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State of Minnesota
11/20/2020 4:22 PM

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

JAMES CHARLES WINTERER, **KATHRYN McGUIRE**, **CATHERINE M. HUNT** and **HOWARD J. MILLER**, **BRUCE J. FARIBAULT**, **BRUCE HOPPE**;

Petitioners,

vs.

THE CITY OF SAINT PAUL, a body corporate and politic under Minnesota law;

Respondent.

Court File No. 62-CV-20-5188
Honorable John H. Guthmann

RESPONDENT CITY OF SAINT PAUL'S MEMORANDUM SUPPORTING THE MOTION TO DISMISS

INTRODUCTION

Ryan Companies is a developer who submitted a variance application to the City of Saint Paul's (the City's) Zoning Administrator requesting a variance on property at the Ford Site redevelopment project. The City's Zoning Administrator determined Ryan's variance request was unnecessary, and decided not to send the request to the City's Board of Zoning Appeals for a hearing.

Petitioners disagree with the Zoning Administrator's decision, and now bring a *Petition for a Writ of Mandamus* asking this Court to require the City to hold that variance hearing. In response to this Court's November 2, 2020 *Alternative Writ of Mandamus*, the City now explains why the relief requested by the Petitioners should not be ordered. Specifically, the City asks this Court to dismiss this case for four reasons.

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

1. **Jurisdiction**. This Court lacks jurisdiction to hear this case because the Petitioners failed to appeal the Zoning Administrator's decision using the procedures inside the City's zoning code.

2. **Standing**. Petitioners lack standing to challenge the Zoning Administrator's decision.

3. **No fair notice of claim**. The City does not have fair notice of Petitioners' legal claim because the *Petition* fails to contain a short and plain statement of that claim.

4. **Rational-basis test**. Even if we reach the merits, the Zoning Administrator's decision was reasonable under the deferential rational-basis test.

This *Memo* discusses each argument in more detail.

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

TABLE OF CONTENTS

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

UNDISPUTED FACTS

i. Background of the Ford Site Development.

In 2006, Ford Motors Company, permanently shut off the lights at a large assembly plant located in the heart of Saint Paul (the City). Eric Wieffering, *Fate of Ford plant was settled a long time ago*, STAR TRIBUNE, (Dec. 11, 2011, 6:42 AM).[1] Left with a large swath of empty land, the City looked at what it could do with this dusty patch of earth. For years, the City engaged with the community, consulted with partners, studied the environmental impacts, and more—all trying to sketch out the best ideas to put the property to use and benefit the entire City. *See* StPaul.gov, *Ford Site/Highland Bridge*.[2]

Eventually an idea emerged. A developer, Ryan Companies (Ryan), had an exciting vision. They saw green parks—dotted with trees and trails—unfurl like a carpet across brown stretches of dirt. CITY OF SAINT PAUL, RYAN COMPANIES, *Ford Site: Our 21st Century Community* 6 (2019).[3] Homes sprouted from the ground in all shapes and sizes—designed for people from all walks of life. *Id.* Bicycles whizzed by on beautiful lattices of dedicated

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[1] A URL to this article is available here: https://www.startribune.com/wieffering-fate-of-ford-plant-was-settled-long-time-ago/135345728/. This Court can consider "matters of public record, without converting the motion" to dismiss under Rule 12 into "one for summary judgment." *Carufel v. Minn. Dep't of Pub. Safety*, No. A18-0476, 2018 WL 6596287, at *3 (Minn. App. Dec. 17, 2018), *review denied* (Mar. 19, 2019) (citing *Central Lakes Educ. Ass'n v. Indep. Sch. Dist. No. 743*, 411 N.W.2d 875, 881 (Minn. App. 1987), *review denied* (Minn. Nov. 13, 1987)). *See also In re Estate of Turner*, 391 N.W.2d 767, 771 (Minn. 1986) (denying a motion to strike an outside report from an appellate case because the report "is a matter of public record" and could be found and used by the court "in the course of [its] own research").

[2] A URL to this site is available here: https://www.stpaul.gov/departments/planning-economic-development/planning/ford-sitehighland-bridge (last visited Nov. 17, 2020).

[3] A URL to this report is available here: https://www.stpaul.gov/sites/default/files/Media%20Root/Planning%20%26%20Economic%20Development/Ford-Site-Ryan-Redevelopment-Proposal.pdf.

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

pathways stretched taut like curlicues across a canvas. *Id.* Small businesses materialized into focus and hobnobbed with larger office spaces. *Id.* And people—the beating heart of this vision—easily walked throughout it all, like blood pumping life through the site's arteries. *Id.* What was once an expanse of inert dust became a vibrant modern place for the City's residents to live, work, and enjoy.

With that, the shuttered Ford Plant became the Ford Site, and with Ryan's vision, the momentum began moving toward progress and development. *Id.*

ii. Building the legal framework for the Ford Site.

Of course, an exciting vision is just a start. Bringing that vision to life is something else entirely. This is a long process—a process that only happens brick by brick, handshake by handshake, and code by code. First, the City enacted a new section of the City's zoning code dedicated to the Ford Site. *See Saint Paul Leg. Code* ch. 66.900 (2020). Next, the City and Ryan drafted a document called the Ford Site Master Plan (Master Plan), which is intended to generally "guide redevelopment of the Ford site" and to "demonstrate general compliance" with the City's code. *Saint Paul Leg. Code* §§ 66.951, 66.953 (2020). In the Master Plan's own words, it is not binding law, but instead a "framework to guide" redevelopment of the Ford Site. (*Petition*, Ex. 1; *Ex. 1 pdf* at 7).[4] It "plays a large," but not exclusive, "role in guiding the future of the site." (*Id.*). Finally, with these pieces in place, it was time to put a shovel into the ground.

[4] Petitioners' filings split their attachments into two different PDFs, called Exhibit 1 and Exhibits 2-8. This is probably because a single PDF of all exhibits was too large to be accepted by the filing system. The City will use the following convention to cite to the *Petition*'s attachments: (*Petition*, Ex. [#]; *Ex.* [*1* or *2-8*] *pdf* at [pdf page #]). For example, (*Petition*, Ex. 1; *Ex. 1 pdf* at 73), or (*Petition*, Ex. 3; *Ex. 2-8 pdf* at 83).

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

iii. How the current dispute began: The Zoning Administrator's June 16 decision.

One of Ryan's first developments at the Ford Site is located at 2170 Ford Parkway (*The Property*). *The Property* was zoned as mixed business, which needed at least 25% of "Open Space Coverage." (*Petition*, Ex. 1; *Ex. 1 pdf* at 101). This concept of "Open Space Coverage" is defined in Chapter 4 of the Master Plan as,

> [A]reas covered by landscape materials, gardens, walkways, patios, recreation facilities, or play areas.

(*Id.* at 47).

Admittedly, this concept of "Open Space Coverage" is easily confused with another idea in the Master Plan called "Parks and Open Space." This idea of "Parks and Open Space" is detailed in Chapter 8 of the Master Plan and defined by the City's zoning ordinances as, "Land and water areas retained for use as active or passive recreation areas or for resource protection." *Saint Paul Leg. Code* § 60.216 (2020); (*Id.* at 132). In fact, the root of the Petitioners' suit appears to be a misunderstanding of these two terms—Petitioners are essentially trying to meld Chapter 8's idea of "Parks and Open Space" into the unrelated Chapter 4 concept of "Open Space Coverage." To avoid sowing any more confusion, the City will refer to Chapter 4's concept of "Open Space Coverage" as *Amenity Space* and Chapter 8's idea of "Parks and Open Space" as *Parks and Open Space*.

