.W.3d at 289. Unlike traditional card tables, ETGs “include[] an electronic video interface linking a dealer with players.” *Minnesota Racing Comm’n I*, 2024 WL 4259301, at *1. More specifically, with ETGs, the dealers are at their own table, which is equipped with a camera and card-recognition technology. Players sit at individual player stations, separated from both the dealer and other players. Each individual player station is fully automated and contains a video touch screen. To begin the game, the dealer deals a set of cards and card-recognition technology captures the cards, which are then displayed as a digital picture on each player’s individual video screen. Players are also shown a live feed of the actual cards being dealt by the dealer. Players place wagers and indicate their betting decisions using only the touchpad screen at their table. Players may cash out through the touchscreen pad and receive a printed voucher that can be exchanged for cash. When the commission approved the use of ETGs at Running Aces in 2017, the approval was made “with the understanding that the card games will be played ‘live’ without the use of a random number generator.” *Id.* at *2.

The 2023 Amendment Involved in the Prior Appeal

In May 2023, Running Aces requested to amend its plan of operation to add an additional ETG. *Id.* Before the requested 2023 amendment, Running Aces’ approved plan

of operation for its card club included the following tables: 60 traditional card-playing tables with seven player seats at each table, 14 traditional tables in the atrium with nine player seats at each table, and three ETGs with 11 “player stations.” *Id.* The 2023 request to amend the plan sought to modify the plan of operations to include one “Stadium Three Card Poker” ETG, with a dealer table and 11 player stations. *Id.*

The community sent a letter and legal memorandum to the commission objecting to the Running Aces’ proposed 2023 amendment.¹ The community asserted that ETGs constitute “gambling devices” and “video games of chance” that Running Aces is legally prohibited from operating at the racetrack and claimed that the requested plan amendment would result in Running Aces exceeding the 80-table statutory limit. *Id.* After considering the community’s objection, the commission voted to approve the request in October 2023. The community appealed the approval of the 2023 amendment to this court.

In our opinion, we considered and decided the following four issues. We first considered whether the community had standing to challenge the commission’s approval of the 2023 amendment to Running Aces’ plan of operation for the card club and concluded that it did. *Id.* at *2-4. We next considered whether the commission exceeded its statutory authority by in effect authorizing “gambling devices” or “video games of chance” and by authorizing more than 80 tables at the card club when it approved the 2023 amendment. *Id.* at *5. In addressing the issue of whether the commission exceeded its statutory

¹ The community was interested in the proposed amendment because “the [c]ommunity has a legally protected interest in the competition-restricted environment of commercial gambling.” *In re Minnesota Racing Comm’n’s Approval of Running Aces Casino, Hotel & Racetrack’s Request to Amend its Plan of Operation*, 30 N.W.3d at 287.

authority, we rejected the community’s argument that ETGs are prohibited “gambling devices” and prohibited “video games of chance” and also rejected the community’s argument that the inclusion of ETGs in the 2023 amended plan of operation resulted in the card club exceeding the 80-table limit. *Id.* at *5-8. Third, we considered whether the commission acted arbitrarily and capriciously by approving the amended plan of operation and concluded it did not. *Id.* at *8-9. Finally, we analyzed and rejected the community’s argument that the commission’s approval of ETGs was invalid because it “rests on an unpromulgated and therefore unenforceable rule.” *Id.* at *9-10.

The Minnesota Supreme Court granted the community’s petition for further review and agreed with this court that the community had standing to challenge the commission’s approval of the 2023 amendment to the plan of operation for card playing activities at the Running Aces racetrack. *In re Minnesota Racing Comm’n’s Approval of Running Aces Casino, Hotel & Racetrack’s Request to Amend its Plan of Operation*, 30 N.W.3d at 292. But, because the supreme court was “evenly divided” on the community’s request to vacate the commission’s approval of the 2023 amendment, the supreme court affirmed “the court of appeals’ decision on the remaining issues without expressing any opinion on the merits.” *Id.* at 287.

The 2024 Amendment

In March 2024, while the appeal of the 2023 amendment was pending before this court, Running Aces submitted a new request with the commission to amend its plan of operations for the card club. The request was limited to “replac[ing] [its] existing Stadium Three Card Poker [with] Stadium Ultimate Texas Hold ’em [Poker].” The request noted

that, if approved, “[t]he existing 11 player terminals linked to [Stadium] Three Card Poker will be changed to [Stadium] Ultimate Texas Hold ’em Poker.”

