

NO. A04-2286

State of Minnesota
 In Supreme Court

Richard Breza,

Appellant,

v.

City of Minnetrista,

Respondent.

APPELLANT'S BRIEF

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STATEMENT OF THE ISSUES

- A. WHERE THERE HAS BEEN AN UNCONTESTED VIOLATION OF MINN. STAT. § 15.99, THE 60-DAY RULE, IN RESPONSE TO A WETLAND EXEMPTION REQUEST UNDER THE WETLAND CONSERVATION ACT (“WCA”), CAN THE LOCAL GOVERNMENT UNIT DENY THE REQUEST BECAUSE IT BELIEVES IT HAS NO LEGAL AUTHORITY TO GRANT IT?

Court of Appeals held: In the affirmative. The Court of Appeals held that the 60-Day Rule is merely a timing statute and does not alter substantive law. The Court of Appeals concluded that there was no authority under the WCA to grant an exemption request for filling 5,737 square feet of a Type 2, 3/4 and 7 wetland (erroneously characterized by the court as Type 3 only). The court held that the request could not be approved in spite of the 60-Day Rule’s mandate that an agency must approve any request subject to the time deadline statute if the agency fails timely to act on it.

Most Apposite Cases and Law:

Minn. Stat. § 15.99, subd. 2 (2000). AA 201.

Moreno v. City of Minneapolis, 676 N.W.2d 1 (Minn. App. 2004).

Northern States Power Co. v. City of Mendota Heights, 646 N.W.2d 919 (Minn. App. 2002).

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- B. SEPARATE AND APART FROM THE MANDATE OF THE 60-DAY RULE THAT “NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY” AN AGENCY MUST GRANT A REQUEST IF IT FAILS TIMELY TO ACT UPON IT, DOES A LOCAL GOVERNMENT UNIT UNDER THE WCA HAVE THE LEGAL AUTHORITY TO GRANT AN EXEMPTION FOR FILLING 5,737 SQUARE FEET OF A TYPE 2, 3/4, AND 7 WETLAND?

Court of Appeals held: In the negative. The Court of Appeals concluded that appellant was not entitled to an exemption for filling a wetland by focusing exclusively on WCA provisions allowing exemptions from restoring a filled wetland back to a wetland and ignoring other WCA provisions allowing exemptions from restoring a filled wetland subject to a replacement plan, under which the applicant must replace the filled wetland with a new or expanded wetland at another location.

Most Apposite Cases and Law:

Minn. Stat. § 15.99, subd. 2 (2000). AA 201.

Minn. Stat. § 103G.221-2373 (2000).

Minn. R. 8420.0290, subps. 2 & 4 (1999). AA 207-208, 209.

STATEMENT OF THE CASE AND FACTS

This case concerns the mishandling of appellant Richard Breza's ("Breza") written request to respondent City of Minnetrista ("City") for an exemption from regulations governing the filling of a wetland area in Breza's yard by virtue of the City's untimely response to this request. The City is located in western Hennepin County, Minnesota, and is defined as a local government unit ("LGU") under the Wetland Conservation Act, Minn. Stat. §§ 103G.221-.2373 ("WCA"). AA 40.

A. Breza Purchases a Vacant Lot on Lake Minnetonka to Construct a Home.

In 1997, Breza purchased a vacant lot on which he intended to construct a home at 6725 Halsted Avenue, Minnetrista, Minnesota (the "Property"). AA 17. The Property sits on Halsted Bay on Lake Minnetonka and is located within the Shoreland Protection Zone of Lake Minnetonka. *Id.* When Breza acquired the Property, parts of it were covered by a wetland, as reflected in a 1994 survey. AA 20. A 1995 wetland delineation report on the Property shows that there were Types 2, 3 and 7 wetlands on the Property.¹ AA 23.

¹ Minn. Stat. § 103G.005, Subd. 17b (2000) defines various classifications of wetlands by type, depending on certain identifiable characteristics, such as vegetation.

On November 21, 1996, Breza's builder applied for a building permit to construct Breza's house at 6725 Halsted Avenue. AA 36. Breza did not fill out or see the building permit at any time prior to the commencement of this litigation. AA 99. Construction of the house concluded in 1997 and on August 22, 1997, the City issued a Certificate of Occupancy for Breza's newly-constructed dwelling. AA 39.

B. Unaware that Wetlands are Highly Regulated and that Activities Affecting Wetlands have Permitting Requirements, Breza Removes Debris from the Backyard Wetland and Hires a Contractor to Place Fill in the Wetland.

In 2000, Breza discovered that the wetland in his backyard was filled with debris—including tires, batteries, cans and bottles—that apparently had been discarded there or that had washed into the wetland area from the lake. AA 100. In an effort to clean up his yard, Breza hired a contractor in July 2000 to place 15 to 20 dump truck loads of fill in the wetland on his Property. AA 101, 17. In August 2000, Breza placed an additional four cubic yards of fill on the Property. AA 102. Breza neither knew, nor was he advised by his contractor at the time of these activities, that it was necessary to obtain a permit before filling the wetland on his Property. AA 101. The total amount of fill placed in the wetland covered approximately 5,737 square feet. AA 17.