Ryan apparently thought *The Property* was just shy of that 25% minimum *Amenity Space*—believing it needed to divide the roof's *Amenity Space* by half because of a different section of the Master Plan for "Green Roofs." (*Petition*, Ex. 3; *Ex. 2-8 pdf* at 75, 91-92); (*Petition*, Ex. 1; *Ex. 1 pdf* at 57). So, Ryan submitted a variance application to the City asking

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

for a variance on *The Property*'s minimum 25% *Amenity Space*. (*Petition*, Ex. 3; *Ex. 2-8 pdf* at 75, 91-92).

On June 16, 2020, after a thoughtful and careful review, the City's Zoning Administrator told Ryan that it actually did *not* need a variance on *The Property*'s 25% *Amenity Space* requirement. (*Petition*, Ex. 4; *Ex. 2-8 pdf* at 107). To explain its decision, the Zoning Administrator walked Ryan through three steps.

First, the Zoning Administrator repeated the definition of *Amenity Space* from Chapter 4 of the Master Plan. That definition was, "areas covered by landscape materials, gardens, walkways, patios, recreation facilities, or play areas." (*Id.*).

Second, the Zoning Administrator interpreted this definition of *Amenity Space* to mean,

> All private property areas that meet the [*Amenity Space*] definition – ground level or above grade – apply 100% towards meeting the [25% *Amenity Space*] requirement.

(*Id.*).

Third, armed with this interpretation, the Zoning Administrator then made its June 16, 2020, decision on Ryan's variance application:

> Therefore, for [*The Property*] the 25% [*Amenity Space*] requirement is <u>met</u> based on perimeter landscape/hardscape (including the dog run area in SW corner) as well as the above grade amenity deck and green roof area.

(*Id.*) (emphasis in original). In other words, under the Zoning Administrator's interpretation of the *Amenity Space* in the Master Plan, all private patios, walkways, play areas, *etc.* can be added up. And when we add up all these areas in *The Property*, we reach that magic 25% minimum. No variance needed.

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

Under the City's ordinances, anyone affected by this June 16 decision by the Zoning Administrator had 10 days to appeal this decision to the City's Board of Zoning Appeals. *Saint Paul Leg. Code* § 61.701(c) (2020). Nobody did. (*Declaration of Yaya Diatta*, at ¶¶ 18-20).[5]

iv. Petitioners' letters to the City.

After the Zoning Administrator's June 16 decision, the City received a letter dated July 8, 2020, from Petitioners' special-interest group called, Neighbors for a Livable Saint Paul (*Neighbors*). (*Petition*, at ¶ 6) ("Petitioners are members of the political committee Neighbors for a Livable Saint Paul."); (*Petition*, Ex. 5; *Ex. 2-8 pdf* at 109-11). *Neighbors*'s self-professed goal is to "PROMOTE rational, incremental growth that happens naturally, not large, transformational projects" and to "SUPPORT development which [*sic*] is truly market driven, which will house, [*sic*] office and serve reasonable clientele without lowering property values." *Our Goal*, Neighbors for a Livable Saint Paul (livablesaintpaul.com).[6] But the primary target of Petitioners' ire, through *Neighbors*, is to tamp down on any infinitesimally-small change in density—believing density fosters mental illness, violence, unhappiness,

[5] Normally on a Rule 12 motion to dismiss, anything outside of the four corners of a *Petition*, or anything that isn't stapled to that *Petition*, cannot be considered without converting the Rule 12 motion into summary judgment. Minn. R. Civ. P. 12.02. But Minnesota allows an exception to this rule where the argument is for lack of jurisdiction. *See Turner v. Comm'r of Revenue*, 840 N.W.2d 205, 208 n.1 (Minn. 2013) (explaining that if a rule 12.02 motion to dismiss is based on a ground other than failure to state a claim, matters outside the pleadings may be considered without converting the motion to one for summary judgment). This exception has been applied to affidavits and declarations that are submitted on a question of law, which do not trigger conversion. *Dahl v. R.J. Reynolds Tobacco Co.*, 742 N.W.2d 186 (Minn. App. 2007), *review granted* (Minn. Feb 27, 2008) *and review denied* (Minn. Jan 20, 2009).

[6] A URL to this statement is available here: https://www.livablesaintpaul.com/our-vision-2 (last visited Nov. 17, 2020).

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

cancer, and more. *Is Density a 'Good Thing'?*, Neighbors for a Livable Saint Paul (livablesaintpaul.com).[7]

Concentrating their general grievances about the Ford Site, Petitioners' July 8 letter lambasted many aspects of the overall development, including the Zoning Administrator's June 16 interpretation of *Amenity Space*. (*Petition*, Ex. 5; *Ex. 2-8 pdf* at 109-10). Specifically, the Petitioners confused the Master Plan's Chapter 4 concept of *Amenity Space* with Chapter 8's idea of *Parks and Open Space*, and then insisted the City should reinterpret *Amenity Space* to a more "commonly held and common-sense definition of open space." (*Id.* at 110). For the Petitioners, a more "common-sense" definition would only include "publicly-owned and publicly accessible" natural lands, athletic fields, recreational lands, community spaces, and recreational buildings—but absolutely *not* privately-owned spaces. (*Id.*).

On July 16, 2020, , the City responded to the Petitioners' letter. (*Petition*, Ex. 6; *Ex. 2-8 pdf* at 112). The City's response tried to address the Petitioners' confusion between *Amenity Space* and *Parks and Open Space* by explaining that the Master Plan Chapter 4 *Amenity Space* "requirement on private development parcels" is "separate and distinct from the public [*Parks and Open Space*] dedicated site-wide" and explained in Chapter 8. (*Id.*) (emphasis added). Because the Chapter 4 *Amenity Space* concerns private development, and the Chapter 8 *Parks and Open Space* concerns public areas, the Zoning Administrator stuck by its June 16 decision. (*Id.*).

[7] A URL to this website is available here: https://www.livablesaintpaul.com/project-2 (last visited Nov. 17, 2020).

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

Finally, the Zoning Administrator repeated its original June 16 decision that *The Property* "meets the 25% [*Amenity Space*] requirement with the proposed square footage of perimeter landscape/hardscape and above grade amenity deck and green roof area." (*Id.*).

Petitioners did not take this explanation well. On October 2, 2020, *Neighbors* sent another letter to the City. (*Petition*, Ex. 7; *Ex. 2-8 pdf* at 114-16). This second letter largely repeats the same critiques from the first—often copying/pasting the exact same writing from their first letter. (*Id.*). Like before, Petitioners confused *Amenity Space* with *Parks and Open Space* and then urged the City to adopt Petitioners' preferred definition of an amorphous notion of "open space" and merge it into the preexisting definition of *Amenity Space*. (*Id.* at 114-15). Lastly, Petitioners threatened possible legal action if the City did not comply with their demands. (*Id.* at 116).

