STATE OF MINNESOTA

IN SUPREME COURT

A19-1099

Court of Appeals Anderson, J.

City of Waconia,

Respondent/Cross-Appellant,

vs. Filed: June 16, 2021
Office of Appellate Courts

Jayson Dock, et al.,

Appellants/Cross-Respondents.

Jared D. Shepherd, George C. Hoff, Hoff Barry, P.A., Eden Prairie, Minnesota, for respondent/cross-appellant.

Mark W. Vyvyan, Pari I. McGarraugh, Frederickson & Byron, P.A., Minneapolis, Minnesota, for appellants/cross-respondents.

Susan L. Naughton, League of Minnesota Cities, Saint Paul, Minnesota, for amicus curiae League of Minnesota Cities.

S Y L L A B U S

1. An order that grants a permanent injunction may be reviewed on appeal when timely taken from either the final judgment, under Minn. R. Civ. App. P. 103.03(a), or from the order that grants the injunction, under Minn. R. Civ. App. P. 103.03(b).

2. The City's ordinance regulating docks is functionally a zoning regulation because it governs the subjects identified in Minn. Stat. § 462.357, subd. 1 (2020), and

serves a zoning purpose. The City therefore was required to follow the procedural requirements of Minn. Stat. § 462.357 (2020) when adopting that ordinance, even if the City purports to rely solely on its authority to regulate docks under Minn. Stat. § 412.221, subd. 12 (2020).

Affirmed in part, reversed in part.

O P I N I O N

ANDERSON, Justice.

We are asked to decide two questions in this appeal. The first is whether the appeal filed by appellants Jayson and Cristine Dock (the owners) was timely. The second is whether an ordinance that purports to regulate docks via a statutory city's authority under Minn. Stat. § 412.221, subd. 12 (2020), is subject to the procedural requirements for adopting or amending a zoning ordinance under Minn. Stat. § 462.357 (2020), or a surface-use ordinance under Minn. Stat. §§ 86B.205, 459.20 (2020).

The district court granted respondent City of Waconia's request for a permanent injunction against the owners. Instead of appealing from that order, the owners appealed from the final judgment, which was entered in the district court less than 30 days after the filing of the order. The City contends that the owners' appeal was untimely because the time to appeal from an injunction order, *see* Minn. R. Civ. App. P. 103.03(b) (allowing an appeal to be taken from an order that grants an injunction), had expired before that appeal was filed. The court of appeals rejected this argument, concluding that the owners' appeal could be taken from the final judgment and therefore was timely.

On the merits, the owners argue that the City's ordinance, which prohibits them from building a permanent dock on their lakeshore property, is void because the City did not follow the procedures required for adopting a zoning or surface-use regulation. *See* Minn. Stat. §§ 462.357, subd. 3 (requiring public notice, a public hearing, and referral to a planning agency when amending a zoning ordinance), 86B.205, subds. 2, 4 (requiring various approvals when adopting a surface-use ordinance). The court of appeals rejected this argument, holding that the City had sufficient authority to adopt the ordinance under a separate statute that does not contain those procedural requirements, *see* Minn. Stat. § 412.221 (2020), and holding that the zoning and surface-use statutes did not apply.

We conclude that the appeal was timely and that the City's ordinance is subject to the procedural requirements of section 462.357 for municipal zoning, including notice and a public hearing. We therefore affirm in part and reverse in part the decision of the court of appeals.

FACTS

The owners have lakeshore property on Lake Waconia in the city of Waconia. In June 2017, the owners began building a year-round dock extending from their property into the lake. One month later, the City adopted Ordinance 705, an interim ordinance that prohibited the construction of any permanent dock for one year.

To stop dock construction by the owners, the City served a cease-and-desist order on the owners and also began litigation to enforce the ordinance. The district court denied the City's request for a temporary injunction against the owners but warned the owners that

proceeding with construction would be at their own financial peril should they ultimately lose on the merits of the litigation.

In early October 2017, the City repealed Ordinance 705 and enacted Ordinance 707. This ordinance amended the Waconia city code to prohibit permanent docks in public waters from riparian (lakeshore) lots within the city. It also required all seasonal docks to be removed from public waters for at least 90 days between November 1 and April 1 of each year. The purpose of Ordinance 707 was to "control and regulate Docks for riparian properties that have shoreline within the city to [e]nsure safety for person and property." For authority, the City cited its power to regulate docks under Minn. Stat. § 412.221, subd. 12.[1] The City did not cite its zoning authority under Minn. Stat. §§ 462.351–.365 (2020), and the ordinance expressly denied regulating the surface use of waters under Minn. Stat. § 86B.205, subd. 2.

By November 2017, construction of the owners' dock was nearly complete. The City filed an amended complaint that sought a permanent injunction under the new ordinance to halt further construction of the dock and to require its removal. The owners

[1] The statute provides that a council of a statutory city "shall have power to establish harbor and dock limits and by ordinance regulate the location, construction and use of piers, docks, wharves, and boat houses on navigable waters and fix rates of wharfage. The council may construct and maintain public docks and warehouses and by ordinance regulate their use." Minn. Stat. § 412.221, subd. 12.

counterclaimed, seeking an injunction to prevent the City from ordering removal of the dock and bringing various other claims.[2]

On cross-motions for summary judgment, the City asserted that the owners were in violation of the ordinance, and the owners claimed that the ordinance was procedurally defective for two reasons. First, the City did not give notice and hold a public hearing, as required for a zoning ordinance under section 462.357. Second, the City did not receive the required agency approval or approval from other townships adjacent to Lake Waconia, as required for a surface-use ordinance under sections 86B.205 and 459.20. The City countered that the ordinance was neither a zoning nor a surface-use ordinance because it was enacted under an independent source of authority, Minn. Stat. § 412.221, subd. 12.

The district court granted summary judgment in favor of the City. The court concluded that Ordinance 707 was not a zoning ordinance because the City chose to rely on its powers under section 412.221 rather than on the zoning or surface-use statutes. Further, because the owners were in violation of the ordinance, the court granted the City's request for an injunction requiring the owners to remove their dock. The court also denied the request of the owners for an injunction and rejected their other claims.

The order for summary judgment was filed on May 2, 2019. On May 3, the City served notice on the owners of the filing of the order. The May 2 order was entered as the judgment of the court on May 28.