The community sent two letters opposing the request. In the first letter, dated April 8, 2024, the community noted that “Stadium Ultimate Texas Hold ’em is an electronic table game (‘ETG’) operated much the same way as the other ETGs” in operation at Running Aces card club. The community then went on to say that it “objects to this amendment *for the reasons that it has objected to the racetracks’ operation of the other ETGs*” and incorporated by reference the arguments it made in objection to the 2023 amendment. (Emphasis added.) It also reiterated its view that “ETGs constitute gambling devices and video games of chance, which the racetracks cannot legally operate.” And the community also asserted, like it had with the 2023 amendment, that the commission “lacks authority to approve illegal games or a [plan of operation] that violates the 80-table limit.” Finally, the community stated that “in continuing to approve ETGs, the [c]ommission is unlawfully enforcing an unpromulgated rule.”

In its second letter to the commission, dated June 14, the community again “object[ed] to [the 2024 plan of operation] amendment [request] *for the same reasons it objected to Running Aces’ . . . 2023 request to amend its plan of operation[.]*” (Emphasis added.) It also reiterated that “the ETGs currently operated at Running Aces constitute gambling devices and video games of chance, which the racetracks cannot legally operate” and stated that “[t]he *newly proposed Stadium Ultimate Texas Hold ’em game is no different.*” (Emphasis added.) And the community went on to assert that “[i]n continuing

to approve ETGs for use at card clubs in . . . Minnesota, the commission is unlawfully enforcing an unpromulgated rule.”

Following receipt of the community’s letters, the commission met on June 17, 2024, to consider Running Aces’ 2024 amendment request to replace Stadium Three Card Poker with Stadium Ultimate Texas Hold ’em. At the meeting, Running Aces explained: “We have Ultimate Texas Hold ’em on the floor right now, but basically, this is an electronic version of a felt-based game.” Running Aces made the request to replace Stadium Three Card Poker, an ETG, with Stadium Ultimate Texas Hold ’em, another ETG, because “Ultimate Texas Hold ’em is one of the more popular games.” Running Aces further explained that “[t]here is no equipment change. The software is actually already in there. Basically, it’s just the flip of a switch.” The commission approved the 2024 amendment request at the meeting.

The community filed a petition for a writ of certiorari challenging the commission’s approval of Running Aces’ request to replace Stadium Three Card Poker with Stadium Ultimate Texas Hold ’em (the 2024 amendment). This court stayed the appeal pending the Minnesota Supreme Court’s decision in *Minnesota Racing Commission I*. Following the supreme court’s decision, we dissolved the stay. The matter is now before this court.

DECISION

This court reviews certiorari appeals from a quasi-judicial agency decision not subject to the Minnesota Administrative Procedures Act, such as this one, under the common-law standard. *In re Petition for Clarification or Amend. of Appropriate Unit*, ___ N.W.3d ___, ___, 2026 WL 2029068, at *4 (Minn. App. July 13, 2026); *see also*

Minnesota Racing Comm’n I, 2024 WL 4259301, at *5 (“Because the commission investigated Running Aces’s request to amend its plan of operation, weighed facts, applied the law to those facts, and issued a binding decision, the commission acted in a quasi-judicial matter.”). When reviewing an agency’s quasi-judicial decision under the common-law standard, we consider “questions affecting the jurisdiction of the [agency], the regularity of its proceedings, and, as to the merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.” *In re Petition for Clarification or Amend. of Appropriate Unit*, 2026 WL 2029068, at *4; *see also Wilhite v. Scott Cnty. Hous. & Redevelopment Auth.*, 759 N.W.2d 252, 255 (Minn. App. 2009).

The community raises four arguments in this appeal challenging the commission’s approval of the 2024 amendment to Running Aces’ plan of operation. It argues that the commission (1) exceeded its authority by permitting Running Aces to operate “gambling devices”; (2) exceeded its authority by permitting Running Aces to operate “video games of chance”; (3) exceeded its authority by permitting Running Aces to operate more than 80 tables at the card club; and (4) “continu[ed] to enforce an unpromulgated rule.” In response, the commission and Running Aces argue collateral estoppel and res judicata foreclose the community from bringing forth the appeal, because this court’s decision in *Minnesota Racing Commission I* is “binding authority on the issues presented by this appeal.” For the reasons discussed below, we agree that collateral estoppel bars us from

reaching the merits of the current appeal because all four issues raised in this appeal are identical to issues raised in *Minnesota Racing Commission I*.

