STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1845

Joel S. Rabbe, et al.,
Appellants,

vs.

Farmers State Bank of Trimont, et al.,
Respondents,

Allen Kahler, et al.,
Respondents.

Filed June 10, 2019
Affirmed
Rodenberg, Judge

Martin County District Court
File No. 46-CV-17-829

Gregory S. Otsuka, J. Robert Keena, Micheal P. Srodoski, Hellmuth & Johnson, Edina, Minnesota (for appellants Joel S. Rabbe, Kirsten C. Rabbe, Jon E. Rabbe, Debra A. Rabbe, Joyce L. Rabbe, and Rabbe Farms LLP)

Dustan J. Cross, Dean M. Zimmerli, Gislason & Hunter LLP, New Ulm, Minnesota (for respondents Farmers State Bank of Trimont, Michael Mulder, and Robert Connors)

David J. McGee, Natalie R. Walz, Chestnut Cambronne PA, Minneapolis, Minnesota (for respondents Land Services Unlimited, Inc., Auctioneer Alley, Inc., Allen Kahler, Kevin Kahler, Ryan Kahler, Dustyn Hartung, and Leah Hartung)

Considered and decided by Bjorkman, Presiding Judge; Rodenberg, Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

In this appeal after the entry of final judgment as to some but not all of the claims under Minn. R. Civ. P. 54.02, appellants argue that the district court erred by determining that their commercial grain-elevator properties are not "agricultural land" under Minn. Stat. § 500.245 (2018) and abused its discretion in denying appellants' request to continue the dispositive motions so as to allow additional discovery. Appellants also challenge the district court's conclusion that Minn. Stat. § 500.245 does not allow a private cause of action by preceding owners against a foreclosing lender and its agents for fraud. We affirm.

FACTS

Appellants, owners of Rabbe Farms LLP, once owned over 1,700 acres of farmland in and around Martin County.[1] In 2013 and 2014, appellants borrowed over $17,000,000 from respondent Farmers State Bank Trimont (FSB).[2] The loans were secured by FSB's mortgages on several parcels of farmland owned by appellants. Rabbe Farms also granted FSB a mortgage on four commercial grain elevators, including grain-elevator properties in Trimont and Sherburn.

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[1] Appellants are the owners of Rabbe Farms LLP. Rabbe Farms is a Minnesota LLP with a registered office in Trimont. Rabbe Farms is owned by several members of the Rabbe family, and appellant Joel Rabbe is the managing partner of Rabbe Farms.

[2] Respondents are Farmers State Bank of Trimont, Auctioneer Alley Inc., and Land Services Unlimited. Auctioneer Alley and Land Services did not file a brief. We refer to respondents separately when needed for identification. Respondent Michael Mulder is the President and Chief Executive Officer of FSB, and respondent Robert Conners is the Vice President of FSB.

In June 2014, appellants defaulted on the FSB loans. In September 2015, Rabbe Farms filed for chapter 11 bankruptcy protection. FSB commenced a foreclosure on the parcels of appellants' farmland not owned by Rabbe Farms. After the bankruptcy proceedings concluded, FSB acquired both the farmland and the elevator properties and sought to sell the real estate that had secured the loans.

FSB sold the Trimont and Sherburn elevator properties to third parties in July 2017. But FSB did not send appellants a notice of the right of first refusal because FSB did not believe that the properties were "agricultural land" as defined in Minn. Stat. § 500.24 (2018). The grain-elevator properties had been used by appellants as part of their grain business, and the buildings thereon were used for "delivering, storing, and segregating seed and/or other identity preserved (IP) products." Small portions of each of the grain-elevator properties contained bare land that appellants assert could be tilled, despite the properties not having been recently farmed. On these elevator properties were situated offices, pit buildings, grain legs, and grain bins. An October 2017 certificate from the Martin County Assessor confirmed that the properties were not classified as either agricultural land or as a farm homestead.

FSB retained respondent Land Services to assist in selling the various parcels of property. Land Services appraised appellants' land and valued the farmland at $7,858 per tillable acre. In July 2017, FSB and a third party entered into a purchase agreement for the purchase of 116 acres of the farmland formerly owned by appellants. The third-party buyer offered to pay, and FSB accepted, $8,500 per acre. After entering into a written agreement

with the third-party buyer, FSB notified appellants of their right of first refusal to purchase the property under section 500.245.

