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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1506**

Frank R. Dropps,
Appellant,

vs.

Brunswick Township, et al.,
Respondents.

**Filed June 1, 2026
Affirmed in part, reversed in part, and remanded
Ross, Judge**

Kanabec County District Court
File No. 33-CV-24-231

Jared M. Goerlitz, Goerlitz Law, PLLC, St. Paul, Minnesota (for appellant)

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Minnesota (for respondents)

Considered and decided by Bratvold, Presiding Judge; Ross, Judge; and Smith,
John, Judge.*

NONPRECEDENTIAL OPINION

ROSS, Judge

Frank Dropps purchased two undeveloped lots in Brunswick Township and later sought to subdivide each into two and build a house on all four resulting parcels. The

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

township at first denied Dropps's subdivision application based on its housing-density ordinance. The township later approved and certified the application but added handwritten language before recording it. It later agreed to record the untainted and approved version but denied Dropps's application to build a house on each lot based on the density ordinance. Dropps sought review of that denial in the district court and sued the township, alleging slander of title, breach of contract, and regulatory taking. The district court granted summary judgment favoring the township. We affirm in part and reverse in part, concluding that Dropps's slander-of-title claim survives summary judgment.

FACTS

Frank Dropps and his wife gained title to two undeveloped lots totaling about 54 acres in Brunswick Township in 2020. They sought to subdivide each of the lots in two, leaving four parcels that the township, and now we, refer to as parcels G, H, I, and J. The township at first denied Dropps's effort to subdivide the lots based on the township's housing-density restriction, which limits the building of single-family homes as follows:

No more tha[n] three (3) [single-family] dwellings shall be allowed per quarter of a quarter section of land, and shall only be permitted if the lot or parcel of land upon which the dwelling is located fronts an existing public road. Any existing lots of record shall be considered buildable []regardless of this density requirement.

The first lot that Dropps sought to subdivide (the one that became parcels G and H) occupied the "Southwest Quarter of the Southeast Quarter" of a township section, and two of the remaining three lots in that quarter-of-a-quarter section each already contained a dwelling. The second lot (the one that became parcels I and J) also sat in a quarter-of-a-

quarter section with two parcels each already containing a dwelling. The township's zoning administrator therefore denied Dropps's building applications.

But the Brunswick Township Board of Adjustment and Appeal reversed that decision in October 2021 and allowed the subdivision after Dropps filed for review in this court and sent the board a letter entitled "Description of Request." The letter clarified that Dropps was "not asking to build a dwelling" and assured the board that he intended only "to divide each parcel allowing for one parcel to be sold as a dwelling site or other permitted use [and] the remaining parcel to be used for farming or other permitted uses." His assurance continued, "If we were asking to build a fourth dwelling within a quarter of a quarter section, we would agree with the Zoning Administrator's denial of such request." And he added, "In the future, if we made such a dwelling permit request, the Zoning Administrator would have a clear basis for denial" because the township could "enforce [the density ordinance] when necessary, even after the approval of our minor subdivision request." The township approved the subdivision applications to create parcels G, H, I, and J. It also amended its ordinance, adding to it that "no more than three . . . dwellings or no more than three . . . parcels shall be allowed per quarter of a quarter section of land," and it amended its definition of "Lot of Record" to be "[a] parcel of land, whether subdivided or otherwise legally described of record as of the effective date of this Ordinance."

Dropps dismissed his pending appeal to this court. He executed four warranty deeds transferring the parcels to himself and his wife as joint tenants and recorded the deeds and subdivision-application certificates eight days later.

In November 2021, the township recorded Dropps's approved subdivision applications, which included the following handwritten statements that were not written by Dropps and that had not been on the applications when he signed them: "Only one . . . parcel of I or J buildable for dwelling on a first come building permit" and "Only one . . . parcel of G or H buildable for dwelling on a first come building permit." Two years later, Dropps's attorney wrote the township in April 2023 objecting to the added handwritten statements on the executed and approved applications, and the township board adopted a resolution to amend them by removing the statements.