Collateral Estoppel

Collateral estoppel precludes parties from relitigating issues that were previously adjudicated. *Tarutis v. Comm’r of Revenue*, 393 N.W.2d 667, 669 (Minn. 1986). Defensive collateral estoppel prevents a plaintiff from asserting a claim that the plaintiff has previously litigated and lost. *Aufderhar v. Data Dispatch, Inc.*, 452 N.W.2d 648, 652 n.2 (Minn. 1990). The doctrine of collateral estoppel may apply if: (1) the issue is identical to the one previously adjudicated; (2) there was a final judgment on the merits; (3) the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the issue. *Ill. Farmers Ins. Co. v. Reed*, 662 N.W.2d 529, 532-33 (Minn. 2003). “In addition to these four factors, a court applying collateral estoppel must be convinced that its application is fair.” *Barth v. Stenwick*, 761 N.W.2d 502, 508 (Minn. App. 2009).

Only the first factor is in dispute here for each of the four issues raised on appeal.² “For collateral-estoppel purposes, issues are identical when the issues presented by [the current] litigation are in substance the same as those resolved in the previous litigation.” *All Finish Concrete, Inc. v. Erickson*, 899 N.W.2d 557, 567 (Minn. App. 2017). “But the

² The remaining three factors are met in this case for each issue: (1) our decision in *Minnesota Racing Commission I* constituted a final judgment on the merits; (2) the parties to this lawsuit are identical to the prior litigation; and (3) the community was given a full and fair opportunity to be heard on the issue. We further note that the parties do not dispute that these factors are met.

facts of the two cases need not be identical, as long as any factual differences have no legal significance in resolving the issue presented in both cases.” *Id.* at 567-68 (quotations omitted).

Because only the first factor is in dispute, we focus our analysis on that factor. We consider each of the four issues raised by the community in this appeal to determine if each issue is identical to an issue previously adjudicated in *Minnesota Racing Commission I*. See *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837-38 (Minn. 2004). Applying the applicable legal standard, we conclude all four issues raised by the community in this appeal are identical to issues raised by the community and adjudicated in the prior appeal.

Gambling Devices

We begin by considering the community’s argument that the commission exceeded its authority by authorizing Running Aces to replace Stadium Three Card Poker with Stadium Ultimate Texas Hold ’em because Stadium Ultimate Texas Hold ’em is a “gambling device” and card clubs are prohibited by statute from operating gambling devices. Specifically, the community contends that Stadium Ultimate Texas Hold ’em meets the definition of “gambling device” because Stadium Ultimate Texas Hold ’em is an ETG and ETGs are gambling devices. A “gambling device” is “a contrivance the purpose of which is that for a consideration a player is afforded an opportunity to obtain something of value, other than free plays, automatically from the machine or otherwise, the award of which is determined principally by chance, whether or not the contrivance is actually played.” Minn. Stat. § 609.75, subd. 4 (2024). The community’s argument that Stadium Ultimate Texas Hold ’em is a “gambling device” does not depend on the specifics of the

game itself, rather it turns on the community’s contention that ETGs are “contrivance[s]” that meet the definition of a “gambling device.” Consequently, the issue raised in this appeal by the community’s gambling-device argument is whether an ETG is a “gambling device” under Minnesota Statutes section 609.75, subdivision 4.

In *Minnesota Racing Commission I*, we addressed and decided this same issue. In that case, “[t]he community argue[d] that ETGs are gambling devices under [Minnesota Statutes section 609.75, subdivision 4].” 2024 WL 4259301, at *5. The community further argued that “the commission acted unlawfully and exceeded its authority by allowing Running Aces to add another ETG to its [plan of operation]” because “gambling devices” are not permitted at card clubs. *Id.* We resolved this argument by deciding that ETGs are not “gambling devices” under section 609.75, subdivision 4, but rather are “associated equipment” under subdivision 4a of the same statute. *Id.* at *6. Our analysis focused on ETGs generally, not the particular ETG that was added under the 2023 amendment. *Id.* Because the community’s gambling-device argument in this case also turns on the use of the ETG technology and not the game itself, we conclude the issue presented is identical to that resolved in the previous litigation between these same parties.

