

*This opinion is nonprecedential except as provided by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
A25-0802**

ROA Rochester, LLC,
Appellant,

vs.

City of Rochester,
Respondent.

**Filed February 17, 2026
Affirmed in part, reversed in part, and remanded
Connolly, Judge**

Olmsted County District Court
File No. 55-CV-23-6020

Bryan J. Huntington, Benjamin T. O’Laughlin, Larkin Hoffman Daly & Lindgren Ltd.,
Minneapolis, Minnesota (for appellant ROA Rochester, LLC)

Katherine M. Swenson, John M. Baker, Greene Espel PLLP, Minneapolis, Minnesota (for
respondent City of Rochester)

Considered and decided by Connolly, Presiding Judge; Bond, Judge; and Smith,
John P., Judge.*

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges the district court’s grant of summary judgment in favor of
respondent-city in an appeal to the district court related to respondent’s denials of

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

appellant's land-use application and respondent's alleged violation of the Minnesota Open Meeting Law (OML), Minn. Stat. §§ 13D.01-.08 (2024). Respondent cross-appeals to challenge the standard used by the district court to determine whether an email communication from the city attorney was protected by the attorney-client privilege. We affirm the district court's grant of summary judgment in favor of respondent. But, because the district court applied the wrong standard to determine whether the email communication was protected by the attorney-client privilege, we reverse and remand for the district court to apply the correct standard.

FACTS

This case concerns a parcel of land in Rochester, Minnesota (the property). The property is owned by Aspire Properties, LLC, (Aspire) and is zoned as Mixed Use General (MX-G).¹ Beginning in 2021, Homestead United Methodist Church (the church), a place of worship, began occupying the parcel directly north of the property. In August 2022, appellant ROA Rochester, LLC, (ROA) entered a lease with Aspire for ROA to install a billboard on the property. The underlying dispute in this case relates to ROA's application to place a billboard on the property and the subsequent proceedings by respondent City of Rochester (the city) relating to whether it would approve the placement of the billboard.

ROA's application for the proposed billboard

In December 2022, ROA filed an application for a sign permit with the city for the installation of a 600-square foot, one-sided digital billboard on the property. ROA

¹ Aspire is a non-party to this litigation.

proposed that the digital billboard be oriented away from and not toward the church. City staff members raised concerns with the permit due to an apparent conflict the billboard's placement would have with Unified Development Code (UDC) § 60.400.110.G.1.d. This section provides the following language and figure:

No billboard shall be located within 300 feet of a Place of Worship, School, or Medical Facility. This distance shall be measured from the nearest edge of the billboard to the Place of Worship, School, or Medical Facility to the closest point on any boundary line of the Place of Worship, School, or Medical Facility property as shown in Figure 1d. This restriction only applies to Place of Worship, School, or Medical Facility properties that abut the same right-of-way where a billboard is oriented, regardless of whether the billboard is located on the same side or the opposite side of the right-of-way as the Place of Worship, School, or Medical Facility.

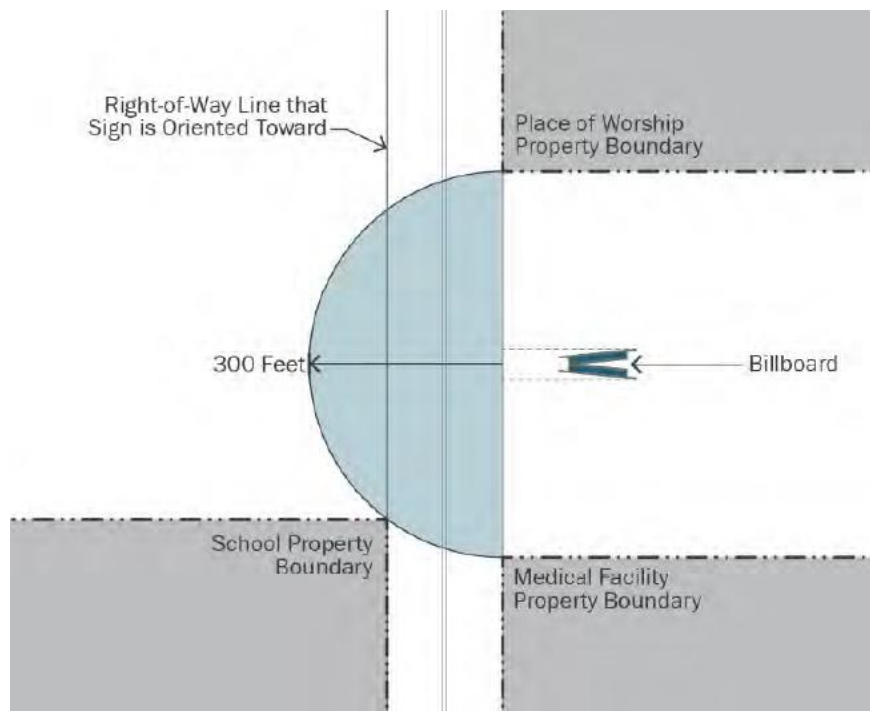


Figure 1d

UDC § 60.400.110.G.1.d.

In April 2023, ROA requested that the city issue a specific interpretation of the UDC as it relates to ROA's proposed billboard. ROA's request included two proposed options for where the billboard would be installed on the property. The city's interpretation letter stated that ROA's proposed billboard locations would violate the UDC for being too close to the neighboring church.

ROA applies to the zoning board of appeals for a variance

In May 2023, ROA submitted a variance application requesting to decrease the required distance between the proposed billboard and the neighboring church from 300 feet to approximately 165 feet, a 45% reduction in the distance requirement between a billboard and a place of worship.

The zoning board of appeals (the board) denied ROA's variance request by a vote of 4-0 based on findings drafted by city staff members.² The board's written resolution set forth its decision and incorporated the findings of city staff. The board determined that ROA had failed to satisfy multiple variance criteria under the UDC.

