NOT DESIGNATED FOR PUBLICATION

No. 124,855

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

FIRST PRESBYTERIAN CHURCH OF LAWRENCE,
Appellant,

v.

THE CITY OF LAWRENCE, KANSAS,
Appellee,

and

FOUNTAIN RESIDENTIAL PARTNERS, L.L.C.,
Intervenor.

MEMORANDUM OPINION

Appeal from Douglas District Court; MARK A. SIMPSON, judge. Opinion filed March 24, 2023. Reversed and remanded with directions.

Richard W. Hird, of Petefish, Immel, Hird, Johnson, Leibold & Sloan, L.L.P., of Lawrence, for appellant.

Curtis L. Tideman and *David E. Waters*, of Lathrop GPM LLP, of Overland Park, for appellee.

Greg L. Musil and *Brett C. Randol*, of Rouse Frets White Goss Gentile Rhodes, P.C., of Leawood, and *Todd N. Thompson*, of Thompson-Hall, P.A., of Lawrence, for intervenor Fountain Residential Partners.

Before ISHERWOOD, P.J., ATCHESON, J., and TIMOTHY G. LAHEY, S.J.

LAHEY, J.: A city ordinance is ambiguous when two or more interpretations of the ordinance can fairly be made. We find the city ordinance at the center of this appeal

meets the foregoing definition. Because the district court determined the ordinance was unambiguous and dismissed the case, we reverse and remand the case for consideration of legislative history, background considerations, and any canons of construction or other relevant information that may be helpful in clarifying the intended meaning of the ordinance.

FACTUAL AND PROCEDURAL BACKGROUND

Fountain Residential Partners, L.L.C. (Fountain) submitted a proposal to the City of Lawrence (City) to develop property at 2300 Crestline Drive (Fountain Property). The Fountain Property proposal was to combine two existing lots into one 9.12-acre lot and to place 57 duplexes and 6 detached dwelling structures on that lot. The First Presbyterian Church of Lawrence (Church) owns neighboring land and opposes the development. In August 2021, the Director of Planning and Development Services of the City administratively approved the site plan. The Church appealed the administrative approval. In October 2021, the Lawrence City Commission approved the site plan by a vote of three to two. The City Commission adopted findings of fact and conclusions of law in November 2021.

The Church sued, seeking injunctive and declaratory judgment to stop the proposed development. It argued that the approved site plan violated the Code of the City of Lawrence (City Code) and that, as a neighbor to the Fountain Property, it would be damaged by traffic, parking, and drainage issues associated with the development.

In its petition, the Church stated that the Fountain Property's zoning category is "Single-Dwelling Residential-Office" (RSO). RSO zoning allows three types of residential structures: detached dwellings, duplexes, and attached dwellings. Each type of dwelling is separately defined in City Code § 20-1734. The petition alleged:

- "The site plan proposes 57 duplexes on one (1) lot, in violation of the requirements of the City of Lawrence Code for RSO zoning";
- "The Site Plan proposes a multi-dwelling use in an RSO zoning district, contrary to the City of Lawrence Code"; and
- "The Site Plan fails to comply with the Comprehensive Plan."

At the core of all the claims was the Church's contention that the definition of "duplex" in the City Code does not permit 57 structures on a single lot. City Code § 20-1734(5) defines a duplex as "[a] single Structure that contains two (2) primary Dwelling Units on one (1) Lot. The units may share common walls or common floor/ceilings." Because the development was designed on a single lot, the Church contended Fountain was limited by the City Code's "duplex" definition to a single structure, meaning it could only have one duplex in the development. The City and Fountain argued the definition does not restrict the number of duplexes per lot—it only requires each duplex to be within the confines of one lot.

The district court, after allowing Fountain to intervene, heard oral arguments on the Church's application for temporary injunction. The court acknowledged the Church could suffer injuries and conceded that damages would be difficult to calculate, making a remedy at law problematic. But the court reasoned that such injuries would not occur until "some time well off in the future," so the litigation could continue without the immediate need for an injunction. The court denied the Church's request for an injunction and set a case management schedule.

Before answering the petition or responding to discovery requests, the City and Fountain filed motions to dismiss the Church's petition under K.S.A. 60-212(b)(6) for failure to state a claim, which the district court granted. Finding the legal elements of a "duplex" to be 1) a single structure, (2) that contains two primary dwelling units, and (3) on one lot, the court adopted the interpretation advanced by the City and Fountain in

ruling that none of the elements of a "duplex" limit the number of structures on one lot, and none of the elements require the structure to be on its own lot. As stated by the court, "[t]he 57 buildings that [Fountain] plans to build on the 9.12-acre lot all individually meet the Code's definition of duplex: Each building is a single structure, each building contains two primary dwelling units, and each building is on one lot." The district court found the duplex definition to be "clear, unambiguous, and fatal to [the Church's] claims."

The Church timely appeals.

ANALYSIS

Standard of Review

"Whether a district court erred by granting a motion to dismiss for failure to state a claim is a question of law subject to unlimited review." *Jayhawk Racing Properties v. City of Topeka*, 313 Kan. 149, 154, 484 P.3d 250 (2021). The appellate court will view the well-pleaded facts in a light most favorable to the plaintiff and assume as true those facts and any inferences reasonably drawn from them, and if those facts and inferences state *any* claim upon which relief can be granted, then dismissal is improper. *Kudlacik v. Johnny's Shawnee, Inc.*, 309 Kan. 788, 790, 440 P.3d 576 (2019). "'Dismissal is proper only when the allegations in the petition clearly demonstrate that the plaintiff does not have a claim.'" 309 Kan. at 790; see K.S.A. 2022 Supp. 60-212(b)(6).