To persuade us otherwise, the community focuses on factual differences between this case and the prior litigation. The community emphasizes that this case involves the commission’s approval of Stadium Ultimate Texas Hold ’em whereas the prior litigation involved the addition of a different ETG approved in the 2023 amendment. The community also emphasizes that Stadium Ultimate Texas Hold ’em is manufactured by a

different company than the company that manufactured the ETG approved in 2023. The community's argument is not persuasive.

As discussed, for collateral estoppel to apply, “the facts of the two cases need not be identical, as long as any factual differences have no legal significance in resolving the issue presented in both cases.” *All Finish Concrete, Inc.*, 899 N.W.2d at 567-68 (quotations omitted). Here, the legal question of whether the approved games in both the 2023 and 2024 amendments are “gambling devices” turns on the fact that the games are ETGs, not the specific game or its manufacturer. The community has not identified any meaningful differences between the game at issue here and the game at issue in the previous case. To the contrary, in its brief in this case arguing that Stadium Ultimate Texas Hold ’em is a “gambling device,” the community focuses on our prior decision and argues we erred in our analysis of whether ETGs are “gambling devices.” In other words, the community has not provided any reason to conclude that the question of whether Stadium Ultimate Texas Hold ’em (an ETG) is a “gambling device” presents a different legal issue than that decided in the last case. For all these reasons, we are satisfied that any factual differences between the current appeal and the prior appeal “have no legal significance” in terms of the question of whether the ETGs at issue are “gambling devices.” *Id.* at 568. Accordingly, the gambling-device issue raised by the community in this appeal has been previously litigated and is subject to collateral estoppel.

Video Game of Chance

The next issue that we consider is the community's argument that the commission exceeded its authority by authorizing Running Aces to replace Stadium Three Card Poker

with Stadium Ultimate Texas Hold 'em because Stadium Ultimate Texas Hold 'em meets the statutory definition of a “video game of chance” even if it is not a “gambling device” and card clubs are prohibited from operating video games of chance. Section 609.75, subdivision 8, defines a “video game of chance” as “a game or device that simulates one or more games commonly referred to as poker, blackjack, craps, hi-lo, roulette, or other common gambling forms, though not offering any type of pecuniary award or gain to players.” Minn. Stat. § 609.75, subd. 8 (2024) (emphasis added). The same statute includes an alternate definition: “any video game having one or more of the following characteristics: (1) it is primarily a game of chance, and has no substantial elements of skill involved; (2) it awards game credits or replays and contains a meter or device that records unplayed credits or replays.” *Id.* In this appeal, the community argues that Stadium Ultimate Texas Hold 'em is a “video game of chance” because “[f]rom the player’s perspective, the experience [of playing table poker games] is indistinguishable from video poker machines.”

In *Minnesota Racing Commission I*, the community raised and we decided an identical argument. In that case, the community argued that ETGs are video games of chance because “[f]rom the player’s perspective, they are no different from typical video blackjack or video poker games or devices.” *Minnesota Racing Comm’n I*, 2024 WL 4259301, at *7. We rejected the community’s argument and concluded that ETGs are not video games of chance as defined by section 609.75, subdivision 8. *Id.* Because our reasoning applied to ETGs generally, we conclude the issue presented in this appeal regarding video games of chance is identical to the issue resolved in the previous litigation.

To persuade us that this issue is not barred by collateral estoppel, the community argues that the doctrine of collateral estoppel “does not freeze statutory interpretation in place where new facts materially affect how the statute operates.” But there are no new facts here which affect our analysis; as the community noted in its June 14, 2024 letter to the commission objecting to the proposed 2024 amendment, it did so for “the same reasons it objected to Running Aces’ May 18, 2023 request to amend its plan of operation.” And although the current appeal involves a new ETG, how the player interacts with ETGs is the same in both cases; the ETG is merely a conduit for viewing the cards in both cases. Additionally, the community does not allege a difference in terms of how the games are played. And, as the commission discussed at the meeting, the physical device is the same in both cases. Accordingly, we discern no factual difference of “legal significance in resolving the issue presented in both cases.” *All Finish Concrete, Inc.*, 899 N.W.2d at 568 (quotation omitted). We therefore conclude that for the purposes of collateral estoppel, the community’s argument that Stadium Ultimate Texas Hold ’em is a video game of chance is identical to its argument regarding “video games of chance” raised and decided in the prior appeal. This issue therefore is subject to collateral estoppel.