C. Breza Receives a Cease and Desist Order Directing Him Either to Apply for an Exemption/No-Loss Determination or to Risk Being Ordered to Remove Whatever Fill He Had Placed.

In late 2000, an enforcement agent from the Minnesota Department of Natural Resources (“DNR”) visited the Property and questioned Breza about the filling activity. AA 17, 105. The DNR agent asked Breza when the last filling activity had occurred; Breza replied that the last fill had been placed in August. AA 18. On December 10,

2000, the DNR issued a cease and desist order to Breza directing him, in part, “to immediately cease and desist any activity draining or filling the wetland” on his Property (the “Cease and Desist Order”). AA 40. The Cease and Desist Order issued to Breza only stated two options: “If you do not apply for an exemption or a no-loss determination within three weeks of the date of the issuance of this order ... then whatever drain or fill work has been done may require restoration” AA 41. The Cease and Desist Order included an application form that was to be used to apply to the local government unit (“LGU”) for an exemption for the filling activity entitled “Determination of Wetland Exemption or No-Loss” (the “Exemption Application”). *Id.* Under applicable law² the LGU in this case is the City.

D. Breza Makes a Timely Application to the City for an Exemption for 5,737 Square Feet of Fill.

On December 29, 2000, Breza made a timely application to the City for an exemption for the fill placed in the wetland on the form printed and provided by the DNR. AA 18, 43.³ The Exemption Application form merely asked the applicant to designate the type of determination sought, as follows:

Type of Determination: Exemption _____ No Loss _____

Under “Type of Determination,” Breza indicated on the Exemption Application that he was seeking an “Exemption.” AA 43. Based on the language of both the Cease and

² Minn. Stat. § 103G.005, Subd. 10e (2000).

³ Breza’s application is date stamped by the City as received on January 4, 2001, but the City stipulated and the District Court found that Breza filed his exemption application with the City on December 29, 2000, which made it timely. AA 15, 18.

Desist Order and the Exemption Application, Breza understood that by making this application, he was seeking relief from regulations requiring all areas filled on the Property to be returned to wetland status and allowing the fill that he had placed to remain. AA 110.

Breza also included with his Exemption Application a short letter explaining his most recent fill activity on the site:

On approximately August 4 & 5 there was approximately 4 cubic yards of black dirt in the back yard and sod placed over that area. This order has not been violated since its effective date [and] I would like to apply for an exemption. Included is a receipt for the sod purchased.

AA 42. Breza included this letter to indicate that he had not violated the Cease and Desist Order since it had issued by the DNR and to document his response to the DNR officer, who had asked Breza when he had last placed fill on the Property. AA 109.

E. The City Fails to Respond to Breza's Exemption Application for Over a Year.

The City did not act on Breza's Exemption Application for over a year, when on January 16, 2002, the City's WCA Agent wrote a letter purporting to deny the application. The letter stated in part that "the city cannot accept your exemption request."

AA 45. The letter further stated, "[a]s required by the Minnesota WCA we will need to determine the area of impact to this basin to determine the next steps and your options."

Id. Although the WCA Agent's letter is dated January 16, 2002, Breza did not receive the letter until sometime in February 2002, or 14 months after Breza had applied for the exemption. AA 119-120. The City admitted at trial and in other documentary evidence

that its response to Breza's Exemption Application was untimely under the 60-Day Rule, Minn. Stat. § 15.99, subd. 2. AA 66-67, 76, 51.

F. The City Admits that it Violated Minn. Stat. § 15.99 but Only Grants Breza an Exemption for 400 Square Feet.

On April 8, 2002, more than 15 months after Breza's Exemption Application, the City's WCA Agent again wrote to Breza, directing that, "the fill in this wetland will need to be removed rather than [sic] replaced via creation of another wetland off site or purchase from a wetland bank" AA 46. On June 10, 2002, Breza, through his counsel, responded to the City by demanding that the Exemption Application be deemed approved by operation of law under Minn. Stat. § 15.99, subd. 2, the 60-Day Rule. AA 49-50. On July 3, 2002, the City's WCA Agent conceded the 60-Day Rule violation, stating that "[t]he City agrees with your conclusion that an exemption has been approved pursuant to Minn. Stat. § 15.99, subd. 2." AA 51. The City claimed that despite its admitted violation, the only exemption it could legally issue to Breza was a *de minimis* exemption, allowing only 400 square feet of fill to remain, under Minn. R. 8420.0122, subp. 9A(5). *Id.*