Dropps submitted four applications to the township to build a residential structure on each of the four parcels. The zoning administrator partially denied his applications, reasoning that Dropps could build on only two of the parcels under the density ordinance and asking Dropps to identify which of the two parcels he wanted to build on.

Dropps appealed that denial to the Board of Adjustment and Appeal, which affirmed the zoning administrator's decision based on the township's zoning regulations as they existed in October 2021 when the township approved Dropps's subdivision applications. The board concluded that Dropps had not created "lots of record" so as to exempt any parcel from the density ordinance. It emphasized Dropps's assurances in his Description of Request letter and applied the density ordinance to the four parcels. Because each parcel G and H, and separately I and J, sat in a quarter-of-a-quarter section with two existing dwellings, the board agreed with the zoning administrator that Dropps could build only a single dwelling in each pair.

Droppps sued the township in district court. He sought a writ of mandamus and a writ of *certiorari* compelling the township to approve his building applications. He also alleged slander of title over his recorded subdivision applications and breach of contract, claiming that the township had agreed to allow him to build dwellings on all four lots in exchange for his dismissing the 2021 *certiorari* appeal. Droppps also sought judgment declaring that a new 2022 ordinance defining a “non-buildable parcel” constituted an unconstitutional regulatory taking. The township moved for summary judgment. Before responding to that motion, Droppps moved the district court for leave to amend his complaint to add a claim for punitive damages.

The district court entered summary judgment favoring the township. It interpreted Droppps’s mandamus and *certiorari* requests as a demand for a declaratory judgment that the density ordinance did not apply to his parcels, and it upheld the board’s decision as not arbitrary or capricious. Regarding the slander-of-title claim, the district court held that Droppps failed to create a fact dispute as to whether the township published a false statement or whether it did so maliciously. Regarding the breach-of-contract claim, the district court saw no fact dispute as to whether a contract existed between him and the township. And it held that Droppps’s regulatory-taking claim failed as a matter of law under a *Penn Central* analysis. The district court deemed Droppps’s motion to amend the pleadings moot.

Droppps appeals.

DECISION

Droppps raises various challenges on appeal. He argues that the district court erroneously concluded that the township properly denied his building application because

it misinterpreted its zoning ordinances. He argues also that the district court erroneously entered summary judgment against his claims of slander of title, breach of contract, and regulatory taking. And he argues that the district court improperly refused to allow him to add a claim for punitive damages to his complaint. We address each argument in turn.

I

Droppps does not challenge the district court’s recharacterization of his claims for writs of mandamus and *certiorari* as a request for declaratory judgment. *See Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 179 (Minn. 2006) (analyzing a plaintiff’s inappropriate writ-of-mandamus request as a declaratory-judgment request). He argues that the district court erroneously dismissed his claim for a declaratory judgment because it misconstrued the township’s density ordinance. We review the district court’s interpretation of the township’s zoning ordinances *de novo*, and we review the Brunswick Board of Adjustment and Appeal’s factual determinations and quasi-legislative decisions for reasonableness. *Meleyco P’ship No. 2 v. City of West St. Paul*, 874 N.W.2d 440, 442–43 (Minn. App. 2016). Applying these standards of review to the circumstances before us, we affirm the district court’s summary-judgment decision.

Droppps urges us to apply a less deferential standard of review, maintaining that the board’s proceeding was not “clear and complete” under *Swanson v. City of Bloomington*, which entitled him to a new and full trial on this issue in district court and results in *de novo* rather than deferential appellate review. 421 N.W.2d 307, 313–14 (Minn. 1988). But we generally do not consider issues that were not presented to and decided by the district court, *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), and Droppps presents the issue

for the first time in his reply brief on appeal, never having raised it in the district court. Dropps maintains that we should nevertheless apply his proposed review standard because the district court allowed for discovery of evidence beyond what the board considered. But the district court proceedings addressed not only Dropps's review of the board's decision but also new claims and the discovery related to those claims. And despite the availability of new evidence, the district court properly limited its review of the board's decision to the materials in the board's record. *See Swanson*, 421 N.W.2d at 311 (explaining that the typical scope of review for zoning appeals is "the record made before the local zoning body"). We proceed with our review standard as we have outlined it.

