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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0561**

EP Land LLC, et al.,
Appellants,

vs.

City of Eden Prairie,
Respondent.

**Filed March 18, 2024
Affirmed
Wheelock, Judge**

Hennepin County District Court
File No. 27-CV-21-14629

Bryan J. Huntington, Kyle L. Vick, Larkin Hoffman Daly & Lindgren Ltd., Minneapolis,
Minnesota (for appellants)

John M. Baker, Katherine M. Swenson, Nicholas B. Scheiner, Greene Espel PLLP,
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Considered and decided by Wheelock, Presiding Judge; Smith, Tracy M., Judge;
and Bratvold, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellants sought review in district court of respondent city's denial of their land-use application to construct a gas station, convenience store, and auto-repair shop, alleging that the city acted without a rational basis and in bad faith. Appellants also brought claims that the city committed a regulatory taking of the property when it denied the

land-use application and amended of its code to remove gas stations and convenience stores from the list of allowable uses for the zone that applies to the property. The district court granted summary judgment on each of appellants' claims in favor of the city. We affirm.

FACTS

This case concerns the conflict between a developer and a city about how to develop certain real property in the Twin Cities metropolitan area. Respondent City of Eden Prairie (the city) is located in the southwest corner of Hennepin County, adjacent to two of the fastest-growing counties in the area—Scott and Carver Counties. The property at issue in this appeal sits at the northwest corner of Hennepin Town Road and Pioneer Trail and is made up of two lots totaling 3.96 acres. The north side of the property abuts a residential road, Breezy Way, and residential buildings sit to the west of the property and across Breezy Way. In 2021, appellants EP Land LLC and Auto Care World LLC (collectively, appellants) sought to develop the property into a commercial lot with a gas station, convenience store, and auto-repair shop, which the city denied.

The record provides some context for the city's decision. In 1999, the city rezoned the property from "rural" to "neighborhood commercial" (N-COM) and approved a development plan covering a large area that included the property and allowed for commercial development on the property. Although that plan included a gas station and convenience store, they were never built. Since approving the development plan, the city council has heard and approved several plans for the property that allowed for residential and commercial uses, but none have come to fruition.

In 2007, the city council approved a planned unit development (PUD) ordinance and development agreement for the property that allowed a coffee shop and other unspecified “commercial development” (the 2007 PUD).¹ The 2007 PUD is at issue in the present dispute.

The Eden Prairie City Code states that a PUD “is supplementary to a zoning district within or encompassing all or a portion or portions of one (1) or more original districts in accordance with the provisions of this chapter.” Eden Prairie, Minn. Code (Zoning Code) § 11.40, subd. 3 (2023).

The 2007 PUD is titled, “An ordinance of the city of Eden Prairie, Minnesota, amending certain land within a zoning district.” It states that the property is “amended within the Neighborhood Commercial District.” The 2007 PUD was recorded with Hennepin County in 2007 and is a public record.

In May 2014, an entity managed by a real-estate developer purchased the property; a few years later, ownership of the property was transferred to appellant EP Land, which was managed by the same real-estate developer. In June 2020, EP Land entered into a purchase agreement for the property with Auto Care Plus, which eventually assigned its interest to appellant Auto Care World.

In January 2021, RJ Ryan Construction Inc., as the agent for appellants, submitted a project application to the city for development of the property (the application). The

¹ PUDs are part of a modern concept of zoning that meets current needs and provides for easier adjustment of the zoning code, and they can have the same effect as a succession of variances or rezonings. *Amcon Corp. v. City of Eagan*, 348 N.W.2d 66, 72-73 (Minn. 1984); *Chandler v. Kroiss*, 190 N.W.2d 472, 476 (Minn. 1971).

application was titled, “Holiday Convenience Store & Auto Care World Service Center,” and it included a 24-hour convenience store with 16 fueling stations (eight pumps), a car wash, and an auto-repair shop with ten bays. The application was comprised of four distinct requests—a PUD concept review, a PUD district review with waivers, a site plan review, and a preliminary plat.

In June, the city’s planning commission held a meeting with a public hearing to consider the application, at which it heard presentations from members of appellants’ project team, city staff, and the public. Neighbors of the property who attended expressed their concerns about the proximity of the proposed auto-repair shop to nearby townhomes, anticipated increased traffic on residential roads and the inability of those residential roads to handle commercial traffic, and the impact of increased traffic and congestion on the safety of children in the area. Planning-commission members expressed concern about noise from the car wash, 24-hour operation of the proposed business, and the lack of a traffic-mitigation plan. At the conclusion of the meeting, the planning commission recommended that the city council deny the application.

In August, the city considered the project application for the first time. At the meeting, one city councilmember expressed doubt that N-COM would be suitable for the project. Another city councilmember spoke about existing traffic problems around the property and expressed concerns about the potential use of private residential roads to access the property. At the end of the meeting, the city council directed its staff to prepare findings in support of denial. Several days later, RJ Ryan submitted an amended application to address the traffic concerns. But city staff informed the developers that the

extent of the changes to the application would require the city to restart the review process, and it appears that appellants did not pursue the amended application.

On September 21, 2021, the city held a second hearing and unanimously denied the application and adopted findings of fact in support of its decision. Pursuant to the requirements in the Zoning Code, the city found that (1) the proposed project conflicted with the city's comprehensive plan²; (2) the project would not form a desirable and unified environment; (3) the project design did not justify the requested waivers; and (4) the project would not be a complete unit itself, without dependence on any other property. The city also determined that the application conflicted with the 2007 PUD. Thereafter, the city communicated its denial of the application to appellants, including its findings and the legal bases for the denial.