On February 3, 2003, the City Council met to consider Breza's exemption request as well as a compromise replacement plan proposal from Breza.⁴ Breza's replacement plan proposal was to restore more than half of the area to wetland and to make a cash

⁴ Breza's primary position before the City Council was that he was entitled to a complete exemption from removing any fill on account of the City's 60-Day Rule violation. AA 66, 70, 72-73. Breza did, however, offer a replacement plan

payment to the City of \$4,800.00 that the City could use for restoration elsewhere. AA 66. Once again, the City Council conceded that it had violated Minn. Stat. § 15.99; the City Attorney admitted on the record that “there certainly was a failure to comply within 60 days . . . [t]here’s really no question about that.” AA 66-67. Moreover, the WCA Agent advised the City Council that a “compromise could potentially involve restoring half of the wetland on-site and replacing the remaining off-site at a 2:1 ratio as required by the Wetland Conservation Act.” AA 61. But after examining both options, the City Council adopted a resolution that rejected Breza’s replacement plan proposal and ordered all but 400 square feet of fill to be removed, with the remainder to be restored by Breza back to wetland. AA 74. The City Council further directed that the restoration work be performed in the spring of 2003. AA 74, 77.

G. Breza Seeks Mandamus Relief in the District Court, Requesting that the Court Compel the City to Grant his Exemption Application in its Entirety.

In February 2003, Breza petitioned the Hennepin County District Court for a writ of mandamus to compel the City to grant Breza’s Exemption Application from removing any of the fill as a consequence for the City’s conceded 60-Day Rule violation. The parties filed cross-motions for summary judgment before the Honorable LaJune Thomas Lange. On August 6, 2003, the court denied the parties’ motions. AA 14-16. On August 27, 2003, the court also denied the City’s request to file a motion to reconsider its summary judgment ruling.

proposal to the City in an effort to avoid having to resort to litigation to enforce his rights under the 60-Day Rule. *Id.*

On June 3, 2004, the parties tried the case to the District Court. AA 80. On September 13, 2004, the court granted a writ of mandamus requiring the City to issue an exemption for 5,737 square feet⁵ for Breza's filling activity. AA 16. The court concluded that since the City failed to deny Breza's request within 60 days, it was approved by operation of law. AA 15. On October 22, 2004, judgment was entered. AA 16.

On December 1, 2004, the City filed its notice of appeal from the District Court's October 22, 2004 judgment. The Minnesota Court of Appeals reversed the District Court's ruling, holding that (a) the 60-Day Rule is a timing statute that does not alter substantive law; (b) an LGU's violation of the 60-Day Rule in failing to act on an application for wetland exemption results in approval only to the extent allowed by statute; and (c) the only allowable exemption from wetland filling here is a 400 square foot *de minimis* exemption. On February 14, 2006, this court granted Breza's petition for review of the decision of the Court of Appeals.

ARGUMENT

I. SUMMARY OF ARGUMENT

This case presents two issues for the Court: (1) whether the 60-Day Rule really means what it says, namely that Breza's exemption request is approved as a matter of law

⁵ There is a slight discrepancy between the District Court's finding and the parties' stipulated fact on the number of square feet Breza filled. The District Court found that Breza filled a total of 5,757 square feet of wetland and issued an exemption for all "5,757 square feet of Petitioner's Breza's filling activity as referenced in the Cease and Desist Order." AA 14-16. The parties stipulated at trial that Breza filled 5,737 square feet of his Property. AA 17, 82, 85.

because of the City's failure to approve or deny the request within 60 days; and (2) whether the Court of Appeals erred when it determined that the City had no authority to grant Breza's exemption, even though the City had the authority under the after-the-fact replacement plan procedure to allow the fill to remain and direct wetland restoration offsite.

In its decision, the Court of Appeals created new law holding that that if an LGU does not have the authority under the WCA to approve a written request, then the request cannot be approved by the LGU's inaction—notwithstanding the 60-Day Rule violation. Not only did the Court of Appeals overstep its bound by creating new law, but it also overstepped in a way that significantly limits the 60-Day Rule—contrary to its plain statutory language and the clear intent of the legislature. Allowing the Court of Appeals decision to stand will render the 60-Day Rule a nullity and opens the door for agencies to admit the transgression, yet deny the consequence the legislature clearly intended.

II. STANDARD OF REVIEW

An appellate court will reverse a trial court's order on an application for mandamus relief "only when there is no evidence reasonably tending to sustain the trial court's findings." *Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. App. 1995). "When the District Court's decision on a petition for writ of mandamus is based solely on a legal determination, this court reviews that decision de novo." *Nolan & Nolan v. City of Eagan*, 673 N.W.2d 487, 493 (Minn. App. 2003), *review denied* (Minn. Mar. 16, 2004).

Statutory construction is a legal question subject to de novo review. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998). Because this case raises issues of statutory construction, the Supreme Court reviews the issues de novo.