Dropps maintains that the district court erroneously interpreted the term "quarter of a quarter" in the township's density ordinance, which allows for no more than three single-family homes in any "quarter of a quarter section of land." According to Dropps, the word "section" in this ordinance is a 40-acre landmass. We review *de novo* a district court's interpretation of a municipality's zoning ordinances. *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). Our *de novo* review supports the district court's rejection of Dropps's argument.

The district court properly interpreted the density ordinance to include Dropps's parcels because it correctly gave the phrase "quarter of a quarter section" its intended technical meaning. *See Jaeger v. Palladium Holdings, LLC*, 884 N.W.2d 601, 605 (Minn. 2016). The record eliminates any uncertainty. It informs us that Brunswick Township is organized based on land surveys marked by sections that are divided into quarters, which are themselves further divided into quarters. The phrase, "quarter of a quarter section of

land” carries an unambiguous technical meaning that tracks the marked surveys with its predetermined sections: quarters, and quarter of quarters. By contrast, Dropps bases his 40-acre definition on out-of-context deposition testimony by township officials and miscellaneous minutes of township meetings that refer to the density ordinance colloquially as a “three per 40” rule. We are confident that language used officially in the township’s ordinance follows the township’s official mapping rather than the informal idiom that was adopted by several township members for reasons that neither Dropps nor the record explains. The district court correctly interpreted the term.

Dropps next argues that even if his parcels are subject to the density ordinance, they qualify for its “lot of record” exception. The density ordinance includes the caveat, “Any existing lots of record shall be considered buildable []regardless of this density requirement.” And the township’s ordinances define a “lot of record” as follows:

A parcel of land, whether subdivided or otherwise legally described of record as of the effective date of this Ordinance, or approved by the Town as a lot subsequent to such date and which is occupied by or intended for occupancy by one (1) principal building or principal use together with any accessory buildings and such open spaces as required by this Ordinance and having its principal frontage on a street, or a proposed street approved by the Board.

According to Dropps, the board misinterpreted the ordinance to require an intended “principal use” to be accompanied by an “accessory building” for a subdivided parcel to become a lot of record because “*any* accessory building” could mean *no* accessory building. The township’s reading of the ordinance to require at least one accessory building is more contextually plausible. It gives “any” its ordinary meaning as an adjective. *The*

American Heritage Dictionary of the English Language 83 (3d ed. 1992) (defining “any” as, “One, some, every, or all without specification”); *see also Christianson v. Henke*, 831 N.W.2d 532, 536–37 (Minn. 2013) (explaining that words in a statute are generally to be given their ordinary meaning). And it gives effect to the broader phrase of “together with any accessory buildings.” By contrast, Dropps’s definition would render the entire phrase superfluous, conflicting with our presumption that every statutory provision has effect. *In re Khan*, 804 N.W.2d 132, 142–43 (Minn. App. 2011) (applying the precept that every statutory provision has meaning to a local ordinance). The township correctly read “lot of record” to involve a principal use and an accessory building.

This leads us to Dropps’s argument that fact issues remain over whether he intended to occupy his parcels with a principal building or use and therefore qualified for the “lot of record” exception. After a clear and complete municipal-ordinance proceeding, this court reviews the municipal record and will set aside the municipality’s zoning decision only if it was unreasonable. *Swanson*, 421 N.W.2d at 313. A municipality’s zoning decision is reasonable if it gives at least one legally sufficient reason for its decision and the reason finds support in the record. *St. Croix Dev., Inc. v. City of Apple Valley*, 446 N.W.2d 392, 398 (Minn. App. 1989), *rev. denied* (Minn. Dec. 1, 1989). The township board acted reasonably by concluding that Dropps lacked the requisite intent to create “lots of record” by subdividing his lots. The board’s denial states that it considered all materials that Dropps submitted with the application before reaching its decision. It observed that Dropps’s subdivision application said that the subdivided parcels would continue to be leased for farming and that his Description of Request stated that he did not seek to build a dwelling

on each parcel. It observed that his submissions expressed an intent to commit the parcels only to some permitted use, not to any specific principal use. Given the clearly reasoned approach the board took when deciding the matter, we hold that its decision passes our review for reasonableness.