FSB entered into three more purchase agreements to sell six additional parcels of the former Rabbe farmland to third parties. After each such purchase agreement, FSB notified appellants of their right of first refusal. Each of the offers contained a "notice of offer to buy agricultural land" and contained the language required by section 500.245—a description of the property, a copy of the purchase agreement with the purchaser's name redacted, and an affidavit from FSB's president, affirming that the purchase agreement was "true, accurate, and made in good faith."

Appellants did not exercise their right of first refusal on any of the farmland. Instead, appellants commenced this action, alleging that respondents violated Minn. Stat. § 500.245 by failing to provide notice of the right of first refusal for the grain-elevator properties and by fraudulently obtaining "artificially inflated offers" from third-party buyers for the farmland. In their suit, appellants claimed that the elevator properties are agricultural land and that appellants have a right of first refusal. Appellants asked the district court to declare FSB the owner of the Trimont and Sherburn elevators and the farmland subject to appellants' right of first refusal in those properties.

Appellants also claimed that FSB violated the hold-harmless clause in Minn. Stat. § 500.245, invalidating the purchase agreements and confirming that respondents acted in bad faith. Respondents counterclaimed for slander of title because of the notices of lis pendens appellants recorded. Appellants moved to dismiss the counterclaim; respondents FSB, Land Services, and Auctioneer Alley moved for summary judgment.

Appellants requested the district court to continue the hearing on respondents' summary-judgment motions so as to allow appellants to conduct additional discovery. After the close of the summary-judgment hearing, appellants filed several affidavits and documents in an attempt to show that the elevator properties are agricultural land. The district court declined to consider these late-filed documents and denied appellants' continuance request.

The district court granted respondents' motions for summary judgment and dismissed appellants' complaint. The district court determined that the grain-elevator properties are not agricultural land under section 500.245 and that section 500.245 does not provide a private cause of action when a purchase offer is the product of fraud or not made in good faith. The district court did not dispose of FSB's counterclaim. The parties then agreed that the district court could enter judgment on the summary-judgment dismissal of appellant's complaint and hold in abeyance litigation concerning FSB's counterclaim. The district court entered final judgment dismissing appellants' complaint under Minn. R. Civ. P. 54.02.

This appeal followed.

D E C I S I O N

Before reaching the merits of this appeal, it is useful to begin our discussion by identifying the legal claims asserted by appellants in their complaint, the factual allegations made in support of those allegations, and the issues raised on appeal.

Count I of the complaint alleges that FSB sold the grain-elevator properties without having first given a right-of-first-refusal notice to appellants. Appellants seek to invalidate

the transfers and to have the district court order FSB to re-sell the properties after notifying appellants of their right of first refusal. Appellants advance two reasons why the grain-elevator properties are "agricultural land." They argue that grain-storage facilities are "agricultural land" despite being zoned for industrial use, and are therefore used in "farming." They also argue that those parcels are "agricultural land" because each parcel includes a small portion of land that could be tilled and is therefore "capable of being used for farming" within the meaning of Minn. Stat. § 500.24, subd. 2(g).

Count II of the complaint alleges that the farmland formerly owned by appellants was appraised in May 2017 at a value of "$7,334 per deeded acre and $7,858 per tillable acre," but that FSB sold the property for an "inflated" price of "approximately $8,500 per acre" as a result of "false representations" FSB made to the subsequent purchasers. This, appellants allege, entitles them to invalidation of the sales to the subsequent purchasers—who are not parties to this litigation—and to re-notification of appellants' right of first refusal "at a fair and non-fraudulent price, as determined by a neutral and impartial valuation method."[3]

"[Appellate courts] review a district court's summary judgment decision de novo. In doing so, [appellate courts] determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010)

[3] Count III of the complaint alleged statutory violations by a real estate broker or salesperson. Appellants do not challenge the district court's dismissal of count III on appeal.

(citation omitted). Summary judgment is appropriate "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01.[4] Appellate courts view the facts in the light most favorable to the nonmoving party. *Sanchez v. Dahlke Trailer Sales, Inc.*, 897 N.W.2d 267, 270 (Minn. 2017). A "metaphysical doubt" as to a fact issue will not defeat summary judgment. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 72 (Minn. 1997). Summary judgment should be granted for the defendant "when the record reflects a complete lack of proof on an essential element of the plaintiff's claim." *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

I. The district court did not abuse its discretion in denying appellants' continuance motion and in declining to consider appellants' late-filed documents.