ROA appeals to the Rochester City Council

In June 2023, ROA appealed the denial of the variance to the Rochester City Council (city council). The city council is made up of 7 members: Council President Brooke Carlson, and Councilmembers Mark Bransford, Molly Dennis, Patrick Keane, Kelly Rae Kirkpatrick, Shaun Palmer, and Norman Wahl. The appeal was heard at the city council's July 24, 2023 regular meeting. The city council voted 5-2 to overturn the board's decision

² Three members of the board were absent.

and grant the variance. Council President Carlson and Councilmember Keane voted against overturning the board's decision.

The mayor vetoes the variance

City of Rochester Mayor Kim Norton vetoed the city council's resolution on July 27, 2023. The mayor provided a memorandum explaining her decision. In the memorandum, the mayor explained that she supported the city staff and the board, as well as their interpretation of the UDC. The mayor also expressed concerns with the July 24 city council meeting stating that, given the quasi-judicial nature of the proceeding, she was not "satisfied that sound judicial judgement based on the law was utilized in identifying [a] rationale for over-riding the prior decisions of [c]ity staff and [the board]." The mayor also stated the following:

I have serious concerns about the rationale given during the City Council meeting on July 24, 2023, to interpret the laws differently in the three (3) areas identified by staff as not meeting the threshold required for the following reasons:

- a. The site could be used in a reasonable manner without the variance.
- b. There is no existing practical difficulty or unique feature of the site.
- c. The variance could be detrimental to public health and create a slippery slope for future billboard variances.

The city attorney's emails

On July 28, 2023, after the mayor's veto had been announced, the city attorney emailed the city council president, the mayor, cc'd city staff members, and bcc'd the remaining members of the city council. The city attorney indicated that all city council members were blind copied to avoid an unintended OML violation. The city attorney sent

the email to provide “guidance and caution” on the billboard matter, “as well as general guidance related to quasi-judicial decisions.” Following that email, some city council members responded to the city attorney by email or emailed each other. No subsequent email correspondence ever included a quorum of the city council. The city attorney did not label the email as privileged or confidential. The city produced this email in response to ROA’s Minnesota Government Data Practice Act request after the proceedings had concluded. Minn. Stat. §§ 13.01-.90 (2024). Both parties agree that this email is not protected by the attorney-client privilege.

ROA had sought a postponement on a motion to override the veto as Councilmember Bransford could not attend the next regularly scheduled meeting. On August 7, 2023, before the city council considered the motion to override the mayor’s veto, the city attorney emailed the city council president, the mayor, cc’d city staff members, and bcc’d the remaining members of the city council. Again, the city attorney indicated that all city council members were blind copied to avoid an OML violation.

The motion to override the mayor’s veto

To override the mayor’s veto, five affirmative votes were needed by the city council. *See* Rochester, Minn., City Code of Ordinances § 6.04 (2006). Later that day, at the next regularly scheduled meeting, the city council considered the motion to override the veto, and the motion failed. Councilmembers Palmer and Wahl voted to override the veto; Council President Carlson, along with Councilmembers Dennis and Keane voted to uphold the veto; Councilmember Kirkpatrick abstained; and Councilmember Bransford was

absent. Because the motion to override the mayor's veto failed, the board's decision denying the variance was upheld.

In discussing their votes, Councilmembers Palmer and Wahl maintained their positions from the last vote. Councilmember Kirkpatrick chose to abstain given concerns about the ability to be fair and make a just decision. Councilmember Keane and Council President Carlson both maintained their votes against the variance.

Councilmember Dennis noted that in hindsight, she would not have wanted to vote the way she did in the first city council vote, but that her prior decision reflected a lack of information received due to censure and the lack of guidance from legal counsel. Councilmember Dennis further provided that she spoke with constituents who raised concerns to her, and that one constituent had expressed concerns with the billboard's lights and their impact on night driving. She then stated that "I wasn't able to articulate the reasons that need[ed] to be a foundation" and that "I will change my view because of all that I had presented and support the veto" In later interrogatory responses to ROA, Councilmember Dennis stated that she had one communication with a resident of Ward 6 who "brought up that even if Councilmember Dennis trusted ROA to comply with the conditions for the variance, the company could be sold in the future, and there was nothing to ensure that a new company would comply."

The district court proceeding

Following the city council's vote on the motion to override the veto, ROA sued the city, contending that a variance was not required by the UDC, that the denial of the variance was illegal, and that the city violated the OML. ROA moved for an order compelling

discovery from the city and for a judicial determination of the scope of review. ROA requested that the district court find that the record of decision was not clear and complete; that the proceeding was unfair; that ROA may conduct discovery regarding information, documents and communications involving the city council, city staff members, the city attorney and the mayor; that the district court compel the depositions of the mayor, Council President Carlson, Councilmembers Keane, Kirkpatrick, and Dennis, and a city staff member; and that the district court find the city attorney's emails to the city council and city staff related to the variance request were not protected by the attorney-client privilege. The city indicated that it would produce some of ROA's requested items, including the July 28 email from the city attorney, but otherwise opposed ROA's motion and sought a protective order barring the depositions.

The district court entered an order granting in part and denying in part ROA's motion. The district court concluded that the record of decision was partially incomplete and allowed limited discovery to supplement the record. The district court denied ROA's motion to compel depositions but allowed ROA to serve limited interrogatories on Councilmember Dennis. The district court determined that both the July 28 and August 7 emails from the city attorney were not protected by the attorney-client privilege and compelled production. The district court denied ROA's motion in all other respects.

The parties brought cross-motions for summary judgment. The district court granted summary judgment to the city. The district court determined that ROA was not entitled to a sign permit because the ordinance unambiguously prohibited the billboard;

that the decisions of the city council and the mayor were reasonable; and that the city attorney's emails did not violate the OML.