Table Limit

We next turn to the community’s argument that the commission exceeded its statutory authority by permitting Running Aces to operate more than 80 tables when it approved the 2024 amendment. Section 240.30, subdivision 8, of the Minnesota Statutes, limits the number of tables used for card playing at a card club operated by a racetrack. The restriction states that “the maximum number of tables used for card playing at the card

club at any one time, other than tables used for instruction, demonstrations, or poker tournament play, may not exceed 80.” Minn. Stat. § 240.30, subd. 8. The term “table” is not defined. The community argues that the 2024 amendment permitted Running Aces to operate more than 80 tables based on its contention that the term “table” “should be given [its] plain and ordinary meaning” and should include both dealer tables and player stations. It asserts that ETGs allow dealers “to deal to a potentially unlimited number of players,” and therefore each player station should be considered a table under section 240.30, subdivision 8.

In *Minnesota Racing Commission I*, the community raised and we decided an identical argument. In that case, the community argued “that the commission exceeded its statutory authority by authorizing Running Aces to exceed the statutory 80-table limit.” *Minnesota Racing Comm’n I*, 2024 WL 4259301, at *7. We concluded that the term “table” included “one dealer and those players interacting with that dealer” and therefore the commission’s approval of the 2023 amendment did not violate the 80-table limit. *Id.*

The issue raised by the community in this appeal regarding the 80-table limit is identical to the issue raised in the prior appeal. The community directly challenges this court’s previous interpretation of the meaning of “tables” in the context of all ETGs and, consequently, directly challenges our prior holding under an identical theory. The community’s argument does not depend on the game being played or the specific plan of operation at issue. The community simply restates its prior assertion that any definition of “tables” under section 240.30, subdivision 8, that does not include ETG player tables is irrational—an assertion we thoroughly considered and rejected. *Id.*

We further note that the community does not contend that any factual differences between the 2024 amendment and the 2023 amendment impact the substance of its argument regarding the 80-table limit in this appeal. It only makes passing reference to the fact that “in Stadium Ultimate Texas Hold ’em at Running Aces one dealer can deal up to . . . 26 more hands than the felt-based game.” But, as explained by a representative for Running Aces, the 2024 plan of operation did not add “any additional stations or any additional tables.” Consequently, the number of hands played is irrelevant to the question of the legal interpretation of the 80-table limit. In sum, we discern no factual difference in the two appeals that impacts the substance of the community’s argument that the commission exceeded its statutory authority by permitting Running Aces to operate more than 80 tables. The issue is therefore subject to collateral estoppel.

Unpromulgated Rule

Finally, the community argues that by approving the 2024 amendment, the commission is “continuing to enforce an unpromulgated rule by permitting licensed card clubs to operate [ETGs].” The Minnesota Administrative Procedure Act governs an agency’s authority to adopt administrative rules. *See* Minn. Stat. §§ 14.001-.69 (2024). Agency rules “must be adopted in accordance with specific notice and comment procedures established by statute.” *White Bear Lake Care Ctr., Inc. v. Minn. Dep’t of Pub. Welfare*, 319 N.W.2d 7, 9 (Minn. 1982). “Generally, an agency may formulate policy in two ways: rules or case-by-case determinations.” *In re Shakopee Mdewakanton Sioux Cmty.*, 988 N.W.2d 135, 143 (Minn. App. 2023). Agencies create rules when they make a “statement of general applicability and future effect.” Minn. Stat. § 14.02, subd. 4. But an

agency does not rule-make when it “enforces a law . . . by applying the law . . . to specific facts on a case-by-case basis.” Minn. Stat. § 14.381, subd. 1(b) (2024).