On October 9, the City again replied to Petitioners' October 2 letter. (*Petition*, Ex. 8; *Ex. 2-8 pdf* at 117). For the second time, the City's Zoning Administrator repeated its June 16 decision, saying,

> As Zoning Administrator, I determined that the proposed development at [*The Property*] complied with the [25% *Amenity Space*] standard. That determination was based on the definition of [*Amenity Space*] in Chapter 4, entitled "Zoning – Districts and General Standards" of the Ford Site Zoning and Public Realm Master Plan because it applies specifically to the square footage of perimeter and above grade landscape, hardscape, and outdoor amenities for projects like the private development of the mixed-use residential and commercial building proposed at [*The Property*].

(*Id.*). Then, in another attempt to illustrate the difference between the <u>private</u> *Amenity Space* versus <u>public</u> *Parks and Open Space*, the Zoning Administrator explained that Chapter 8's

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

Parks and Open Space requirements "are separate and distinct from calculating the [*Amenity Space*] standard in Chapter 4 of the [Master] Plan for private property development." (*Id.*).

Despite the Zoning Administrator's noble efforts, on October 28, 2020, Petitioners filed their current *Petition for a Writ of Mandamus* with this Court. Their *Petition* asks this Court to reverse the Zoning Administrator's June 16 decision and require the City to hold a variance hearing on *The Property* before the Board of Zoning Appeals. (*Petition*, at 6). Respondents now ask this Court to dismiss this case for lack of jurisdiction and failure to state a claim.

STANDARD OF REVIEW

Jurisdiction is a question that may be raised at any time by a party, or *sua sponte* by a court. *City of Saint Paul v. Eldredge*, 800 N.W.2d 643, 646-47 (Minn. 2011). Jurisdiction is an essential element to a court's "power to hear and determine cases that are presented to" it. *In re Welfare of M.J.M.*, 766 N.W.2d 360, 364 (Minn. App. 2009). This is because jurisdiction is "not only authority to hear and determine a particular class of actions, but authority to hear and determine the particular questions the court assumes to decide." *Cochrane v. Tudor Oaks Condo. Project*, 529 N.W.2d 429, 432 (Minn. App. 1995). Without jurisdiction, a court's hands are tied—there is no power to hear the case.

In considering a Rule 12 motion to dismiss for failure to state a legal claim, courts accept the facts alleged in a *Petition* as true and give the Petitioners the benefit of all favorable inferences. *See Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003); *Krueger v. Zeman Const. Co.*, 781 N.W.2d 858, 861 (Minn. 2010). But courts are not bound by

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

legal conclusions stated in a complaint. *Herbert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008).

ARGUMENTS

The core of the Petitioners' case seems to be a dispute about a decision by the City's Zoning Administrator that a variance hearing on *The Property* was unnecessary. Cases like this—where a plaintiff challenges a municipal land-use or planning decision—fall under Minnesota Statute section 462.361 (2020). This statute creates a private cause-of-action for anyone "aggrieved by an ordinance, rule, regulation, decision or order of a governing body or board of adjustments and appeals" in municipal-zoning cases. *Id.* at subd. 1. In other words, the statute creates standing for anyone who wants to fight a city's zoning/planning-decision, as long as (1) the person is "aggrieved,"[8] and (2) their aggravation flows from a municipal-planning decision or order from a city's governing body.

The City now asks this Court to dismiss the *Petition* for four reasons. First (1), this Court lacks jurisdiction to hear this case because the Petitioners failed to appeal the Zoning Administrator's decision using the City's ordinances. Second (2), the Petitioners lack standing to even bring this case. Third (3), the *Petition* does not contain a short and plain statement giving the City fair notice of the legal claims being asserted against it. And finally, fourth (4), even if we reach the merits of this case, the Petitioners dispute is based on a simple confusion between two different concepts of *Amenity Space* (*i.e.*, "Open Space Coverage") and *Parks and Open Space* in the Ford Site Master Plan.

[8] Being an "aggrieved" plaintiff is the test to demonstrate standing, which the Petitioners also lack. More on this later. *See* Section 2 of this *Memo*.

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

1. This Court lacks jurisdiction because the Petitioners failed to follow the City's ordinances to appeal the Zoning Administrator's June 16 decision.

Section 462.361 has a defensive-mechanism built into its language. The statute says that in lawsuits filed under the statute, a city can defend itself by highlighting a plaintiff's failure to follow the city's internal appellate procedures. Minn. Stat. § 462.361, subd. 2. Failing to follow these procedures is poisonous—infecting the entire case. That's because the City's internal procedures are jurisdictional, and if the Petitioners could have—but did not—follow them, then no district court can acquire jurisdiction to hear the case. *Centra Homes, LLC v. City of Norwood Young Am.*, 834 N.W.2d 581, 588 (Minn. App. 2013) (failing to follow a City's internal procedures before filing a district-court lawsuit over a municipal-planning dispute deprives any district court of subject-matter jurisdiction).

This infection is present in this case. In their zeal to stymie development of the Ford Site, the Petitioners leapfrogged over the City's long-standing appellate procedures designed to address, formalize, and give due-process to the Petitioners' concerns. Petitioners failure to use these procedures now creates two mortal wounds to their case. First (1.1) the Petitioners failed to appeal the Zoning Administrator's decision within 10 days. This alone dissolves jurisdiction from this Court. Second (1.2), the Petitioners could only take their case to this Court after receiving a final "decision or order" of the City's "governing body,"—aka, the Saint Paul City Council. They never obtained that order. And finally (1.3), it was not futile for the Petitioners to have used these zoning procedures to dispute the Zoning Administrator's decision. Each point is addressed in more detail below.

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

1.1. Petitioners failed to appeal the Zoning Administrator's decision within 10 days, which deprives this Court of jurisdiction.

The first internal procedure the Petitioners failed to use was the jurisdictional timeline etched into the City's zoning ordinances. Our ordinances say that if you are "affected by a decision of the planning or zoning administrator," and you disagree with that decision, you must appeal that decision "within ten (10) days after the date of the decision." *Saint Paul Leg. Code*, § 61.701(c) (2020). This is not a suggestion—it's a commandment. Failing to follow similar deadlines has doomed other petitioners in similar cases. *See, e.g., Friends of Chester Park v. Humes*, No. CX-00-1385, 2001 WL 290419, at *3 (Minn. App. Mar. 27, 2001) (concluding petitioner's claim disputing Duluth's decision to issue a permit lacked jurisdiction because petitioner failed to appeal to the city council within 10 days, which was required by Duluth's zoning code).[9]

This 10-day deadline exists so the City can begin the detailed process of receiving notice that there is a dispute, formally assembling a record of the dispute, transmitting that record to the City's Board of Zoning Appeals, allowing the Board to take evidence and testimony, and then provide an opportunity for the Board to formally adjudicate the dispute. *Id.* at § 61.701(a). Even then, the process is not over. If you are still unhappy once the Board of Zoning Appeals considers and decides your case, then you have 10 days from the Board's decision to appeal to the Saint Paul City Council. *Saint Paul Leg. Code* § 61.702(a) (2020). Only when the City Council has an opportunity to review the record, hear testimony, investigate and weigh the evidence, then issue a decision, can you walk through the district

[9] Unpublished cases only carry persuasive value and are not precedential. *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993).

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

court's doors. *Saint Paul Leg. Code* § 61.704 (2020); Minn. Stat. § 462.361. But Petitioners lost this opportunity when they failed to appeal the Zoning Administrator's initial decision.