This appeal follows. The city cross-appeals, seeking review of the district court's decision that the August 7 email was not protected by the attorney-client privilege.

DECISION

On appeal, ROA argues that the district court erred by allowing only limited supplementation of the record, concluding the relevant city code provision unambiguously prohibited appellant's proposed billboard, concluding that the city's denial of a variance application was not erroneous, and concluding that respondent did not violate the OML. On cross-appeal, the city argues that the district court erred by applying the wrong standard to determine whether the August 7 email communication was protected by the attorney-client privilege.

I. The district court did not err in allowing ROA to conduct only limited discovery and ordering limited supplementation of the record of decision.

ROA argues that the district court erred when it denied ROA's request to supplement the record with additional documents and to conduct discovery and depositions because the record of decision was not clear and complete and that ROA should have been allowed to conduct full discovery. We disagree.

An appellate court reviews the record made before a municipal body "without according any special deference to the same review conducted by the trial court." *Swanson v. City of Bloomington*, 421 N.W.2d 307, 311 (Minn. 1988) (quotation omitted). As part of that review, the court determines whether the record was "clear and complete," such that

review should be on the record. *Id.* at 313. However, “where a city has failed to make a complete and adequate record of its proceedings,” the court may “require [the] city to prove the basis of its decision.” *Id.* at 312. The parties may then expand the record through discovery. *See, e.g., Honn v. City of Coon Rapids*, 313 N.W.2d 409, 415-16 (Minn. 1981).

A. The district court did not err in granting ROA only limited discovery.

“Where the municipal proceeding has not been fair or the record of that proceeding is not clear and complete, *Honn* applies and the parties are entitled to a trial or an opportunity to augment the record in district court.” *Swanson*, 421 N.W.2d at 313. “The meaningful review to which parties are entitled requires no less.” *Id.* The court in *Honn* addressed the procedure for augmenting the record in a declaratory judgment action challenging a rezoning decision and held that, when the parties are entitled to a trial, the evidence presented to the city council is relevant and should be included in the trial, and that “[n]ew or additional evidence *may* be received at trial, but it must be relevant to the issues that were raised and considered before the municipal body.” *Honn*, 313 N.W.2d at 416 (emphasis added).

Neither *Swanson* nor *Honn* supports ROA’s contention that, because the district court found the record was partially incomplete, ROA was entitled to conduct full discovery. Instead, the caselaw provides that when the record from a municipal proceeding is not complete, the parties are entitled to “augment the record in district court” based on the relevance of the issues to the proceedings. *Swanson*, 421 N.W.2d at 313. Here, after the district court determined the record was partially incomplete, it properly augmented the record by allowing ROA to serve written interrogatories on Councilmember Dennis related

to limited relevant issues and by adding the July 28 email from the city attorney to the record. This limited expansion of the record is supported by caselaw which has recognized that, except in rare cases, “it is the duty of the judiciary to exercise restraint and accord appropriate deference to civil authorities in the performance of their duties.” *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 176 (Minn. 1982). This is not a rare case warranting departure from this principle.

Accordingly, the district court did not err in granting ROA only limited discovery.

B. The district court did not err in denying ROA’s request to add to the record of decision email messages from non-decision-makers that were never received by any decision-makers.

When deciding whether to supplement a municipal record, this court has consistently held that the record should not be supplemented with information that was not before the municipal body at the time of its decision. *See In re Stoick Creek, LLC*, 999 N.W.2d 915, 925 (Minn. App. 2023) (denying the parties’ motion to supplement the record as “[n]either party ha[d] clearly demonstrated that supplementation [was] necessary to ensure that the record before this court accurately reflect[ed] the record that was before the town board at the time of its decision”); *see also Rostamkhani v. City of St. Paul*, 645 N.W.2d 479, 484 (Minn. App. 2002) (granting the city’s motion to strike certain documents from the record as “there [was] no evidence in the record that this information had been provided to the council and was simply omitted or misstated[,]” but denying the city’s motion to strike a material document from the record that was received by a city council member prior to the meeting); *Herbst v. City of Deephaven*, No. A24-0987, 2025 WL 1023871, at *4 (Minn. App. Apr. 7, 2025) (stating that there was “no reason to supplement

the record” with email communications that allegedly demonstrated the city’s bias as the city council did not consider the material in its decision-making process),³ *rev. denied* (Minn. July 15, 2025). As such, for ROA to argue successfully that the district court erred when it declined to supplement the record, ROA must demonstrate that the emails were received by decision-makers at the time their decisions were made. Each of the emails that ROA sought to include in the record of decision will be analyzed in turn.

The first email ROA sought to add to the record of decision is an email from one city staff member to another requesting materials to “build[] our case around the negative impacts billboards have on communities.” ROA has presented no evidence that this email was sent to the decision-makers at the time of their decision. As such, the district court properly excluded this email from the record of decision.

The second email ROA sought to add to the record is an email between two members of city staff with suggestions for a draft email to the mayor and the city council. However, this email does not indicate that it was sent to decision-makers. Notably, the city has already disclosed a revised version of the email that was sent to the mayor and all city council members. As such, the district court properly excluded this email, a draft which was never actually sent to decision-makers, from the record of decision.

The third email ROA sought to add to the record is an email from the city attorney to a non-decision-maker where he refers to an individual as “obnoxious.” ROA claims the individual being referred to by the city attorney is one of ROA’s employees. However, as

³ Nonprecedential opinions may be cited as persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

this email does not reflect that it was sent to a decision-maker, the district court properly excluded this email from the record of decision.

The fourth email ROA sought to add to the record is an email between two city employees where one employee states he does not care what happens with the billboard but has to “pretend it’s a huge deal based on the rules!” As this email does not reflect that it was sent to a decision-maker, the district court properly excluded this email from the record of decision.