III. UNDER THE EXPLICIT LANGUAGE OF THE 60-DAY RULE, MINN. STAT. § 15.99, RESPONDENT'S FAILURE TO RESPOND TO APPELLANT'S REQUEST WITHIN THE STATUTORY TIME REQUIREMENTS MANDATES APPROVAL OF HIS REQUEST.

This case concerns the consequence of the City's admitted violation of Minn. Stat. § 15.99, which expressly provides that when an agency fails to adhere to the time limit, the application is approved as a matter of law. AA 201. The following are undisputed: (1) Minn. Stat. § 15.99 applies to the Exemption Application that Breza submitted to the City; (2) the City accepted Breza's application as complete on December 29, 2000; and (3) the City violated the time requirements of the 60-Day Rule when it failed to respond to Breza's application for over one year. AA 18-19. Based on the undisputed facts of this case and the plain language of Minn. Stat. § 15.99, the consequence for the City's violation is clear: Breza's Exemption Application is approved as a matter of law.

A. Since the 60-Day Rule's Adoption in 1995 by the Legislature, it Has Provided Strict Guidelines for Agency Handling of Certain Types of Citizen Requests and a Mandatory Time Deadline for Agency Action on Such Requests.

In 1995, Minnesota joined approximately two dozen states, including our neighbor Wisconsin, that have adopted an "automatic approval" statute for written requests relating to zoning and certain other specified approvals. The statute is commonly referred to as the 60-Day Rule because the basic time deadline established for making a decision on

such requests is 60 days. 1995 Minn. Laws 248, art. 18 § 1, codified at Minn. Stat. AA 201. “[T]he underlying purpose of Minn. Stat. § 15.99 is to keep government agencies from taking too long in deciding issues like the one in question [referring to a conditional use permit application].” *Manco of Fairmont, Inc. v. Town Board of Rock Dell Township*, 583 N.W.2d 293, 296 (Minn. App. 1998), *review denied* (Minn. Oct. 20, 1998).⁶

Minn. Stat. § 15.99, subd. 2 (2000), mandates that if an agency fails to grant or deny certain types of applications to government agencies within 60 days, such applications are automatically approved:

Except as otherwise provided in this section . . . ***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, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action. ***Failure of an agency to deny a request within 60 days is approval of the request.***

⁶ The legislative history clearly stated this rationale and intent:

I introduced this bill in order to provide a forum to discuss how the state and local government agencies can assure citizens that when they apply for a land use permit that they can get a response to the request within 45 days [the bill was originally introduced with a 45 day time limit]. . . . It’s unfortunate you have to ask the government to be prompt, ask the government to respond quickly when a citizen does request a permit. There’s many instances that are - - people are waiting a year, two years, three years for a request.

Hearing on S.F. No. 647 Before the Senate Comm. on Governmental Operations and Veterans (Mar. 29, 1995) (statement of Sen. Wiener). AA 147-148.

Minn. Stat. § 15.99, subd. 2, (emphasis added). AA 201. The 60-day time limit begins to run upon the agency's receipt of a written request containing all the required information. Minn. Stat. § 15.99, subd. 3(a) (2000). If an agency receives an incomplete request, the 60-day time limit starts over *only* if the agency sends notice to the applicant within *ten* business days of receipt of the request. *Id.* (emphasis added). Further, an agency may unilaterally extend the time limit

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.

Minn. Stat. § 15.99, subd. 3(f). AA 202. An agency may even obtain a longer extension if the agency and the applicant mutually agree to extend the applicable time period. *Id.*

The fundamental requirement of Minn. Stat. § 15.99 is that an agency has 60 days to grant or deny an applicable written request. This requirement was held early on to be a mandatory requirement. *Manco*, 583 N.W.2d at 295 (requirement that government must take action within 60 days is mandatory because it provides consequence of approval of request by operation of law for noncompliance). Even though the legislature has amended this statute twice⁷ since its original adoption in 1995, the legislature has never seen fit to alter the fundamental mandatory requirement as originally stated:

⁷ The legislature amended the 60-Day Rule in 1996 and 2003. The most significant changes were made in 2003 and include the following: (1) new provisions on response deadlines and recognizing that a failure of a resolution or a motion to approve a request constitutes a denial if those voting against the resolution or motion state their reasons on the record (Minn. Stat. § 15.99, subd. 2(b)); (2) new

notwithstanding any other law to the contrary, an agency must approve or deny within 60 days a written request relating to zoning Failure of an agency to deny a request within 60 days is approval of the request.

Minn. Stat. § 15.99, subd. 2. AA 201.

B. Under the Plain Language of Minn. Stat. § 15.99, Appellant's Wetland Exemption Request is Approved as a Matter of Law.