The decision the Petitioners disagree with—which is the basis for this case—is the Zoning Administrator's decision from June 16, 2020. That decision determined, "All private property areas that meet the [*Amenity Space*] definition" under Chapter 4 of the Ford Site's Master Plan, "ground level or above grade – apply 100% towards meeting the" Chapter 4 definition of *Amenity Space*. (*Petition*, at Ex. 4; *Ex. 2-8 pdf* at 107). Under Minnesota Statute section 462.361, as long as the Petitioners were "aggrieved" by this decision,[10] they now had a 10-day clock hanging over their heads to appeal that decision to the Board of Zoning Appeals. *Saint Paul Leg. Code* § 61.701(c). Ten days from June 16 was June 26, 2020. And yet, as the jurisdictional watch hands ticked past this date, the Petitioners did nothing. They never appealed. (*Declaration of Yaya Diatta*, at ¶¶ 19, 20).

Of course, jurisdictional defects are absolute, and the City expects the Petitioners to try anything to maneuver out of this problem. But it's tough to see how this would work. The Petitioners clearly had notice of this decision because on July 8, 2020, they penned a missive lambasting the Zoning Administrator's decision—complaining he should have used Petitioners' own unique understanding of "open space" instead of the one in Chapter 4 of the Master Plan. (*Petition*, at Ex. 5; *Ex. 2-8 pdf* at 109-11). But all this letter does now is confirm the Petitioners' notice of the Zoning Administrator's decision—meaning if we give Petitioners the benefit of the doubt, this letter clearly shows they received notice of the June

[10] But Petitioners were not aggrieved under the statute, and Petitioners simply lack standing to pursue this case. *See* Section 2 of this *Memo*.

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

16 decision *at the latest* by July 8. Even if we start the ten-day jurisdictional clock at July 8, they still missed their 10-day deadline.

And for its part, eight days later, on July 16, the Zoning Administrator responded to the Petitioners by repeating the contents of his June 16 decision, writing that *The Property* "meets the 25% [*Amenity Space*] definition in Chapter 4 by including the "square footage of perimeter landscape/hardscape and above grade amenity deck and green roof area." (*Id.* at Ex. 5; *Id.* at 112). Meaning even if we ignore Petitioners' first letter—proving they knew about the Zoning Administrator's decision at the latest by July 8—and for whatever reason we use the City's July 16 response as the jurisdictional starting-point, it makes no difference. Ten days from July 16 is July 26. Still, there was no appeal. (*Declaration of Yaya Diatta*, at ¶¶ 19, 20).

And lastly, it's worth mentioning the Petitioners responded to the City's July 16 letter with yet *another* letter dated October 2, 2020. (*Petition*, at Ex. 7; *Ex. 2-8 pdf* at 114-16). This October 2nd letter is a near cookie-cutter copy of their July 8th letter. (*Id.*). The City, again, responded on October 9 by repeating the same information from its June 16 decision, and repeating the same message from its July 16 response. (*Id.* at Ex. 8; *Id.* at 117). Now, for the last time, the Zoning Administrator repeated,

> As Zoning Administrator, I determined that the proposed development at [*The Property*] complied with the [*Amenity Space*] standard. That determination was based on the definition of [*Amenity Space*] in Chapter 4, entitled "Zoning - Districts and General Standards" of the Ford Site Zoning and Public Realm Master Plan because it applies specifically to the square footage of perimeter and above grade landscape, hardscape, and outdoor amenities for projects like the private development of the mixed-use residential and commercial building proposed at [*The Property*].

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

(*Id.*). Like twice before, there was no appeal. (*Declaration of Yaya Diatta*, at ¶¶ 19, 20). The Petitioners made no attempt to follow the City's internal procedures. The only response was this lawsuit, which was filed with this Court on October 28, 2020. (*See Petition*).

To see the Petitioners' jurisdictional problems in even starker relief, the following timeline illustrates how greatly the Petitioners ignored the City's jurisdictional timelines:

Date	Action	Citation
June 16, 2020	The City's Zoning Administrator issues a decision that, based on the Ford Site Master Plan's definition of *Amenity Space* in Chapter 4, "All private property areas that meet the [*Amenity Space*] definition – ground level or above grade – apply 100% towards meeting the [25% *Amenity Space*] requirement."	*Petition*, Ex. 4; *Ex. 2-8 pdf* at 107.
	Saint Paul's ordinances allow aggrieved persons to appeal this decision to the Board of Zoning Appeals within 10 days.	*Saint Paul Leg. Code* § 61.701(c).
June 26, 2020	Deadline to appeal this decision to the Board of Zoning Appeals under the City's ordinances. No appeal is filed.	*Saint Paul Leg. Code* § 61.701(c).
July 8, 2020	Petitioners send a letter to the Zoning Administrator complaining the Administrator's June 16 decision is wrong.	*Petition*, Ex. 5; *Ex. 2-8 pdf* at 109.
	Appeal is now 12 days overdue.	*Saint Paul Leg. Code* § 61.701(c).
July 16, 2020	The City's Zoning Administrator responds to the Petitioners' July 8 letter by repeating its decision.	*Petition*, Ex. 6; *Ex. 2-8 pdf* at 112.
	Appeal is now 20 days overdue.	*Saint Paul Leg. Code* § 61.701(c).
October 2, 2020	Petitioners send another letter to the Zoning Administrator. This letter repeats the same claims from their July 8 letter.	*Petition*, Ex. 7; *Ex. 2-8 pdf* at 114.
	Appeal is now 98 days overdue.	*Saint Paul Leg. Code* § 61.701(c).
October 9, 2020	The City's Zoning Administrator responds to the Petitioners' October 2 letter by repeating its decision.	*Petition*, Ex. 8; *Ex. 2-8 pdf* at 117.
	Appeal is now 105 days overdue.	*Saint Paul Leg. Code* § 61.701(c).

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

October 28, 2020	Petitioners file their *Petition for a Writ of Mandamus* in this case, alleging the same claims from their July 8 and October 2 letters.	*Petition.*
	Appeal is now 124 days overdue.	*Saint Paul Leg. Code* § 61.701(c).

As this timeline lays bare, the Petitioners refused to follow the City's appellate procedures. This failure deprives this Court of jurisdiction, and without jurisdiction, this case must be dismissed.

1.2. The Petitioners lack a final order from the City's governing body—the City Council—as required by statute, which deprives this Court of jurisdiction.

There is a second jurisdictional-glitch in the Petitioners' case: They lack a final decision from the Saint Paul City Council, which is required before they could bring their case to this Court.

As explained above, to challenge the Zoning Administrator's June decision in district court, the Petitioners first needed to appeal that decision using the City's ordinances. Minn. Stat. § 462.361. The Petitioners already missed their jurisdictional-deadline—by over 124 days and counting—but the statute also required the Petitioners to first obtain a final "decision or order of a *governing body*." *Id.* at subd. 1. (emphasis added). "Governing body" means "the council by whatever name known," which in this case is the Saint Paul City Council. Minn. Stat. § 462.352, subd. 11 (2020); *Saint Paul City Charter*, ch. 4. And without a final decision from the City Council, there is no jurisdiction for a district court. *Stillwater Twp. v. Rivard*, 547 N.W.2d 906, 912 (Minn. App. 1996) (district court does not have jurisdiction to consider a dispute under Section 462.352 unless there is a "final action" of a governing body for the court to review); *Hagstrom v. City of Shoreview*, No. A04-1812, 2005 WL 1620117,

at *8 (Minn. App. July 5, 2005), *review denied* (Minn. Sep. 28, 2005) (dismissing plaintiff's land-use claim because there was "no final decision" by the city's governing body).