The final email ROA sought to add to the record is an exchange between the city attorney and city staff members. The email is a draft of the July 28 city attorney’s email. The version of this email that was sent to decision-makers has already been disclosed in the record of decision. As such, the district court properly excluded this email, a draft which was never actually sent to decision-makers, from the record of decision.

In sum, the district court did not err in declining to add any of these emails to the record of decision. To the extent ROA suggests that these emails implicated an underlying bias from city employees that carried over into their ultimate recommendations to decision-makers, the reports themselves are included within the record of decision and can be analyzed for their reasonableness.

Accordingly, the district court did not err in denying ROA’s request to supplement the record with emails that were not sent to, or considered by, any decision-makers.

C. The district court did not err in denying ROA’s request to add to the record of decision depositions of the mayor, city council members, and a city staff member.

“[P]ublic policy requires that the time and energies of public officials be conserved for the public’s business.” *Ellingson & Assocs., Inc. v. Keefe*, 396 N.W.2d 694, 696 (Minn. App. 1986) (quotation omitted). Given “the volume of litigation to which the government is a party,” this court has recognized that “a failure to place reasonable limits upon private litigants’ access to responsible governmental officials as sources of routine pre-trial discovery would result in a severe disruption of the government’s primary function.” *Id.* at 696-97 (quotation omitted). In cases involving city council members, depositions are “the most burdensome and disruptive form of discovery.” *Stone’s Auto Mart, Inc. v. City of St. Paul, Minn.*, 721 F. Supp. 206, 211 (D. Minn. 1989).

Here, ROA sought the depositions of the mayor and multiple city council members to demonstrate that their decisions were “tainted by bias and consideration of incorrect factors.” However, the record of decision provides the basis for each of these decisions. The mayor, after vetoing the city council’s decision to overturn the board’s denial of the variance, provided a written explanation for her decision. This document is included in the record of decision. Further, the entire transcript of the August 7, 2023, city council meeting on the motion to override the mayor’s veto is included in the record of decision. In the transcript, numerous councilmembers provide a basis for their decision. This includes a discussion from councilmember Kirkpatrick on her decision to abstain.

Given the completeness of the record on this issue, and the burden and disruption these depositions would place on the city, the district court did not err in determining that

these depositions would be “cumulative and burdensome.” Further, ROA’s request to depose a city staff member—a non-decision-maker whose reports are included within the record of decision and can be analyzed for their reasonableness—is unnecessary and overly burdensome.

Accordingly, the district court properly denied ROA’s request to add to the record of decision the depositions of the mayor, certain city council members, and a city staff member.

II. The district court erred in substituting the standard for closing a city council meeting under the Minnesota Open Meeting Law in place of the Minnesota Supreme Court’s standard for the attorney-client privilege.

The city argues that the district court applied the wrong legal standard to determine whether the August 7, 2023, city attorney email was privileged. Specifically, the city contends that the district court incorrectly relied on caselaw which addressed closing a city council meeting under the OML instead of applying the supreme court’s standard to determine whether a document is privileged. We agree.

The attorney-client privilege exception to the OML allows a public body to close a meeting to discuss pending or prospective litigation. *See Minneapolis Star & Trib. Co. v. Hous. & Redevelopment Auth. In & For City of Minneapolis*, 251 N.W.2d 620, 626 (1976); *see also Prior Lake Am. v. Mader*, 642 N.W.2d 729, 737 (Minn. 2002). The caselaw provides that the attorney-client privilege exception to the OML applies only when there is a need for “absolute confidentiality.” *Id.* In reliance on this caselaw, the district court determined that the city had not demonstrated the August 7 email required the need for absolute confidentiality, and as a result, that the attorney-client privilege did not apply to

the email. However, as the district court had already concluded that there was no open meeting for purposes of the August 7 email, its reliance on cases analyzing the attorney-client privilege exception to the OML was erroneous. Instead, the district court should have applied caselaw analyzing whether a document from an attorney to their client is protected under the attorney-client privilege, as privilege is a distinct basis to withhold a document.

The attorney-client privilege applies:

(1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived.

Energy Pol’y Advocs. v. Ellison, 980 N.W.2d 146, 152 (Minn. 2022) (quoting *Kobluk v. Univ. of Minnesota*, 574 N.W.2d 436, 440 (Minn. 1998) (quotation omitted)). “The purpose of the privilege is to encourage the client to confide openly and fully in his attorney without fear that the communications will be divulged and to enable the attorney to act more effectively on behalf of his client.” *Kobluk*, 574 N.W.2d at 440 (quotation omitted).

Accordingly, we reverse and remand for the district court to apply the correct standard to determine whether the August 7 email was protected by the attorney-client privilege.

III. The district court did not err in determining that ROA was not entitled to a sign permit as the proposed billboard violated the plain language of the ordinance.

ROA argues that the place of worship spacing restriction is ambiguous, that an alternative construction applies, and that ROA is entitled to the sign permit as a matter of law. We disagree.

“Interpretations of state statutes and existing local zoning ordinances are questions of law that this court reviews de novo.” *Clear Channel Outdoor Advert., Inc. v. City of St. Paul*, 675 N.W.2d 343, 346 (Minn. App. 2004) (quotation omitted). The rules governing statutory interpretation apply to the interpretation of city ordinances. *In re Haslund*, 781 N.W.2d 349, 354 (Minn. 2010). When interpreting an ordinance, “a court must first determine whether the [ordinance’s] language, on its face, is ambiguous.” *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). Courts interpret an ordinance’s words according to their plain and ordinary meaning using the rules of grammar. *Frank’s Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980); Minn. Stat. § 645.08(1) (2024). An ordinance “is only ambiguous when the language therein is subject to more than one reasonable interpretation.” *Motokazie! Inc. v. Rice Cnty.*, 824 N.W.2d 341, 344 (Minn. App. 2012). “Where the legislature’s intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute’s plain meaning.” *Am. Tower, L.P.*, 636 N.W.2d at 312. “Although the city’s action is not determinative, its interpretation is entitled to some weight.” *Chanhassen Ests. Residents Ass’n v. City of Chanhassen*, 342 N.W.2d 335, 340 (Minn. 1984).