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[2] The owners sought a declaratory judgment that Ordinance 707 is unenforceable, and they sought monetary damages for the tort of abuse of the legal process. Neither claim is before us.

On July 16, 2019, the owners filed a notice of appeal. The City moved to partially dismiss the appeal, asserting that the appeal period for the injunction began on May 3, when the City served the owners with notice of the filing of the district court's May 2 order. *See* Minn. R. Civ. App. P. 104.01, subd. 1 (measuring an appeal period from the date of service of written notice of the filing of an appealable order). Thus, the City argued, under the provision that authorizes an appeal from an order that grants an injunction, Minn. R. Civ. App. P. 103.03(b), the time for appeal had expired before the owners filed their appeal. The court of appeals denied this motion, concluding that the owners' appeal could be taken under Minn. R. Civ. App. P. 103.03(a) from the final judgment and therefore was timely. *City of Waconia v. Dock*, No. A19-1099, Order (Minn. App. Aug. 13, 2019).

On review of the merits, the court of appeals affirmed the district court's decision, *City of Waconia v. Dock*, No. A19-1099, 2020 WL 1909700, at *1 (Minn. App. Apr. 20, 2020), but on different grounds. The court held that Ordinance 707 is not a zoning ordinance because it applies "generally" and does not "regulate activities within specific zones." *Id.* at *6. It also held that the surface-use statute did not apply because Lake Waconia was not solely within the City's jurisdiction and because the City had no joint powers agreement with neighboring municipalities. *Id.* at *5.

The owners sought review on the merits and the City sought review on the timeliness of the owners' appeal. We granted review to address two questions: one, was the owners' appeal timely? and two, is Ordinance 707 subject to the procedural requirements for adopting a zoning ordinance under Minn. Stat. § 462.357 or a surface-use ordinance under Minn. Stat. §§ 86B.205, 459.20?

ANALYSIS

I.

We first consider whether the appeal by the owners was timely under the Minnesota Rules of Civil Appellate Procedure. "Construction and application of a rule of procedure is a legal issue, which we review de novo." *Olson v. Synergistic Techs. Bus. Sys., Inc.*, 628 N.W.2d 142, 153 (Minn. 2001). We will apply the plain language of the rule unless we determine that the language is subject to multiple reasonable interpretations and therefore is ambiguous. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 601 (Minn. 2014).

We begin by explaining the nature of the dispute. Rules 103 and 104 of our Rules of Civil Appellate Procedure identify categories of appealable decisions from the district courts and the timing for appeals from those decisions. As relevant here, an appeal may be taken from a final judgment, Minn. R. Civ. App. P. 103.03(a), within 60 days from the entry of judgment, Minn. R. Civ. App. P. 104.01, subd. 1. An appeal also may be taken from an order that "grants, refuses, dissolves or refuses to dissolve, an injunction," Minn. R. Civ. App. P. 103.03(b), within 60 days after written notice of the filing of the order is served, Minn. R. Civ. App. P. 104.01, subd. 1.

Ordinarily, an order granting summary judgment requires an entry of judgment to be appealable. *See Johnson & Peterson, Inc. v. Toohey*, 184 N.W.2d 586, 587 (Minn. 1971) ("An order granting summary judgment is an intermediate order which requires a subsequent judgment to give it effect and is not appealable." (citation omitted) (internal quotation marks omitted)). But when an order that decides a motion for summary judgment resolves a request for injunctive relief, we have considered appeals taken from that order

as appealable under Rule 103.03(b). *See State v. Minn. Sch. of Bus., Inc.*, 899 N.W.2d 467, 471 (Minn. 2017) (concluding that appellate jurisdiction was proper under Minn. R. Civ. App. P. 103.03(b) over an appeal from the district court's order denying summary judgment and refusing a request for a permanent injunction); *Hursch v. Vill. of Long Lake*, 75 N.W.2d 602, 604 (Minn. 1956) (treating an order granting summary judgment "as an order refusing an injunction").

Here, the district court issued an order that granted the City's motion for summary judgment and request for a permanent injunction. That order was entered as the final judgment less than 30 days later, and this appeal was taken from the judgment. It is undisputed that the owners could have taken their appeal from the court's summary judgment order. *See Favorite v. Minneapolis St. Ry. Co.*, 91 N.W.2d 459, 463 (Minn. 1958) ("That part of the order which grants an injunction permanently enjoining plaintiff . . . is appealable."). But if taken from the order, the appeal would be untimely because it was not filed within 60 days after the City served the owners with written notice of the filing of that order. *See* Minn. R. Civ. App. P. 104.01. Thus, the question we must decide is whether the owners could appeal from *either* the order granting injunctive relief *or* from the entry of judgment.

The City argues that an appeal of the injunction could be taken from only the injunction order and that, consequently, the appeal is untimely and we have no jurisdiction to hear it. The owners counter that their appeal was timely because Rule 103.03 permits

an appeal from either an injunction order or the final judgment.[3] To resolve this dispute, we will consider the plain language of the rules and longstanding policies embodied in our rules of civil appellate procedure. *See Engvall v. Soo Line R.R. Co.*, 605 N.W.2d 738, 741 (Minn. 2000) (examining the language of the rule and "caselaw that has shaped our policy toward interlocutory appeals").

A.

We agree with the owners that the timeliness of this appeal can be determined under the plain language of Rule 103.03. As noted above, Rule 103.03 identifies categories of decisions and events before the district court from which an appeal may be taken. Nothing in the rule suggests that an appeal may be taken in only one category and not another when the particular outcome before the district court involves a potentially appealable order *and* a potentially appealable judgment. Paragraphs (a) and (b) of Rule 103.03—permitting appeals from final judgments and injunction orders—have no qualifying or restricting language, unlike other paragraphs in the rule. For example, paragraph (d) allows an appeal from an order for a new trial "if the trial court" makes certain express findings. Minn. R. Civ. App. P. 103.03(d).