We first address appellants' argument that the district court abused its discretion when it denied their request to continue the dispositive motions for further discovery and declined to consider their untimely filed documents submitted after the close of the summary-judgment hearing record.

To survive summary judgment on their claim that respondents improperly sold the grain-elevator properties because appellants were not notified of their right of first refusal,

[4] The district court applied the former version of rule 56 which at the time was Minn. R. Civ. P. 56.03. The rule was recently "revamped" to more "closely follow" the federal rules and was renumbered to Minn. R. Civ. P. 56.01. Minn. R. Civ. P. 56 2018 advisory comm. cmt. When promulgating amendments to rule 56, effective on July 1, 2018 and applicable to pending cases, the supreme court specifically indicated that amended language on the standard for granting summary judgment reflects Minnesota case law. *Order Promulgating Amendments to Rules of Civil Procedure*, No. ADM04-8001 (Minn. Mar. 13, 2018). Because the legal standard is unchanged, we cite to the current version of rule 56.01.

appellants must show a genuine issue of material fact concerning whether these properties were "agricultural land."

A district court's decision to rule on a summary judgment motion without allowing additional discovery is reviewed for an abuse of discretion. *Molde v. CitiMortgage, Inc.*, 781 N.W.2d 36, 45 (Minn. App. 2010). If the nonmovant shows by affidavit that, for specified reasons, it cannot present facts essential to justify the party's opposition, the district court may defer consideration of the motion or deny it, allow additional time to obtain affidavits or take discovery, or issue any other appropriate order. Minn. R. Civ. P. 56.04.[5] There is a "presumption in favor of granting continuances to allow sufficient time for discovery." *Cargill Inc. v. Jorgenson Farms*, 719 N.W.2d 226, 231 (Minn. App. 2006).

The district court must consider two factors in determining whether to grant a motion for a continuance: (1) whether the nonmoving party is seeking further discovery in the good-faith belief that material facts will be uncovered or merely engaging in a fishing expedition; and (2) whether the nonmoving party has been diligent in obtaining or seeking discovery. *City of Maple Grove v. Marketline Constr. Capital, LLC*, 802 N.W.2d 809, 818 (Minn. App. 2011). But when discovery would not assist the district court or change the result of the summary-judgment motion, the district court does not abuse its discretion by granting the summary-judgment motion without granting the continuance. *QBE Ins. Corp.*

[5] The district court applied the former vision of rule 56.04 which at the time was Minn. R. Civ. P. 56.06. As discussed, the rule was "revamped" and reorganized to more closely follow the federal rules of civil procedure. Because the legal standard is unchanged, we cite to the current version of rule 56.04.

v. Twin Homes of French Ridge Homeowners Ass'n, 778 N.W.2d 393, 400 (Minn. App. 2010).

Continuance Request for Additional Discovery

Appellants argue that the district court abused its discretion when it denied their continuance request because additional discovery would have allowed them to rebut the land-classification presumption created by the assessor certificates.

Appellants filed their complaint on September 20, 2017. In October 2017, after the grain-elevator properties had been sold, the Martin County Assessor issued two certificates certifying that neither the Sherburn Elevator nor the Trimont Elevator were classified as agricultural land. FSB moved for summary judgment on December 22, 2017, and Land Services and Auctioneer Alley moved for summary judgment on January 31, 2018. Appellants opposed respondents' summary-judgment motions, arguing that summary judgment would be premature because the parties had not completed discovery. And it is the case, as appellants note, that the district court's scheduling order set a conclusion-of-discovery date of August 7, 2018, more than seven months after respondent FSB's motion for summary judgment.

Appellants point to no evidence that they believe would rebut the assessor's certificate that the grain-elevator properties are zoned for industrial use. That fact seems undisputed. Appellants' arguments opposing summary judgment, and their arguments on appeal, are legal arguments about whether the grain-elevator properties are "agricultural land." In affidavits, appellants asserted that, because small portions of the grain-elevator properties included land that had once been used for farming as share-crop ground, the

properties were "agricultural land" within the meaning of sections 500.24, subd. 2(g), and 500.245. But the district court noted that the "small amount of potentially tillable land does not transform an industrial acreage into agricultural land."