Two days after the hearing, the mayor emailed the city manager to ask how to amend the permitted uses of properties zoned N-COM to exclude gas stations explicitly. At the October meeting, the city directed its staff to draft an amendment to the Zoning Code that would remove gas stations from the permitted uses in districts zoned N-COM, and in

²

“Comprehensive municipal plan” means a compilation of policy statements, goals, standards, and maps for guiding the physical, social and economic development, both private and public, of the municipality and its environs, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, including proposed densities for development, a community facilities plan, a transportation plan, and recommendations for plan execution. A comprehensive plan represents the planning agency's recommendations for the future development of the community.

Minn. Stat. § 462.352, subd. 5 (2022).

December, the city held a first hearing on that proposed amendment. Also in December, appellants commenced an action in Hennepin County District Court, seeking (1) a declaratory judgment that the city's denial of their application lacked a rational basis and constituted a regulatory taking and (2) a writ of mandamus ordering the city to either approve the application or commence eminent-domain proceedings.

On January 4, 2022, the city adopted the amendment removing gas stations and convenience stores from the permitted uses for properties zoned N-COM. Subsequently, appellants amended their complaint to allege an additional takings claim premised on the Zoning Code amendment.

After completion of discovery, appellants and the city cross-moved for summary judgment on all issues. The district court held a hearing and granted summary judgment in favor of the city on all issues.

This appeal follows.

DECISION

This case arises from the district court's grant of summary judgment on all issues in favor of the city.³ Appellants contend that the district court erred, arguing that (1) the city's denial of the application was unlawful because the city did not rely on rational bases to

³ Appellants' complaint included a request for declaratory judgment and a writ of mandamus. The district court implicitly denied the request for a writ of mandamus when it granted summary judgment on all issues in favor of the city. Although appellants referenced a writ of mandamus in their brief to this court and at oral argument, they did not properly brief this issue, and therefore, we do not consider it. *See State Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (appellate courts may decline to reach issues that are inadequately briefed).

make its decision—specifically, the city could not rely on an alleged conflict between the application and the city’s comprehensive plan or on the 2007 PUD; (2) the city’s denial of the application constituted a regulatory taking because it reduced the value of the property, eliminated appellants’ planned use for the property, and affected only appellants’ property; and (3) the city’s adoption of the amended Zoning Code constituted a regulatory taking of the property because it permanently eliminated appellants’ planned use for the property from the permitted uses for properties zoned N-COM.⁴ The city argues that this court should affirm the district court’s judgment because the city relied on facts and law that constituted rational bases to support its denial of the application, did not effect a regulatory taking of the property when it denied the application, and did not effect a regulatory taking of the property when it amended the Zoning Code to remove gas stations from the permitted uses for all properties zoned N-COM. The parties do not argue that any dispute of material fact exists on appeal.

⁴ Appellants assert throughout their briefing that the city acted in bad faith when it denied their application. We note that the alleged bad faith of the city has no bearing on our analysis. First, appellants do not cite any authority for the proposition that bad faith is relevant to rational-basis review. Second, appellants appear to argue that the city denied their application because of their intent to build a gas station, convenience store, and auto-repair shop, and we understand appellants’ repeated references to *Olsen v. City of Minneapolis* as an attempt to show that if the city opposed appellants’ application merely because it included a gas station, then the city acted in bad faith because *Olsen* holds that a city cannot deny a project simply because it is a gas station. 115 N.W.2d 734, 736, 739-41 (Minn. 1962) (restating a previous holding from 1928 that a gas station does not itself create a nuisance and then stating that Minneapolis’s “underlying motive” of “purely aesthetic considerations” to deny Olsen’s permit was unjust). However, appellants’ argument is unclear, and as appellants have not identified support to show that this court must consider their bad-faith argument, we decline to do so.

We review a district court’s grant of summary judgment de novo to determine “whether the district court erred in its application of the law.” *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). We first address whether the city’s bases for denying the application fail rational-basis review, then we turn to appellants’ regulatory-takings claims.

I. The district court did not err when it granted summary judgment in favor of the city because the city had a rational basis to deny the application.

The city denied appellants’ application because the application did not meet the criteria required for approval of a new PUD under the Zoning Code, which it explained to appellants in its denial resolution, and it denied the application because the application planned uses for the property beyond those permitted by the 2007 PUD.

A. Rational-Basis Review

Appellants argue that we should reverse the district court’s grant of summary judgment on this issue because the city’s denial of their application was arbitrary, capricious, and contrary to law.⁵ “[W]hen a municipality adopts or amends a zoning ordinance, it acts in a legislative capacity under its delegated police powers.” *Beck v. City of St. Paul*, 231 N.W.2d 919, 925 (Minn. 1975). Our caselaw distinguishes between legislative and quasi-judicial zoning matters, but regardless of this classification, “the

⁵ Minnesota law provides that a party may seek judicial review in district court of a municipal planning or zoning decision, subject to some limitations. Minn. Stat. § 462.361 (2022); see *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 178 (Minn. 2006) (acknowledging that a party may seek judicial review of a municipal zoning decision). However, appellate courts “do not give any special deference to the conclusions of the lower courts, but rather engage in an independent examination of the record and arrive at our own conclusions as to the propriety of the city’s decision.” *Id.* at 180.

standard of review is the same for all zoning matters, namely, whether the zoning authority's action was reasonable." *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 416--17 (Minn. 1981). Caselaw expresses this standard with a variety of words, including "reasonable basis," "unreasonable, arbitrary or capricious," or "reasonably debatable." *Id.* at 417. Regardless, a court's review of a city's zoning decision is narrow, and courts should affirm a city's decision so long as there is a rational basis for the decision. *See id.* at 414-15.

Rational-basis review requires that a reviewing court determine, first, whether the city supported its decision with legally sufficient reasons and, second, whether it supported those reasons with a factual basis. *Mendota Golf*, 708 N.W.2d at 180. Generally, "[a] city council has broad discretion in legislative matters, and even if the city council's decision is debatable, so long as there is a rational basis for what it does, the courts do not interfere." *Honn*, 313 N.W.2d at 415. Under rational-basis review, a court must affirm a city's decision if at least one of the reasons for denial has a rational basis. *St. Croix Dev., Inc. v. City of Apple Valley*, 446 N.W.2d 392, 398 (Minn. App. 1989), *rev. denied* (Minn. Dec. 1, 1989).