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[3] Relatedly, the owners moved to strike the following sentence from the City's reply brief: "In briefing this issue before the Minnesota Court of Appeals, the Docks did not argue that their declaratory judgment claim might survive dismissal of the order granting relief." A motion to strike is appropriate for a variety of reasons, including when a party's brief is untimely, *Townsend v. State*, 867 N.W.2d 497, 501 n.3 (Minn. 2015), when it raises forfeited arguments, *Bilbro v. State*, 920 N.W.2d 836, 836 (Minn. 2018) (order), or when it relies on facts that we may not consider, *Olson v. Lesch*, 943 N.W.2d 648, 652 n.3 (Minn. 2020). Here, the motion to strike focuses on a dispute about how to characterize an argument in a brief. The motion is denied.

Here, the court's summary judgment order falls into two of the categories identified in Rule 103.03. The summary judgment order was an appealable order to the extent it granted a permanent injunction. Minn. R. Civ. App. P. 103.03(b). That order was also entered as an appealable final judgment. Minn. R. Civ. App. P. 103.03(a). Accordingly, Rule 103.03 permits an appeal from either the order or the judgment. Limiting the owners' right to appeal to only one category or the other would "deviate from the plain language of the rule," which we decline to do. *See Marzitelli v. City of Little Canada*, 582 N.W.2d 904, 906 (Minn. 1998) (refusing to deviate from the plain language of Rule 103.03 by designating an appealable order as nonappealable simply because the district court directed entry of judgment on that order).[4]

The City argues that we are without jurisdiction to hear this appeal because the "sole act" that commences the running time for an appeal from an appealable order is the service of the notice of the filing of the order, by which measure the owners' appeal is not timely. *See* 5A Diane B. Bratvold & Paula Duggan Vraa, *Minnesota Practice—Methods of Practice* § 1.23 (4th ed. 2007). Although the City is correct that the appeal would be untimely if taken from the order, this time limit is irrelevant because we conclude that the owners permissibly and timely appealed from the judgment.

[4] Our holding applies in the relatively specific circumstances presented by this appeal and should not be taken as an indication that we intend to alter longstanding principles of appellate jurisdiction over summary judgment dispositions. *See Johnson & Peterson, Inc.*, 184 N.W.2d at 587 (explaining that an order granting summary judgment requires a subsequent judgment to be appealable).

B.

Our conclusion that the owners could appeal from either the injunction order or the final judgment is supported by several longstanding policies that undergird our interpretation of the rules of civil appellate procedure. Specifically, we seek to "preserv[e] the right to appeal" and avoid setting a "trap for the unwary." *Huntsman v. Huntsman*, 633 N.W.2d 852, 855–56 (Minn. 2001). We also encourage unified appeals. *Emme v. C.O.M.B., Inc.*, 418 N.W.2d 176, 179 (Minn. 1988) ("[T]he thrust of the rules governing the appellate process is that appeals should not be brought or considered piecemeal.").

In *Engvall v. Soo Line Railroad. Co.*, 605 N.W.2d 738 (Minn. 2000), we considered these policies when faced with a question that was almost identical to the one at hand. There, we considered whether an appellant's failure to take a timely appeal from an interlocutory order or judgment that is immediately appealable, even without an express determination under Minn. R. Civ. P. 54.02,[5] could result in the forfeiture of the right to appeal from the final judgment. 605 N.W.2d at 744. We concluded that no right is forfeited by waiting to appeal from the final judgment because interlocutory orders and judgments are "permissive rather than mandatory."[6] *Id.* at 745. We reasoned that a "rigid

[5] Rule 54.02 permits a district court to enter an interlocutory judgment only when it expressly determines that there is no just reason for delay and expressly directs the entry of the judgment.

[6] Although our statements on this point were dicta, *see Engvall*, 605 N.W.2d at 745 (holding that the interlocutory order was not immediately appealable but concluding in the alternative that an appeal from an interlocutory order was permissive and not mandatory), our reasoning in *Engvall* is persuasive.

determination" that interlocutory appeals are mandatory would be "inconsistent" with our practice of allowing procedural flexibility for appellants. *Id.* As an example, we cited *Shorewood v. Metropolitan Waste Control Commission*, 533 N.W.2d 402 (Minn. 1995). *Engvall*, 605 N.W.2d at 742–43. In *Shorewood*, the district court issued an order dismissing the case for lack of subject-matter jurisdiction, but the order directed the entry of judgment. 533 N.W.2d at 403. The judgment was then appealed. *Id.* Because the district court had directed the entry of judgment, we held that the appellant was "justified in regarding the order as a nonappealable order for judgment and in taking an appeal from the judgment—even though an appeal from the order would be proper." *Id.* at 404.[7] In *Engvall*, we noted that our conclusion in *Shorewood* "evinces a policy of some procedural flexibility for the benefit of the appellant." 605 N.W.2d at 743. That preference for allowing procedural flexibility for appellants supports our plain-language determination here as well.

[7] Our holding in *Shorewood* was based on notions of equity, rather than a plain-language analysis. *See* 533 N.W.2d at 404 (concluding—without citing any statute or rule governing civil appellate procedure—that counsel were "justified" in relying on the direction of the district court for entry of judgment); *Marzitelli*, 582 N.W.2dat 906 n.15 (interpreting *Shorewood* as providing an "accommodation" to parties so they would not have to second-guess the decision of a district court to direct, or not direct, the entry of judgment). Nevertheless, our reasoning in *Shorewood* evinces our policies of preserving the right to appeal and avoiding traps for the unwary, which support our holding today.

The City asserts that *Shorewood* is inapposite because we later held that an appealable order is not rendered nonappealable by language directing the entry of judgment. *See id.* at 906. The city's argument is inapplicable because here we rely on the plain language of the rules and do not extend *Shorewood*'s equitable rule. Moreover, *Marzitelli* dealt with the appealability of an *order* that directed the entry of judgment, not the appealability of a *judgment* as we are faced with today. *See id.* at 904.

We also stated in *Engvall* that a rigid determination of the rules would be inconsistent with our policies against piecemeal litigation and against setting traps " 'by a rule designed to alleviate untoward risks, not to create them.' " *Id.* at 745 (citation omitted). Although our statements in *Engvall* were made in the context of appealable *interlocutory* orders and judgments, these policy considerations are even more relevant here, where the appealable order effectively resolved the case by deciding all of the parties' remaining claims. Requiring the owners to appeal the injunction from the order would necessitate a piecemeal appeal because at least one of the owners' noninjunction claims—abuse of the legal process—could be appealed only from the judgment. Requiring separate appeals on these facts would also set a "trap for the unwary" party, *Huntsman*, 633 N.W.2d at 854, who may assume that a judgment is forthcoming and that a unified appeal would benefit all parties and the judicial system. Therefore, a restrictive interpretation of Rule 103.03 does no service here.