While it is true that the discovery period set by the district court remained open when the district court granted respondents' summary-judgment motions, appellants had ample time after disclosure of the assessor's certificate to have rebutted the presumption in the assessor's certificate. *See Rice v. Perl*, 320 N.W.2d 407, 413 (Minn. 1982) (plaintiff was diligent in seeking discovery when defendants moved for summary judgment roughly two weeks after filing of complaint, and it was therefore error for district court to deny plaintiff's motion for continuance); *Cargill*, 719 N.W.2d at 231 (denying motion for continuance when Cargill had about seven months to conduct discovery from the time it served its complaint). The district court did not abuse its discretion by denying appellants' continuance motion where "continued discovery would be fruitless."

Late-Filed Documents

Appellants also argue that the district court should have considered affidavits and documents they submitted after the close of the summary-judgment-hearing record. Those documents were filed to support count II of their complaint, alleging that the purchase agreements were not made in good faith.

The General Rules of Practice for the District Courts are very clear concerning motion practice generally and dispositive motions specifically. The rules require filing a dispositive motion at least 28 days before the hearing. Minn. R. Gen. Prac. 115.03(a). Responsive filings must be served and filed at least nine days before the hearing. Minn.

R. Gen. Prac. 115.03(b). Respondent FSB's motion for summary judgment was filed on December 22, 2017, with a hearing date of February 29, 2018, all in compliance with the requirements of rule 115. On April 19, 2018, appellants sought to file affidavits that they contend would show that the purchase agreements with the third-party buyers were not made in good faith. Appellants' filing was late. *See* Minn. Gen. R. Prac. 115.03(b) (requiring that a party responding to a motion must serve a memorandum of law and supplementary affidavits and exhibits on opposing counsel, and file documents with the court administrator at least nine days before the hearing).

Appellants offered no good reason why the documents were filed late. And nothing in rule 115.03 excuses late-filed documents because the discovery period remains open. The late-filed documents appear to have been a last-minute effort to raise issues that could and should have been addressed before the summary-judgment motion hearing. The district court did not abuse its discretion by denying appellants' request to consider appellants' untimely filings. *See Am. Warehousing & Distrib., Inc. v. Michael Ede Mgmt., Inc.*, 414 N.W.2d 554, 557 (Minn. App. 1987) (upholding a district court's refusal to consider an affidavit submitted four days after a summary-judgment hearing), *review dismissed* (Minn. Jan. 20, 1988).

II. The district court did not err in determining that the grain-elevator properties are not "agricultural land" under Minn. Stat. § 500.245.

Appellants argue that the district court erroneously interpreted section 500.245 and that the grain-elevator properties are "agricultural land." Appellants assert that they were therefore improperly denied their right of first refusal under Minn. Stat. § 500.245.

Whether the district court properly applied Minn. Stat. § 500.245 is a question of statutory interpretation. Appellate courts review questions of statutory interpretation de novo. *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 836 (Minn. 2012). The object of statutory interpretation is to ascertain and effectuate the intention of the legislative body. Minn. Stat. § 645.16 (2018). "If the language of the statute is clear and free from ambiguity, the court's role is to enforce the language of the statute and not explore the spirit or purpose of the law." *Caldas*, 820 N.W.2d at 836. "If the Legislature's intent is clear from the unambiguous language of the statute, we apply the statute according to its plain meaning." *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 716-17 (Minn. 2014).

Minn. Stat. § 500.245 is titled "Right of First Refusal for Agricultural Land." It is organized with other statutes relating to "Use of Agricultural Land by Business Organizations." Although appellate courts are not permitted to consider the caption as part of the statute, the headings are relevant to legislative intent where they were present in the bill during the legislative process. *Minn. Express, Inc. v. Travelers Ins. Co.*, 333 N.W.2d 871, 873 (Minn. 1983). Section 500.24 identifies the legislative purpose underlying these statutes:

> The legislature finds that it is in the best interests of the state to encourage and protect the family farm as a basic economic unit, to insure it as the most socially desirable mode of agricultural production, and to enhance and promote the stability and well-being of rural society in Minnesota and the nuclear family.

Minn. Stat. § 500.24, subd. 1.