This requirement to first secure a final decision from the City Council is paralleled in the City's own ordinances. The City's procedure says that after appealing the Zoning Administrator's decision to the Board of Zoning Appeals, you "shall" appeal the Board's decision to the City Council within 10 days. *Saint Paul Leg. Code* § 61.702(a) (2020). Any decision by the City Council is considered final within the City's ordinances, and can only be reviewed "by a court of competent jurisdiction." *Saint Paul Leg. Code* § 61.704 (2020).

Under both the state statute and the City's ordinances, the Petitioners failed to obtain a final decision from the Saint Paul City Council. In their eagerness to throw sand in the gears of the Ford Site project, they failed to appeal the Zoning Administrator's June 16 decision on *The Property*'s required *Amenity Space* to the Board of Zoning Appeals. Without that initial appeal to the Board, the Petitioners had no way to send their dispute to the City Council, which would have issued the final order they needed to walk into this Court. And without that final order from the City Council, they do not meet the jurisdictional-requirements in Section 462.361 or the City's ordinances of being a person aggrieved by a final "decision or order of a governing body." Minn. Stat. § 462.361, subd. 1. Without that final decision from the City Council, this Court lacks jurisdiction to hear this case. *Stillwater Twp.*, 547 N.W.2d at 912; *Hagstrom*, 2005 WL 1620117, at *8.

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

1.3. It was not futile for the Petitioners to comply with the City's jurisdictional procedures.

There is one escape hatch for the Petitioners to defend themselves from these jurisdictional-wounds: Futility. Just as Section 462.361 contains a jurisdictional defense-mechanism for the City, the statute allows the Petitioners to parry by claiming that complying with the City's ordinances would have been useless. Minn. Stat. § 462.361, subd. 2 (requiring district courts to dismiss claims that fail to follow a city's procedures unless the court concludes that following those procedures would "serve no useful purpose under the circumstances of the case").

But this counterattack is not a rubberstamp. It's not enough for Petitioners to simply throw their hands in the air and shout, "Futility." It must be clearly shown, not gifted.

To explain more fully, we look to *Med. Servs., Inc. v. City of Savage*, where the City Council of Savage denied plaintiff's request to build a waste-processing facility because the city attorney concluded it was not permitted under *any* part of Savage's ordinances. 487 N.W.2d 263, 265 (Minn. App. 1992). On appeal, Savage argued there was no jurisdiction because it was possible other ordinances, besides the zoning ordinance, could have allowed the facility. *Id.* at 265-66. But the Court of Appeals gave this argument short shrift. The city attorney's analysis concluded the facility was forbidden under *every* piece of the zoning code. *Id.* at 266. Making the plaintiffs trial-and-error their way through the code to a foregone conclusion was pointless, and the plaintiffs were allowed to bring their case to district court. *Id. See also Altenburg v. Bd. of Sup'rs of Pleasant Mound Twp.*, 615 N.W.2d 874, 878 (Minn. App. 2000) (holding it was "pointless and futile" to make plaintiffs request a variance for a feedlot when the city's ordinances expressly prohibited feedlots).

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

But it was not pointless to follow Duluth's zoning procedures in *Friends of Chester Park v. Humes*, No. CX-00-1385, 2001 WL 290419 (Minn. App. Mar. 27, 2001). In *Chester Park*, Duluth granted a special permit to construct a women's shelter. *Id.* at *1-2. After the permit was approved, the shelter made minor changes to the construction plans and then asked Duluth if they needed to re-submit their special-permit application. *Id.* at *2. Duluth decided the changes were too minor for a new permit. *Id.* at *2. No one appealed this decision under Duluth's zoning code. *Id.*

In a later court case, plaintiff-neighbors claimed Duluth actually *should* have held a new permit hearing. *Id.* at *3. But the Court of Appeals disagreed, concluding the claim lacked jurisdiction because it was not futile for the neighbor-plaintiffs to have used Duluth's appellate procedures in the zoning code. *Id.* Even more damaging to the neighbor-plaintiffs' case was what they wanted. The remedy the neighbor-plaintiffs were asking for was—like in this case—a hearing on the permit application. *Id.* But this court-remedy was *literally* the end-product of the very procedure they should have followed in the first place. The Court wrote, "the remedy requested was council review of the revised project. We do not see how council review can be considered both futile and the requested remedy at the same time." *Id.*

Chester Park is this current case to a tee. Like in *Chester Park*, the only thing the Petitioners want is to force the City to hold a variance hearing on *The Property*. (*See Petition*, at 6) (demanding "the City to conduct a variance hearing on the [*The Property*]"). It would be absurd for Petitioners to now turn around and say it was pointless to follow the City's zoning-appeal procedures. The destination at the end of those procedures was a variance hearing—the *very* thing they're now asking for. *See Saint Paul Leg. Code* § 61.701(c) (allowing

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

Petitioners to appeal the Zoning Administrator's denial of a variance hearing to the Board of Zoning Appeals). The Petitioners could have gotten everything they want if they just followed the City's procedures and appealed to the Board of Zoning Appeals. How can they now insist that process would have served "no useful purpose?"

The answer is simple: They can't.

It was not futile for the Petitioners to have used the City's procedures. As we see in *Med. Servs., Inc.*, futility means a forgone conclusion. It means there is no point forcing a plaintiff to jump through hoops when we already know what the result will be. But that wasn't true here. Like in *Chester Park*, the Petitioners had a clear process to dispute the Zoning Administrator's decision. And the very remedy Petitioners are now asking for is what they would have received if they followed those procedures from the start.

In sum, Petitioners refused to follow the City's rules and appeal the Zoning Administrator's June 16 decision within 10 days and obtain a final order from the City's governing body—the City Council. Either jurisdictional-defect requires dismissal.

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

2. The Petitioners lack standing to challenge the City's decision because they are not "aggrieved persons" under Minnesota Statute section 462.361 and do not have taxpayer standing.

Even if the Petitioners survive these procedural defects—which the City insists they cannot withstand—they also lack standing to bring this case. A court lacks jurisdiction to hear a matter when the plaintiff does not have standing. *Annandale Advocate v. City of Annandale*, 435 N.W.2d 24, 27 (Minn. 1989). Standing is essential to a justiciable controversy and can be raised by anyone at any time. C*itizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 18 (Minn. App. 2003).

There are basically two roads the Petitioners could take to show standing, either standing established by Section 462.361, or taxpayer standing. But neither pathway bears fruit for the Petitioners because, first (2.1), Petitioners are not "aggrieved" persons under Section 462.361, which would engrave statutory-standing on them. Second (2.2.), the Petitioners do not have some special or peculiar injury from the general public at large to hook into taxpayer standing.

2.1. Petitioners do not have statutory standing to challenge the City's variance decision because they are not "aggrieved persons" under Section 462.361.

There are two basic ways to show traditional standing—either you suffered a specific and direct harm (an injury-in-fact), or a statute explicitly gives you standing. *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). Standing to fight a zoning decision comes from the latter path, specifically, Minnesota Statute section 462.361, subdivision 1. *Citizens for a Balanced City*, 672 N.W.2d at 18. This statute grants standing to any person who

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

wants to dispute a municipal zoning or land-use decision, but only if that person is "aggrieved." Minn. Stat. § 462.361, subd. 1.