The City counters that, even if piecemeal appeals result, that result is dictated by the rules, which specifically contemplate multiple appeals. *See* Minn. R. Civ. App. P. 104.01 advisory comm. cmt.–1998 amendments (recognizing that a uniform 60-day appeal period for final judgments and appealable orders "will not necessarily result in an identical period to appeal" both an order and a judgment). Although we agree that the rules contemplate the possibility of distinct appeal periods for appealable orders and judgments, our holding today simply recognizes that the owners are permitted to appeal from *either* the injunction order *or* the final judgment. The corresponding appeal periods are unaffected by our holding.

The City also contends that permitting an appeal on these facts denies the City, and parties to other litigation involving injunctions, a "speedy, final determination" of the validity of an injunction order. We disagree. Judgment was entered by the district court less than 30 days after the injunction order was filed. At that point, the City knew the last possible date for an appeal, and this appeal was taken within the 60 days required by Minn. R. Civ. App. P. 104.01, subd. 1. Accordingly, there was no long delay or unfair surprise created by the decision of the owners to appeal from the judgment. In fact, the owners had no choice but to wait for an entry of judgment to appeal the decision on the merits of their claims, *see Johnson & Peterson*, 184 N.W.2d at 586, so the City could well anticipate the prospect of an appeal from the judgment. Further, the right to appeal an injunction order immediately is primarily for the benefit of the party whose interests are adversely affected by the order. Consequently, if it is in the best interests of an appellant to wait to appeal from the final judgment, we see no reason to deny the appellant that choice. *See Engvall*, 605 N.W.2d at 745.

Accordingly, we hold that an order that grants a permanent injunction may be reviewed on appeal if timely taken from either the final judgment, under Minn. R. Civ. App. P. 103.03(a), or from the order that grants the injunction, under Minn. R. Civ. App. P. 103.03(b). Because the owners' appeal was timely taken from the final judgment, we have jurisdiction to determine this appeal on the merits.

II.

Next, we consider whether the district court erred by issuing an injunction requiring the owners to remove their nearly completed dock because it was in violation of Ordinance

707. The owners argue that the ordinance is void because the City did not follow the procedural requirements for adopting a zoning regulation, including, but not limited to, notice and a public hearing. *See* Minn. Stat. § 462.357, subd. 3. The City makes two arguments in response: first, the ordinance is not a zoning regulation and, second, even if it were, the City was not required to follow zoning procedures because the City relied on its authority to regulate docks under Minn. Stat. § 412.221, subd. 12, which does not require the notice and hearing procedures, rather than the zoning powers set out in chapter 462.

This question requires us to review the district court's grant of summary judgment and to determine the relationship between the two statutes on which the parties rely, Minn. Stat. §§ 462.357, 412.221. We review a grant of summary judgment de novo. *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998). The interpretation of a statute is a question of law, which we review de novo. *Harstad v. City of Woodbury*, 916 N.W.2d 540, 545 (Minn. 2018).

A.

We must first determine whether Ordinance 707 is a zoning regulation within the meaning of section 462.357. *See* Minn. Stat. § 462.357, subd. 1 (authorizing a city to regulate "by ordinance"). If it is not a zoning regulation, then the parties agree that no notice or public hearing was required, and the ordinance is valid.

The goal of all statutory interpretation is to "ascertain and effectuate" the Legislature's intent. Minn. Stat. § 645.16 (2020). "When the language of a statute is plain

and unambiguous, that plain language must be followed." *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999).

1.

Because we have not previously adopted a test for determining whether an ordinance is a zoning regulation, we must do so now. As a statutory city, Waconia has no inherent powers; it has only those powers "expressly conferred by statute or implied as necessary in aid of those powers." *Country Joe, Inc. v. City of Eagan*, 560 N.W.2d 681, 683 (Minn. 1997) (citation omitted) (internal quotation marks omitted). The city's zoning power is conferred by the state zoning enabling act, Minn. Stat. §§ 462.351–.365 (2020). *See White v. City of Elk River*, 840 N.W.2d 43, 49 (Minn. 2013). The purpose of the act is "to provide municipalities, in a single body of law, with the necessary powers and a uniform procedure for adequately conducting and implementing municipal planning." Minn. Stat. § 462.351. To that end, the act authorizes municipalities to adopt a comprehensive municipal plan and to "implement such plan by ordinance and other official actions" as permitted under other sections. Minn. Stat. § 462.353, subd. 1.

Although the zoning enabling act does not define "zoning," section 462.357 identifies the scope of a municipality's zoning power by listing the subjects that a municipality "may by ordinance regulate" to promote public health, safety, morals, and welfare. Minn. Stat. § 462.357, subd. 1. As relevant here, these subjects include the location, type of foundation, and uses of structures. *Id.* The act also permits cities to divide land into "districts or zones" with uniform regulations and then explains that the ordinance "embodying these regulations" shall be known as "the zoning ordinance," which the act

also calls a "comprehensive zoning regulation." *Id.*; *see Denney v. City of Duluth*, 202 N.W.2d 892, 894 (Minn. 1972) (explaining that section 462.357 "empowers all municipalities to adopt by ordinance comprehensive zoning regulations and thereafter to amend such ordinances"). Subdivision 1 reads as follows:

> For the purpose of promoting the public health, safety, morals, and general welfare, *a municipality may by ordinance regulate* on the earth's surface, in the air space above the surface, and in subsurface areas, *the location*, height, width, bulk, *type of foundation*, number of stories, size of buildings and other structures, the percentage of lot which may be occupied, the size of yards and other open spaces, the density and distribution of population, *the uses of buildings and structures* for trade, industry, residence, recreation, public activities, or other purposes, *and the uses of land* for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation, conservation of shorelands . . . or other purposes, and may establish standards and procedures regulating such uses. . . . *The regulations may divide* the surface, above surface, and subsurface areas of *the municipality into districts or zones* of suitable numbers, shape, and area. The regulations shall be uniform for each class or kind of buildings, structures, or land and for each class or kind of use throughout such district, but the regulations in one district may differ from those in other districts. *The ordinance embodying these regulations shall be known as the zoning ordinance* and shall consist of text and maps.