We are not persuaded otherwise by Dropps's counterarguments that the record includes facts that could lead to a different result and that the board should not have relied on his Description of Request letter because it was written by his legal counsel as an argument rather than as a statement of fact. The arguments fail under our standard of review, which calls us to assess the decision for reasonableness rather than consider whether the record might support some different result. We affirm the district court's grant of summary judgment to the township on Dropps's declaratory-judgment claim.

II

Dropps's slander-of-title claim fares better against the township's summary-judgment effort. We review *de novo* whether any genuine issues of material fact preclude summary judgment. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). The nonmoving party can prevent summary judgment by presenting evidence from which a reasonable person could draw conclusions that defeat the moving party's legal argument. *Schroeder v. St. Louis County*, 708 N.W.2d 497, 507 (Minn. 2006). A successful slander-of-title claim requires proof of a false statement concerning real property owned by the claimant, the publication of the false statement, malice in its publication, and pecuniary losses that constitute special damages. *Paidar v. Hughes*, 615 N.W.2d 276, 279–80 (Minn. 2000). Dropps argues persuasively that genuine

issues exist as to the falsity of the handwritten inscription that, according to Dropps, some township official maliciously included on the approved subdivision documents recorded with Kanabec County.

Summary judgment is improper here. Although the added handwritten statements on the recorded documents were substantively correct—Dropps could build only one dwelling on either parcel G or H and only one on either parcel I or J because of the density ordinance—a plaintiff can satisfy the falsity element in a slander-of-title claim by proving that the defendant filed “for record an instrument known to be inoperative.” *Kelly v. First State Bank of Rothsay*, 177 N.W. 347, 347 (Minn. 1920). Inoperative legal instruments are those with no effect. *See, e.g., Paidar*, 615 N.W.2d at 278, 280; *Brickner v. One Land Dev. Co.*, 742 N.W.2d 706, 709, 711 (Minn. App. 2007), *rev. denied* (Minn. Mar. 18, 2008). Dropps argues on appeal that the altered, recorded subdivision documents had no legal effect and were therefore inoperable. The township does not directly respond to this contention and the district court’s decision does not directly address it, only reiterating that the added language is accurate. We offer no opinion on the merit to the argument and hold only that a fact issue therefore remains on this element. And the parties do not contest the district court’s conclusion that a genuine fact issue also exists on the second element of whether the township published the false statement to others by recording the documents.

The record also reveals a genuine fact issue as to maliciousness. A defendant publishes a false statement maliciously if he publishes a statement aware of a strong probability that it is false. *Brickner*, 742 N.W.2d at 711–12. The record includes evidence that Dropps communicated to the township that he would not execute the version of the

application with the added language, that he executed the versions without the added language, and that the township recorded versions that bore Dropps's signature and included the added language. These circumstances reasonably imply the township's awareness of the documents' falsity-based inoperability. The township's willingness to eventually remove the altered documents for replacement by unaltered ones does not defeat a potential finding that the township official who allegedly recorded the documents knew them to be false when they were published.

The district court correctly concluded that a fact issue exists as to whether Dropps incurred special damages. The township maintains that the conclusion is wrong, asserting that only Dropps's company, Brunswick Development Properties LLC, incurred attorney fees and that Dropps himself did not. Attorney fees spent on clearing a slandered title qualify as special damages. *Paidar*, 615 N.W.2d at 281. The record includes Dropps's attorney's billing statement for researching and writing the demand letter to the township and indicates that the attorney billed Dropps and his wife personally and not Brunswick Development. And when Dropps was litigating this issue in March 2023, he had not yet registered Brunswick Development with the state. A fact dispute remains as to the issue of special damages, and Dropps's slander-of-title claim survives summary judgment.