Here, appellants argue that the city's decision fails to pass rational-basis review because the city did not rely on any legally sufficient reasons for its decision to deny the application. Specifically, appellants argue that none of the following were a legally sufficient basis on which the city could rely: alleged inconsistency with surrounding uses; alleged inconsistency with the city's comprehensive plan; and alleged inconsistency with the 2007 PUD. We disagree.

B. The Zoning Code provides a rational basis for the city’s denial of the application.

1. The Zoning Code’s Prerequisites for Application Approval

To guide the city in its decision whether to approve or deny a PUD application, the Zoning Code establishes four findings that the city must make before it can approve an application: (1) the project must not conflict with the city’s comprehensive plan; (2) the project must form a desirable and unified environment within its boundaries; (3) any exceptions to the requirements of the code must be justified by the project’s design; and (4) the PUD must be a complete unit itself, without dependence on any other property. Zoning Code § 11.40, subd. 11 (2020). An application must meet all four of these requirements to be approved. Here, the city found that the application did not meet any of the requirements, and its denial resolution provided the factual basis for its findings.

a. Legally Sufficient Reasons

The city argues that it is allowed to consider whether an application is consistent with surrounding uses and its comprehensive plan because the Zoning Code explicitly requires that a PUD application be “designed in such a manner to form a desirable and unified environment within its own boundaries.” Zoning Code § 11.40, subd. 11(B) (2020); *see also Mendota Golf*, 708 N.W.2d at 174-75 (holding that if a city’s zoning ordinance conflicts with its comprehensive plan, a city must reconcile them). Appellants argue that the city’s decision to deny the application based on its findings that the application was inconsistent with surrounding uses fails rational-basis review because,

under *PTL, LLC v. Chisago County Board of Commissioners*, 656 N.W.2d 567 (Minn. App. 2003), that finding is not a legally acceptable reason to reject the application.

However, *PTL* does not control here because that case involved a county's board of commissioners that did not act in a legislative capacity and so lacked the discretionary authority to deny a preliminary plat application that otherwise complied with the regulatory standards established in the ordinance. 656 N.W.2d at 569, 571-72. In contrast, this case involves a municipality acting in its legislative capacity to consider amending an ordinance via a PUD that supplements the zoning district, and thus the city had broad authority to consider "any rational basis related to promoting the public health, safety, morals, or general welfare" when assessing the appellants' rezoning request. See *Honn*, 313 N.W.2d at 414-15. Furthermore, *PTL* does not apply here because, in that case, the preliminary plat application conformed to the permitted uses in the zoning district and complied with the standards set out in the ordinance, whereas in the instant case, the application's planned uses conflict with the permitted uses for the property as outlined in the 2007 PUD and the project do not comply with the Zoning Code's required findings, as detailed below.

Appellants also argue that failure to comply with the comprehensive plan is a legally insufficient reason to deny their application. But a comprehensive plan may be used to guide a legislative body's decision. *Mendota Golf*, 708 N.W.2d at 174. The Minnesota legislature decided to "delegate[] to municipalities the power to determine and plan the use of land within their boundaries"; therefore, compliance with a comprehensive plan is a legally sufficient reason to deny appellants' application. *Id.* (quotation omitted). Thus, inconsistency with surrounding uses and failure to comply with a comprehensive plan are

legally sufficient reasons, and so long as the city provides a factual basis to support its decision, we will affirm the city's decision. *Id.* at 180; *Honn*, 313 N.W.2d at 415.

b. Factual Basis

We next examine each of the city's findings in turn and consider whether the city provided facts to support its determination that the application did not satisfy the Zoning Code's required findings.

Conflict with the Comprehensive Plan

The city found that the application conflicted with its comprehensive plan because the application provided for a project design that "increases potential negative impacts to the surrounding residential uses, including increased traffic, noise, and safety concerns," and thus it conflicted with the comprehensive plan's objective "to promote balanced growth and retain an appropriate mix of land uses while enhancing housing opportunities and preserving natural areas." The application provided for a 24-hour convenience store, a gas station and car wash with 16 fueling stations, and an auto-repair shop with ten bays next to a residential development. The city determined that such heavy commercial use in a small lot that is surrounded by a residential community does not enhance housing opportunities as this would likely decrease interest for anyone looking to move into the adjacent residences. Additionally, the record shows that approval of the application would result in increased traffic, noise, and safety concerns for residential neighbors of the property and that city-council members and community members raised these concerns during the public hearings. These facts support the city's finding that the application conflicted with the city's comprehensive plan.

The city also found that the application conflicted with the comprehensive plan's goals to "provide a safe and efficient roadway system" and "a transportation system that supports the economic vitality and prosperity of the City" because the application did not "contain traffic control improvements to accommodate roadway capacity and reduce delays" or "provide for efficient connections to the broader transportation system." The city found that although congestion already exists at the intersection next to the property—which is supported by traffic reports that appellants presented to the city—the application would only exacerbate that problem, which in turn would restrict access to the few businesses already located at that intersection. We conclude that the city's determination that the application conflicted with the city's comprehensive plan is supported by facts in the record and that this is a rational basis to deny the application.

Desirable and Unified Environment

The city next found that the application did not form a desirable and unified environment because it would generate additional commercial traffic on neighboring residential streets that would negatively impact surrounding properties. The city also found that the 24-hour gas station and the auto-repair shop did not create a desirable environment and would negatively impact the "peace and welfare of the neighboring residents" by creating noise. Additionally, the city found that the increased traffic to the property would endanger children attending the daycare across the street from the property and other children going to and from the bus stop at an intersection of the property. These facts support the city's finding that the project would not create a desirable and unified environment.