UDC § 60.400.110G.1.d provides the following language and figure:⁴

No billboard shall be located within 300 feet of a Place of Worship, School, or Medical Facility. This distance shall be measured from the nearest edge of the billboard to the Place of Worship, School, or Medical Facility to the closest point on any boundary line of the Place of Worship, School, or Medical Facility property as shown in Figure 1d. This restriction only applies to Place of Worship, School, or Medical Facility properties that abut the same right-of-way where a billboard is oriented, regardless of whether the billboard is located on the same side or the opposite side of the right-of-way as the Place of Worship, School, or Medical Facility.

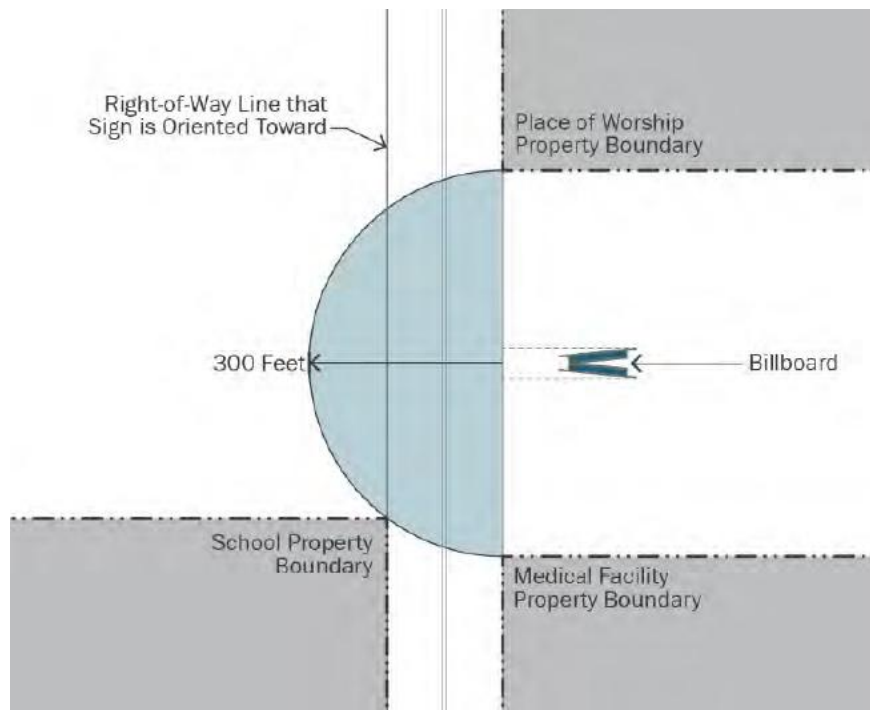


Figure 1d

ROA proposes the alternative construction that “the spacing restriction is not implicated so long as the billboard is not oriented (viz., directed) to the right of way directly abutting the place of worship.” ROA contends that as the “proposed billboard was not directed toward [the church]” that it was not prohibited by the spacing restriction. To

⁴ This graphic is not to scale and is only meant to illustrate the ordinance’s provisions.

support this argument, ROA contends that the term “right-of-way” is ambiguous, that the definition “refers to a strip of land set aside for a specific use, not to an entire street or highway,” and that the term “oriented” should not be interpreted to be synonymous with “abut.” Because the ordinance is unambiguous, ROA’s argument fails.

The UDC provides definitions for the terms “right-of-way” and “abut.” *See* UDC § 60.600.030. “Right-of-way” is defined as “[a] strip of land acquired by dedication, reservation, prescription, or condemnation occupied or intended to be occupied by a road, crosswalk, utility line, railroad, electric transmission line, streetscape improvements, street furniture, or other similar use.” *See id.* “Abut” is defined as “[t]o share a common lot line for a distance greater than a point.” *See id.*

The frontage road located adjacent to the properties is “a strip of land . . . occupied by a road.” *See id.* As such, the frontage road clearly meets the definition of a right-of-way. The fact that the definition uses the term “a strip of land” does not render the definition ambiguous. Further, the record clearly reflects that the church abuts this frontage road. Thus, ROA’s argument on this point is unpersuasive.

The term “oriented” is not defined by the UDC. *See generally* UDC § 60.600.030. However, under the UDC’s rules of construction, “[a]ll words and terms used in this UDC have their commonly accepted dictionary meaning unless they are specifically defined in this UDC or the context in which they are used clearly indicates to the contrary.” UDC § 60.600.010(B). The parties agree that “oriented” means “directed” at or “facing.” Applying this definition, ROA’s proposed billboard would be “directed” at, or “facing,” the frontage road. As the church abuts the same right-of-way (the frontage road) the

proposed billboard would be oriented towards, and because the church is located within 300 feet of the proposed billboard, the proposed billboard would clearly violate the UDC.

In sum, based on the ordinance's plain and ordinary language, the ordinance has only one reasonable interpretation: A billboard cannot be located within 300 feet of a place of worship, as properly measured, where the place of worship abuts a right-of-way, and the billboard is oriented toward that same right-of-way. Here, ROA seeks to place a billboard 165 feet from a place of worship (the church), where the place of worship abuts a right-of-way (the frontage road), and where the billboard will be oriented toward the right-of-way (the frontage road). Nowhere in the UDC does it address how the billboard must be oriented with respect to the place of worship. As such, ROA's proposed alternative construction improperly adds language to the unambiguous ordinance. *See Rohmiller v. Hart*, 811 N.W.2d 585, 590 (Minn. 2012) (stating the court "cannot add words or meaning to a statute that were intentionally or inadvertently omitted"). As the ordinance is unambiguous, this court need not reach ROA's policy argument. *See Energy Pol'y Advocs.*, 980 N.W.2d at 162 (stating that the court does not consider policy when the language of the statute is unambiguous).