Here, the Church's petition plainly sets forth a factual claim that, if true, entitles it to relief. If the City approved the proposed development in violation of the City Code as alleged, the Church would be entitled to the relief it seeks. But the City and Fountain do not challenge the factual sufficiency of the petition; rather, they challenge the Church's underlying interpretation of the City Code upon which the Church's claim is based. In other words, they contend that the Church's petition fails to state a claim because it is entirely based on a flawed interpretation of the City Code. And the parties here agree that

the validity of the Church's claim depends on the interpretation of the definition of "duplex" within the City Code.

"The interpretation of a municipal ordinance presents a question of law over which an appellate court has unlimited review." *Robinson v. City of Wichita Employees' Retirement Bd. of Trustees*, 291 Kan. 266, Syl. ¶ 5, 241 P.3d 15 (2010). This court applies the same rules of statutory construction to municipal ordinances. When a statute or municipal ordinance is unambiguous, appellate courts give effect to its express language. "This court will not speculate on legislative intent and will not read the provision to add something not readily found in it. If the provision's language is clear, there is no need to resort to statutory construction." 291 Kan. at 272. When interpreting statutes, it is axiomatic that the legislative intent controls, if ascertainable. *In re Estate of Strader*, 301 Kan. 50, 55, 339 P.3d 769 (2014). And in that regard, the statutory text "'is our paramount consideration because "the best and only safe rule for ascertaining the intention of the makers of any written law is to abide by the language they have used. And in abiding by the language the legislature has used, we assign common words their ordinary meaning."'" *In re Estate of Taylor*, 312 Kan. 678, 681, 479 P.3d 476 (2021) (quoting *Strader*, 301 Kan. at 55).

Where there is no ambiguity, the court need not resort to statutory construction. Only if the statute's language or text is unclear or ambiguous does the court use canons of construction or legislative history to construe the Legislature's intent. *In re Joint Application of Westar Energy and Kansas Gas and Electric Co.*, 311 Kan. 320, 328, 460 P.3d 821 (2020). "A statute is ambiguous when two or more interpretations can fairly be made." *Petty v. City of El Dorado*, 270 Kan. 847, 851, 19 P.3d 167 (2001). When a statute is ambiguous on its face, the court may look at the historical background of the statute's enactment, the circumstances surrounding its passage, and the statute's purposes and effect. *Robinett v. Haskell Co.*, 270 Kan. 95, 100-01, 12 P.3d 411 (2000).

Discussion

All parties agree that the Fountain property is zoned RSO under the City Code. RSO zoning allows "Detached Dwellings, Duplexes, Attached Dwellings and Administrative and Professional Offices uses." City Code § 20-203(a). The Fountain site plan includes detached dwellings and duplexes but does not include attached dwellings or offices. The only structures disputed in this case are the proposed duplexes.

The Church argues that RSO zoning limits Fountain to building only one duplex on the 9.12-acre lot because of the way a duplex is defined in § 20-1734(5). The relevant language from the definition of duplex is as follows: "A single Structure that contains two (2) primary Dwelling Units on one (1) Lot." City Code § 20-1734(5).

Though all parties contend the meaning of § 20-1734(5) is unambiguous, they do not agree on that "unambiguous" meaning. The Church points out that the section defines a duplex as a "single" structure with two primary dwelling units on one lot; it does not state "two" or "multiple" or "57" structures with two primary dwelling units on one lot. City Code § 20-1734(5). In other words, the Church reads § 20-1734(5) as unambiguously defining a duplex as "a '*single* Structure' with two dwelling units on *one* lot." (Emphasis added.) If only one structure exists on a lot, then it is a "single" structure. If a second structure is built, then neither one is a single structure because there are two on one lot. Consequently, the Church believes approval of a plan with 57 duplexes on one lot violates RSO zoning and should be reversed.

The City and Fountain say each of the 57 structures are "single" structures with two dwelling units on one lot and therefore fall within the definition. They contend the City Code's definition of duplex does not limit the placement of multiple duplexes on a single lot—it merely prohibits any part of a duplex from being placed on more than one lot. The point of the definition is to ensure that each duplex is entirely within the confines

of one lot—it does not establish a one-to-one ratio between structure and lot. Consequently, the definition allows 57 duplexes because each one will be located entirely on one lot. Thus, at issue is whether the definition of duplex requires that each duplex be on a separate lot or whether it allows the 57 duplexes to be placed on one lot.

The Church, in support of its "unambiguous" reading, relies first on a grammatical argument derived from *Glaze v. J.K. Williams*, 309 Kan. 562, 565, 439 P.3d 920 (2019), where our Supreme Court analyzed the grammatical structure of a workers compensation statute to discern its intended meaning. *Glaze* distinguished between two types of adjective clauses: restrictive, where the clause is essential to the meaning of the associated noun, and nonrestrictive, where the clause is unnecessary to that meaning. Attempting to follow *Glaze*, the Church asserts that the adjective clause "that contains two (2) primary Dwelling Units" is a nonrestrictive clause because it is not a necessary element of the basic sentence. Because "[t]he sentence can be read without that clause and still makes perfect sense: 'A single Structure . . . on one lot,'" the Church concludes that the grammatical structure makes the section unambiguously clear only a single structure can be constructed on the lot. We are not persuaded by this argument.