Being a "person aggrieved" is a term of art, which is defined by the Court of Appeals as a "person when an action by the municipality adversely operates on his rights of property or bears directly upon his personal interest." *Stansell v. City of Northfield*, 618 N.W.2d 814, 819 (Minn. App. 2000) (borrowing this definition from administrative law), *review denied* (Minn. Jan. 26, 2001). This definition is clearly wound up with some degree of confusing legalese, but courts generally understand it to say this: You are an "aggrieved" person who can challenge a municipal land-use decision if you can show some concrete "particularized injuries" to your property rights or personal interest. *Id. See also Citizens for a Balanced City*, 672 N.W.2d at 18 (stating that to acquire standing under Section 462.361, a plaintiff must have "'particularized injuries' to his or her property rights or personal interests").

Petitioners are not aggrieved in this case because they do not allege any "particularized injuries" to their property rights or personal interests. The City has searched their *Petition*, and nothing in that document alleges the Petitioners have been harmed or injured by the City's decision that a variance hearing was unnecessary for *The Property*. In fact, no permutation of the words "harm," "injury," "suffer," or "damage" appear *anywhere* in the *Petition* or Petitioners July and October letters to the City. Failing to even dash off a few lines illustrating how you've been specifically harmed does not clear the microscopically-low bar requiring the Petitioners to allege a "short and plain statement of the claim *showing that the pleader is entitled to relief*." Minn. R. Civ. P. 8.01 (emphasis added). Here, Petitioners neglected to show why they are entitled to relief at all.

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

The Petitioners seem to think they can wag a finger at anything they disagree with about the Ford Site and, *ipso facto*, acquire standing to fight their dispute to the bitter end. This is wrong. Standing is not another rubberstamp—it's an essential ingredient of a court's jurisdiction. And the *Petition* brings no evidence—or even claim—of standing to the table. Every plaintiff who walks through the courthouse doors must have some skin in the game, which the Petitioners do not have.

It was the Plaintiff's burden to show how they suffered a particularized harm to their own personal or property interests. They failed to do this, and it is not this Court's—or the City's—job to divine this phantom-harm for them. Because the Petitioners have not alleged concrete "particularized injuries" to their personal or property rights, they are not "aggrieved" under Section 462.361. This means Petitioners lack standing to bring this case, and this Court lacks jurisdiction to hear it. *Stansell*, 618 N.W.2d at 819; *Citizens for a Balanced City*, 672 N.W.2d at 18.

2.2. Petitioners do not have taxpayer standing because they are not alleging unlawful disbursements of taxpayer money or illegal actions by public officials.

The only other path for Petitioners to gain standing here is the moonshot of showing taxpayer standing. Generally, taxpayers who simply disagree with a state-action cannot sue to prevent that action unless they "can show some damage or injury" that is "special or peculiar and different from damage or injury sustained by the general public." *Olson v. State*, 742 N.W.2d 681, 684 (Minn. App. 2007). This rule is generally known as the prohibition on taxpayer standing. *Arizona Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 134-35 (2011).

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

But Minnesota law opens a tiny window to allege taxpayer standing in very limited circumstances. To fit through this window, a taxpayer who lacks a personal or direct injury can still acquire taxpayer standing if their case concerns the unlawful disbursements of public money or illegal action of public officials. *Olson v. State*, 742 N.W.2d 681, 684 (Minn. App. 2007). But Minnesota's courts have "limited" this window of taxpayer standing "closely to the facts" of the first case recognizing it. *Citizens for Rule of Law v. Senate Comm. on Rules & Admin.*, 770 N.W.2d 169, 175 (Minn. App. 2009) (citing *McKee v. Likins*, 261 N.W.2d 566, 571 (Minn. 1977)). *See*, *e.g.*, *Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 147 (Minn. App. 1999) (concluding there was no taxpayer standing if the funding challenged did not come directly from taxes), *review denied* (Minn. Dec. 21, 1999); *Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. App. 2004) (determining no taxpayer standing when money was returned to the general fund from a special allotment), *review denied* (Minn. Oct. 19, 2004).

In essence, Minnesota's taxpayer-standing rule is a steep mountain to summit. A simple "disagreement with policy or the exercise of discretion by those responsible for executing the law" does not create taxpayer standing. *Rukavina*, 684 N.W.2d at 531. A difference of opinion is not enough—instead, a plaintiff must show some illegal disbursement of direct taxpayer money. *Id.*

Petitioners do not allege anything remotely close to an illegal disbursement of taxpayer money in this case. In fact, no challenge has been made to any City action regarding public funds. Petitioners do not allege a cent of taxpayer money was illegally used when the Zoning Administrator determined that Ryan did not need a variance hearing. Petitioners do

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

not even insinuate there was some illegal expenditures of taxpayer money made when the Zoning Administrator carried out its duties of enforcing the City's zoning code and the Ford Site Master Plan.

To be frank, Petitioners case is much simpler: They do not like the Ford Site. They do not like what it stands for. They do not like that it's different. They do not like Ryan's vision of transforming the current patch of untilled dirt into homes for families, apartments for renters, shops for small businesses, walkways for pedestrians, and greenspace for people from all walks of life to enjoy.[11] But this is not a legal claim—this is a disagreement over policy and the City's discretion. It was well-within the Zoning Administrator's discretion to enforce the City's zoning code and the Master Plan and conclude Ryan's variance request was unnecessary. Petitioners simply disagree with the City's policy, and this does not fit them through the small window of taxpayer standing. Without standing, this case must be dismissed.

[11] In an open letter to the City that is currently posted on *Neighbors*'s website, the Petitioners complain the Ford Site will be a nightmare of "high-rise apartment buildings with space for retail businesses." *Dear Mayor Carter and Members of the City Council*, Neighbors for a Livable Saint Paul, Media, https://www.livablesaintpaul.com/media-links (last visited Nov. 15, 2020). Petitioners then complain that apartments are "not homes" and then claim these tenants' "real estate footprint would be small"—implying renters are somehow an underclass who do not understand the value of a mortgage. *Id.* The letter goes on to explicitly say these people are not part of a "thriving middle class" whom the development should be prioritizing, and then parades the horrors of "efficient public transportation" and affordable housing for "760 families in difficult circumstances." *Id.* These claims are insulting to uncountable numbers of the City's residents, and they strip the glossy lacquer off this lawsuit to reveal what the Petitioners' grievances are truly about.

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

3. The *Petition* does not contain a short and plain statement of the claim and the City has not received fair notice of what Petitioners' legal claim is.

Assuming the *Petition* makes it this far, it still fails to adhere to Minnesota's basic pleading rules. Petitioners are clearly unhappy with the Zoning Administrator's decision that a variance hearing was not needed on *The Property*. But it's not entirely clear *why* the Petitioners feel this way. The Petition does not meet the bare minimum of Minnesota's notice-pleading standard, which requires a plaintiff to give the defendant "fair notice of the theory on which" the plaintiff "seeks relief." *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997). *See also* Minn. R. Civ. P. 8.01 (stating pleadings "shall contain a short and plain statement of the claim showing that the pleader is entitled to relief").