Minn. Stat. § 462.357, subd. 1 (emphasis added).

From this language we conclude that a functional analysis is appropriate for determining whether an ordinance is a zoning regulation governed by section 462.357. A city may adopt a comprehensive zoning code that consists of any number of subsidiary regulations. Both the comprehensive code and the subsidiary regulations are recognized by the content: the subsidiary regulations govern the subjects authorized by subdivision 1—such as the location, height, and width of buildings and structures—and the comprehensive zoning code is the collection of these regulations and any related maps.

Accordingly, the first step in determining whether an ordinance is a zoning regulation is to determine whether it governs the subjects identified by section 462.357.

The second step is to determine whether an ordinance serves a zoning purpose. Section 462.357, subdivision 1, states that a city may regulate by ordinance for the "public health, safety, morals, and general welfare." Other sections of the zoning enabling act clarify that zoning regulations are a municipal tool for controlling land use and development. *See, e.g.,* Minn. Stat. §§ 462.351 (explaining that the purpose of the act is to provide municipalities, in a single body of law, with the necessary powers and a uniform procedure for "adequately conducting and implementing municipal planning"), .352, subd. 15 (defining "official controls" as "ordinances and regulations which control the physical development of a city . . . and implement the general objectives of the comprehensive plan" and which include "ordinances establishing zoning"), .353, subd. 1 (permitting a municipality to "carry on comprehensive municipal planning activities . . . and implement [a comprehensive municipal] plan by ordinance and other official actions"), .357, subd. 2 (permitting a planning agency to submit a proposed zoning ordinance to the governing body for the purpose of carrying out the policies and goals of the land use plan).

In assessing whether an ordinance serves a zoning purpose, a variety of nonexclusive factors may be relevant, including the stated purpose of an ordinance and whether the ordinance operates like a typical zoning regulation. As described by one treatise, zoning laws usually include the following characteristics:

> [Z]oning ordinances typically divide a geographic area into multiple zones or districts. Within the districts or zones certain uses are typically allowed as of right and certain uses are prohibited by virtue of not being included in

> the list of permissive uses for a district. In general, zoning ordinances provide landowners with permitted uses, which allow a landowner to use his or her land, in said manner, as of right; zoning ordinances are traditionally aimed at directly controlling where a use takes place, as opposed to how it takes place, classify uses in general terms, and attempt to comprehensively address all possible uses in the geographic area. Zoning ordinances make a fixed, forward-looking determination about what uses will be permitted, as opposed to case-by-case, ad hoc determinations of what individual landowners will be allowed to do and allow certain landowners whose land use was legal prior to the adoption of the zoning ordinance to maintain their land use despite its failure to conform to the zoning ordinance.

8 Eugene McQuillin, *The Law of Municipal Corporations* § 25:59 (3d ed. 2020). The presence of these characteristics indicates a zoning purpose.

A functional test that considers the content and purpose of the ordinance accords with our prior statements and holdings. We have previously stated that a "zoning statute or ordinance is one which, by definition, regulates the building development and uses of property." *In re Denial of Eller Media Co.'s Applications for Outdoor Advert. Device Permits*, 664 N.W.2d 1, 8 (Minn. 2003). We have also observed that the purpose of zoning laws is " 'to control land use[] and development in order to promote public health, safety, welfare, morals, and aesthetics.' " *In re Stadsvold*, 754 N.W.2d 323, 329 (Minn. 2008) (quoting *State ex rel. Ziervogel v. Wash. Cnty. Bd. of Adjustment*, 676 N.W.2d 401, 407 (Wis. 2004)). More narrowly, "zoning ordinances are regarded as being aimed primarily at conserving property values and encouraging the most appropriate use of land." *Hutchinson v. Cotton*, 53 N.W.2d 27, 28 (Minn. 1952). Moreover, we have adopted a functional test in at least one parallel context. *See City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1 (Minn. 2008). In *Sax Investments*, we determined whether a city ordinance was preempted by the state building code and concluded that the phrase "building code

provision" means "at least those subjects specifically regulated by the State Building Code," which required us to examine the specific provisions of the ordinance at issue. *Id.* at 8.

A functional analysis also accords with persuasive authority from legal experts and courts more generally, although the tests vary. One test looks to the nature and purpose of the ordinance. *See* 8 McQuillin, *supra*, § 25:59 ("Whether or not a particular ordinance is a zoning ordinance may be determined by a consideration of the substance of its provisions and terms, and its relation to the general plan of zoning in the city." (footnote omitted)); *Zwiefelhofer v. Town of Cooks Valley*, 809 N.W.2d 362, 366 (Wis. 2012) (using a functional analysis that considers the characteristics and purposes of an ordinance); *Square Lake Hills Condo. Ass'n v. Bloomfield Twp.*, 471 N.W.2d 321, 326–27 (Mich. 1991) (quoting *McQuillin* and applying a functional analysis); *Piper v. Meredith*, 266 A.2d 103, 107 (N.H. 1970) (same). Another test asks whether the ordinance would have a substantial effect on land use. *See* 1 Arden H. Rathkopf et al., *Rathkopf's The Law of Zoning and Planning* § 1:10 (4th ed. 2020) ("Where the particular restriction constitutes, or would constitute, a substantial interference with land use, the municipality ordinarily must treat it as a zoning regulation and must follow statutory or charter zoning procedures, even though other authority for the particular type of ordinance has been granted."); S*NPCO, Inc. v. City of Jefferson City*, 363 S.W.3d 467, 478 (Tenn. 2012) (applying a substantial effects test); *Thrash Ltd. P'ship v. Cnty. of Buncombe*, 673 S.E.2d 689, 693 (N.C. Ct. App. 2009) (same); *City of Sanibel v. Buntrock*, 409 So. 2d 1073, 1075 (Fla. Dist. Ct. App. 1981) (same). Still other tests look for traditional features of zoning, particularly the use of