Accordingly, the district court did not err in determining that ROA's proposed billboard violated the plain language of the ordinance. As such, the district court properly determined that ROA was not entitled to a sign permit.

IV. The district court did not err in determining the record of decision adequately supports the denial of the variance.

ROA argues that the denial of the variance was arbitrary, capricious, unsupported by substantial evidence, and contrary to the law. The UDC provides that a variance shall be approved if each of the listed criteria (a through i) have been satisfied. *See* UDC § 60.500.070(C)(4). ROA challenges the city’s decisions for multiple criteria. Because at least one of the city’s given reasons for the denial of the variance is adequately supported by the record of decision, ROA’s argument fails.

Appellate courts review a local government’s zoning decision “independent of the findings and conclusions of the district court.” *Nw. Coll. v. City of Arden Hills*, 281 N.W.2d 865, 868 (Minn. 1979). “Municipalities have broad discretionary power in considering whether to grant or deny a variance.” *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721, 727 (Minn. 2010) (quotation omitted). An appellate court reviews a municipal variance decision “to determine whether the municipality was within its jurisdiction, was not mistaken as to the applicable law, and did not act arbitrarily, oppressively, or unreasonably, and to determine whether the evidence could reasonably support or justify the determination.” *Id.* (quoting *In re Stadsvold*, 754 N.W.2d 323, 332 (Minn. 2008) (internal quotation omitted)).

“On appeal we affirm a municipality’s decision so long as any one stated reason shows its decision was not arbitrary or capricious.” *Roselawn Cemetery v. City of Roseville*, 689 N.W.2d 254, 259 (Minn. App. 2004). If any one of the city’s stated reasons is “legally sufficient” and has “a factual basis” in the record of decision, the denial of the variance is not arbitrary, capricious, or unreasonable. *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 508 (Minn. 1983). Appellate courts defer to a municipality’s

decision when the factual basis for the denial has even the “slightest validity.” *Roselawn Cemetery*, 689 N.W.2d at 259 (quoting *White Bear Docking & Storage, Inc.*, 324 N.W.2d at 176).

A. At least one of the city’s stated reasons for the denial of the variance is adequately supported by the record of decision.

1. Criterion c: Practical difficulties unique to the property

To satisfy criterion c, the applicant must prove that:

The practical difficulties are unique to the property, are not solely economic considerations, and have not been created by the landowner. Examples of practical difficulties that are unique to the property include but are not limited to irregularity, narrowness, or shallowness of the lot, exceptional topographical or physical conditions, or inadequate access to direct sunlight for solar energy systems, that are peculiar to the property that do not apply to other lands within the neighborhood or the same class of zoning district.

UDC § 60.500.070(C)(4)(c).

The board found that ROA failed to satisfy this criterion because ROA’s plight is not unique to the property:

No practical difficulties exist on the site as it is currently being used as a storage facility, in compliance with the zoning ordinance. If practical difficulties do exist, the difficulties are created by the landowner and are based solely on economic considerations to increase revenue. There is nothing unique to this site (narrowness, topography, etc.) that does not apply to all other sites in an MX-G Zoning District.

This court has determined that unique circumstances are not created by hardship imposed from the property owner’s decision-making. *See Graham v. Itasca Cnty. Plan. Comm’n*, 601 N.W.2d 461, 467-468 (Minn. App. 1999) (stating that neither the

landowner's mistaken knowledge of a zoning ordinance nor the decision to purchase adjacent lots, which imposed the hardship, constituted unique circumstances). Similarly, here, while ROA may argue that the lot's size makes it impossible to place a billboard outside of the 300-foot requirement, that does not constitute a unique circumstance. The ordinance was in place, and the church was in its location, when ROA entered the lease. The fact that ROA now claims that it cannot lease the property as it intended (to build and maintain a billboard), when the ordinance was in effect at the time the lease was entered, does not create unique circumstances justifying a variance. *See id.*

While ROA argues that a unique circumstance is created by the church not opposing the variance, this argument is unpersuasive. A third-party's approval of a variance is not a practical difficulty unique to the property, nor is it a factor this court is required to consider. *See* UDC § 60.500.070(C)(4)(c).

Accordingly, because unique circumstances are not created by hardship imposed from the property owner's decision-making, the city did not err in determining that ROA had failed to demonstrate practical difficulties unique to the property.

2. Criterion e: Essential character

To satisfy criterion e, the applicant must prove that "[t]he [v]ariance will not alter the essential character of the surrounding area." UDC § 60.500.070(C)(4)(e).

The board found that ROA had failed to satisfy this criterion because:

The Variance will alter the essential character of the surrounding area, as a Place of Worship is located within 300 feet of where the billboard is being proposed. The Land Development Manual and the new Unified Development Code specifically identify three uses (Places of Worship, Medical

Facilities, and Schools) that should not be located within 300 feet of any new billboard. The proposed billboard seeks to reduce the distance between the billboard and Homestead Church from 300 feet to approximately 165 feet—a 45% reduction in the required distance between a billboard and a Place of Worship.

ROA asserts that, because the church moved onto the neighboring property with an existing billboard less than 300-feet away, and because there was a second billboard that stood for over 30 years and was located 75 feet from where ROA now seeks to place the new billboard, that ROA’s proposed billboard would maintain rather than change the essential character of the area. While this argument does have some merit, municipalities still retain discretion in deciding whether to grant or deny a variance. *See Krummenacher*, 783 N.W.2d at 723. Here, both billboards that ROA references were in place at the time the church moved into the neighboring property. The board’s findings clarify that the ordinance is directed at *new* billboards, not existing ones. Because the second billboard was removed in 2023, only one billboard remains. Therefore, it was not unreasonable for the board to determine that ROA had failed to satisfy this criterion.