The city also found that the project did not create a desirable environment because it created traffic problems within the property and at its entrance and exit points: “The proposed circulation also requires vehicles to move between uses on the site in a way that conflicts with vehicles that are trying to enter or exit the site . . . [and] the design of the access [to the site] will create traffic issues, such as queuing.” The findings cited to appellants’ traffic reports, stating that the proposed project would generate an additional 3,489 daily trips, which is double the current daily trips to the businesses adjacent to the property. This level of increased traffic and relevant concerns support a finding that the project would not create a desirable and unified environment. We conclude that the city’s determination that the project did not promote a desirable and unified environment is supported by facts in the record and that this is a rational basis that supports denial of the application.

Justification for the Requested Exceptions

The city next found that the application did not justify its requested waivers of city standards set forth in the Zoning Code. Specifically, the application included a request that the city grant waivers of the following standards: the lot size and width requirements for the auto-repair shop; the parking-setback requirements from the lot lines; and the requirements that the canopy over the gas-station pumps be connected to the convenience store and have a peaked roof. In reviewing the waiver requests, the city found that the purpose of the Zoning Code requirements in the N-COM district is to “minimize the impact of convenience stores and gas stations adjacent to residential areas.” Thus, the effect of

granting the waivers would be the opposite of that stated purpose—the waivers would increase the visual impact and footprint of the proposed development in the neighborhood.

The city found that the application did not provide justifications for the requested waivers and that the waivers would not “serve or enhance the health, safety, order, convenience, prosperity, and general welfare of the City and its inhabitants,” nor would they promote creativity, efficiency, safety, or transition between the property and the neighborhood. We conclude that the city’s findings that the waivers would not benefit the public and were not justified were legally sufficient reasons, supported by factual findings, and that this is a rational basis that supports denial of the application.

Dependence on Other Property

Finally, the city found that the application did not support a finding that the property could be independent from any other property because the application would depend on adjacent residential streets that were not designed to accommodate the commercial traffic that the project would generate. The city found that the application did not include provisions to “accommodate traffic and site circulation in a manner that [would] not create conflicts with adjacent properties . . . or minimize the adverse impacts to the neighboring residential properties.” The reliance on residential streets and effect on neighboring properties supports a finding that the application cannot be independent from other properties.

The city also identified in its findings that the application did not conform to the purpose of the N-COM zoning district, which was to provide establishments for residents in the immediate neighborhood, such as “neighborhood shops and related office

uses . . . that minimize adverse impact on adjoining residential uses.” Rather, the application’s project would serve the region as a whole because it included what would be “one of the largest gas stations in the City.” We conclude that the city’s determination that the application conflicted with the underlying N-COM zoning district is supported by facts in the record and that this is a rational basis that supports denial of the application.

For the city to deny the application, it needed to determine only that one of the four findings could not be satisfied; here, the city found that *none* of the four findings could be satisfied. Courts afford a city’s zoning decisions a high level of deference. Because the city’s determination that the application did not satisfy any of the required findings set forth in the Zoning Code was supported by facts in the record, the city had rational bases to deny the application.

2. 2007 PUD Amendment to the Zoning Code

Appellants argue that the city’s denial of the application was unreasonable because the Zoning Code defines a PUD as “supplementary” to the underlying zoning district and thus a PUD cannot limit the uses permitted in an underlying zoning district.⁶ But appellants’ argument is inconsistent with a plain reading of the Zoning Code and Minnesota zoning law.

⁶ Appellants concede that a development agreement for the property incorporated in the 2007 PUD may limit the permitted uses, but insist that the development agreement does not continue to apply because the PUD does not continue to apply to the property.

We first consider the evolution of zoning law in Minnesota to provide context for the parties' arguments regarding the effect of the 2007 PUD, then we examine the city's Zoning Code to understand the 2007 PUD.

Zoning Law and Zoning Tools

Zoning law began in the early 1900s with "Euclidean zoning," which refers to the development of broad zoning plans that apply to districts of a municipality. *See Amcon Corp.*, 348 N.W.2d at 72 n.5 (citing generally *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), in which the United States Supreme Court upheld the creation of a zoning plan and zoning districts as a valid use of police power). Many early Minnesota zoning laws used this style of comprehensive zoning to simplify their land-use regulations. *See* Karen E. Marty, *Minnesota Land Use Law* § 1.B.d (2d ed. 2018). Euclidean zoning, however, did not allow for any combination of uses in a single zone and thus lacked the flexibility that evolving communities needed to adjust to changing demands. *Amcon Corp.*, 348 N.W.2d at 72 n.5.

Municipalities then developed zoning tools to supplement Euclidean zoning practices. *See id.* at 72-73 (discussing "planned development zoning" as one example of a modern concept developed to address Euclidean zoning practices). Zoning tools allowed municipalities to zone a property in a way that did not correspond to any single district while ensuring that the uses of the property are "in harmony with the surrounding neighborhood," thereby meeting the current needs of the community while promoting its general welfare. *Id.* "Planned development zoning" is one example of a zoning tool that "does not appear on the initial zoning map of a municipality but regulations authorize its

future creation.” *Id.* at 73. Planned-development zoning requires that plans for development be filed with and reviewed by a planning commission, which then provides a recommendation to the legislative authority of the municipality. *Id.* The legislative authority then decides whether the proposal is consistent with the applicable comprehensive plan and any standards provided in the municipality’s law that guide the entity’s exercise of discretion. *Id.*

In *Chandler*, the supreme court recognized that a zoning ordinance that “alters the established, allowed land usages of the [city] has the same effect as would a succession of variances or rezonings.” 190 N.W.2d at 476. In *Chandler*, the supreme court was interpreting Shoreview’s municipal code to determine whether the village improperly granted a special-use permit, and it held that the ordinance permitting rezoning for a PUD did not require an application for a variance relating to the special-use permit. *Id.* In that case, the village had adopted a comprehensive municipal plan and two separate ordinances around the same time with the intent that the two ordinances would allow flexibility as to the comprehensive plan. *Id.* at 474. The two ordinances provided for “flexible control of land usage and development” by the city council via the power to grant or deny special-use permits and PUDs. *Id.* The supreme court ultimately concluded that the municipality’s use of a zoning tool to effectively amend the zoning of a property is permissible “[s]o long as procedures for securing a permit for a [PUD] fairly provide for airing the topic.” *Id.* at 476. The ordinances also set forth criteria the council must consider when exercising its power to approve a PUD, such as conformity with the city plan and other zoning ordinances. *Id.* at 476-77.