Minnesota courts have strictly enforced the 60-Day Rule, consistently holding that, "When the city fails to adhere to the time limit, the result must be that the application was statutorily approved as a matter of law." *Moreno v. City of Minneapolis*, 676 N.W.2d 1, 7 (Minn. App. 2004); *see also Gun Lake Assoc. v. County of Aitkin*, 612 N.W.2d 177, 182 (Minn. App. 2000) (rejecting relators' argument that approval of CUP application defective because county failed to abide by relevant statutes and ordinances; holding that approval compelled by statute because county failed to deny application within time requirements of Minn. Stat. § 15.99), *review denied* (Minn. Sept. 13, 2000); *Demolition Landfill Services, LLC v. City of Duluth*, 609 N.W.2d 278 (Minn. App. 2000), *review denied* (Minn. Jul. 25, 2000).

application requirements, such as requiring that the application fee, if any, be paid before an application is deemed complete and the time for action begins to run (Minn. Stat. § 15.99, subd. 3(a)); and (3) new provisions on deadline extensions, such as (a) extending the initial government review time from ten to 15 business days, and (b) allowing an applicant to request an extension of the time limit by written notice to the agency (Minn. Stat. § 15.99, subd. 3(b), (g)). The 2003 amendments are not applicable to this case because Breza applied for his exemption request in December 2000. Thus, the applicable statute is Minn. Stat. § 15.99 (2000).

Because the Wetland Conservation Act expressly incorporates the time deadlines of Minn. Stat. § 15.99 and requires that the LGU respond in a manner consistent with Minn. Stat. § 15.99 or suffer the consequences for its inactions, the City was required to grant Breza's application in its entirety. Minn. Stat. § 103G.2242 (2004) ("The local government unit reviewing . . . exemption or no-loss determination requests must act on all . . . exemption or no-loss determination requests in compliance with section 15.99."). AA 217. The requirement that an LGU make a timely determination is further enforced by the express adoption of Minnesota's 60-Day Rule in rules promulgated under the WCA: "The local government unit decision must be made in compliance with Minnesota Statutes, section 15.99 [the 60-day rule], which generally requires a decision to be made within 60 days of receipt of a complete application." *Id.*

Under the WCA, a "local government unit ("LGU") is responsible for determining whether the use of a property qualifies for an exemption." Minn. R. 8420.0210.⁸ AA 204. Here, it is undisputed that the LGU responsible for acting on Breza's written exemption request is the City. AA 40. According to rules promulgated under the WCA, "[a]n exemption may apply whether or not the local government unit has made an

⁸ While the WCA contains a general prohibition against draining or filling a wetland without an approved plan providing for its replacement, the statute also contains several *exemptions* that may apply to relieve a landowner from this replacement requirement. *See* Minn. Stat. § 103G.222, Subd. 1(prohibitions); *See* Minn. Stat. § 103G.2241, subds. 1-10 (exemptions). AA 211-215. If an exemption is granted, the applicant is exempt from the prohibitions against draining and filling, and is therefore exempt from the requirement of producing a "replacement plan." Minn. Stat. § 103G.2241.

exemption determination. If the landowner requests an exemption determination, then the local government unit must make one.” Minn. R. 8420.0210.

Breza’s exemption request is not only allowed, but is compelled by statute because of the City’s failure to deny his application within the time deadline set by Minn. Stat. § 15.99, subd. 2. The statute’s plain language providing that, “[f]ailure of an agency to deny a request within 60 days is approval of the request,” (*id.*) has been strictly enforced by Minnesota courts as a mandatory requirement under its unambiguous terms. AA 201. Case law enforcing the 60-Day Rule is replete with examples of strict enforcement of the time deadline statute—conditional use permits, special use permits, rezoning, building permits and other approvals have been ordered to be issued automatically upon a violation of the statute. *See e.g., American Tower, L.P. v. City of Grant*, 636 N.W.2d 309 (Minn. 2001) (60-Day Rule mandates automatic approval of telecommunications tower); *Northern States Power Co. v. City of Mendota Heights*, 646 N.W.2d 919 (Minn. App. 2002) (60-Day Rule mandates automatic approval of conditional use permit for upgrade of utility’s transmission lines), *review denied* (Minn. Sept. 25, 2002); *Kramer v. Otter Tail County Bd. of Com’rs*, 647 N.W.2d 23 (Minn. App. 2002) (60-Day Rule mandates automatic approval of plat for shorefront development); *Demolition*, 609 N.W.2d 278 (60-Day Rule mandates automatic approval of special-use permit for landfill).

In each of these cases, the agency was required to issue permits and other approvals *even though* it failed to hold public hearings, make findings, or conduct other reviews that would have otherwise been legally required as part and parcel of the normal

processing of the request, but for the 60-Day Rule violation.⁹ Nonetheless, the courts directed the agencies to issue the approvals because that is what the unambiguous and mandatory terms of the 60-Day Rule require.

C. The Approval of Appellant's Application is Compelled by Minn. Stat. § 15.99 and Cannot be Challenged on the Ground that Automatic Approval Would be an Error of Law.

