A PRACTICAL GUIDE TO Minn. Stat. § 15.99

The 60-DAY RULE

Revised January, 2004

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INTRODUCTION

In 1995, the Minnesota Legislature enacted Minn. Stat. ' 15.99, also known as the "60-day Rule." The statute was amended in a number of important respects effective for applications submitted on or after June 1, 2003. When violated by a governmental agency, the 60-day Rule dramatically alters the landscape of governmental decision making, because it creates automatic approval of certain requests made to local governments when those requests are not acted upon in a timely manner. If the 60-day Rule is violated, even decisions that are entirely discretionary can be taken out of the hands of local officials, and requests made to local boards ruled automatically granted by the courts. Because of this dramatic possibility, governmental bodies (called Agencies under the 60-day Rule) must be proactive in dealing with the statute.

I. SCOPE OF THE 60 DAY RULE

The basics of the 60-day Rule are as follows.

1. To Whom Does It Apply

It applies to all “Agencies”. "Agency" includes a "department, agency, board, commission, or other group in the executive branch of state government; a statutory or home rule charter city, county, town or school district; any metropolitan agency or regional entity; and any other political subdivision of the state." Minn. Stat. '15.99, subd. 1(b).

2. What Does It Require

The 60-day Rule requires that an Agency: "must approve or deny within 60 days a written request relating to zoning, septic systems, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action[1]. Failure of an agency to deny a request within 60 days is approval of the request. If an agency denies the request, it must state in writing the reasons for the denial at the time it denies the request." Minn. Stat. '15.99, subd. 2.

3. What is a "Written Request?"

The request does not necessarily have to be submitted on an agency=s special form, nor does a fee necessarily have to be submitted with the application. Under Minnesota=s 60-day Rule, a written request might be something as simple as a handwritten note which

[1] The Court of Appeals has held that a building permit request did not fall within the 60-day Rule since it was not a land use request. *Advantage Capital Management v. City of Northfield*, 664 N.W.2d 421 (Minn. Ct. App. 2003).

states, "Please give me the OK to build a barn." Although this is an incomplete request, it is still a written request and may trigger the 60-day clock under Minn. Stat. '15.99. The agency must be vigilant and make sure it calendars every request which comes into its office, whether it be a completed application with fee enclosed or a handwritten request on a bar napkin.

The recent statutory amendments do clarify the power of agencies to at least require that certain information be provided and that the applicant be very specific about what is being requested. Under the new definition of the word “Request”,

> A request must be submitted in writing to the agency on an application form provided by the agency, if one exists. The agency may reject as incomplete a request not on a form of the agency if the request does not include information required by the agency. A request not on a form of the agency must clearly identify on the first page the specific permit, license, or other governmental approval being sought. No request shall be deemed made if not in compliance with this paragraph.

This language is important for several reasons. First, it makes clear that the applicant must either use forms provided by the agency, or provide all of the same information that those forms would request. This gives agencies an opportunity to define what information will be necessary, and in so doing, improves their ability to reject an application or request as incomplete. HOWEVER - such rejections must generally be made within 15 days or the rejection is not effective. (See page 5 of these materials).

Second, this language prohibits applicants from using their own forms or letters, and “burying” or hiding requests for things in those forms. There have been cases in Minnesota where applications came in that were captioned as requests for one thing, and many pages into the application something else was requested. Applicants have then argued that when the second item, not listed on the caption, was never acted on by the agency, that the second, “hidden”, request was deemed granted. This language should prohibit that practice on the part of applicants.

Third, the statutory changes in 2003 specifically exempt subdivision applications pursuant to Minn. Stat. § 462.358, subd. 3(b), and plat requests pursuant to Chapter 505 of Minnesota Statutes from the 60-day Rule. Minn. Stat. § 15.99, subd. 2(a).

In 2001, the Minnesota Court of Appeals emphasized that the request must be for action, by the applicant, not approval of a process or technology. *In Matter of System Designation of Multi-Flo Wisconsin Aerobic Treatment Unit,* 2001 WL 1665410 (Minn. Ct. App. 2001). This is an important clarification because in recent years, applicants have argued that the statute applies to nearly everything anyone requests, such as contract negotiations and

mandatory cartways. Though the decision is unreported, it should provide some limitation to the broad readings proposed by some applicants.[2]

4. What Starts the Clock

The 60-day clock begins to run the day the agency receives a written request

> containing all the information required by law or a previously adopted rule, ordinance, or policy of the agency, including the applicable application fee. If an agency receives a written request that does not contain all required information, the 60 day limit starts over only if the agency sends written notice within 15 business days of receipt of the request telling the requestor what information is missing.