At issue here is the meaning of "agricultural land" as used in Minn. Stat. § 500.245. "Agricultural land" is defined in Minn. Stat. § 500.24 as "real estate used for farming or capable of being used for farming in this state." Minn. Stat. § 500.24, subd. 2(g). "Farming" is defined in section 500.24, and means the "production of (1) agricultural products; (2) livestock or livestock products; (3) milk or milk products; or (4) fruit or other horticultural products." *Id.*, subd. 2(a). Farming does not include "the processing, refining, or packaging of said products." *Id.*[6]

Section 500.245 provides that a

> corporation . . . may not lease or sell agricultural land or a farm homestead before offering or making a good faith effort to offer the land for sale or lease to the immediately preceding former owner at a price no higher than the highest price offered by a third party that is acceptable to the seller or lessor.

Minn. Stat. § 500.245, subd. 1(a). The statute also provides that:

> The offer must be made on the notice to offer form under subdivision 2. . . . This subdivision applies only to a sale or lease when the seller or lessor acquired the property by enforcing a debt against the agricultural land or farm homestead, including foreclosure of a mortgage, accepting a deed in lieu of foreclosure, terminating a contract for deed, or accepting a deed in lieu of terminating a contract for deed. Selling or leasing property to a third party at a price is prima facie evidence that the price is acceptable to the seller or lessor.

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[6] The definition of farming in Minn. Stat. § 500.24, subd. 2, "appl[ies] to [that] section." That section does not necessarily include whether those definitions also apply to section 500.245. Before 1997, the definitions and first-refusal provision were in one statute, but section 500.245 was separated out in 1997. *See* 1997 Minn. Laws. ch. 126, § 6, at 852 (taking Minn. Stat. § 500.24, subds. 6, 7, 8, and renumbering them as Minn. Stat. § 500.245, subds. 1, 2, 3, and explaining that section heading for Minn. Stat. § 500.245 is "Right of First Refusal for Agricultural Land"). We assume without deciding that the definition in section 500.24 applies to section 500.245.

Id. The statute also requires that the seller provide "written notice to the immediately preceding former owner that the agricultural land . . . will be offered for sale at least 14 days before" it is offered for sale. *Id.*

Neither party disputes the applicable statutory definition of "real estate." Appellants assert that the grain-elevator properties were used in the "production" of agricultural products and are therefore "agricultural land."

The statute does not further define "production" as that word is used in the definition of farming. In the absence of a statutory definition, we interpret the words used in a statute according to their plain and ordinary meaning. Minn. Stat. § 645.08(1) (2018); *Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 297 (Minn. 2016). We read and construe a statute as a whole and must interpret each section in light of the surrounding circumstances to avoid conflicting interpretations. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000).

"Production" means "[t]he act or process of producing" or "[t]he creation of value or wealth by producing goods and services." *American Heritage Dictionary of the English Language* 1406 (5th ed. 2011). *Black's Law Dictionary* defines production as "[t]he act or process of making or growing things, esp. those to be sold" and it is "[t]he amount of goods that are made or grown; esp., the tangible result of industrial or other labor." *Black's Law Dictionary* 1402 (10th ed. 2014).

Section 500.245 provides that farming does not include "the processing, refining, or packaging" of agricultural products. While section 500.245 does not expand on those definitions, processing means, "[t]o put through the steps of a prescribed procedure" and

"[t]o prepare treat, or convert by subjecting to a special process." *American Heritage Dictionary*, *supra*, at 1404. Refining means, "[t]o reduce to a pure state; purify" and "[t]o remove by purifying. *Id.* at 1517. Packaging means "[t]o place into a package or make a package of." *Id.* at 1264.

"A certificate indicating whether or not the property contains agricultural land or a farm homestead that is signed by the county assessor where the property is located and recorded . . . is prima facie evidence of whether the property is agricultural land or a farm homestead." Minn. Stat. § 500.245, subd. 1(j).

Count I of appellants' complaint asserts that, because the grain-elevator properties were agricultural land, appellants had a right of first refusal under section 500.245. But under the plain language of the statute, appellants' commercial grain-elevator properties, mainly used for grain storage, are not property that is used in the *production* of agricultural products. The district court properly applied the statute's plain language in concluding that they are not agricultural land. *See* Minn. Stat. § 500.24, subd. 2(a).

The definition of "farming" unambiguously relates to production. The grain-elevator properties were used for storage and shipping, all of which occur after production is complete. "Storage" is "[t]he act of storing goods." *American Heritage Dictionary*, *supra*, at 1720. "Storing" means, "[t]o reserve or put away for future use" and "[t]o fill, supply, or stock." *Id.* Given the plain-language meaning of storage, we agree with the district court that storage occurs after production is complete. Property used for storing agricultural products is not "agricultural land."