Today, municipalities use “official controls” to manage land development, *see* Minn. Stat. § 462.357, subd. 1 (Supp. 2023), which may include “ordinances establishing zoning, subdivision controls, site plan regulations, sanitary codes, building codes and official maps,” all of which are employed to “implement the general objectives of the . . . comprehensive plan,” Minn. Stat. § 462.352, subd. 15 (2022). This authority, vested in each individual municipality, leads to diverse zoning practices and language so that very little can be said to apply statewide. Regardless, we are confident that when a municipality passes a zoning ordinance, so long as it is passed in adherence to the procedural safeguards outlined in the Minnesota Statutes and is not preempted by state or federal law, the ordinance remains valid until it is amended, repealed, or replaced. *See* Minn. Stat. § 462.357 (2022 & Supp. 2023) (conferring upon municipalities the authority to pass zoning ordinances to address land use within their boundaries); *St. Paul Citizens for Hum. Rts. v. City Council*, 289 N.W.2d 402, 405 (Minn. 1979) (explaining that the power to enact ordinances implies the power to repeal them, which can be done through the enactment of new ordinances, therefore implying that an ordinance does not end but remains in effect until it is replaced by another ordinance); *Hawkins v. Talbot*, 80 N.W.2d 863, 865 (Minn. 1957) (“Zoning ordinances have long been upheld as legitimate exercises of the police power as long as they conform to the usual limitations governing the exercise of that power.”); *Mayes v. Byers*, 7 N.W.2d 403, 407 (Minn. 1943) (“A city ordinance within its proper scope has the force and effect of law.”); *Builders Ass’n of Minn. v. City of St. Paul*, 819 N.W.2d 172, 181-82 (Minn. App. 2012) (“An ordinance is commonly

defined as an authoritative law or decree, especially a municipal regulation.” (quotation omitted)).

With this background in mind, we turn to the PUD at issue here.

The 2007 PUD

Appellants argue that a PUD cannot limit the uses permitted in an underlying zoning district because the code defines a PUD as “supplementary,” which is ambiguous, and, because a PUD is only supplemental, it does not alter the underlying zoning. The city argues that the definition of a PUD in the Zoning Code unambiguously states that a PUD can amend the underlying zoning district by limiting the uses allowed within the relevant district; thus, the 2007 PUD amended the Zoning Code, and any limits set forth in the 2007 PUD apply to the property until such time as the 2007 PUD is rescinded, replaced, or amended. We agree with the city.

We first address appellants’ argument that the term “supplementary” is ambiguous. Interpreting a city ordinance or city code is a question of law. *Amcon Corp.*, 348 N.W.2d at 72. The primary focus of statutory interpretation is to “effectuate the intent of the legislature.” *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015) (quoting Minn. Stat. § 645.16 (2014)). If the words of the ordinance are clear as applied to the current case, then the ordinance is not ambiguous and statutory construction is inappropriate. *Chanhassen Ests. Residents Ass’n v. City of Chanhassen*, 342 N.W.2d 335, 339 (Minn. 1984). When an ordinance does not define a term, the court may “look to the dictionary definitions of those words and apply them in the context of the [ordinance] to determine whether the phrase has a plain and unambiguous meaning.” *Fordyce v. State*, 994 N.W.2d

893, 897 (Minn. 2023) (quotation omitted). When interpreting a term or provision, “it is sometimes necessary to analyze that provision in the context of surrounding sections” to determine whether the word or phrase is indeed ambiguous. *See Am. Fam. Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 278 (Minn. 2000). Terms should be construed according to their ordinary meaning. *Id.* And although a city’s interpretation or action based on its interpretation of its code is not determinative, courts do owe it some weight. *Chanhassen Ests. Residents Ass’n*, 342 N.W.2d at 340.

Because the word “supplementary” is not defined in the city’s code, we look to the dictionary definition. “Supplementary” is an adjective that means “added or serving as a supplement: additional.” *Merriam-Webster’s Collegiate Dictionary* 1256 (11th ed. 2014). The word “supplement” as a noun means “something that completes or makes an addition.” *Id.* at 1255.

Recall that the Zoning Code states as follows: “Planned Unit Development District (“PUD”) is *supplementary* to a zoning district within or encompassing all or a portion or portions of one (1) or more original districts in accordance with the provisions of this chapter.” Zoning Code § 11.40, subd. 3 (emphasis added).

The plain meaning of the word “supplementary” unambiguously means that both the PUD and the underlying zoning district exist at once over a property without being in conflict. This understanding is solidified by reading additional provisions of the Zoning Code. The Zoning Code provides that the permitted uses expressed by the zoning district for the property remain, but a PUD can limit the permitted uses of the property:

The permitted uses set forth in this chapter pertaining to the original district or districts within a PUD shall apply to and be permitted uses in that part of a PUD in which such a district is encompassed, except as such use or uses may be limited by a development plan, an agreement or imposed by the City as a condition to approval of the PUD.