Although notice pleading is forgiving, it does require Petitioners to give the City some idea about what their legal cause-of-action is—and that seems to have been overlooked. The *Petition* does not explain what Petitioners' claim is. It assembles and moves certain factual pieces in place, but then fails to arrange them into an overall coherent claim. Perhaps most surprisingly, the word "claim" does not appear anywhere in the *Petition*. Instead, all the *Petition* gives us is a laundry-list of factual allegations. So, in order to respond to the *Petition*, the City is now forced to engage in some legal cryptography—searching for the Petitioners' shadow-claim in the dark nooks and crannies of their *Petition* and attachments.

This is not "a short and plain statement of the claim showing that the pleader is entitled to relief." Minn. R. Civ. P. 8.01. Failing to adhere to the basic pleading rules now makes the City's job a tall order. We understand the Petitioners want the City to hold a variance hearing on *The Property*, but the obvious question is, Why? Why should the City hold

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

a hearing? What legal claim would force the City to do what these Petitioners demand? The *Petition* does not say why, it only demands.

Because the *Petition* fails to put the City on notice about what the legal claim is, it fails to clear the basic hurdle of including a short and plain statement of the claim showing the Petitioners are entitled to relief. For this reason alone, the *Petition* fails to state a legal claim on which this Court can grant relief.

4. Even if Petitioners' case survives, the City's decision not to hold a variance hearing was reasonable under the deferential rational-basis test, and Petitioners' dispute comes from their confusion of two similar-sounding terms.

If the City is forced to feed the *Petition* through a legal enigma machine, it can only construct a claim by using the Exhibits attached to that *Petition*. Using these Exhibits as a claim-seeking divining rod, as best the City can tell, the Petitioners' legal claim is this: The City's June 16 understanding of *Amenity Space* defined in Chapter 4 of the Master Plan was wrong and unreasonable, and their preferred definition—which is something of a monster-definition stitched together from multiple sources—is better.

Below, the City makes two arguments. First (4.1), the City's interpretation of *Amenity Space* from Chapter 4 of the Master Plan is reasonable and easily clears the rational-basis test. Second (4.2), Petitioners' alternative definitions of *Amenity Space* are not reasonable.

4.1. The City's interpretation of *Amenity Space* (*i.e.* Open Space Coverage) from Chapter 4 of the Ford Site Master Plan was reasonable.

Assuming the City correctly understands Petitioners' legal claim, the City's decision to not hold a variance hearing was reasonable under the rational-basis test. When reviewing municipal land-use decisions, courts use "a rational basis standard of review." *Mendota Golf,*

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

LLP v. City of Mendota Heights, 708 N.W.2d 162, 179 (Minn. 2006); *Mohler v. City of St. Louis Park*, 643 N.W.2d 623, 630 (Minn. App. 2002), *review denied* (Minn. July 16, 2002) (stating that regardless of whether a city's land-use decision was quasi-legislative or quasi-judicial, "a reviewing court determines whether the municipality's action was reasonable"). Under this deferential standard, courts will uphold a city's land-use decision if it is supported by any rational basis related to promoting the public health, safety, morals, or general welfare. *See Mendota Golf, LLP*, 708 N.W.2d at 180. But even if the city's decision is "debatable, so long as there is a rational basis for what it does, the courts do not interfere." *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 415 (Minn. 1981). Ultimately, rational-basis review assumes the government's decision is reasonable as long as the government "could rationally believe that" its decision "would help achieve" a desired goal. *Fletcher Properties, Inc. v. City of Minneapolis*, 947 N.W.2d 1, 10 (Minn. 2020).

The City's June 16 decision—that Ryan did not need a variance hearing for *The Property*—came from the Zoning Administrator's interpretation of *Amenity Space* (*i.e.*, "Open Space Coverage").[12] *Amenity Space* is defined in Chapter 4 of the Master Plan as,

> [A]reas covered by landscape materials, gardens, walkways, patios, recreation facilities, or play areas.

(*Petition*, Ex. 1; *Ex. 1 pdf* at 47). *The Property* in this case required at least 25% of this *Amenity Space*. (*Id.* at 101). The City's Zoning Administrator interpreted this definition of *Amenity Space* to mean,

[12] Recall this term *Amenity Space* is being used by the City to avoid confusion between the actual term used in Chapter 4 of the Master Plan—"Open Space Coverage"—and a different term in Chapter 8 of the Master Plan called *Parks and Open Space*.

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

> All private property areas that meet the [*Amenity Space*] definition – ground level or above ground – apply 100% towards meeting the [25% minimum *Amenity Space*] requirement.

(*Petition*, Ex. 4; *Ex. 2-8 pdf* at 107). In other words, the *Amenity Space* definition is broad, and all types of amenities like walkways, private balconies, gardens, *etc.* can add up to the 25% minimum. This meant Ryan's variance request was unnecessary—they already hit the 25% under the plain terms of the *Amenity Space* definition.

Petitioners' entire case appears to be a dispute with this interpretation of *Amenity Space*. Apparently, Petitioners would prefer a more restrictive definition that only includes ground-level spaces and only public spaces—not private ones. But the City's interpretation is perfectly reasonable under the rational-basis test. For starters, the guiding light for any decision about the Ford Site is "to provide for a desired mix of residential, civic and commercial uses across the site, and a mix of housing styles, types and sizes to accommodate households of varying sizes, ages and incomes." *Saint Paul Leg. Code* § 66.911 (2020). The Zoning Administrator's decision promotes this noble goal by sticking to the plain language of the broad *Amenity Space* definition, which includes *all* areas covered by landscape materials, gardens, walkways, patios, recreation facilities, or play areas—regardless of those areas being public, private, on the ground level, or up high. (*Petition*, Ex. 1; *Ex. 1 pdf* at 47).

Certainly hewing to the City's definition gives developers—like Ryan—breathing room to paint a richer canvas of mixed "residential, civic, and commercial buildings," while dotting that same painting with unique "housing styles" that fit all "sizes, ages and incomes." *Saint Paul Leg. Code* § 66.991 (explaining the general purpose of the whole Ford Site). Petitioners' narrower idea of "open space," vis-à-vis *Amenity Space*, would only gray this now-

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

vibrant portrait with muted tones, and morph the overall image into a more humdrum and cookie-cutter existence—dulling the very soul of the Ford Site. Of these two roads, the City's road sticks closest to the intent of the site and the City's ordinances. This is a reasonable interpretation, and it should be the road we travel.

Additionally, nothing in its broad language suggests *Amenity Space* should be reined in by—as Petitioners suggest—only amenities at ground level, as opposed to amenities occurring on multiples stories. Similarly, this broad language of *Amenity Space* includes amenities in private areas, not just public ones. If they were, the City and Ryan would have included this language in the *Amenity Space* definition. The fact they did not says all we need to know about whether the ghosts of these limiting-words are lurking within the liminal spaces of the *Amenity Space* definition. They are not there.

In reality, the Petitioners simply dislike this broad definition of *Amenity Space*, and now urge this Court to rewrite it in their favor. That is not this Court's job. *See Honn*, 313 N.W.2d at 415 (writing that even if a city's decision is "debatable, so long as there is a rational basis for what it does, the courts do not interfere"). This Court only reviews whether or not the City's understanding of *Amenity Space* was reasonable under the rational-basis test. And on the plain language of the definition, our interpretation was more than reasonable—our interpretation respects the definition's plain language and the intent of the Ford Site.