ROA additionally challenges the mayor’s veto as the mayor, in the written explanation of her decision, stated that “[t]he variance could be detrimental to public health and create a slippery slope for future billboard variances.” Even assuming ROA’s argument is correct, the mayor provided at least one legally sufficient reason for her decision when she agreed with the board that ROA had failed to meet criterion c, stating “[t]here is no existing practical difficulty or unique feature of the site.” This reason alone is sufficient to demonstrate that the mayor’s decision was not arbitrary or capricious. *See*

Roselawn Cemetery, 689 N.W.2d at 259 (stating “[o]n appeal we affirm a municipality’s decision so long as any one stated reason shows its decision was not arbitrary or capricious”).

Accordingly, because ROA sought a substantial deviation from the setback requirement and has failed to demonstrate that the variance would not alter the essential character of the surrounding area, the record of decision adequately supports the city’s denial of the variance.⁵

B. The proceedings were not fundamentally unfair.

ROA argues that the city’s proceeding was fundamentally unfair, rendering the city’s denial of the variance arbitrary and capricious. ROA cites (1) the city attorney’s email communications to the city council; (2) Councilmember Dennis’ change of vote; (3) Councilmember Kirkpatrick’s abstention; and (4) the city council’s decision not to postpone the vote on the mayor’s veto. Each of these arguments will be addressed in turn.

1. The city attorney’s email communications

ROA argues that the city attorney’s July 28 email contained factual and legal inaccuracies that shifted the votes of “multiple councilmembers,” and that this email rendered the entire proceeding unfair. We disagree.

⁵ ROA additionally argues that the city applied the wrong legal standard for criterion b, reasonable use. However, even assuming ROA’s requested variance is a reasonable use of the property, because the record of decision supports the city’s determination as to criteria c and e, this factor alone does not render the city’s decision arbitrary and capricious. *See Roselawn Cemetery*, 689 N.W.2d at 259.

ROA characterizes the July 28 email by stating the city attorney urged the city council to “defer to the [s]taff’s recommendations or face ‘greater legal risk.’” This characterization is inaccurate. The city attorney made clear in the July 28 email that he was not suggesting the council should always agree with staff, but rather that the council should be “thoughtful” when doing so. The relevant portion of the email states:

From a legal perspective, the Council should be very careful and deliberate when choosing to dismiss or ignore staff’s proposed finding. Don’t misunderstand me, *I am not suggesting that Council should always agree with staff.* But particularly on quasi-judicial matters, the body should be very thoughtful when deviating from staff’s recommendation. The City assumes greater legal risk if a body ignores staff’s recommendations and fails to offer well-reasoned and legally valid alternative Findings.

(Emphasis added.)

ROA also takes issue with the city attorney’s advice that the council, as a quasi-judicial decision-making body, should focus on the legal criteria in deciding the matter as opposed to other factors. It is not inappropriate for an attorney to advise his client to focus on the legal criteria when deciding on a variance, and ROA has not presented any evidence that the city attorney instructed the council to disregard the legal criteria or otherwise act unfairly.

Moreover, ROA’s contention that the city attorney’s emails shifted the votes of “multiple councilmembers,” is incorrect. Of the five council members who voted to reverse the board’s denial, only Councilmember Dennis voted against the motion to override the veto. Councilmember Dennis provided multiple reasons on the record for her change of vote.

As such, ROA's contention that the city attorney's July 28 email rendered the entire proceeding unfair is unpersuasive. Because we reverse and remand for the district court to apply the correct standard to determine whether the August 7 email is protected by the attorney-client privilege, we need not analyze the fairness of that email on appeal at this time.

2. Councilmember Dennis's vote

ROA argues that Councilmember Dennis's vote in favor of the veto was unfair because Dennis had a phone call with a constituent that influenced her vote. Councilmember Dennis's interrogatory answers state that the constituent "brought up that even if Councilmember Dennis trusted ROA to comply with the conditions for the variance, the company could be sold in the future, and there was nothing to ensure that a new company would comply." ROA also contends that, because the conditions on the variance would remain in effect if the leased property was sold, or if ROA was sold, that Councilmember Dennis based her decision on an incorrect theory of law. We disagree.

The supreme court has established that variance applicants bear a heavy burden to demonstrate entitlement to a variance grant. *See Luger v. City of Burnsville*, 295 N.W.2d 609, 612 (Minn. 1980) (explaining that because "[a] variance allows property to be used in a manner forbidden by the ordinance . . . a heavy burden is imposed on an applicant for a variance to show that its grant is appropriate"); *see also Krummenacher*, 783 N.W.2d at 727-28 (explaining that a variance applicant must meet all of the applicable statutory requirements before being granted a variance). For the reasons discussed above, the record of decision reflects that ROA failed to meet their burden. The transcript of the August 7

city council meeting reflects that Councilmember Dennis did not have any background in zoning at the time of her vote to overturn the board's denial of the variance. Dennis explained that, at the time, she "was in very much support of [the] project because it did not impact the residents around the billboard." Councilmember Dennis goes on to explain that due to the "depletion of the information" she had during her first vote, she "wasn't able to articulate the reasons that need[ed] to be a foundation." The burden was on ROA to provide Councilmember Dennis with the foundation needed to support the variance. *See id.* The record of decision, and the transcript of the August 7 city council meeting, reflect that ROA failed to meet this burden.