There are at least three things very significant about this language.

a. Submission, Not Meeting

The first significant point about this language is that the clock does not start at the first meeting in which the agency is able to discuss the application. Often agencies that receive applications but don't have meetings for 20 or more days after the request is physically delivered to them will assume that the clock starts at their meeting, which is after all the first time they have had a chance to discuss the request. This is not accurate. The clock starts when the application is submitted.

b. Issues With Application Fee

Second, this language appears to indicate that the clock does not start until the agency has received both a complete request in terms of information needed, and the applicable application fee. This is a change from earlier statutory language which did not mention the fee. It appears reasonable to assume, therefore, that a completed application without a fee would not start the clock. As of the writing of these materials, there are no cases interpreting this language. We would suggest for caution that agencies should assume the clock would start even if a fee were not supplied, and should therefore treat an application submitted without a fee in a manner similar to an incomplete application, and give notice of an incomplete application under the 15-day clock as set forth below. We assume that Courts will follow the language of the statute if a challenge is ever brought by an applicant who has submitted an application without a fee, but there is no point in being the agency that gets to test this language.

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[2] Also see enclosed decision in the matter of ***Ovsak, et al v. Borgholm Township, et al*** holding that the 60-day Rule does not apply to cartway petitions.

c. 15-Day Window

The third important point of this provision is the 15-day clock itself. See discussion below.

II. AVOIDING PROBLEMS WITH THE 60 DAY RULE

1. Be Proactive

To avoid problems with the 60-day Rule, the agency needs to be proactive in its approach to handling applications and requests. The agency should also document all decisions and reasons for the decisions when denying the applications. Following these two steps will aid in avoiding the common problems which are encountered when dealing with Minnesota=s 60-day Rule.

When an application or written request is received, an agency should act immediately. The agency should first calendar the relevant dates so it can be sure when the clock will run out. These dates include 1) 15 days from the date of the request[3], and 2) 60 days from the date of the request. The 15 day period provides the agency=s opportunity to object to incomplete applications. The 60 day period is the time during which the agency must either: (1) grant the application, (2) deny the application, or (3) request an extension so the agency may further deliberate the application. Whichever of the above three actions the agency decides to take, it must do so within 60 days. Minn. Stat. '15.99, subd. 2.

2. Start Of The 15-day Clock

Perhaps the most frequent error made by agencies under the 60-day Rule is the failure to object to an incomplete application within 15 days. Often, local governments that receive incomplete or partial applications miss the opportunity to stop the clock from running when they fail to point out the deficiencies in an application within 15 days. This is particularly true for smaller units of government that may meet only monthly. If an agency receives an incomplete application, it has 15 business days from the date of receipt to send written notice to the applicant of the incomplete application. *Am. Tower, L.P. v. City of Grant*, 621 N.W.2d 37, 41 (Minn. Ct. App. 2000)(citing Minn. Stat. '15.99, subd. 3(a) (1998)). This means that in small cities and towns, someone generally must be vested with authority to review and reject applications, since there will often not be a meeting within 15 days of receipt.

In order to determine what is a complete or incomplete application, each agency should have its own policy in place defining what is needed for a complete application. If the

[3] Please note this is a significant change from the earlier version of the statute which provided a 10 day response window. Many of the cases refer to the 10 day period. Presumably new cases will continue to apply the same legal standards, but extend the period to 15 days in accordance with the statute.

application does not meet the requirements for a complete application within the agency=s policy, the agency must then notify the applicant that the written request it received was incomplete. The agency must notify the applicant by written notification within 15 business days from the initial date of receipt that his or her application was incomplete. The written notification should apply the language in the agency=s policy and plainly list what the application was missing and why it was incomplete. Therefore, the first part of being proactive is to make sure that you have a policy in place setting forth whose responsibility it is to take in applications and requests, and identifying what information is needed to make such requests Acomplete@. The person with that intake responsibility should be instructed to reject all incomplete applications, with written reasons for the rejection, within 15 days of their receipt.

When an agency notifies the applicant of the incomplete application within 15 business days of its initial receipt, the 60-day clock stops. Once the agency receives a completed application from the applicant, the 60-day time period begins to run again, starting at >day one.= Minn. Stat. '15.99, subd. 3(a) (2000).