Moreover, the Court of Appeals's ruling contradicts its own prior holding that "when the operation of Minn. Stat. § 15.99 statutorily compels the approval of a zoning application, approval of that application cannot be an error of law." *Moreno v. City of Minneapolis*, 676 N.W.2d 1, 7 (Minn. App. 2004). In *Moreno*, the City of Minneapolis argued that Minn. Stat. § 15.99 could not compel approval of the applicant's zoning request because the request violated the Minneapolis zoning ordinances and the city had no authority to violate these ordinances. *Id.* at 7. The court rejected the city's argument,

⁹ See e.g., *American Tower*, 636 N.W.2d 309 (even though only the City's planning commission had approved the applicant's conditional-use permit, and not the City Council, the court still ruled that the City's violation of the 60-Day Rule mandated that the conditional-use permit was granted); *Northern States*, 646 N.W.2d 919 (even though the City was required to hire a consultant to look at the impact of Xcel's conditional-use permit application and review the project, the City's failure to secure an extension until the consultant issued its final report resulted in automatic approval of Xcel's permit because of the City's clear 60-Day Rule violation); *Kramer*, 647 N.W.2d 23 (even though an EAW had to be prepared to determine if an Environmental Impact Statement was necessary, the City's failure to make the determination and rule within the applicable time period resulted in automatic approval of the permit); *Demolition*, 609 N.W.2d 278 (even though the City was required to enact a separate resolution denying the permit because its rejection of the resolution granting the permit was not a clear denial, the City's failure to do so within the applicable time limit mandated approval of the permit).

holding that “when approval of a zoning application is statutorily compelled, it cannot then be argued that the approval was an error of law.” *Id.*

The 60-Day Rule by its terms states “notwithstanding any other law to the contrary, an agency must approve or deny within 60 days a written request relating to zoning” Minn. Stat. § 15.99, subd. 2. AA 201. This language legally ratifies any action taken to enforce the 60-Day Rule, so it cannot be said that such action violates the law, as *Moreno* recognized.

[T]he underlying purpose of Minn. Stat. § 15.99 is to keep government agencies from taking too long in deciding issues like the one in question. Although automatic approval of a permit application is an extraordinary remedy, it is a remedy that has been granted by the legislature ‘notwithstanding any other law to the contrary.’ When a city has failed to satisfy its clear requirements, the remedy shall be granted.

676 N.W.2d at 6 (quotations omitted) (citations omitted).

The Court of Appeals here distinguished *Moreno* by holding that in *Moreno* the city had the authority to grant the application, while here the City purportedly did not have the requisite authority.¹⁰ Despite the unambiguity of the Minn. Stat. § 15.99 automatic approval requirement as a consequence for untimely agency decisions, the Court of Appeals has now imposed a significant limitation that abrogates the statute’s plain language. The Court of Appeals exceeded its authority as an error-correcting court

¹⁰ This was further error by the Court of Appeals. As argued *infra*, Section IV, the City had the authority to grant Breza’s exemption request under wetland replacement options that are allowable under the WCA and under a specific replacement option that Breza presented to the City as an acceptable alternative to a lawsuit to enforce his 60-Day Rule rights. *See* n. 4, *supra*.

of review by making new law holding that Minn. Stat. § 15.99 is a timing statute that does not alter substantive law. *See Terault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987), *review denied* (Minn. Dec. 18, 1987) (“the task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court.”).

D. The Court of Appeals Improperly Made New Law by Imposing a Significant Limitation on the Statute that Conflicts with the Plain Language and the Intent of the 60-Day Rule.

When appellate courts interpret a statute, the court must first determine whether the statutory language is facially ambiguous. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). A statute is ambiguous when its language is “subject to more than one reasonable interpretation.” *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). If the legislative intent “is clearly discernible from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute’s plain meaning.” *Am. Tower, L.P.*, 636 N.W.2d at 312; *see also* Minn. Stat. § 645.16 (2004).

In this case, the legislative intent is clearly discernable from the plain language of the Minn. Stat. § 15.99. The purpose of Minn. Stat. § 15.99 is to ensure timely land-use decisions by governmental agencies. *Tollefson Dev., Inc. v. City of Elk River*, 665 N.W.2d 554, 558 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003). The legislature accomplished this goal by drafting a clearly-written statute that requires automatic approval of the applicant’s request upon the agency’s failure to make a timely land-use decision. In doing so, the legislature undoubtedly was aware that agencies may attempt to rely on other purported statutory constraints to resist the automatic approval

provision of Minn. Stat. § 15.99, but the legislature adopted broad preemptive language to make clear its intent and to ensure enforcement of the mandatory penalty of approval by its terms: the approvals occur automatically upon a violation of the statute, *notwithstanding any other law to the contrary. Id.*, subd. 2. To conclude otherwise eviscerates the time deadline statute.