As the City and Fountain observe, the first line of the definition is not a complete sentence—it is merely a sentence fragment. *Glaze* does not analyze sentence fragments, and the grammatical structure of the statute in *Glaze* is not similar in any meaningful way to the section at issue here. But even if we apply the grammar rules set forth in *Glaze* to the sentence fragments in the duplex definition, the Church misreads *Glaze* by finding a nonrestrictive clause where none exists. The adjective clause "that contains two (2) primary dwelling units" is a necessary component to the meaning of "[a] single Structure," which makes it a restrictive clause. The Church's grammar analysis simply does not make the section's meaning any clearer. Consequently, we find the Church's grammatical argument, based on *Glaze*, unpersuasive. But our conclusion does not resolve the ambiguity question.

Despite its flawed grammatical analysis under *Glaze*, the Church makes a plausible and valid observation about the plain language of the City Code. Section 20-1734(5) uses the word "single" in defining the "structure" that must be on "one (1) Lot"—a *single* structure with two dwelling units on *one* lot. The adjective "single" serves no apparent purpose under the City and Fountain's proposed interpretation. As the Church argues, "[t]he Ordinance could have been written without the word 'single' to read '[a] structure that contains two (2) primary Dwelling Units on one (1) lot." Under the City and Fountain's interpretation, "a structure" and "a single structure" mean the same thing. But Black's Law Dictionary 1665 (11th ed. 2019) defines single as "[c]onsisting of one alone; individual." Merriam-Webster definitions include, "consisting of one as opposed to or in contrast with many; consisting of only one in number." Merriam-Webster.com/dictionary/single. The City and Fountain's interpretation requires us to simply ignore the word "single" or disregard it as superfluous or meaningless. Neither the City nor Fountain offer any explanation for the inclusion of the adjective "single" in the duplex definition. See *Wing v. City of Edwardsville*, 51 Kan. App. 2d 58, 63, 341 P.3d 607 (2014) ("[C]ourts presume that the legislature does not use redundant language, and we try to give meaning to every word in the statute."). Ordinances should be read *in pari materia* to give effect to all of the language of a city code. Courts should not add to, nor take from, the words of the ordinance, and we must interpret § 20-1734 in harmony with other sections of the City Code. *State v. Lyon*, 58 Kan. App. 2d 474, 487-88, 471 P.3d 716 (2020).

The inclusion of the adjective "single" in the definition plausibly suggests that a duplex is a solitary structure on one lot. As noted above, if only one structure exists on a lot, then it is a single structure. If a second structure is built, then neither one is a single structure because there are two on the lot. Thus, the Church is correct that the use of "single" creates an ambiguity because two meanings are possible. In our view, it is simply not possible to determine from the language of the duplex definition alone

whether the City Code is intended to require a one-to-one ratio between duplex and lot, or whether it was intended to ensure merely that both dwelling units of a duplex be placed on the same lot without regard to the number of duplexes on a lot. The ordinance is ambiguous.

We address one final argument. The City and Fountain contend that when the definition of duplex is read in the context of the City Code's definition of an attached dwelling, any ambiguity evaporates. And Fountain contends the Church's reading of the City Code is absurd because it allows only one duplex on a 9.12-acre lot. We disagree.

City Code § 20-1734(2) provides:

> "(2) Attached Dwelling
> "A Dwelling Unit, located on its own Lot, that shares one or more common or abutting walls with one or more Dwelling Units. An Attached Dwelling does not share common floor/ceilings with other Dwelling Units. An Attached Dwelling is also called a townhouse or a row house."

The parties agree that this definition is clear and that it plainly allows only one attached dwelling to be placed on a lot. In other words, each attached dwelling must be on a separate lot. But the fact that the language defining "attached dwelling" is clear does not enhance the clarity of the language defining "duplex."

The City and Fountain contend that, where § 20-1734(2) intends a structure to be the only structure on the lot, it expresses that requirement with the phrase "on its own Lot." Fountain argues "[i]f the Code required every Duplex to be located on its own, separate lot, it would have so stated, just as it did for 'Attached Dwellings.'" Again, the fact that the definition could have been written in a clear manner does not assist us in determining the intended meaning. The definitions do not use identical language, and we are not compelled to necessarily conclude anything about the intended meaning of

"duplex" based on the language about attached dwellings. And we note that the definition of an "attached dwelling" only addresses the *dwelling unit* and does not use the word *structure* at any point. In contrast, the definition of duplex begins by describing the *structure* to be placed on a lot as a "single structure" and further describes that single structure as having two dwelling units on one lot. Based on the wording of § 20-1734(5), it is plausible that Fountain's claim that each of the 57 buildings in the site plan is a "single structure" misses the mark by 56 buildings.

The Church contends that its interpretation is consistent with the townhouse definition and does not create an absurd result. Under the Church's interpretation, a single structure on one lot would mean that lot lines must separate each duplex structure just as lot lines must separate the dwelling units in a townhouse. To the extent that result is absurd, the Church argues it results from the developer's plan to create a single lot instead of 57 lots. The City acknowledges that there would need to be 114 separate lots to accommodate 114 townhouse dwelling units, making it difficult to see the absurdity of requiring 57 separate lots for 57 duplexes.