Storage is not part of production—the absence of storage from the exclusionary language is irrelevant because storage is not part of production. To include storage as production and include it as farming would result in an absurd result—if storage were included in the farming definition, then grain elevators all across the state would be violating the anti-corporate farming law. *See* Minn. Stat. § 500.24, subd. 3 (2018) (stating that Minnesota's anti-corporate farming statute restricts farming and ownership of agricultural land by corporations); *see also* Minn. Stat. § 645.17(1) (2018) (stating that in ascertaining legislative intent, courts presume that the legislature does not intend results that are absurd, impossible of execution, or unreasonable).

Appellants also argue that, even if storage is not included in production, these particular grain-elevator properties are agricultural land because portions of each are "capable of being used for farming." Each of the grain-elevator properties contain some land not occupied by buildings which could theoretically be converted to tilled land. There is no evidence in the record that these parcels have recently been used in the production of agricultural products.

The statutory definition provides that agricultural land is "real estate used for farming or capable of being used for farming." Minn. Stat. § 500.24, subd. 2(g). Whether appellants' "tillable" ground is "agricultural land" depends, in part, on whether the land is real estate "used for farming or capable of being used for farming." Because the land surrounding the grain elevators is not currently used for farming, we must interpret the meaning of "capable" as used in section 500.24, subd. 2(g).

As stated, statutory interpretation is a question of law that appellate courts review de novo. *Caldas*, 820 N.W.2d at 836. The first step of statutory interpretation is to determine whether the statute's language, on its face, is ambiguous. *Christianson v. Henke*, 831 N.W.2d 532, 536 (Minn. 2013). Where the legislature's intent is clear from the statute's unambiguous language, courts apply the statute according to its plain meaning. *Staab*, 853 N.W.2d at 716-17. "But if a statute is susceptible to more than one reasonable interpretation, the statute is ambiguous, and [appellate courts] will consider other factors to ascertain the Legislature's intent." *Id.* at 717.

The plain-language definition of "capable" means "[h]aving capacity or ability; efficient and able." *American Heritage Dictionary*, *supra*, at 274. Most land could, with enough effort, be "capable of being used for farming." Minn. Stat. § 500.24, subd. 2(g). Because "capable" in this context is not further defined and is subject to more than one reasonable interpretation, the statute is ambiguous.

"When confronted with an ambiguous statute, we use other interpretative tools to discern the meaning of the statute." *In re J.M.M.*, 890 N.W.2d 750, 754 (Minn. App. 2017). Courts do not construe statutes to reach results that are "absurd, impossible of execution, or unreasonable" because the legislature does not intend such results. Minn. Stat. § 645.17(1). Here, the legislature could not have intended the definition of agricultural land to include whatever might be theoretically possible. We agree with respondents that virtually all land would be capable of being used for some type of farming if the buildings and structures were to be removed and other modifications made.

The statute's language suggests that the current use of land is the relevant inquiry. The words "used for farming or capable of being used for farming," must be understood in that context. *See Cocchiarella v. Driggs*, 884 N.W.2d 621, 625 (Minn. 2016) (stating that when a word has a variety of meanings, we examine the context in which the word appears). Land such as winter farmland or conservation reserve program (CRP) acreage[7] are examples of land not actually being used for farming that is still "capable" of being so used. Here, a small portion of the land on which the grain elevators are located *could* be tilled—the same could be said of much of the land in Minnesota. But those small portions of land are not tilled and there is no record evidence of when the land was last tilled. The grain-elevator parcels are not currently classified as agricultural land. The properties are zoned industrial.[8]

Because the grain-elevator properties are not currently being used for farming and because they are not currently capable of being used for farming, they are not agricultural land under Minn. Stat. § 500.245.

Appellants argue that respondents' counsel having prepared the assessor's certificate showing the elevator properties to be classified for industrial—and not for

[7] Land used as CRP is "enrolled through the use of contracts to assist owners and operators of land . . . to conserve and improve the soil, water, and wildlife resources of such land and to address issues raised by State, regional, and national conservation initiatives." 16 U.S.C. § 3831(a) (Supp. 2014). Eligible CRP land includes "highly erodible cropland" and other types of land that will aid in soil and water conservation and quality. *Id.*, (b).