Even though the language of the 60-Day Rule is clear, unambiguous and manifests the clear intent of the legislature, the legislative history of the statute is instructive, informative and corroborative of the legislature's intent in adopting the time deadline statute. The legislative history shows that the legislature clearly contemplated and intended that agencies *must* suffer the consequence of automatic approval if they flout the time deadline requirement:

I think the permit should be issued if the agencies can't respond. And when permits start getting issued that we don't like, then we're going to start asking the agencies why they haven't gotten together.

Hearing on S.F. No. 647 Before the Senate Comm. on Governmental Operations and Veterans (Mar. 29, 1995) (statement of Sen. Beckman).¹¹ AA 164.

¹¹ This is not the first time that the City of Minnetrista has run afoul of the 60-Day Rule. See *Hans Hagen Homes, Inc. v. City of Minnetrista*, Appellant Court File No. A05-1686 (district court held that City violated 60-Day Rule; matter pending before Court of Appeals); *Concept Properties, LLP v. City of Minnetrista*, 694 N.W.2d 804, 827 (Minn.App.2005), *review denied* (Minn. July 19, 2005) (applicant's 60-Day Rule challenge of untimely denial rejected because City narrowly avoided violation when it gave written notice of denial on last legally possible day).

The effect of the Court of Appeal's ruling here is that the City suffers no consequence for its failure to act on Breza's exemption application for over a year. Such an interpretation violates both the letter and the intent of the 60-Day Rule.

E. By Blatantly Violating Minn. Stat. § 15.99, Respondent Lost the Ability to Raise "Lack-of-Authority" as Justification for Refusing to Implement the Mandatory Remedy of Approval Under the 60-Day Rule.

Once the City violated the time deadline statute, Breza became entitled to his statutorily-mandated remedy under Section 15.99, and the City could no longer invoke whatever limits on its powers may have been operative during the legally allowable period for the City to act.

The City first attempted to reject Breza's exemption request almost thirteen months after Breza submitted his application. After this inexcusably protracted delay, the WCA Agent sent Breza a letter attempting to reject Breza's written request as incomplete. AA 45. This contravened an explicit 60-Day Rule provision that requires prompt agency review of the request if the agency seeks to toll the 60-day time period based upon incomplete information in the request. AA 201-202. The 60-Day Rule mandates that an agency may only toll the 60-day period if it "sends notice within ten business days of receipt of the request telling the requester what information is missing." *Id.* After Breza informed the City that it had violated Minn. Stat. § 15.99 by failing to respond to his application for over a year, the City then responded that it only had the legal authority to grant an exemption for 400 square feet, even though it had also considered and denied Breza's compromise replacement plan proposal. AA 51.

The Court of Appeals correctly recognized that “[o]nce an application is approved by operation of law under Minn. Stat. § 15.99, subd. 2, the local government unit (LGU) loses jurisdiction over the application, and any attempt thereafter to act on the application is invalid.” *Breza v. City of Minnetrista*, 706 N.W.2d 512, 516 (Minn. App. 2005), *review granted* (Minn. Feb. 14, 2006). The court improperly concluded, however, that the City could still exercise its authority on the type of approval it would grant. The court’s ruling is inconsistent and conflicts with both the automatic approval language and the purpose of Minn. Stat. § 15.99. The legislature was clear that when an agency failed to meet the mandatory timing requirement, the request is taken out of the agency’s hands and granted, as is. The Court of Appeals’s holding essentially allows agencies to negate the clear language of the statute under the theory that Minn. Stat. § 15.99 encroaches on an agency’s powers to consider zoning matters, but “such an encroachment is fully within the authority of the legislature to give and revoke.” *Northern States Power Co. v. City of Mendota Heights*, 646 N.W.2d 919, 927 (Minn. App. 2002) (rejecting city claim of approval encroaching on city zoning authority and enforcing automatic approval for 60-Day Rule violation), *review denied* (Minn. Sept. 25, 2002).

Under Minn. Stat. § 15.99, the City had three opportunities to invoke properly its authority upon receipt of Breza’s Exemption Application: (1) the City had ten business days from receipt of Breza’s request to send a notice that his application was incomplete, which would have tolled the running of the 60 days until the missing information was provided; (2) the City had the option to grant itself unilaterally up to an additional 60 days to act on Breza’s request and even seek a longer extension upon Breza’s consent; or

(3) the City could have denied the application on its face within the applicable time period. AA 201. The City failed to avail itself of any of these three legally-sanctioned options under the statute. Accordingly, the City lost jurisdiction over Breza's application and the clear mandate of the 60-Day Rule operated to approve the application for a complete exemption.