Id., subd. 7 (2020). The Zoning Code reiterates this in the next subdivision, explaining that permitted uses cannot be expanded by a PUD, but the city can grant waivers of other requirements outlined in the Zoning Code so long as the PUD includes a development plan or other document that expressly lays out these waivers: “Any standard or provision, except permitted uses, set forth in this chapter relating to an original district may be waived or modified by the City provided the ordinance relating to such PUD sets forth specifically or by reference to a development plan or an agreement such modification or waiver.” *Id.*, subd. 8(A) (2020). The 2007 PUD did just that, as it incorporated the relevant development agreement and its waivers into the property’s zoning: “The land shall be subject to the terms and conditions of that certain Development Agreement dated as of May 15, 2007 The Development Agreement contains the terms and conditions of [the 2007 PUD], and are hereby made a part hereof.”

We conclude that the term “supplementary” as used in the definition of a PUD in the city’s Zoning Code is unambiguous and further that it means that a PUD can amend the underlying zoning district by limiting the uses allowed within the relevant district. This is consistent with the language in the 2007 PUD that states that the property’s zoning is amended by the 2007 PUD: “The proposal is hereby adopted and the land shall be, and hereby is amended within the [N-COM district] and shall be included hereafter in the [2007

PUD].” The incorporated development agreement also states, “Provisions of this Agreement shall be binding upon and enforceable against the Property and the Owners, their successors and assigns of the Property,” eliminating any doubt that, under the Zoning Code, the 2007 PUD applies to appellants. Furthermore, the city’s definition, explanation, and use of a PUD is consistent with modern zoning law.

Here, the city rezoned the property when it approved the 2007 PUD, which included the term “ordinance” in its title.⁷ Because the 2007 PUD is an ordinance, it remains valid until it is amended, repealed, or replaced. Under the Zoning Code, Minnesota Statutes, and the language of the 2007 PUD, it is clear that the 2007 PUD still applies to the property here, and we therefore reject the remainder of appellants’ argument that, because a PUD is only supplementary, it does not alter the underlying zoning. We therefore conclude that the 2007 PUD amended the Zoning Code and that any limits set forth in the 2007 PUD are applicable to the property until such time as the 2007 PUD is rescinded or amended.

Because the 2007 PUD rezoned the property and did not allow gas stations or convenience stores as uses within the area to which it applies, the 2007 PUD was a rational basis on which the city could rely to deny the application. And because the city provided rational bases for its decision to deny the application, we affirm the district court’s grant of summary judgment in favor of the city on this issue.

⁷ “An ordinance of the City of Eden Prairie, Minnesota, Amending Certain Land Within a Zoning District, Amending the Legal Descriptions of Land in Each District, and, Adopting by Reference City Code Chapter 1 and Section 11.99 Which, Among Other Things, Contain Penalty Provisions.”

II. The district court did not err by granting summary judgment in favor of the city because neither the city’s denial of the application nor its decision to amend the Zoning Code constituted an unconstitutional regulatory taking.

Appellants assert that the city’s actions resulted in two separate regulatory takings of their property—the first taking occurred when the city denied their application to develop the property, and the second taking occurred when the city amended its Zoning Code to exclude gas stations and convenience stores from the list of permitted uses in N-COM districts.⁸ “Whether a government entity’s action constitutes a taking is a question of law that we review de novo.” *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623, 631 (Minn. 2007).

Both the U.S. and Minnesota Constitutions prohibit the taking of private property for public use without just compensation. U.S. Const. amend. V; Minn. Const. art. I, § 13. Even when a government does not physically possess the property, the government may still effect a regulatory taking if it “goes too far in its regulation, so as to unfairly diminish the value of the individual’s property, thus causing the individual to bear the burden rightly borne by the public.” *Wensmann Realty*, 734 N.W.2d at 632 (quotation omitted). Determining whether the government has taken a property is a highly fact-specific inquiry. *Id.*

⁸ Appellants brought and argued two separate takings claims in the district court, which analyzed them separately. Although appellants’ brief to this court could be understood to frame the two separate takings claims as one claim, we continue to review their argument as two separate takings claims because this is how the district court analyzed the claims. Additionally, although appellants seem to argue at times that their takings claims could be treated as a single claim, even if we consider both the application denial and the Zoning Code amendment together, we are not persuaded that the city committed a regulatory taking of appellants’ property.

Minnesota courts apply the framework adopted by the United States Supreme Court in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), to analyze regulatory-takings claims arising under the Minnesota Constitution when there is no argument that the Minnesota Constitution should be interpreted more broadly than the United States Constitution. *Wensmann Realty*, 734 N.W.2d at 632-33. This includes regulatory-takings claims in which the alleged taking is based on a government entity passing a zoning ordinance. *See, e.g., DeCook v. Rochester Int’l Airport Joint Zoning Bd.*, 796 N.W.2d 299, 305 (Minn. 2011) (airport zoning ordinance); *Zeman v. City of Minneapolis*, 552 N.W.2d 548, 552 (Minn. 1996) (city zoning ordinance); *Pratt v. State, Dep’t of Nat. Res.*, 309 N.W.2d 767, 774 (Minn. 1981) (statewide legislation reclassifying water on a property); *Interstate Cos. v. City of Bloomington*, 790 N.W.2d 409, 414-15 (Minn. App. 2010) (city zoning amendment), *rev. denied* (Minn. Apr. 27, 2011). The *Penn Central* framework identifies three factors that courts must consider and balance to determine “the severity of the burden that government imposes upon private property rights.” *Wensmann Realty*, 734 N.W.2d at 633. The three factors are (1) the economic impact of the regulation, (2) the interference of the regulation with distinct investment-backed expectations, and (3) the character of the government’s action. *Penn Cent.*, 438 U.S. at 124; *Wensmann Realty*, 734 N.W.2d at 632-33.

Before we apply the *Penn Central* framework to appellants’ takings claims, we address appellants’ argument that with respect to the first factor—the economic impact of the regulation—there is a distinction between *Penn Central* and *Wensmann Realty* and the district court erred by applying *Wensmann Realty* instead of *Penn Central*. Appellants

argue that *Wensmann Realty* improperly applied a categorical-takings analysis that is not present in *Penn Central* and that, therefore, *Wensmann Realty* is limited to only those situations involving proposed amendments to land-use designations contained in a comprehensive plan. The city urges us to reject the contention that *Wensmann Realty* is limited to its facts that involve comprehensive-plan amendments and cites nonprecedential cases in which this court applied *Wensmann Realty* to the denial of other types of land-use applications.