3. Councilmember Kirkpatrick's abstention

ROA argues that Councilmember Kirkpatrick was biased and "could not act as an objective and impartial decision-maker on ROA's variance in light of this bias." However, the record does not support ROA's contention. During the July 24 city council meeting, Councilmember Kirkpatrick voted in favor of ROA when she voted to overturn the board's denial of the variance. Then, during the August 7 city council meeting, Councilmember Kirkpatrick abstained from voting altogether. Kirkpatrick explained that she "continue[d] to go back and forth on both sides," and was "unable to make a just decision either way." It is appropriate for a councilmember to abstain when they cannot vote in a neutral manner. *See Cont'l Prop. Grp., Inc. v. City of Minneapolis*, No. A10-1072, 2011 WL 1642510, at *6-7 (Minn. App. May 3, 2011) (explaining that a biased city council member should not have participated in the city council decision and remanding to the city council for a new hearing and decision without the biased councilmember). As such, ROA's contention that

Councilmember Kirkpatrick's abstention resulted in unfairness toward ROA is unpersuasive.

4. The city council's decision not to postpone the vote on the mayor's veto

ROA argues that the city's decision to conduct the vote on the mayor's veto at the regular council meeting immediately following the veto was unfair, and that the city should have postponed the vote until Councilmember Bransford could be in attendance.⁶ We disagree.

Rochester City Ordinance § 6.03 provides:

If the mayor approves the same, the mayor shall sign it, adding the date of approval thereto. The mayor shall then return it to the city clerk within five days of receipt from the city clerk. If the mayor declines to approve the same, the mayor shall, within said five days, return it to the city clerk with a statement of objections thereto, *to be presented to the common council at its next meeting thereafter.*

(Emphasis added.)

Presenting the mayor's veto to the city council at the meeting immediately following the veto is expressly contemplated by the ordinance. In contrast, the ordinance does not contemplate postponing the vote. Here, the mayor issued the veto on July 27. The vote on whether to override the mayor's veto was held at the next city council meeting, occurring on August 7. The vote was conducted in accordance with the ordinance. As a result, it was not unfair for the city to hold the vote on the mayor's veto at the regular council

⁶ Councilmember Bransford voted in favor of ROA on July 24 and indicated via email that he would be voting in favor of overturning the mayor's veto, had he been present for the vote.

meeting immediately following the veto, even if it meant Councilmember Bransford could not be in attendance.

Accordingly, the district court did not err in determining the city's proceedings were not fundamentally unfair.

V. The district court did not err in determining that the city did not violate the Minnesota Open Meeting Law.

ROA argues that it is entitled to summary judgment on its OML claim because the district court erred in concluding the city attorney's July 28 and August 7 emails did not violate the OML. We disagree.

"On appeal from summary judgment, we review whether there are any genuine issues of material fact and whether the district court erred in its application of the law. We view the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002) (citations omitted). "We review de novo whether a genuine issue of material fact exists. We also review de novo whether the district court erred in its application of the law." *Id.* at 77 (citations omitted). The interpretation of a statute is a question of law that is reviewed de novo. *Funk v. O'Connor*, 916 N.W.2d 319, 321 (Minn. 2018).

"All meetings . . . of the governing body of a . . . statutory or home rule charter city" must be open to the public. Minn. Stat. § 13D.01, subd. 1(b)(4). What constitutes a "meeting" is undefined by statute, but caselaw has provided that the OML applies to "those gatherings of a quorum or more members of the governing body, or a quorum of a committee, subcommittee, board, department, or commission thereof, at which members

discuss, decide, or receive information as a group on issues relating to the official business of that governing body.” *Moberg v. Indep. Sch. Dist. No. 281*, 336 N.W.2d 510, 518 (Minn. 1983). This court has recognized that the quorum requirement in *Moberg* “reflects the supreme court’s unwillingness to subject gatherings of public officials to the open meeting law where the group lacks power to actually transact business.” *Sovereign v. Dunn*, 498 N.W.2d 62, 66 (Minn. App. 1993) (quotation omitted), *rev. denied* (Minn. May 28, 1993).

In *Moberg*, the supreme court clarified that “[t]he [OML] statute does not apply to letters, or to telephone conversations between fewer than a quorum” of members. *Moberg*, 336 N.W.2d at 518. In that case, the court held that there was no OML violation when, at a gathering attended by all board members, “the superintendent distributed, but did not discuss, written copies of the questions and answers and invited Board members to give him their reactions individually after they had had an opportunity to read the material.” *Id.* The court explained that the “distribution of written questions and answers was functionally equivalent to receiving the information through the mail” and that there was “no danger of forming a group consensus because no information was actually received until the material was read, and no discussion occurred.” *Id.* at 518-19.

Here, a quorum of the city council requires four members. In the July 28 email, the city attorney emailed the city council president, the mayor, cc’d city staff, and bcc’d the remaining members of the city council “to avoid an unintended open meeting law violation.” Following receipt of the July 28 email, it is true that some city council members replied to the city attorney, or exchanged emails with other members; however, no emails

were exchanged between a quorum of the city council.⁷ In the August 7 email, the city attorney emailed the city council president, the mayor, cc'd city staff, and bcc'd the remaining members of the city council to "avoid OML violations." Again, there is nothing in the record of decision to indicate that subsequent email discussion took place among a quorum of the council.

In sum, the July 28 and August 7 emails from the city attorney (a non-decision-maker) to all council members are not "meetings" under the OML because there is no evidence that a quorum of the council (in this case, at least four members) discussed the contents of the email messages in a non-public setting. Because the emails were not open meetings within the scope of the OML, ROA was not entitled to copies of the emails prior to any city proceeding.

Accordingly, the district court did not err in determining that the city did not violate the OML.

Affirmed in part, reversed in part, and remanded.

⁷ Councilmember Mark Bransford replied to the city attorney's email and included Councilmember Shaun Palmer; Councilmember Bransford emailed the city attorney and included Council President Brooke Carlson and Councilmember Patrick Keane; emails were exchanged between Councilmember Keane, Mayor Norton, the city attorney, and Council President Carlson; emails were exchanged between Councilmember Keane and Councilmember Bransford with the city attorney and Council President Carlson included; Councilmember Dennis emailed the city attorney with Councilmember Kirkpatrick and Council President Carlson included.