What happens if the 15-day window is missed? The statute is not entirely clear on this point. The statute makes plain that after 15 days from receipt, the clock cannot be stopped, but the statutes does not say what to do about the fact that an incomplete application has been presented. A fair reading of the statute would imply that the agency should be permitted to deny the request on its merits. Presumably one basis would be incomplete information supplied by the applicant. However, the power to deny based upon the incompleteness of the application, even after the 15-day clock is missed, is not explicitly set forth. Therefore, it is important to carefully watch this Afirst@ clock under the 60-day Rule, since it provides a great deal of power to the agency, but after 15 days, that power is lost, and any advantage provided by the statute may become the applicant=s advantage.

3. Extensions of the 60-Day Rule

An agency may extend its 60-day time frame if the agency has received an incomplete application or, if the agency needs more time to make its decision. The notification of extension must be sent before the expiration of the 60-day time period. A written notification stating the specific reasons for the extension, along with the anticipated length of time needed for the extension, must be sent to the applicant before the 60-day time period runs out.

4. Agency’s Request and Notification of Extension

In *Manco of Fairmont, Inc. v. Town Bd. Of Rock Dell Tp.*, 583 N.W.2d 293 (Minn. Ct. App. 1998), the Minnesota Court of Appeals ruled that the statutory requirement that a city give notice of its reasons for extensions was "directory" rather than "mandatory." The *Manco* Court adopted a "substantial compliance" test, where no statutory violation would be found if the [township] substantially complied with the notice requirements under Minn. Stat.

'15.99. *Manco*, 583 N.W.2d at 295. In a subsequent decision, the Supreme Court reversed a Court of Appeals= decision which had, in conflict with the *Manco* case, required Aextenuating circumstances@ in order to take an additional 60 days. See, *American Tower, LP, v. APT Minneapolis, Inc.,* 639 N.W.2d 309 (Minn. 2001).

a. Notice of Extension Must be In Writing

Under the 60-day Rule, an agency may not make a notice of extension orally. Pursuant to Minn. Stat. '15.99, subd. 3(f), the agency must make the notice of extension in writing. According to the statute, a proper notice of extension requires four parts: (1) the notice of extension is written, (2) the notice is given before the expiration of the 60-day deadline, (3) the city must state the reasons for the extension, and (4) the agency must indicate the anticipated length of the extension. Minn. Stat. ' 15.99, subd. 3(f).

b. Automatic Extension

The Minnesota Supreme Court held that agencies cannot, in their applications, give notice of an automatic 60-day extension. See, *American Tower LP, v. APT Minneapolis, Inc.,* 636 N.W.2d 309 (Minn. 2001). In that case, the Court looked at a policy that the City of Grant had adopted whereby every application contained with it a notice of a 60-day extension. Ruling very carefully on the technical language of the statute, the Court held that since the notice had to be given prior to the expiration of the 60 days, no extension could be made by placing the notice of extension on the application form itself, since notice given in that fashion effectively constituted notice given to someone prior to the application being submitted. That is, because the statute requires notice be given prior to the expiration of the 60 days, the Court held that notice must obviously be given during the 60 days, and not before it, so notice contained on the application form was ineffective. The Court left open the question of whether an agency could, as a matter of practice, take an extension on every application as soon as the application comes in. It appears from the decision that the Court might permit such a practice, though the decision does not specifically address this point.

The Court of Appeals has held that the 60-day clock is not extended by the appeal period available from an agency determination of whether to order an Environmental Impact Statement (EIS) or Environmental Assessment Worksheet (EAW). *Kramer v. Otter Tail Board of Commissioners,* 647 N.W.2d 23 (Minn.Ct. App. 2002). Consistent with other decisions under the statute, the court held the local government to a very close and strict reading of the plain language of the statute.

5. Waiver of the 60-day Rule

The applicant may effectively "waive" the 60-day time frame for an extension. Minn. Stat. '15.99, subd. 3(f) states that [a]n agency may extend the time limit in subdivision 2 before the end of the initial 60-day period by providing written notice of the extension to the

applicant. The notification must state the reasons for the extension and its anticipated length, which may not exceed 60 days unless approved by the applicant.