districts or zones. *See Powell v. City of Houston*, ___ S.W.3d ___, 2021 WL 2273976, at *7 n.8, *8 (Tex. June 4, 2021) (holding that a regulation is zoning when it "shares the common features of zoning," which include "district-based regulation of the uses to which land can be put and of the height, bulk, and placement of buildings on land"); *City of Walnut Grove v. Questco, Ltd.*, 564 S.E.2d 445, 447 (Ga. 2002) ("[W]e reiterate our holding . . . that a land use regulation be evaluated as a whole to determine whether or not it involves dividing a governmental unit into zones or districts and applying different standards to such zones or districts in regard to property therein."); *Bd. of Cnty. Comm'rs v. City of Las Vegas*, 622 P.2d 695, 697 (N.M. 1980) (" '[Z]oning is defined as governmental regulation of the uses of land and buildings according to districts or zones.' " (quoting *Miller v. City of Albuquerque*, 554 P.2d 665, 667 (N.M. 1976))). But other courts have relied on formal distinctions. *See, e.g.*, *Landmark Land Co. v. City & Cnty. of Denver*, 728 P.2d 1281, 1286 (Colo. 1986) (upholding a building-height regulation under the city's police power because the city was "free to choose the method of implementing" its permissible goal).

In sum, we conclude that whether an ordinance is a zoning regulation requires a two-step inquiry in which we consider whether the ordinance governs the subjects identified in section 462.357, subdivision 1, and whether the ordinance serves a zoning purpose.[8]

[8] For classification purposes, we observe that our test aligns most closely with the nature and purpose test in the McQuillin treatise. *See* 8 McQuillin, *supra*, § 25:59.

2.

Applying our test, we conclude that Ordinance 707 is a zoning regulation. Under section 462.357, subdivision 1, municipalities may regulate the "location," "type of foundation," and "uses" of "structures."[9]

We begin with location. The statute permits cities to regulate the location of structures, including through the use of districts or zones. Minn. Stat. § 462.357, subd. 1 ("The regulations may divide the surface, above surface, and subsurface areas of the municipality into districts or zones . . . . [T]he regulations in one district may differ from those in other districts."). The owners assert that Ordinance 707 regulates the location of docks because it prohibits permanent docks from "riparian properties that have shoreline within the city." The City argues that this ordinance is essentially a citywide ban on permanent docks and that, because the ordinance does not regulate the location of docks within a property, as with a setback requirement, it does not regulate location within the meaning of section 462.357.

We disagree with the City's assessment that Ordinance 707 is simply a citywide ban on permanent docks. Although the ordinance applies to "all Docks in Public Waters that have shoreline within the City," it expressly exempts "Commercial Docks, Marinas or Public Docks," which the ordinance defines in relation to formal zones. For the purpose of the ordinance, a commercial dock means "a Dock used in conjunction with a commercial

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[9] Preliminarily, docks are undeniably "structures." *See Structure*, *Black's Law Dictionary* (11th ed. 2019) ("Any construction, production, or piece of work artificially built up or composed of parts purposefully joined together . . . .").

or other revenue producing business enterprise . . . provided that the Dock is attached to and serves a *parcel zoned for commercial use*." (Emphasis added.) A marina means "a *commercial Dock* for the mooring of seven or more watercraft or seaplanes . . . and where . . . the parcel to which the Marina is adjacent is *zoned for commercial purposes*, specifically those for which the Marina is used." (Emphasis added.) And a public dock means "any Dock or Dock structure that is owned and operated by the City, the County or the Minnesota Department of Natural Resources." Accordingly, by its own terms, Ordinance 707 regulates the location of docks because it permits them on commercially zoned shoreline lots but prohibits them from private, noncommercial lots.[10] That a city could rely on its zoning power to also regulate the location of a dock *within* a property is inconsequential.

Next, we determine whether the ordinance regulates the type of foundation of a structure. The ordinance differentiates between a "permanent" dock and a "seasonal" dock based on the methods and materials used to anchor the dock in the lakebed. The ordinance prohibits any permanent dock, which it defines as one that "is not a Seasonal Dock and is

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[10] Even if Ordinance 707 banned permanent docks citywide, that would not automatically exclude a determination that the ordinance is a zoning regulation. *See, e.g.*, *Bd. of Cnty. Comm'rs*, 622 P.2d at 697 (holding that an ordinance governed "zoning" even though it applied to a single, countywide district). Notably, the city's zoning code has several regulations that apply to "All Districts" within the city. *See, e.g.*, Waconia, Minn., Code § 900.07, subd. 3(C)(2)–(3) (prohibiting fences on a public right-of-way or boulevard area and on any corner lot that will obstruct the view of an intersection); Waconia, Minn., Code § 900.10, subd. 3(B)(1), (4)–(5), (9), (13) (prohibiting signs that project into any public right-of-way or easement, are affixed to trees, rocks, or similar natural surfaces, are painted directly on the wall or roof of a building or structure, or are on a vehicle, trailer, or roof). In any event, whether an ordinance is a zoning regulation requires a functional analysis of all the relevant factors.

supported by pilings, retaining wall or other materials and associated with a permanent foundation that is either resting or embedded in the lake bottom and is designed to make relocation impracticable." But the ordinance permits "seasonal" docks, which it defines as docks that "may be removed from the Public Waters on a seasonal basis." Because the ordinance effectively prohibits certain types of foundations—those that rest or are embedded in the lake bottom and are designed to make relocation difficult—the ordinance regulates the "type of foundation" of a "structure" as described in section 462.357.

Finally, we determine whether Ordinance 707 regulates the "uses" of structures or land "for trade, industry, residence, recreation, public activities, or other purposes." Minn. Stat. § 462.357, subd. 1. As already explained, Ordinance 707 permits the use of permanent docks for commercial purposes and bans the use of nonpublic permanent docks for noncommercial uses. Thus, it regulates the uses of structures. Further, the ordinance permits the construction of permanent docks on commercial properties but not on residential or other noncommercial private properties, which is a regulation of the uses of land. Accordingly, the ordinance regulates the uses of structures and land.[11]

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[11] The owners argue that the ordinance also regulates the "use" of seasonal docks because it requires dock removal for 90 days each year between November 1 and April 1. The city maintains that this timing restriction does not transform the ordinance into a zoning regulation. Notably, the city has similar time-based regulations within its zoning code already. *See, e.g.*, Waconia, Minn., Code §§ 900.07, subd. 3(C)(4) (permitting snow-stop fencing to be used from November 1 to April 1), .10, subd. 3(G) (permitting garage sale signs during the duration of a garage sale and one day after), (I) (permitting special event signs for 30 days prior to the special event and two business days after). But, because we have already concluded that the ordinance regulates the location, foundation, and use of structures on other grounds, we need not decide whether a timing restriction like the one here constitutes a regulation of "uses . . . for trade, industry, residence, recreation, public activities, or other purposes" within the meaning of the statute.