The City Code's definition of "duplex" reflects a dramatic shift in the approach to lots if the City and Fountain's interpretation is correct. That approach requires a townhouse builder to draw 114 lots for 114 dwelling units, while a duplex builder need only draw one large lot for the same overall number of dwelling units. If the City and Fountain are correct in their interpretation, it may be there is a reason for the significant difference in the treatment of townhouses versus duplexes, but that reason is not evident in the language of the section at issue. We find the attached dwelling definition does not resolve the ambiguity in the duplex definition.

The Church sought to undertake at least some discovery of the historical application of the City Code—whether there were any instances in Lawrence of other RSO developments with multiple duplexes on one lot. The Church believed not, the City

was uncertain, and Fountain believed there was one such instance. There are no exhibits or testimony in the record addressing this disputed fact. Such historical application of the zoning code may not be determinative, but it is relevant in construing the language of the ordinance.

As noted above, the interpretation of the City Code is a question of law over which we have unlimited review. Because the district court dismissed the case before the completion of any discovery, and because each party's main argument was based on competing claims over the "unambiguous" meaning of the language in the City Code, the record below was undeveloped. Having found the relevant language in § 20-1734 to be ambiguous, it is proper to consider the historical background of the City Code's enactment, the circumstances surrounding its passage, and its purpose and effect. *Robinett*, 270 Kan at 100-01. Also relevant and appropriate for consideration are "legislative history or use of canons of construction" to construe the City Commission's intent. *Westar Energy*, 311 Kan. at 328. The entire City Zoning Code may be relevant to establish the context in which the language of § 20-1734(5) is structured. Here, the primary *in pari materia* analysis by the parties involves one section of the City Code. Thus, although we can undertake an unlimited review of the issue, here the record is insufficiently developed to permit a meaningful review.

The dissent has undertaken a broader *in pari materia* analysis than the parties did before the district court or in this appeal. Unlike the parties, whose primary focus was the plain language of the various dwelling definitions in § 20-1734, the dissent relies on some provisions in the Code not cited or argued by the parties. Because the definition of duplex is ambiguous, we agree a full-blown *in pari materia* analysis is appropriate, but it should be done in the first instance by the parties. While we do not intend to take a firm position on any particular argument, we suggest other statutory provisions, not included in the dissent's analysis, may shed light on the intended meanings of the duplex definition.

For example, the dissent expands somewhat upon the City's conclusory contention that the Church's interpretation of the duplex definition conflicts with the density regulations of the City Code. We view this argument as one that may support the plausibility of the position of the City and Fountain. But we are not necessarily persuaded there is any such conflict. We note first that density is measured by the acre, whereas a duplex is defined in terms of "a lot" rather than acres. There is not a clear explanation in the record why drawing separate lot lines for each duplex would not resolve any density concern. In other words, it appears that a developer need only to place lot lines around each duplex to achieve maximum density. The inability to achieve maximum density is not created by the definition of duplex, it may simply be the result of the developer's decision to create a site plan with a single lot.

Furthermore, the RSO District ordinance incorporates "a number of other Development standards that may apply," including Article 9 of the City Code. See City Code § 20-203(f)(3). In a subsection entitled "Duplex Dwelling Lots," § 20-912(c)(3) states: "Two curb cuts are permitted on a Duplex Lot in accordance with Section 16-302, Sketch C of the City Code." A curb cut allows for direct access to a public street. The title and wording of the subsection suggests that each duplex has its own lot. And the allowance for two curb cuts appears to exist to allow for individual direct access to the street for each dwelling unit in a single duplex. If correct, this provision plainly supports the Church's position. Because all 57 duplexes are on a single lot, all 114 dwelling units would apparently be required to access the street from the same two curb cuts. We are unable to discern from the site plan exhibit precisely how many direct street access points are available in the plan.

The City Code presents at least one other area of interpretive difficulty, and the dissent rightly points it out. A "multi-dwelling structure" is a structure containing three or more dwelling units that share common walls or floors/ceilings with one or more units,

on land that is not divided into separate lots. City Code § 20-1734(8). The dissent correctly observes that three "attached dwellings" (townhouses) could be built as a triplex on one lot and would meet the definition of a multi-dwelling structure. But the dissent ignores the point that its hypothetical triplex would not be allowed in RSO zoning because it does not qualify as a "townhouse" under the City Code. To comply with the "attached dwelling" definition, nothing about the triplex structure itself need be changed; the physical construction would be the same, as would the density standards. The only change would be the drawing of lot lines around the structure. This is the crucial distinction because RSO zoning allows townhouses but does not allow multi-dwelling structures. A developer such as Fountain planning to build townhouses on an RSO-zoned property, like the one at issue here, would need to draw lot lines between the townhouses to obtain City approval. Stated differently, even though density allowances would permit more than one townhouse on a nine-acre lot, the definition of a townhouse would prevent that development from reaching full density.