[8] The record does not provide further detail on the property's zoning classification as "industrial" land. The record does indicate, however, that the property was classified as industrial because it has been used for business and commercial purposes.

agricultural—use is of some relevance. But nothing in the record suggests that the certificate is inaccurate or fraudulent. There is no fact issue concerning the classification of these parcels, regardless of who prepared the certificate. The county assessor's certificate provides prima facie evidence of the agricultural property. Minn. Stat. § 500.245, subd. 1(j).

In sum, the district court did not err in determining that appellants did not rebut the land-classification and that the grain-elevator properties are not agricultural property under section 500.245.

III. Even if we assume that section 500.245 provides appellants a cause of action, appellants' claim that respondents' sale to a buyer for a greater per-acre price than an earlier appraisal does not state a claim against respondents under that section.

Appellants argue that, because Minn. Stat. § 500.245, subd. 2(b), requires that the affidavits accompanying the notice of purchase be made in good faith, section 500.245, subdivision 3, provides a private cause of action to a former owner when a purchase offer is the product of fraud or not made in good faith.

Both parties cite to our decision in *Ag Servs. of Am., Inc. v. Schroeder*, 693 N.W.2d 227, 235 (Minn. App. 2005). But there we did not reach the question of whether a purchase agreement would be void because of lack of good faith. *Id.* at 235. Instead, we concluded that because Ag Services failed to provide the statutorily required 14-day notice of intent to sell and affidavit of good faith, the Schroeders still had a right of first refusal, and the purchase agreement between Ag Services and a third party was unenforceable. *Id.* at 237. The district court here, trying to locate a statutory basis for count II of appellant's

complaint, analyzed appellants' claim under Minn. Stat. § 500.245, subd. 2(b), which explains what must be included in the notice to the immediately preceding owner. For an offer to sell, the required notice must include "a copy of the purchase agreement containing the price and terms of the highest offer made by a third party that is acceptable to the seller and a signed affidavit by the seller affirming that the purchase agreement is true, accurate, and made in good faith." Minn. Stat. § 500.245, subd. 2(b). The affidavit requirement in subdivision 2 provides for criminal penalties for perjury in cases where the affidavit is not made in good faith or is fraudulent. *Id.*, subd. 2(d). Subdivision 3 requires that:

> An action for the recovery of title to or possession of real property or any right in the property or any action for damages, except damages for fraud, based upon a failure to comply with the requirements of subdivision 1 or 2 must be commenced, and a notice of lis pendens filed with the county recorder or registrar of titles in the county where the real property is located, within three years after the conveyance on which the action is based was recorded with the county recorder or registrar of titles.

Minn. Stat. § 500.245, subd. 3.

The district court concluded that subdivision 2 only refers to "good faith" in the context of a purchase agreement. It therefore held that, because subdivision 2(d) expressly provides for criminal perjury charges if an affidavit is false or not in good faith, the statute does not create an implied cause of action.

Our decision does not rely on the district court's analysis of the statute. We assume, without deciding, that section 500.245, subd. 2(b), provides a private cause of action. But, even if section 500.245 provides a private cause of action, appellants have failed to state a claim against respondents under the statute.

Appellants' complaint did not allege that respondents' affidavits were false or that respondents failed to comply with the requirements of the statute concerning those affidavits. In count II of their complaint, appellants alleged that FSB procured offers on the land formerly owned by appellants "by fraudulent misrepresentations" to the new purchasers. Appellants' only claim was that respondents "artificially inflated" the purchase price to $8,500 per acre when the 2017 appraisal had been "$7,334 per deeded acre and $7,858 per tillable acre." Their claim is that FSB lied to the third-party buyers to obtain the $8,500 per acre offers. This assertion, however, states no claim against respondents in the context of chapter 500. The purchasers under the agreements are not parties to this litigation and have made no claim that the price they agreed to pay is unfair or resulted from misrepresentations. The allegation that respondents were able to find a buyer to pay somewhat more than an earlier appraisal, even if true, fails to state a claim against respondents under section 500.24.

In sum, the district court did not abuse its discretion when it denied appellants' continuance request and declined to consider their untimely filings. The district court correctly determined that appellants' grain-elevator properties are not "agricultural land" under section 500.245. And, because appellants failed to state a section 500.245 claim against respondents, the district court did not err in dismissing their claims that respondents had failed to comply with the good-faith-affidavit requirement.

Affirmed.