Because Ordinance 707 regulates subjects permitted by section 462.357, namely, the location and type of foundation of structures, and the uses of structures and land, we next consider whether the ordinance serves a zoning purpose. We first examine the stated purpose of the ordinance and then compare the features of the ordinance to those of typical zoning laws.

The ordinance has the following purpose: "[T]he intent of this Chapter is to control and regulate Docks . . . to [e]nsure safety for person and property and to promote the general health, safety and welfare of the general public and the citizens of the City." Promoting safety and the general health and welfare of the people is a permissible zoning goal. *See* Minn. Stat. § 462.357, subd. 1; *Stadsvold*, 754 N.W.2d at 329. It also mirrors one of the goals of the city's zoning code. *See* Waconia, Minn., § 900.02 (stating that a purpose of the zoning code is to "[p]rotect the public health" and "safety"). But this statement of purpose is formulated so broadly that it is of little use in distinguishing an exercise of general police power from an exercise of narrower municipal zoning powers. *See Zwiefelhofer v. Town of Cooks Valley*, 809 N.W.2d 362, 378 (Wis. 2012) (acknowledging that broad statements of purpose, such as to promote the general "health, safety, prosperity, aesthetics and general welfare" of a city, are "not helpful" in distinguishing a zoning ordinance from an ordinance enacted under a city's nonzoning police power).

We turn next to the manner in which the ordinance operates. Generally, zoning ordinances are "aimed at directly controlling *where* a use takes place, as opposed to *how* it takes place," and these ordinances "typically divide a geographical area into multiple zones or districts." 8 McQuillin, *supra*, § 25:59 (emphasis added). Consequently, reliance on

formal districts is highly indicative of a zoning purpose. *See In re Denial of Eller Media Co.'s Applications*, 664 N.W.2d at 8 ("[T]he creation of districts or zones and the classification of those districts is a vital part of any zoning plan."). As explained, Ordinance 707 permits nonpublic permanent docks on commercial properties but not on residential properties. Thus, the ordinance operates directly through the districts established by the City's zoning code, *see* Waconia, Minn., § 900.05, subd. 1 (establishing various districts), which strongly suggests that Ordinance 707 has a zoning purpose.

In addition, under zoning laws, "certain uses are typically allowed as of right and certain uses are prohibited." 8 McQuillin, *supra*, § 25:59. Zoning laws make a "fixed, forward-looking determination about what uses will be permitted, as opposed to case-by-case, ad hoc determinations." *Id.* Ordinance 707 permits the commercial use of permanent docks on commercial properties as of right and prohibits the use of permanent docks on residential properties. These permitted and prohibited uses are forward-looking and do not involve any kind of permit-based or case-by-case determination. Therefore, these features of the ordinance parallel those of typical zoning laws.

Some provisions suggest a nonzoning application. Ordinance 707 does not permit preexisting permanent docks (a "nonconforming use" in zoning parlance), *see id.*, or for docks that, like the owners' dock, were undergoing construction at the time the ordinance was adopted. In addition, the ordinance addresses very narrow uses—that of permanent docks and seasonal docks—and does not "classify uses in general terms" or "attempt to comprehensively address all possible uses" in the city. *See id.* But these features are

entitled to little weight under our analysis because any noncomprehensive amendment to a zoning code contains similar provisions.

On the whole, Ordinance 707 embodies a clear judgment about the appropriate use and development of land within the city. It regulates dock usage and where permanent docks may be built, which fundamentally are zoning judgments. *See* 1 Patricia E. Salkin, *American Law of Zoning* § 1:18 (5th ed. 2020) ("Zoning is 'a legislative act representing a legislative judgment as to how the land within the City should be utilized . . . .' " (citation omitted)); *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 417 (Minn. 1981) (explaining that zoning ordinances involve a wide range of value judgments and are inherently legislative rather than judicial in character). Accordingly, because Ordinance 707 regulates subjects authorized by Minn. Stat. § 462.357 for the purpose of controlling municipal land use and development, it is functionally a zoning regulation.

B.

Having determined that Ordinance 707 is functionally a zoning regulation, we next decide whether the City was required to follow the procedural requirements for adopting or amending a zoning ordinance. This question requires us to determine the relationship between two statutes: Minn. Stat. § 462.357 (authorizing municipal zoning) and Minn. Stat § 412.221, subd. 12 (authorizing municipal regulation of docks). The City argues that, because section 412.221 provides an independent source of statutory authority for its dock regulations, the City was not required to follow the procedural requirements for exercising its zoning powers. The owners counter that the requirements of section 462.357 apply even when the City regulates docks under another statutory authorization.

Minnesota Statutes chapter 412 governs the powers of statutory cities. *See generally* Minn. Stat. §§ 412.01–.921 (2020). Section 412.221 identifies 34 specific powers of a statutory city council, including the power to regulate the location, construction, and use of docks:

> The council shall have power to establish harbor and dock limits and by ordinance regulate the location, construction and use of piers, docks, wharves, and boat houses on navigable waters and fix rates of wharfage. The council may construct and maintain public docks and warehouses and by ordinance regulate their use.

Minn. Stat. § 412.221, subd. 12. In exercising powers under section 412.221, the only procedural requirements are contained in section 412.191, which requires a proposed ordinance to be approved by a majority vote of the city council, signed by the mayor, attested to by the clerk, published in the official newspaper, and recorded in the ordinance book. Minn. Stat. § 412.191, subd. 4 (2020). In addition, certain subdivisions of section 412.221 incorporate limitations contained outside of chapter 412. *See, e.g.*, Minn. Stat. § 412.221, subd. 20 (requiring an ordinance regulating taxicabs to meet the requirements of Minn. Stat. § 221.091, subd. 2 (2020)). The parties agree that the ordinance is valid if it is held only to the requirements of chapter 412.

