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RISK MANAGEMENT INFORMATION

THE "60 DAY RULE" – MINN. STAT. SEC. 15.99 MINNESOTA'S AUTOMATIC APPROVAL STATUTE

Minnesota statutes require municipalities to approve or deny written requests related to zoning within 60 days. Failure to do so results in automatic approval of the request. This memo reviews the rules, exceptions, and elements of law.

During 1995, Minnesota joined about two dozen states in adopting an "automatic approval" statute, Minn. Stat. Sec. 15.99. That statute provides that a municipality must approve or deny a written request relating to zoning within 60 days or it is deemed approved.

> **Highlight**
> Minn. Stat. Sec. 15.99, subd. 2. provides that a municipality must approve or deny a written request relating to zoning within 60 days or it is deemed approved.

According to the Minnesota Court of Appeals, "the underlying purpose of Minn. Stat. Sec. 15.99 is to keep governmental agencies from taking too long in deciding land use issues . . ." *Manco of Fairmont, Inc. v. Town Board of Rock Dell Township*, 583 N.W.2d 293, 296 (Minn. Ct. App. 1998). Courts have generally demanded strict compliance with the requirements of the law. Accordingly, the law has resulted in numerous lawsuits against local governments. This memo reviews the basic requirement of the law and discusses some of the more common mistakes cities have made in applying it.

General Rule

The general rule states that the "Failure of [a municipality] to deny a request within 60 days is approval of the request." The statute also requires that "a [municipality's] response meets the 60-day time limit if the [municipality] can document that the response was sent within 60 days of receipt of the written request." Minn. Stat. Sec. 15.99, subd. 3(c).

Statutory Exceptions

- The 60-day time period does not begin to run if the city notifies the landowner in writing within 15 business days that the application is incomplete. The city must also state what information is missing. (The 2003 Legislature increased the period from 10 to 15 days.)

- The city may extend the initial 60-day period by another 60 days (up to a total of 120 days), if, before the end of the initial 60-day period, it notifies the landowner in writing of its intent to take additional time to consider the application, reasons for the extension, and anticipated length of the extension.

This material is provided as general information and is not a substitute for legal advice.
Consult your attorney for advice concerning specific situations.

- The 60-day time period is stopped, while other necessary state or federal approvals are being sought.

- The 60-day time period does not apply to applications for subdivision approval. (The subdivision statute Minn. Stat. Sec. 462.358, subd. 3b provides its own time periods of 120 days for preliminary plat approval and 60 days for final plat approval.)

Elements of the Law

What is a "written request" for purposes of starting the 60-day period?

What constitutes a "written request" has been the subject of several court decisions. For instance, it has been argued that a request submitted on the back of a napkin was enough to start the clock. The courts also have found that submission of a request in a letter or as part of a settlement proposal may be enough to start the time running. The 2003 legislature clarified the law in this regard by defining a written request as a submission on a city approved application form, or if there is no form, submission in writing with the specific governmental approval sought listed on the first page of the document.

What about an incomplete application?

If the city receives an application that does not include all the city required information, the clock does not begin to run, if within 15 days of receipt of the application, the city informs the applicant in writing that the application is incomplete and what information is missing. (This timeframe was increased by the 2003 Legislature from 10 to 15 days.)

Therefore, the city should give some thought to being clear about exactly what information it requires for various types of land use applications. The city may want to consider developing a checklist and reviewing its zoning ordinances to make explicit what items are required. This will not only help the applicant, but will act as a sort of fail-safe mechanism for city staff who need to thoroughly evaluate applications within the first 15 days.

What is considered "related to zoning?"

It is useful to look at the precise wording of the statute – Minn. Stat. Sec. 15.99 subd. 2 (2011) – to see that the statute, on its face, covers much more than just requests "related to zoning."

> *"Except as otherwise provided in this section, section 462.358 subd. 3b, or 473.175, or chapter 505, and notwithstanding any other law to the contrary, an agency must approve or deny within 60 days a written request relating to zoning, septic systems, watershed district review, soil and water conservation district review, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action."*

Highlight

The law allows cities a 60-day extension to consider an application if the city follows specific statutory requirements. To do so, cities must provide the landowner a written explanation during the initial 60-day period that details the reasons for the extension and the anticipated length of the extension.

The courts have been rather expansive in their interpretation of the phrase "related to zoning."