In *Wensmann Realty*, the supreme court considered a city's denial of a proposed amendment to its comprehensive plan that would have expanded the permitted uses of the subject property. 734 N.W.2d at 627. The supreme court did not find a reason to interpret the Minnesota Constitution more broadly than the United States Constitution, and therefore, it applied the *Penn Central* factors set forth above. *Id.* at 633. The supreme court also addressed the frequent confusion between the first factor and a categorical-takings⁹ analysis. *Id.* at 633 n.6. The supreme court's analysis of the relevant United States Supreme Court case, *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), which defined a categorical taking that does not need to consider all of the *Penn Central* factors, demonstrates that *Wensmann Realty* does not adopt a categorical-takings analysis. *Id.*

The supreme court articulated in *Wensmann Realty* that though the language "all economically beneficial uses" in *Lucas* is similar to the language "economically viable

⁹ In their briefing, appellants here referred to this as a "per se" taking.

uses” in *Penn Central*, the phrases are not the same. *Id.* The supreme court’s analysis of the first factor in *Wensmann Realty* demonstrates that there is a difference and that we do not apply a categorical-takings analysis when applying the factors in *Penn Central* as relayed in *Wensmann Realty* because the standard to apply is “whether the city’s decision leaves any reasonable, economically viable use of the property.” *Id.* at 635. Furthermore, the court explained that the reasonable-use standard requires that the property owner be afforded “some reasonably beneficial and economically viable use of his land,” which is not the bright line that exists in a categorical-takings analysis. *Id.* In *Wensmann Realty*, the supreme court determined that the record did not provide a sufficient review of the reasonable uses for the property despite some evidence of alternate uses for the property. *Id.* at 637. Thus, the supreme court remanded the case for further findings related to this first factor. *Id.* at 642. The decision to remand demonstrates that *Wensmann Realty* does not support the use of a categorical-takings analysis in lieu of the first factor as set forth in *Penn Central*. Thus, we conclude that appellants’ argument that there is a distinction between *Penn Central* and *Wensmann Realty* misunderstands the supreme court’s takings analysis in *Wensmann Realty*. We therefore apply the *Penn Central* factors as outlined in *Wensmann Realty* because appellants make no argument that the Minnesota Constitution should be interpreted more broadly than the U.S. Constitution.

We next apply the *Penn Central* framework to the facts of this case.

A. The city’s denial of the application does not constitute a taking.

Appellants argue that all three factors favor them and show that the city effected a regulatory taking when it denied the application. The city argues that all the factors favor them such that no taking occurred. We review each factor in turn.

1. Economic Impact of the Regulation

Appellants argue that the economic impact of the city’s denial is high because it reduces the property’s profitability by “at least fifty percent.”¹⁰ The city argues that denying the application does not limit all reasonable and profitable uses of the property because the property can still be developed in other ways.

The first factor of *Penn Central* requires a court to consider the economic impact of the city’s decision on the appellants. *Wensmann Realty*, 734 N.W.2d at 634. One way to determine the economic impact is to consider “whether the city’s decision leaves any reasonable, economically viable use of the property.” *Id.* at 635. The supreme court has stated that a “taking does not result simply because the property owner has been deprived of the most profitable use of the property.” *Id.*

Here, the first factor favors the city because the city denied the application for the specific businesses and specific aspects of the businesses proposed to be developed on the property; the city did not deny *all* development on the property. The city acknowledged

¹⁰ Appellants dispute the district court’s use of the appraisal of the property that included the property’s zoning history and current market value because the appraisal was not admissible evidence. But because we review the application of law de novo and determine that, even without the appraisal, the first factor favors the city, we decline to address this issue more fully.

that the property would be developed but expressed specific concerns about the gas station, convenience store, and auto-repair shop that appellants planned. The 2007 PUD provides that the property can be developed for a coffee shop and other retail stores, which demonstrates that there are other reasonable economically viable uses for the property, and appellants do not argue or provide evidence to show that these are not reasonable economically viable uses for the property. A determination that the application included a use that is more profitable than other possible uses is not a determination that there are no reasonable economically viable uses for the property, and it does not require a conclusion that this factor favors appellants. Because there are other reasonable economically viable uses for the property, the first factor favors the city.

2. Interference with Investment-Backed Expectations

Appellants argue that the city's denial of the application caused interference with and harm to their investment-backed expectations because they purchased the land after relying on the N-COM's permitted uses and on representations by city staff that the property's zoning permitted a gas station and convenience store. The city responds with three arguments: first, that appellants' misunderstanding of the property's zoning does not permit a finding that appellants had a reasonable, investment-backed expectation; second, that even if city staff misrepresented the lawful uses of the property, any potential misrepresentation likely happened after the quitclaim deed for the property was executed; and third, that any misrepresentations do not prevent the city from correctly interpreting and enforcing its laws.

The second factor considers whether the government act interfered with the property owner's investment-backed expectations, meaning the permitted uses of the property that existed at the time the owner acquired the property. *Id.* at 637. A person who purchases property knowing of the restrictions on its use assumes the risk of economic loss. *Id.* at 638-39. Similarly, a person who purchases land must still comply with regulatory restrictions. *Minn. Sands, LLC v. County of Winona*, 917 N.W.2d 775, 784 (Minn. App. 2018), *aff'd* (Minn. Mar. 11, 2020).