The fact that lot lines are a key distinction between an attached dwelling and a multi-dwelling structure shows two things that bear on the definition of "duplex." First, the density allowances in the City Code are separate from the lot line drawing requirements. It is a fallacy to suggest the Church's proposed reading of the duplex definition negates or conflicts with density requirements. Even if multiple structures would fall within the density standards for an RSO zone, the City would reject a proposal if lot lines were not drawn consistent with the lot line requirements inherent in the structures' definition—as with townhouses. Thus, a contention that an ordinance definition violates density allowances because it limits the number of structures to one per lot is without merit. Second, we presume the City must have had some specific legislative intent for its lot line drawing requirements. As discussed, by specifying how lot lines are drawn in the definition, the City Code allows three townhouses on separate lots in RSO zoning but excludes the same three townhouses if they share a lot. Nothing in the record before us explains the importance of the distinction. Understanding the

rationale, if it can be discerned, can shed light on the intent underlying the intended meaning "duplex." As stated above, the record is insufficient for us to resolve the issue at present. We think it is incumbent on the parties to make and respond to arguments how the definition of duplex should be interpreted in relation to the "balance of the Code." See slip op. at 18, 25.

The dissent finds the City "has regularly revised" the 500-page City Code. Slip op. at 16. While it is no doubt true that revisions to the City Code have been made, the precise revisions and the reasons for them are not in the record and may be relevant in resolving this dispute. Yet because the claim was dismissed at the initial pleading stage, the Church was granted no opportunity to obtain any discovery of the modifications. We think it an appropriate area of inquiry on remand. Certainly any modifications to the definitions and/or density requirements may assist in identifying the intended meaning of the current City Code.

Our discussion of the Church's proposed interpretation of the City Code is intended to explain why the definition of "duplex" in § 20-1734(5) is ambiguous and the Church's interpretation is plausible. We do not suggest that the Church's interpretation is necessarily correct. The district court's decision and the underlying arguments by the City and Fountain, along with points raised in the dissent, demonstrate that their proposed interpretation is also plausible. Our Supreme Court's most recent discussion of the criterion for ambiguity comes from *Bruce v. Kelly*, 316 Kan. 218, 514 P.3d 1007 (2022). "'[E]ach side of the caption presents a compelling argument why the plain language of the statute favors the competing constructions that each side proposes.'" 316 Kan. at 255 (Luckert, C.J., concurring) (quoting *Bruce v. Kelly*, No. 20-4077-DDC-GEB, 2021 WL 4284534, at *19 [D. Kan. 2021] [unpublished opinion]). That is, Chief Justice Luckert agreed with the majority holding, but would have labeled the statute at issue as ambiguous because each side had a plausible but contradictory reading of the relevant

language. Here, we find that both sides of this dispute present plausible but contradictory readings of the relevant language of the City Code.

We reverse the dismissal by the district court and remand the case for further proceedings.

Reversed and remanded with directions.

* * *

ATCHESON, J., dissenting: The First Presbyterian Church of Lawrence decided a development calling for 57 duplexes and 6 detached residences on a nine-acre tract across the street from its facilities would make for a poor neighbor. After the Lawrence City Commission approved the developer's plan, the Church filed an action in Douglas County District Court for declaratory and injunctive relief based on a linguistic extraction of the definition of a duplex—a dozen words—excavated and isolated from the balance of the 500-page municipal development code as ostensibly prohibiting the plan. The district court recognized the Church's argument for the parlor trick it is and granted companion motions from the City and Fountain Residential Partners, L.L.C., the developer, to dismiss for failure to state a claim. The Church has appealed, and my colleagues see at least a sufficient glimmer of ambiguity in the duplex definition to reverse and remand for further proceedings. The Church imputes an unreasonable reading to the definition by expanding its intended (and fairly obvious) purpose as a description of a type of structure into a limitation on density, even though the development code elsewhere covers density in great detail. I, therefore, respectfully dissent and would affirm the district court.

FACTUAL AND PROCEDURAL UNDERPINNINGS

The City of Lawrence adopted and has regularly revised the development code, a comprehensive regulation of zoning and land use within the municipality. The code creates 13 residential zoning classifications and 11 commercial and industrial (nonresidential) classifications. Each classification identifies appropriate land uses and restrictions on buildings, such as density limits, setbacks, and minimum lot sizes. The city has been carved into districts corresponding to the zoning classifications in a way that contiguous districts require compatible uses. In theory, then, a district limited to single-family dwellings would not be placed adjacent to a district consisting of industrial uses. Likewise, incompatible uses would not be mixed within a single district. The code includes an extensive glossary defining scores of words and terms, including many that otherwise have common meanings, such as "dwelling" or "structure," for example, and centrally here "duplex." City Code ch. 20, art. 17 (terminology).

On a split vote, the City Commission approved Fountain Residential Partners' development plan for the tract that had been zoned as an RSO district—considered a low-to-medium density residential area that can accommodate some professional offices but not heavily trafficked commercial enterprises like restaurants and retail stores. An RSO district typically allows various forms of housing ranging from "detached dwellings" that consist of a single residential unit to "duplexes" to "mixed use structures" having offices on the ground floor and residences on an upper floor. Under the code, an RSO district is intended to provide a transition or buffer between purely residential neighborhoods and commercial areas. City Code § 20-203.

As I have indicated, the approved development plan consists of 57 duplexes and 6 detached dwellings on a 9.12-acre tract, so it would be exclusively residential in character. Pertinent to the Church's legal challenge, in Fountain Residential Partners' plan, the entire tract was a single "lot," defined in the code as a parcel on a block fronting

a dedicated street that is to be developed or occupied through single ownership or control. City Code § 20-1701. The code imposes no maximum on the size of a single lot. But the six districts for single-family residences set minimum lot sizes for each "dwelling unit," effectively permitting only one home on a lot. As a zoning classification mixing types of dwellings, the RSO district includes a minimum lot size but sets no limit on the number of dwelling units permitted on a lot. The code regulates the density or concentration of housing in RSO districts by permitting no more than 15 dwelling units per acre. City Code § 20-601(a).