In order to successfully obtain such a "waiver," an agency should seek written approval from the applicant. The written approval should be signed by the applicant, stating that the applicant was notified of the extension by the agency prior to the expiration of the 60-day time period and the applicant approves the agency=s extension beyond the statutory 60-day time frame.

6. What Constitutes a "Denial"

An agency=s meeting or a discussion of the application does not constitute a denial of the application within the 60-day Rule. An agency must decide, document and send the denial within 60 days of the receipt of the written request.

One of the very significant changes added to this statute in 2003 is found in Minn. Stat. § 15.99, subd. 2(b), which holds

> When a vote on a resolution or properly made motion to approve a request fails for any reason, the failure shall constitute a denial of the request provided that those voting against the motion state on the record the reasons why they oppose the request. A denial of a request because of a failure to approve a resolution or motion does not preclude an immediate submission of a same or similar request.

This section was presumably added to the statute in response to the case of *Demolition Landfill Services, L.L.C. v. City of Duluth*, 609 N.W.2d 278, 280 (Minn. Ct. App. 2000). In that case, the City of Duluth was unable to pass a resolution approving or denying a permit within the confines of the statute. The Court held that because the City had not denied the permit within the confines of the statute no effective denial took place and therefore the permit was granted. Under the new statutory language, if a Board deadlocks then a denial is the legal result. Please note, however, that written notice of that result still must be given in accordance with the statute.

III. DOCUMENTATION

An important way to avoid problems with the 60-Day Rule is to thoroughly document when the response was sent and the reasons for denials. Minn. Stat. ' 15.99, subd. 3(c) states that "[a]n agency response meets the 60-day time limit if the agency can document that the response was sent within 60 days of receipt of the written request."

1. Written Reasons Are Mandatory

The statue does not expressly require written reasons be given with the notice of denial.

Still, good practice would dictate that written reasons for denial should be stated in the denial notification letter and the meeting=s minutes. In *Demolition Landfill Services, L.L.C. v. City of Duluth*, 609 N.W.2d 278, 282 (Minn. Ct. App. 2000), the Minnesota Court of Appeals ruled that "simultaneous, written reasons for a denial are mandatory and not directory."

2. Written Reasons Must be Given At Time of Denial

In *Demolition Landfill Services*, the Minnesota Court of Appeals explained the importance of written documentation, holding against the City where it was undisputed that no written reasons were given to appellant when the council rejected the resolution granting the permit. As the Court pointed out, the statute requires the agency to provide written reasons for a denial "at the time that it denies the request." *Demolition Landfill Services, L.L.C. v. City of Duluth*, 609 N.W.2d 278, 282 (Minn. Ct. App. 2000), Minn. Stat. ' 15.99, subd. 2. Here, written reasons for rejecting the resolution granting the permit were provided within the resolution denying the permit that was adopted [beyond the 120-day mark]. *Id.* Therefore, it is insufficient for an agency to simply pass a resolution which says, "Your request to build a barn was denied." The agency must include with the denial a list of reasons stating why the application was denied.

This is another section of the statute that was changed in 2003. Minn. Stat. § 15.99, subd. 2(c) now requires

> If a multi-member governing body denies a request, it must state the reasons for denial on the record and provide the applicant in writing a statement of the reasons for the denial. 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 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.

This section is intended to deal with requirements for findings and written reasons. Often a request will be denied by simple motion. The statute requires that there be written reasons given which are typically in the form of findings. It may not always be possible to have good findings drafted up and ready for adoption at a meeting. This section permits agencies to pass a resolution denying a request, and have findings prepared for adoption at the next meeting. Note the very important requirement that those findings be adopted within the original timeframe for agency decision making. If an agency is holding a meeting at the very end of the period available to make a decision, the agency should not defer findings to the next meeting. Even if the findings have to be handwritten, they must be made prior to the expiration of the timeframes provided in the statute.

IV. CONCLUSION

Almost all problems that an agency encounters regarding Minnesota=s 60-day Rule can be eliminated by being proactive and with thorough documentation. If an agency quickly acts on each written request it receives, no matter how incomplete or non-uniform the request may be, many of the 60-day Rule problems that local governments run into will no longer be an issue. Thorough documentation - including recording all reasons for denials in the minutes, stating in writing the reasons for denial to the applicant, and recording the date the denials were sent - is imperative for an agency to avoid problems with the 60-day rule. Agencies, including Townships, that remember documentation and being proactive will have no problem in complying with the 60-day Rule.

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