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

4.2. Petitioners' other sources to spin a new definition of *Amenity Space* are not reasonable and Petitioners are confusing this term with another term in the Master Plan: *Parks and Open Space*.

Petitioners try to rewrite this plain language of *Amenity Space* by pointing to three other sources, hoping something sticks. Nothing does.

First, Petitioners point to the definition of "open space" in the City's zoning code as proof the City has surreptitiously abandoned our own code and the common-sense meaning of *Amenity Space*. (*Petition*, at ¶ 12); *see Saint Paul Leg. Code* § 60.216 (2020). Petitioners are mixing up two different things. *Amenity Space* is not the same as the zoning code's term, "open space." Here are the differences,

Master Plan's definition of *Amenity Space* (*Petition*, Ex. 1; *Ex. 1 pdf* at 47)	**Zoning code's definition of "open space" (*Saint Paul Leg. Code* § 60.216)**
[A]reas covered by landscape materials, gardens, walkways, patios, recreation facilities, or play areas.	Land and water areas retained for use as active or passive recreation areas or for resource protection.

Side-by-side, we can see these two concepts are not the same. The Master Plan's *Amenity Space*—the subject of this lawsuit—is clearly looking at all types of open areas that make life more enjoyable (*i.e.*, an amenity) for private residents on the ground floor of a building, the second story, third story, fourth story, *etc.* This is not equivalent to the zoning code's idea of "open space," which evokes rolling hills, grassy fields, parks with swing sets and baseball fields, *etc.* They are not the same, no matter how much Petitioners want to merge them together.

Second, the Petitioners point to Chapter 8 of the Master Plan as another way to insist the City misinterpreted the definition of *Amenity Space* in Chapter 4. (*Petition*, at ¶ 13). Again, Petitioners confuse two different things. Chapter 8 of the Master Plan deals with

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

Parks and Open Space, but this is *not* the *Amenity Space* from Chapter 4. (*Petition*, Ex. 1; *Ex. 1 pdf* at 132). Chapter 8's idea of "Parks and Open Space" is quite literally about a system of six specific parks and sports fields, they are:

- Gateway Park
- Civic Square
- Neighborhood Park
- Pocket Parks
- Hidden Falls Headwater Park
- Recreational Fields

(*Id.* at 133). Chapter 8's concept of *Parks and Open Space* is referred to as a *public* system of traditional city parks, stormwater infrastructure, and ground-level spaces available for everyone to wander through and enjoy. (*Id.*). But this is not *Amenity Space*, which refers to *private* landscape materials, gardens, walkways, patios, recreation facilities, or play areas in private developments. (*Id.* at 47). Chapter 4 deals with three-dimensions of amenities in private spaces. Chapter 8 deals with public parks and ground-level walking areas. They are different ideas.

The Petitioners are confused because they saw the words "open" and "space" in tight proximity to each other and assumed *every* phrase containing these words refers to the same idea. To the Petitioners, Chapter 4's *Amenity Space*-Open Space Coverage sounds a lot like Chapter 8's *Parks and Open Space*—so they must be the same. But similar-sounding phrases sharing similar words can have radically different meanings. For instance, "a bar that's open"

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

is sadly not the same as "an open bar." Petitioners' complaint is with the English language, not with the City.

Third and strangest, Petitioners seem to insist the City should use a definition of "open space" from a decade-old study commissioned years before any pen was put to paper on the Master Plan. (*Petition* at ¶ 14). For purposes of the study, the authors defined "open space" as

> Natural lands, athletic fields (even if managed by non-city entity), recreational lands, community gathering spaces and recreational buildings which are publicly-owned and/or publicly-accessible. The term is not intended to refer to privately owned lands, yards, urban plazas, stormwater treatment areas or public street rights-of-way unless, through agreement, the land is designated as public space with a recreational and/or habitat function.

(*Petition*, Ex. 2; *Ex. 2-8 pdf* at 13). Petitioners apparently think this definition from a 2010 study on the *potential* ideas for the Ford Site—a definition written by private consultants back in 2010—is somehow so powerful, it ties the City's hands today by overriding the zoning code and the Master Plan.

This argument deserves little attention. For one, this 2010 study is obviously referring to the idea of "open space" from the zoning code. It is *not* referring to the current idea of *Amenity Space* from Chapter 4 of the Master Plan. Again, as the City has said many times now, these are two different concepts.

But also, this study is a foundational-document meant to explore the *possibilities* of the Ford Site—not a sacred text intended to bind Ford Site orthodoxy in perpetuity. This study was one in a fleet of many illuminating every potential for the Ford Site. *See Ford*

Filed in District Court
State of Minnesota
11/20/2020 4:22 PM

Site/Highland Bridge – Project Studies, StPaul.gov.[13] These studies were meant to "understand opportunities for and limitations on" the possible ways to develop the Ford Site. *Id.* "The studies identified infrastructure efficiencies, cost-effectiveness, opportunities for environment design and conservation, and how to strike a balance between development and the creation of vibrant public spaces." *Id.* These studies are not binding terms. They were rough guideposts to see what was—and was not—possible.

Lastly, Petitioners overlook the summary at the beginning of this study that literally says it is intended only as "guidelines" and should *not* be read "**to physically design open spaces on the Ford site but rather to identify programmatic, design and performance criteria for future open spaces**." (*Petition*, Ex. 2; *Ex. 2-8 pdf* at 4) (emphasis in original). In other words, the study tells the Petitioners not to do the very thing they are now doing—treating the study as mandatory rules when it was only meant to be a visionary glimpse into future possibilities. They were not carved in stone then. They are not carved in stone now.

To tie things up, it's important to remember the Master Plan is not a source of binding law. The City's code explicitly says it's designed to "guide redevelopment of the Ford site," and "demonstrate general compliance with the" City's zoning code. *Saint Paul Leg. Code* §§ 66.951, 66.953. This is repeated in the opening salvo of the Master Plan, telling the reader not to read it as a sacred text, but instead, as a "framework to guide mixed-use redevelopment of the former Ford Motor Company assembly plant." (*Petition*, Ex. 1; *Ex. 1 pdf* at 7). It plays a large—but not exclusive—role "in guiding the future of the site." (*Id.*).

[13] A URL to this website is available here: https://www.stpaul.gov/departments/planning-economic-development/planning/ford-sitehighland-bridge/ford-site-zoning-and-2#11 (last visited November 16, 2020).

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State of Minnesota
11/20/2020 4:22 PM

And ultimately, the City has wide discretion to interpret the Master Plan and its code in a way that furthers the goals of the Ford Site project, as long as that discretion is reasonable. *Fletcher Properties*, 947 N.W.2d at 10 (Minn. 2020).

Using this very city-friendly standard, it cannot be said the Zoning Administrator's interpretation of the plain language of *Amenity Space* was so obviously irrational it failed to "help achieve" the ultimate goals of "guiding the future of the" Ford Site. *Id.*; (*Petition*, Ex. 1; *Ex. 1 pdf* at 7). The City's decision that a variance was unnecessary clears this low bar.

CONCLUSION

For the reasons discussed in this *Memo*, the City respectfully asks this Court to dismiss this case for lack of subject-matter jurisdiction or, alternatively, for failing to state a legal claim, which this Court may grant relief.

Dated: November 20, 2020

Respectfully submitted,

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11/20/2020 4:22 PM

MINN. STAT. § 549.211
ACKNOWLEDGMENT

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

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