In this appeal, the community asserts that the commission enforced an unpromulgated rule permitting the use of ETGs at card clubs when it approved the change from Stadium Three Card Poker to Stadium Ultimate Texas Hold ’em, both ETGs, in the 2024 amendment. To support its argument, the community alleges that the approval was “a pro forma rubber-stamping of [this] ETG application” that relied on the commission’s prior approval of ETGs at Running Aces in 2017. The community further argues that the commission’s 2017 approval of ETGs constitutes an unlawful, unpromulgated rule.

In *Minnesota Racing Commission I*, we considered and decided an identical issue: whether “the commission’s approval of ETGs is invalid because the approval rests on an unpromulgated and . . . unenforceable rule” from 2017. *Minnesota Racing Comm’n I*, 2024 WL 4259301, at *9. We concluded that the commission’s approval of the 2023 amendment did not implement an unpromulgated rule from 2017 because the approval of the 2023 amendment as well as the 2017 amendment reflected “a case-by-case assessment of the gaming tables as they were proposed for use at the time the commission considered Running Aces’s amendment proposals.” *Id.* at *10. We further noted that the commission’s deliberations lacked “pronouncements of future direction.” *Id.* On this basis, we rejected the community’s theory that, when the commission approved the 2023 amendment, the commission was enforcing an unpromulgated rule from 2017.

In the present appeal, the community again argues that the commission “is continuing to enforce an unpromulgated rule by permitting card clubs to operate [ETGs].”

Based on our review and the community’s briefing and admissions at oral argument, we are convinced that the substance of the community’s arguments are identical between the two appeals. *All Finish Concrete, Inc.*, 899 N.W.2d at 567. We discern no material factual differences between the community’s prior appeal and the present appeal on the issue of whether the commission is enforcing an unpromulgated rule.

To persuade us otherwise, the community argues that “[t]he 2023 appeal did not—and could not—resolve the legality of the Commission’s continued reliance on its 2017 approval of the first group of ETGs” to support approval of the 2024 amendment. We disagree. While the community is correct that the 2023 appeal involved a different underlying amendment to the plan of operation, collateral estoppel requires only that the underlying issues are identical, not that the causes of action are identical. *Kaiser v. N. States Power Co.*, 353 N.W.2d 899, 902 (Minn. 1984) (stating that under collateral estoppel, “once an issue is determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation”). In essence, the community asserts that, because the 2023 and 2024 plan of operation amendments are distinct, collateral estoppel cannot apply. But under Minnesota law, as long as the *legal issues* are identical, the first factor of collateral estoppel is met. Here, the unpromulgated-rule argument made by the community in this case is identical to that made in the prior appeal and therefore collateral estoppel applies. Accordingly, we discern no difference between the prior litigation and the present dispute that alters the “substance” of the community’s argument on unpromulgated rulemaking. *All Finish Concrete, Inc.*, 899 N.W.2d at 567. The issue raised by the

community regarding unpromulgated rulemaking in this appeal is identical to that raised in the community's prior appeal. *Minnesota Racing Comm'n I*, 2024 WL 4259301, at *8-9. We therefore conclude that this issue is also subject to collateral estoppel.

Fairness

Having concluded that all four issues are identical to those raised by the community in the prior appeal, we next consider whether application of collateral estoppel is fair to the community. Collateral estoppel is an equitable remedy and should not be applied where it “would work an injustice on the party against whom the [doctrine is] urged.” *Hauschildt*, 686 N.W.2d at 837. But defensive collateral estoppel, which is the type of collateral estoppel at issue here, is favored in the law. *Aufderhar*, 452 N.W.2d at 652 n.2; *see also Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329-330 (1979).

We have no trouble concluding that application of collateral estoppel to the issues here would not work an injustice. Rather, applying collateral estoppel is fair to the community because the community initiated both this appeal and the prior appeal against the commission and argued the same issues in *Minnesota Racing Commission I*. Additionally, application of collateral estoppel based on our resolution of identical issues in *Minnesota Racing Commission I* promotes judicial economy and respect for our prior decision. *See* Minn. R. Civ. App. P. 136.01(c) (stating that nonprecedential opinions are binding authority for collateral estoppel purposes); *Parklane Hosiery Co.*, 439 U.S. at 329-30 (noting that defensive use of collateral estoppel “promote[s] judicial economy”).

Conclusion

In sum, we conclude collateral estoppel bars each of the community's arguments raised in this appeal. Therefore, we affirm the commission's approval of the 2024 plan of operation amendment.

Affirmed.