Based on the comparatively limited record, Fountain Residential Partners' development plan conforms to those code requirements. The Church has never suggested otherwise. Rather, the Church latched onto the definition of "duplex" in the code to fashion twin arguments that the plan deviates from the definition and, therefore, is unlawful. The code defines "duplex" as: "A single Structure that contains two (2) primary Dwelling Units on one (1) lot. The units may share common walls or common floor/ceilings." City Code § 20-1734(5). The Church zeros in on the first portion of the definition as plainly inconsistent with the development plan. As a fallback, the Church has suggested the definition is ambiguous, requiring discovery into the legislative history of the code and how the term "duplex" has been applied to other municipal development. With comparable vigor, the City and Fountain Residential Partners say the definition unambiguously dovetails with the development plan. Simply because both sides declare statutory language to be unambiguous doesn't make it so, just as their disagreement over the meaning of the language doesn't render it ambiguous. See *Tinnin v. MoDOT & Patrol Employees' Retirement System*, 647 S.W.3d 26, 35 (Mo. App. 2022) (statute not ambiguous simply because parties disagree on its meaning); *Home & Community Services of Hawaii, Inc. v. Department of Labor & Indus. Relations*, 137 Hawai'i 125, 129, 366 P.3d 181 (2016); cf. *Jones v. Reliable Security, Inc.*, 29 Kan. App. 2d 617, 627, 28 P.3d 1051 (2001) ("The fact that the parties disagree over the meaning of the terms does not establish the contract is ambiguous.").

The district court sided with the City and Fountain Residential Partners and granted their motions to dismiss the petition. The Church has appealed. My colleagues find the definition of "duplex" to be ambiguous and would remand for further proceedings. As I explain, the district court got it right. The Church's reading of the definition, especially in context with the balance of the code, is unreasonable.

ANALYSIS

The standards for granting a motion to dismiss for failure to state a claim under K.S.A. 2022 Supp. 60-212(b)(6) are strict. In considering a motion to dismiss, the district court must credit as true both the well-pleaded factual allegations in the plaintiff's petition and any reasonable inferences drawn from those assertions. The district court should not dismiss if those allegations and inferences present any viable legal claim. *Steckline Communications, Inc. v. Journal Broadcast Group of KS, Inc.*, 305 Kan. 761, 767-68, 388 P.3d 84 (2017); *Cohen v. Battaglia*, 296 Kan. 542, 545-46, 293 P.3d 752 (2013). We review a dismissal applying essentially the same standards and without any deference to the district court, since the determination involves no resolution of factual disputes—the facts must be construed favorably for the plaintiff—and, thus, rests on a question of law. 296 Kan. at 545-46.

In a given case, the district court and we, in turn, on appeal may look at the entirety of key materials identified and relied upon in a plaintiff's well-pleaded petition without converting a motion to dismiss into a summary judgment motion. See K.S.A. 2022 Supp. 60-212(d) (If the district court considers "matters outside the pleadings," a motion to dismiss must be treated as a summary judgment motion, and the parties should be given the opportunity to supplement their written submissions accordingly.). The identified materials are considered to be part and parcel of the pleaded factual allegations. See *United States ex rel. Foreman v. AECOM*, 19 F.4th 85, 106 (2d Cir. 2021) (in ruling

on motion to dismiss under Fed. R. Civ. Proc. 12[b][6], district court may review documents "integral" to claim where plaintiff refers to them and relies on their "'terms and effect'"); *Crosby v. ESIS Insurance*, No. 121,626, 2020 WL 6372266, at *2-3 (Kan. App. 2020) (unpublished opinion), *rev. denied* 314 Kan. 854 (2021). Were the rule otherwise, a plaintiff could ward off a motion to dismiss by selectively citing to a critical document, such as a contract, without permitting the district court to review the entire document. Here, where the Church rested its claim for relief on portions of the City's development code and repeatedly referred to the code in its petition, the district court properly could examine the entire document in considering the motion to dismiss. And we may do likewise on appeal.

The principles governing the judicial reading of statutes apply equally to municipal ordinances, as legislative enactments. *Phillips v. Vieux*, 210 Kan. 612, 617, 504 P.2d 196 (1972); see *Layle v. City of Mission Hills*, 54 Kan. App. 2d 591, 596, 401 P.3d 1052 (2017) (applying principles to city ordinance); *Mathews v. City of Mission Hills*, No. 122,710, 2022 WL 414255, at *7 (Kan. App. 2022) (unpublished opinion) (same). Our overarching objective is to discern the legislative intent and purpose of a statute or an ordinance and to give effect to that intent and purpose. *State v. James*, 301 Kan. 898, 903, 349 P.3d 457 (2015). In most circumstances, we are to be guided by the plain meaning of the words used. *State v. O'Connor*, 299 Kan. 819, 822, 326 P.3d 1064 (2014). But the Legislature or a municipality's governing body may adopt specific definitions for terms used in a statute or an ordinance, and those meanings necessarily control as to that enactment. See *Midwest Crane & Rigging, LLC v. Kansas Corporation Comm'n*, 306 Kan. 845, 851, 397 P.3d 1205 (2017) (absent statutory definition, words in statute should be given their usual dictionary meaning); *State v. Baumgarner*, 59 Kan. App. 2d 330, 335, 481 P.3d 170 (2021); Scalia & Garner, Reading Law: The Interpretation of Legal Texts, p. 225 (2012) ("Individual statutes often contain definition sections giving ordinary words a limited or artificial meaning.").

