**Statement of the case and notes for hearing.**

* The Zoning Administrator has an **undeniable ministerial and legal duty** to enforce the Municipal Code in accordance with its **plain meaning** and has no power to change or grant variances from that Code.
* For each parcel at the Ford site, the Code clearly prescribes a **maximum percentage** that can be **covered by buildings** and a **minimum percentage** of the parcel that **must be open space**.
* For the parcel at 2170 Ford Parkway, the Code clearly states that ***lot coverage by buildings is a maximum of 75%*** and that ***lot coverage for open space is a minimum of 25%.***
* Ryan **applied for a variance** from the 25% open space requirement.
* The City said Ryan **didn’t need the variance** because private rooftop decks and balconies **within the limits of the building lot coverage** constitute open space.
* There is **no available codified definition of “open space” that would allow for this** and the City knows this. In fact, they have admitted this multiple times and have pledged to resolve it via an amendment to the Code or the Master Plan. They haven’t.
* The Zoning Administrator’s illegal misapplication of the open space definition has **swallowed up the entire codified distinction** between *lot coverage by buildings* and *lot coverage for open space*.
* In fact, it is noteworthy that the City now attempts to **legislate via legal memo** on a very important land use issue by introducing a **completely made-up term “amenity space”** and uses it to **completely swallow up the codified distinction** between *lot coverage by buildings* and *lot coverage for open space* presumably to inflate building footprints, square footage, tax revenue, and developer profits.
* **Petitioners**, **several of whom serve on community council boards**, **notified** the Zoning Administrator, the Board of Zoning Appeals, and the City Council multiple times of this issue. The City has taken no action, so the petitioners filed the present action.
* The City now seeks a motion to dismiss which **should be denied** for the following reasons.
  + **Jurisdiction.** The central question before us is whether the City must follow their own laws. However, the City uses sleight of hand by citing Minn. Stat. §462.361 jurisdictional requirements in an attempt to convert this case into a dispute over use of discretion. Regardless of the Municipal Planning Act, Minnesota case law is clear[[1]](#footnote-1) that **Minn. Stat. §586.01 can be applied in the context of municipal land use issues**, especially to compel the performance of an official duty clearly imposed by law which is exactly what we have here (the duty to apply the plain meaning of the Code). The court has jurisdiction to hear this case.
  + **Standing.** Minnesota Supreme Court has said resident **taxpayers have an interest in ensuring that zoning ordinances are enforced** and such interest is **sufficient to confer standing** in mandamus actions.[[2]](#footnote-2)
  + **Duty to exhaust remedies defense.** The City raises as a defense that petitioners did not appeal within 10 days of the Zoning Administrators’ deliberate failure to enforce the City’s own Code. However, (1) the deliberate failure to enforce their own laws **does not** **constitute legitimate action** that would trigger the duty to appeal[[3]](#footnote-3); the public policy implications of the opposite conclusion would be disastrous; (2) it would **not be equitable** to allow the City to assert failure to appeal as a defense because the record shows that **they were aware** of the issue and **said multiple times they would address it**,and never did, and (3) any effort to appeal would have been **futile** as petitioners wrote many letters to Zoning Administration, Board of Zoning Appeals, and the City Council making them aware of this issue, and no action was taken.
  + **Rational basis. Making up a new term “amenity space”** out of thin air and **using it to swallow** **up** the codified distinction between *lot coverage by buildings* and *lot coverage for open space* **is not a rational-basis** for not holding a variance hearing to deviate from the plain meaning of the Code.

1. See Mendota Heights Golf, LLP v. City of Mendota Heights. [↑](#footnote-ref-1)
2. See *Scinocca v. St. Louis County Bd. of Com’rs*, 1979, 281 N.W.2d. 659. [↑](#footnote-ref-2)
3. Petitioners cite *Sholes* to make the **general point** that Minnesota Courts have recognized that the **duty to exhaust other remedies presupposes that some action has been taken**. Petitioners **also cite**, 21 Minn. Prac., Administrative Prac. & Proc § 10.14 (2d ed.) to support their argument that the City is bound by it’s own rules and procedures and where they **fail to follow them**, it is an abuse of discretion which **invalidates the City’s action**. Petitioners stand firm in their position that the Zoning Administrator’s deliberate failure to enforce the City’s own Code by unilaterally granting a variance from the plain meaning of the Code is not legitimate action that would trigger the duty to appeal. Any other conclusion would undermine societal interests in lawful governance and sound public policy.

   [↑](#footnote-ref-3)