

UNDERSTANDING MINNESOTA'S SIXTY DAY DEADLINE FOR GOVERNMENT ACTION ON LAND USE REQUESTS.

By Ryan J. Wartick

Unfortunately, too many land owners are familiar with the old adage, "you can't fight city hall". However, knowledgeable land owners know that this old adage is not always true. Minnesota has a number of statutes that protect land owners from unnecessary delay and arbitrary action by the government in regard to land use decisions.

One such statute is Minn. Stat. § 15.99, which provides that an agency must approve or deny within sixty days a written request relating to zoning, septic systems, watershed district review, soil and water conservation district review or expansion of the metropolitan service area for a permit, license, or other governmental approval of an action. Minn. Stat. § 15.99 subd. 2(a) (2007). If the agency does not act within sixty days, the application is automatically approved. *Id.* In addition, if an agency

denies the request within the sixty day timeframe, it must also provide the reasons for the denial in writing at the time that it denies the request. *Id.*

Ultimately, the sixty day rule is a very powerful tool for land owners when dealing with the City. The sixty day rule provides a clear timeframe for a response, and provides for harsh penalties if the government does not meet the deadline. However, before relying on the sixty day statute to "fight city hall", a landowner must answer a number of threshold questions to determine if the statute applies. The landowner must consider the following:

- Is the decision making body an "agency" as defined by the statute;
- Did the land owner make the appropriate "request" under the statute; and
- Did the agency lawfully extend the deadline?

Set forth below is the information to help a land owner determine if the statute applies to their land use request.

IS THE DECISION MAKING BODY AN AGENCY?

The sixty day deadline only applies to an "agency." Under the statute an agency is a "department, agency, board, or commission or other group in the executive branch of State government." Minn. Stat. § 15.99 subd. 1(a) (2007). The definition of agency also includes a "statutory or home ruled chartered cities, counties, towns or school districts, as well as any metropolitan agency or regional entity or any other political subdivision of the State." *Id.* However, city planning commissions are not agencies under the statute. *Moreno v. City of Minneapolis*, 676 N.W.2d 1 (Minn. Ct. App. 2004)

Given the broad definition of agency, the sixty day rule applies to any division of the State or local government that makes the final determination on land use decision. This definition includes city councils and county boards, as well as state agencies, like the Department of Natural Resources and Minnesota Board of Water and Soil

Resources, which are empowered by statute to make specific land use decisions.

DID THE LAND OWNER MAKE THE APPROPRIATE REQUEST?

In order for the sixty day rule to apply, the land owner must make a "request" under the statute. A request is defined as a "written application related to zoning, septic systems, watershed district review, soil and water conservation district review or the expansion of metropolitan or urban service areas for permit, license or other governmental approval of an action." Minn. Stat. § 15.99 subd. 1(b) (2007). This definition of request is extremely broad and encompasses most types of land use applications, including the routine variance and conditional use permit application.

It is important to note that the request must be in writing to the agency and on the application form provided by the agency. *Id.* If no form exists, the request must clearly identify on the first page the specific permit, license, or other governmental approval being sought. *Id.* Therefore,


it is extremely imperative that the land owner make certain that the request is made on an approved form. If there is no form, the landowner must ensure that the first page of your application contains the requested information.

DID THE AGENCY LAWFULLY EXTEND THE DEADLINE?

Under certain circumstances the agency may obtain an extension to the sixty day deadline. In particular, an agency may extend the sixty day time limit by providing written notice of the extension to the applicant before the end of the sixty day period. Minn. Stat. § 15.99, subd. 3(f) (2007). The notification must state the reason for the extension and its anticipated length, which may not exceed an additional sixty days, unless approved by the applicant. *Id.* As a result, an agency may take up to one hundred and twenty days to render a decision, provided the agency gives written notice of the extension.

IF AN AGENCY MISSES THE DEADLINE, WHAT ARE THE LAND OWNER'S REMEDIES?

If the agency misses the deadline, the landowner must

move quickly to ensure that the application is approved. First, the landowner should contact an attorney to determine if the sixty day rule applies to their request. If the statute applies, the attorney should immediately send a letter to the agency demanding approval of the application. Second, the land owner must avoid taking any action which would extend the deadline, or signal an implied consent to waive the deadline. This includes verbal or written statements to the agency regarding the sixty day deadline. Last, if the City refuses to grant your application, your attorney can file a Writ of Mandamus and a claim for declaratory judgment with the Court. 

For more information, contact Ryan Wartick at 952-941-4005 or rwartick@hjlawfirm.com.

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This course will provide a comprehensive introduction to Minnesota's foreclosure process and laws regarding mortgage

fraud and equity stripping.

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This seminar provides an overview of Fair Housing law and issues, along with a review of Dual Agency.

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Receive an in-depth view of Minnesota fair housing and related issues.

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HELLMUTH & JOHNSON PLLC
ATTORNEYS AT LAW

10400 Viking Drive, Suite 500
Eden Prairie, Minnesota 55344

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HELLMUTH & JOHNSON PLLC

10400 Viking Drive, Suite 500
Eden Prairie, MN 55344
T 952-941-4005 F 952-941-2337
www.hjlawfirm.com

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