In turn, we typically deploy the canons of construction and extrinsic evidence of legislative intent when the relevant language of the enactment is genuinely ambiguous. A statute or ordinance presents an ambiguity only if the language may be given more than one *reasonable* meaning. *State v. Paul*, 285 Kan. 658, 661-62, 175 P.3d 840 (2008); *State v. Wilmore*, 57 Kan. App. 2d 469, 475, 453 P.3d 1192 (2019). In ascertaining ambiguity, the courts should, of course, examine not only the particular statutory language but also how the provision in which the language appears functions as both a discrete statutory unit and as part of an integrated statutory scheme. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341, 117 S. Ct. 843, 136 L. Ed. 2d 808 (1997) ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole."); *In re Doll*, 57 F.4th 1129, 1140 (10th Cir. 2023); *Seife v. United States Food and Drug Administration*, 43 F.4th 231, 239 (2d Cir. 2022).

The Church's dual arguments that the code definition of duplex clearly and unambiguously conflicts with Fountain Residential Partners' development plan fail. In the first, the Church submits the phrase "that contains two (2) primary Dwelling Units" in the definition of "duplex" is a nonrestrictive clause that may be excised in assessing the core meaning of what constitutes a duplex. The Church builds its argument on the notion the remaining words—"[a] single Structure . . . on one (1) lot"—express a complete thought or definition. They do. But it's not the thought or definition that's stated in the code. By the Church's definition, a supermarket would qualify as a "duplex," so long as it didn't straddle a lot line. The store would, indeed, be a single structure. So a supermarket (or any other "single structure") could be built on land in an RSO district. That conflicts with the limited uses expressly allowed in RSO districts under the code and would be patently unreasonable. City Code § 20-203 (outlining purpose, principal uses, and other characteristics of RSO districts); City Code § 20-402 (residential district use table).

Moreover, the argument depends on a misunderstanding of restrictive and nonrestrictive clauses that I expect would equally vex middle school English teachers and skilled book editors. A restrictive clause contains information necessary for a full understanding of the information conveyed in a sentence. Conversely, a nonrestrictive clause is, in that sense, unnecessary and imparts only additional details. See Garner, Garner's Modern American Usage 782 (2003) (restrictive clause "essential to the grammatical and logical completeness of a sentence"; nonrestrictive clause "could be omitted without changing the meaning" of sentence); Strunk & White, The Elements of Style, at 3, https://faculty.washington.edu/heagerty/Courses/b572/public/StrunkWhite.pdf (nonrestrictive clauses "do not limit the application of the words on which they depend"). Thus, consider this sentence: "People who live in glass houses shouldn't throw stones." The phrase "who live in glass houses" is a restrictive clause establishing who, among all people, ought not throw stones. Contrast this sentence: "Kansas, admitted to the Union in 1861, consistently votes for the Republican in presidential elections." The phrase "admitted to the Union in 1861" is nonrestrictive. It simply adds information about Kansas, which has been otherwise clearly identified in the sentence, since there is only one state so named; the information is unnecessary in conveying the central idea.

So, the grammatical premise of the Church's argument is faulty, and the conclusion similarly collapses. In the code's definition of duplex, the phrase "that contains two (2) Dwelling Units" is a restrictive clause essential to the full description of the structure being described. Common grammar rules also cast the clause as restrictive rather than nonrestrictive—it is introduced by "that" rather than "which" and it is not set off by commas. See Garner's Modern American Usage 782 (2003). Although courts should refrain from fetishizing finespun points of grammar in reading statutes, the Church's presentation fares badly on every grammatical count. The district court and the majority have correctly given this argument a failing grade.

But the Church offers a second argument focusing on the word "single" in the duplex definition and contends the language necessarily permits only one duplex on a lot, regardless of the lot's size. On the Church's reading of the definition, were the Hundred Acre Wood a single lot in an RSO district in Lawrence, a developer could build one—and only one—duplex on the entire property. But the developer could put in up to 15 dwelling units of other types on each acre. Looked at that way, the argument, on its face, presses the limits of reasonableness, especially given the purpose of the definition. As the district court recognized, the definition is simply intended to describe a particular type of building and nothing more. In that respect, the word "single" means a structure limited to or containing only two dwelling units on one lot rather than straddling a lot line. The definition, then, excludes buildings combining office and residential uses and buildings with a single residential unit or more than two residential units. It is, in short, a deliberately precise description of one type of structure. And that's the purpose of a defined term within a broader statutory scheme.

The code definition of "duplex" may not be especially artful linguistically, but neither is it artless. A duplex might have been more adroitly defined as "a structure on one lot consisting of two dwelling units." But the definition in the code doesn't become ambiguous merely because an ostensibly better alternative could have been fashioned. Like the code definitions of other residential buildings, the definition of duplex is intended to define the character of a structure by describing the type and extent of its constituent uses. It more than adequately serves that purpose.