While no one likely would argue the language includes requests for parcels specific to rezonings, and requests for conditional use permits and variances, courts have also found the law applicable to requests for sign permits, wetlands determination review, and road permits.

In short, almost all requests affecting the use of land have been treated as subject to the law. Subdivision and plat approvals are an exception, since those processes are subject to their own timeframes. The law also does not apply to applications for building permits. Building permits are issued pursuant to the State Building Code to regulate the construction process; they do not regulate the use of land that may occur in a particular zoning district. Therefore, they are not "related to zoning."

More Information

Learn more from these resources:

- *Zoning Decisions*
- *Zoning Guide for Cities*

What happens if the city fails to deny a request within the statutory time period?
Failure of a city to deny a written request within the statutory time period results in automatic approval of the request. Automatic approval can be a harsh penalty. Examples of requests that automatically were approved because the city failed to timely deny the request include a request for a permit to operate a landfill, a request for a permit to build a telecommunications tower, and a request for a permit to install electrical transmission lines. Failing to deny a request within the statutory time period can have severe consequences.

What constitutes a denial under the law?
There have been a number of court decisions on the question of what constitutes denial of a request. In most situations, the courts have required that the city council actually pass a resolution or motion denying the request. In fact, the Minnesota Supreme Court went so far as to find that an unsuccessful motion to approve was not the equivalent of a denial. That decision was overturned by the 2003 Legislature, which amended the law to provide that a motion to approve which fails is the equivalent of a denial, as long as those voting against the motion state, on the record, the reasons for denying the request. The courts also have required a formal motion to deny approval even when a city has a moratorium in place that would otherwise prohibit the proposed application.

Along with the denial motion, the law requires that the city adopt written findings supporting denial. The law states:

> *"If the written statement is not adopted at the same time as the denial, it must be adopted at the next meeting following the denial of the request but before the expiration of the time allowed for making a decision under this section."*

The law also requires that the:

> *"Written statement must be consistent with the reasons stated in the record at the time of the denial. The written statement must be provided to the applicant upon adoption."*

In 2007, the Supreme Court of Minnesota held that failure to provide the applicant with the written reasons for denial of a request within the 60-day period did not result in automatic approval because the law's requirement to provide the applicant with written reasons was only directory and

not mandatory. Then in 2010, the Supreme Court of Minnesota went a step further and held that the law's requirement that the council *adopt* "written-reasons" for a denial was directory, not mandatory. Therefore, where a municipality denied a written request related to zoning within the time period provided for by the law, but failed to provide written reasons for denying the request, the request was not automatically approved under Minn. Stat. Sec. 15.99. However, the Court also cautioned that while failure to provide written reasons for the denial did not result in automatic approval under Minn. Stat. Sec. 15.99, it could still result in the reviewing court overturning the denial because it was deprived of the record necessary to uphold the city's decision. In other words, even though a city's failure to provide contemporaneous written reasons for denying the request may not result in automatic approval of the request, the city must still state legally sufficient reasons for denying the request or the court may not sustain the decision.

What about the internal appeals process?

The statutory time period runs until there is a final approval or denial of a request. There is not a final approval or denial until all internal appeals processes have been resolved. As a result, the city must structure any internal appeals process so all appeals are resolved within the statutory time period.

What needs to be done for the city to extend the time period for an additional 60 days?

The law allows a city the opportunity to give itself an additional 60 days to consider an application, if the city follows specific statutory requirements. In order to avail itself of an additional 60 days, the city must provide the landowner a written notification within the initial 60-day period that details:

- The reasons for extension.
- The anticipated length of the extension.

The courts have been particularly demanding on local governments with regard to this requirement. They have required local governments to meet each element of the statute. Oral notice or an oral agreement to extend is insufficient. However, extending the time period "to take an additional 60 days to make a decision on an application" has been held to be a sufficient written reason for an extension.

What is needed to extend beyond 120 days?

A city only can go beyond 120 days if it gets the approval of the applicant. The city must either initiate the request in writing and have the applicant agree to it in writing, or the applicant by written request, may ask for an extension. Otherwise, the city must act on the request within the designated timeframe. Again, the courts have demanded strict compliance with the statutory requirements. Accordingly, oral representations or actions by the applicant should not be treated as justification for delaying action on a permit.

Your League Resource

For more information, please contact Jed Burkett, Loss Control Land Use Attorney, at:

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