Here, the second factor favors the city because, at the time appellants purchased the property, the 2007 PUD did not allow gas stations or convenience stores to be built on the property. Although city staff informed appellants that the property's underlying zoning (N-COM) permitted gas stations, the 2007 PUD restricted the N-COM permitted uses to those identified in the 2007 PUD, which incorporated the development agreement and did not include a gas station. Because the 2007 PUD was recorded in Hennepin County and was a public document, appellants had access to it and were on notice that the property was subject to a PUD, and both the 2007 PUD and the Zoning Code expressly state that a PUD rezones the subject property. Because the permitted uses at the time appellants purchased the property did not include the uses proposed in the application, appellants did not have an investment-backed expectation that the property could be developed as they proposed. Therefore, this factor favors the city.

3. Character of the Government's Action

Appellants argue that the city's denial of the application is a government action for which the appellants, rather than the general public, bear the weight, and therefore, the

third factor favors them. The city argues that its denial of the application did not burden only the appellants, because, by virtue of its nature as a zoning decision, the city's denial of the application is an action that is felt by the entire community.

The third factor examines the character of the government's action—whether the government regulated in a way that limits only a single owner's request for a different permitted use, or if many property owners are now subject to a restrictive regulation. *Wensmann Realty*, 734 N.W.2d at 639.

Here, the government action was a denial of an application to develop a gas station, convenience store, and auto-repair shop on the property. Although the decision to deny the application impacted appellants more than the public, the application included a request to rezone the property by issuing a new PUD that would permit the application's proposed uses on the property, and a request to rezone a property is regulatory in nature and impacts the public generally. Therefore, this factor is neutral; however, even if this factor favored appellants, it would not affect the outcome given our resolution of the first and second factors.

Balancing all three factors, we conclude that the city's denial of the application did not amount to a regulatory taking of appellants' property because the first two factors clearly favor the city. Therefore, we affirm the district court's grant of summary judgment on appellants' first takings claim.

B. The city's amendment of its Zoning Code does not constitute a taking.

Appellants argue that the city committed a regulatory taking of appellants' property by amending the Zoning Code to remove gas stations and convenience stores from the list

of permitted uses in areas zoned N-COM.¹¹ Again, the city asserts that all the factors favor them. We review each factor in turn.

1. Economic Impact of the Regulation

Appellants argue that the economic impact of the Zoning Code amendment is diminishment of the property's value by at least 50%. The city argues that the amendment does not prevent all reasonable uses of the property and that the 2007 PUD demonstrates that the property can still be developed for other uses besides a gas station and convenience store.

This factor requires that we consider the economic impact of the city's decision on appellants, and in this case, we review what reasonable economically viable uses of the property remain after the city's action. *Wensmann Realty*, 734 N.W.2d at 634-35. Because the impact of the Zoning Code amendment is to remove only two specific uses, gas stations and convenience stores, from the list of permitted uses of N-COM properties, there are other reasonable and economically viable uses for the property. This factor favors the city.

¹¹ At various points in appellants' briefing to this court, they assert that they can rely on, and incorporate by reference, briefing submitted to the district court for additional arguments. This is incorrect. The Minnesota Rules of Civil Appellate Procedure impose page limits on briefs submitted to this court and direct counsel to be precise in the relief they seek and to state their arguments specifically. *See* Minn. R. Civ. App. P. 132.01; *Peterson v. BASF Corp.*, 675 N.W.2d 57, 66 (Minn. 2004). Appellants point to Minn. R. Civ. App. P. 128.01, subd. 2, which allows a party to rely on materials submitted to the district court *if* they comply with the special conditions set forth in that rule. Appellants did not satisfy those conditions, and this court does not consider arguments that a party fails to make in accordance with applicable rules.

2. Interference with Investment-Backed Expectations

Appellants argue that the Zoning Code amendment impacts their investment-backed expectations for the property because appellants purchased the property with the intent to build a gas station and convenience store.¹² The city argues that because the 2007 PUD has controlled the property's permitted uses since 2007, the 2022 amendment to the Zoning Code does not impact the lawful uses available to appellants at the time of their application.

This factor requires that we weigh the amount the government action interferes with the property owner's investment-backed expectations. *Wensmann Realty*, 734 N.W.2d at 637. Because the property was already subject to the 2007 PUD, which excluded gas stations and convenience stores from the permitted uses of the property, the Zoning Code amendment did not impact the permitted uses of the property. This factor also favors the city.

3. Character of the Government's Action

Appellants argue that the Zoning Code amendment is not "general" because appellants' property is the only property that is still undeveloped and zoned N-COM, and therefore, the amendment impacts only appellants. Appellants also point out that the city amended the Zoning Code only after appellants attempted to develop the property. The

¹² Appellants also assert that although appellant Auto Care World entered the purchase agreement after the city passed the amendment, this does not prevent appellants' regulatory-takings claim, citing *Palazzolo v. Rhode Island*, 533 U.S. 606, 626-30 (2001). The city does not respond to this argument, and we agree that Auto Care World is not prohibited from alleging a takings claim here.

city argues that appellants conceded that this factor favors the city because the government action is the amendment of its Zoning Code.

This factor requires that we consider whether the government regulation limits only a single owner's property or if many parcels are subject to a restrictive regulation. *Id.* at 639. Because an amendment to the Zoning Code is a legislative function and applies to all properties zoned N-COM, not only appellants' property, the character of the city's action here is general. Furthermore, appellants' argument is unpersuasive because although the other properties zoned N-COM are already developed, the amendment still impacts their owners' ability to redevelop or expand the affected properties. This factor also favors the city.

Because all three factors favor the city, we conclude that the city's act in amending its Zoning Code is not a regulatory taking of appellants' property. And because appellants' takings claim fails, the district court did not err when it granted summary judgment in favor of the city. Therefore, we affirm the district court's grant of summary judgment on appellants' second takings claim.

In sum, the city's denial of the application survives rational-basis review because the city supported its decision with rational legal and factual bases. The city also did not commit a regulatory taking by denying the application or amending the Zoning Code because the *Penn Central* factors favor the city on both claims. Thus, the district court did not err when it granted summary judgment in favor of the city on all of appellants' claims.

Affirmed.