The Church effectively tries to turn the definition into a device imposing a density restriction—an artificial purpose it was never intended to serve. The density or concentration of structures in the various zoning districts, including the RSO classification, are expressly addressed elsewhere in the development code in excruciating detail. City Code ch. 20, art. 6. Those provisions undercut the Church's imposition that the definition serves the same purpose or should negate the specific density requirements.

See *Alliance Well Service, Inc. v. Pratt County*, 61 Kan. App. 2d 454, 474-75, 505 P.3d 757 (2022) (specific statute controls over general statute). Moreover, the definition of duplex does not say that only one such structure may be built on a lot, but rather that such a structure may not overlap a lot line and, thus, be on two lots. Again, the district court recognized that difference. To reiterate, the number of duplexes on a lot in an RSO district is governed by the density limitations stated elsewhere in the development code.

Both in the district court and on appeal, the Church has sought to camouflage that defect in its position by looking at the code definition of "attached dwelling" as a residential unit "located on its own Lot, that shares one or more common or abutting walls with one or more Dwelling Units. . . . [and] is also called a townhouse or row house." City Code § 20-1734(2). The Church basically argues that because each townhouse unit must be on a separate lot, no more than one duplex—essentially a two-unit set of townhouses—is, by definition, permitted on a lot. But the comparison doesn't hold up.

The logical equivalence would require each unit of a duplex to be on a separate lot. And the development code could have imposed that kind of limitation by using parallel language to define a duplex as a single structure *on its own lot* consisting of two dwelling units with common walls or floors and ceilings. But the code wasn't drafted that way, strongly indicating a different meaning should be drawn from the plainly different phrasing. See *Law v. Siegel*, 571 U.S. 415, 422, 134 S. Ct. 1188, 188 L. Ed. 2d 146 (2014) (applying "'normal rule of statutory construction'" recognizing that "words repeated in different parts of the same statute generally have the same meaning"); *Russello v. United States*, 464 U.S. 16, 23, 104 S. Ct. 296, 78 L. Ed. 2d 17 (1983) (use of different terms within statute demonstrates legislative intent to convey different meanings); *Jane Doe No. 1 v. Backpage.com*, 817 F.3d 12, 23 (1st Cir. 2016) ("The normal presumption is that the employment of different words within the same statutory scheme is deliberate, so the terms ordinarily should be given differing meanings.").

The fallacy of the Church's argument is further exposed by considering the code definition of a "multi-dwelling structure": Three or more dwelling units sharing common walls or floors and ceilings on land that "is not divided into separate Lots." City Code § 20-1734(8). So, triplexes may be put on a single lot. And residences in the configuration of "attached dwellings" or townhouses come within the definition of a multi-dwelling structure if they are on the same lot rather than on separate lots. Again, that underscores the purpose of the dwelling definitions as describing types of structures rather than specifically regulating their placement or concentration in various districts. Thus, a string of townhouses may be constructed on one lot under the code—they would constitute a "multi-dwelling structure" rather than "attached dwellings." And that configuration of residences would be consistent with putting more than one duplex on a lot, as the definition of "duplex," reasonably read, provides.

The comparison of these three definitions readily debunks the almost talismanic significance the Church imputes to the definition of an "attached dwelling" as a townhouse on a single lot in furthering the idea that only one duplex (a similar housing configuration) may be placed on a lot regardless of the lot's size. The code permits three or more townhouses (a configuration also similar to duplexes) on a single lot in various residential districts and defines the configuration as a "multi-dwelling structure." The majority's extended exegesis on this simple point misses the point. And that discussion in no way renders the Church's unreasonable interpretation of the term "duplex" somehow reasonable or even debatably plausible.

In short, the Church tries to promote its skewed reading of the term "duplex" by comparing it myopically to another defined term without looking at anything else in the code. Considered in context, the Church's trumpeted anomaly about lot requirements for attached dwellings compared with duplexes isn't anomalous at all. The argument, therefore, furnishes no sound legal basis for suggesting the definition of duplex clearly

allows only one duplex on a lot. Moreover, it does not support the notion the definition is ostensibly ambiguous in that respect. As I have said, the Church both misconstrues the definition of a duplex and overextends the purpose of the definition within the code to impose location and density requirements actually regulated elsewhere in the code.

The Church's legal position makes hash of a comprehensive land use and zoning code heavily populated with defined terms. The Church has posed quite artificial and unreasonable readings of the definition of "duplex" to challenge a development plan it doesn't like. The plain language of the definition doesn't support the Church's representations. Nor is that sliver of language even plausibly ambiguous, especially in context with the balance of the code, notwithstanding the majority's suggestion otherwise. I would affirm the district court's dismissal of the petition for failure to state a claim.[*]

[*] The district court's memorandum decision and order appears to be a dismissal with prejudice. See K.S.A. 2022 Supp. 60-241(b)(1). The Church has not addressed the point on appeal and, thus, has not suggested the dismissal should have been without prejudice. Ordinarily, a dismissal for failure to state a claim ought to be without prejudice unless there is an insuperable legal bar precluding the suit. Often, a district court will permit the plaintiff to promptly file an amended petition rather than having to initiate a new action. See *Danzman v. Herington Municipal Hospital Bd. of Trustees*, No. 124,675, 2022 WL 4115577, at *3 (Kan. App. 2022) (unpublished opinion). I need not and do not offer an opinion as to whether a petition dependent on patently erroneous statutory arguments exhibits an insuperable bar, i.e., one that could not be corrected on repleading.