III

Dropps argues that his breach-of-contract claim should also have survived summary judgment. A breach-of-contract claim requires proof that a contract existed. *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011). The alleged contract, according to Dropps, is his agreement with the township to dismiss his appeal that was pending in this

court in 2021 in exchange for his right to build a house on each of the four parcels. Dropps identifies no evidence in the record on which a reasonable fact-finder could conclude that this alleged agreement existed. Dropps cites offhand remarks by township officials and isolated resolution language as evidence of the supposed contract. But this constitutes neither direct nor reasonable circumstantial evidence that the township and Dropps mutually assented to any binding agreement. It is, at most, a collection of unrelated circumstances that would require a series of attenuated and highly speculative inferences to find that the parties intended to and did form a contract. These dubious inferences offer, perhaps, scant, metaphysical support for the necessary ultimate finding. But “there is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). Dropps’s contract-breach claim fails for lack of evidence.

IV

Dropps argues that the district court improperly granted the township summary judgment on his regulatory-taking claim. In Minnesota, “Private property shall not be taken, destroyed or damaged for public use without just compensation.” Minn. Const. art. I, § 13. Regulations that unfairly diminish the value of private property may constitute takings. *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623, 632 (Minn. 2007). Minnesota follows the federal, multi-factor test for a regulatory taking, established in *Penn Central Transportation Company v. New York City*. *Id.* (citing 438 U.S. 104, 124 (1978)).

The *Penn Central* analysis considers the extent of the regulation’s economic impact on the claimant, the extent of its interference with his “investment-backed expectations,” and the character of the government action. *Penn Cent. Transp. Co.*, 438 U.S. at 124; *accord Wensmann Realty, Inc.*, 734 N.W.2d at 632–33. The question of whether a regulation amounts to a taking is a question of law, reviewed *de novo*. *Alevizos v. Metro. Airports Comm’n*, 216 N.W.2d 651, 660–61 (Minn. 1974). Our review leads us to affirm.

The allegedly violative provision is the township’s 2022 amendment to section 2 of its zoning ordinances, which added a provision defining a “non-buildable parcel” as follows:

A parcel of land which, because of size and/or location, and classified as Agriculture Cropland, shall have no buildings. A non-buildable parcel cannot be developed with any permanent structures or other, similar improvements. A non-buildable parcel may not have a water-well, an on-site sewer system, or electric service provided to it. No camping vehicles are allowed to be located on property for overnight use. Hunting is allowed on non-buildable parcels.

We doubt that Dropps has shown that his parcels are subject to this ordinance, but we will assume otherwise for the sake of his argument.

Our *de novo* assessment follows the district court’s reasoning. The first *Penn Central* factor cuts against Dropps’s takings claim because he did not introduce evidence of any economic detriment, relying instead on the assertion that the ordinance would have “an obvious negative impact.” This is not sufficient to avoid summary judgment. *See Wensmann Realty, Inc.*, 734 N.W.2d at 634 n.7 (discussing the ways litigants typically demonstrate a regulation’s economic damage upon their property). Dropps also had no

investment-backed expectations in the parcels, as the record shows that he purchased them not expecting to develop them but that he bid on them only to inflate their auction price. Dropps may have later planned to develop the parcels for profit, but his investment occurred beforehand. An owner's reasonable expectation of eventual use absent investment is insufficient to score this factor in Dropps's favor. *See id.* at 639. The third *Penn Central* factor also weighs against Dropps because he has not shown that the nature of the regulation disproportionately encumbers his property rights in comparison to the burden that falls on other township property owners subject to the same restriction. The district court correctly determined summary judgment on Dropps's regulatory-taking claim.

V

Dropps argues that we must require the district court to rule on his motion for leave to amend his complaint to add punitive damages to his slander-of-title claim. Although our decision revives Dropps's slander-of-title claim against the township and municipalities are liable for their torts and those of their officers, Minn. Stat. § 466.02 (2024), “[n]o award for damages on any such claim shall include punitive damages,” Minn. Stat. § 466.04, subd. 1(b) (2024). Because Dropps cannot successfully claim punitive damages against the township on his slander-of-title claim, we will not instruct the district court to allow the requested amendment.

Affirmed in part, reversed in part, and remanded.