By contrast, when adopting or amending a zoning ordinance, a city is required to provide notice and hold a public hearing. *See* Minn. Stat. § 462.357, subd. 3. Additionally, "[a]n amendment that is not initiated by a city planning agency must be submitted to the planning agency, if there is one, for study and report." *Id.*, subd. 4.

Although chapters 412 and 462 each provide the City with sufficient authority to regulate docks, the Legislature has made it clear that, when exercising zoning power, a city

must follow the procedural steps that are set out in chapter 462. "It is the purpose of sections 462.351 to 462.364 to provide municipalities, *in a single body of law*, with the necessary powers and a *uniform procedure* for adequately conducting and implementing municipal planning." Minn. Stat. § 462.351 (emphasis added). To permit the city to bypass the requirements of section 462.357 by relying on the grant of authority in section 412.221, subdivision 12, would contradict the Legislature's stated intent of providing a "single" body of law with a "uniform procedure" for cities to exercise their zoning power. *See Nordmarken v. City of Richfield*, 641 N.W.2d 343, 348–49 (Minn. App. 2002) (holding that local zoning by referendum was preempted by the procedures established in chapters 462 and 473 because the Legislature had declared its intent to provide a uniform procedure for conducting and implementing municipal planning).

The City argues that if the Legislature had intended for the zoning procedural requirements to apply when a city exercises its power under section 412.221, subdivision 12, the Legislature would have stated so in subdivision 12. The City notes that, although other powers identified in section 412.221 incorporate limitations from outside chapter 412, that specific power contains no such limitations. *See, e.g.*, Minn. Stat. § 412.221, subds. 20, 30 (requiring an ordinance regulating taxicabs to meet the requirements of section 221.091, subdivision 2, and permitting regulation of restaurants, other than one in a grocery store that is subject to regulation under Minnesota Statutes chapter 28A). Although the City is correct that section 412.221, subdivision 12, does not identify any external limitations on the power of a statutory city to regulate docks, that silence does not

negate the Legislature's clearly expressed intent in section 462.351 that a city follow zoning procedural requirements when exercising its zoning authority.

Due process considerations bolster our determination. Zoning laws interfere with the property rights of owners, and because of this concern, a variety of protective doctrines apply, including the nonconforming-use doctrine, vested-rights doctrine, and discretionary variances. *See White v. City of Elk River*, 840 N.W.2d 43, 49 (Minn. 2013) ("A nonconforming use is a use of land that is prohibited under a current zoning ordinance but nonetheless is permitted to continue because the use lawfully existed before the ordinance took effect."); *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 294 (Minn. 1980) ("[In a] vested rights analysis the court asks whether a developer has progressed sufficiently with his construction to acquire a vested right to complete it."); *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 508–09 (Minn. 1983) (recognizing that a municipality must act in good faith but has "broad discretionary power" to grant or deny a request for a zoning variance).

Allowing cities to implement zoning regulations without following statutory zoning procedures bypasses these protections, which raises serious questions about constitutional and statutory due process. "We have long upheld a municipality's authority to enact zoning ordinances . . . . But we also have recognized limitations—both constitutional and statutory—on that authority." *White*, 840 N.W.2d at 49; *see also* 1 Salkin, *supra*, § 8:3 ("Procedural requirements are considered by the courts to be safeguards against the arbitrary exercise of power. Failure to comply with such procedural requirements has been regarded not only as an ultra vires act on the part of municipal legislators, but also as a

denial of due process of law."); *Glen Paul Ct. Neighborhood Ass'n v. Paster*, 437 N.W.2d 52, 56–57 (Minn. 1989) (stating that "[a]dministrative convenience does not outweigh the right of property owners to statutorily mandated due process" and invalidating a zoning amendment because the city failed to make a bona fide effort to comply with the notice requirement).

Many courts and commentators share our concern with bypassing zoning law requirements by relying on another source of authority. *See, e.g.*, 8 McQuillin, *supra*, § 25:59 ("[W]here an ordinance is in nature and purpose a zoning ordinance, it must comply with the zoning statute."); 1 Rathkopf et al., *supra*, § 1:10 ("While the zoning power is justified because it is a facet of the general police power, a locality cannot evade the protection provided for the citizen's use of his property by the legislative limitations imposed on the zoning power, by labeling what is actually a zoning ordinance a 'police power' ordinance."); *Ellison v. City of Fort Lauderdale*, 183 So. 2d 193, 195 (Fla. 1966) (disapproving of attempts by municipalities to "evade the protections" of legislative limits on zoning power by "labeling a zoning act a mere exercise of police power"); *Cherokee Country Club, Inc. v. City of Knoxville*, 152 S.W.3d 466, 473 (Tenn. 2004) (adopting a functional definition of a zoning ordinance in part to eliminate "the risk that a municipality may avoid statutory zoning requirements by attempting to label what is in reality a zoning ordinance as a building regulation"); *Thrash Ltd. P'ship v. Cnty. of Buncombe*, 673 S.E.2d 689, 693–94 (N.C. Ct. App. 2009) (concluding that a multifamily dwelling ordinance passed under a city's general police powers was invalid for not complying with zoning notice requirements).

Ultimately, a municipality is a political subdivision of the state, and thus, municipal powers of statutory cities exist at the sufferance of the Legislature. *See Country Joe, Inc.*, 560 N.W.2d at 683. Requiring a city to follow the procedural steps contained in section 462.357, when adopting what is, in effect, a zoning regulation, ensures that a municipality respects the property rights of individuals when that municipality seeks to restrict the use and development of private property.

We hold that Ordinance 707 is functionally a zoning regulation, and therefore, the City is required to follow the procedures outlined in Minn. Stat. § 462.357 for amending or adopting a zoning ordinance. Because the City failed to comply with the procedural requirements of section 462.357, including notice and a public hearing, Ordinance 707 is void, and the permanent injunction against the owners under the ordinance is also void.[12]

CONCLUSION

For the foregoing reasons, the decision of the court of appeals is affirmed in part and reversed in part.

Affirmed in part, reversed in part.

[12] Because we invalidate the ordinance for failing to comply with Minn. Stat. § 462.357, we need not consider whether the ordinance is also subject to the requirements for adopting a surface-use ordinance under Minn. Stat. §§ 86B.205, 459.20.