The Court of Appeals believed that "an absurd and unreasonable result" would follow if the 60-Day Rule were enforced by its plain language because, the court believed, the City would be forced to approve a request that it had no statutory authority to give. *Breza*, 706 N.W.2d at 517-18. This is error in two respects: first, because it repudiates the plain language of the 60-Day Rule; second, because it fails to recognize broader exemption relief available under the WCA.¹²

To accept the City's position and the ruling below on this issue is to depart from the *stare decisis* effect of the many 60-Day Rule cases and to ignore that the statutory consequence for violating the time deadline "unambiguously . . . mandates an approval." *Demolition*, 609 N.W.2d at 281. In any 60-Day Rule challenge, there is always another public hearing, determination, or finding required by law that the agency missed because of its own procrastination. Cities are not entitled to "revisit" these issues after the expiration of the deadline in an effort to defeat the operation of Minn. Stat. § 15.99. *Id.* (reasoning that "[w]e cannot permit a municipality to bend the letter of the statute for the sake of administrative ease"). The statute provides for only one result upon a violation of

¹² See Section IV, *infra*.

the 60-day deadline: automatic approval, notwithstanding any other law to the contrary. Accordingly, the City's and the Court of Appeals's "illegality argument" must be rejected in its entirety and the District Court's grant of mandamus relief to Breza should be reinstated.

F. Mandamus is the Proper Remedy for Respondent's Violation of Minn. Stat. § 15.99 and the Court of Appeals Erred When it Reversed the District Court's Grant of Mandamus Relief to Appellant.

The District Court properly granted mandamus relief to Breza because of the City's admitted Minn. Stat. § 15.99 violation. AA 15-16. The Court of Appeals erroneously reversed the District Court's ruling when it held that "[b]ecause the city does not have the authority to grant Breza an exemption for more than 400 square feet, the city has fully satisfied its official duties. Therefore, under these circumstances, mandamus is not appropriate, and the District Court erred by granting Breza's petition." *Breza*, 706 N.W.2d at 519.

Minnesota law has clearly established that mandamus relief, which may only be granted by a court under Minn. Stat. § 586.02, is the appropriate remedy for a violation of Minn. Stat. § 15.99. *See Kramer v. Otter Tail Bd. of Com'rs*, 647 N.W.2d 23, 26-27 (Minn. App. 2002) (citing *American Tower, L.P. v. City of Grant*, 621 N.W.2d 37, 41-43 (Minn. App. 2000) (holding writ of mandamus requiring city to issue CUP proper after city failed to act in time), *aff'd* 636 N.W.2d 309 (Minn. 2001)). *See also Carlson v. Blue Earth County Bd. Of Comm'rs*, No. C1-99-1980, 2000 WL 1239734, at * 6 (Minn. App. Sept. 5, 2000) (noting that "[h]ad relators believed that the rejection by the board of a

motion to approve the permit did not constitute a denial as required by section 15.99, their action lay in filing a writ of mandamus in District Court”). AA 217.

“Mandamus is an extraordinary legal remedy that courts issue only when the petitioner shows that there is a ‘clear and present official duty to perform a certain act.’” *Kramer*, 647 N.W.2d at 26 (quoting *McIntosh v. Davis*, 441 N.W.2d 115, 118 (Minn. 1989)). For a petitioner to be entitled to mandamus relief, the petitioner must demonstrate three elements: (1) the failure of an official to perform a duty clearly imposed by law; (2) a public wrong specifically injurious to petitioner; and (3) no other adequate remedy. *Id.*; *Demolition Landfill Servs., L.L.C. v. City of Duluth*, 609 N.W.2d 278, 280 (Minn. App. 2000), *review denied* (Minn. July 25, 2000). AA 15.

In *Kramer*, the Court of Appeals held that it is appropriate for an applicant to seek mandamus relief when a government agency has violated Minn. Stat. § 15.99. 647 N.W.2d at 26. First, the court reasoned that a government agency’s failure either to approve or deny an application within 60 days is a clear failure to perform an official duty imposed by law. *Id.* Second, the court noted that the county’s failure to act on the application injured the applicant because the applicant was unable to develop its resort. *Id.* And third, the court held that mandamus relief was appropriate because the only other available relief was more expensive, more complicated, and more time consuming. *Id.*

Here, the District Court appropriately relied upon *Kramer* to hold that Breza was entitled to mandamus relief because of the City’s admitted failure to respond to Breza’s application within 60 days. Like *Kramer*, the District Court found that: (1) the City failed to perform an official duty imposed by law by waiting for 14 months to respond to

Breza's application; (2) the City's failure to act timely harmed Breza because his wetland exemption application and the status of his filling activity remained unresolved; and (3) the other available remedy, which was an appeal to Board of Water & Soil Resources, was not adequate because the LGU lost jurisdiction over the application when it violated Minn. Stat. § 15.99. AA 14-16.

In its far-reaching decision, the Court of Appeals is not only limiting Minn. Stat. § 15.99 in a manner the legislature never intended, but it is also stripping mandamus relief from applicants where there has been a clear violation of Minn. Stat. § 15.99. The Court of Appeals's ruling is giving governmental agencies tremendous power by allowing agencies to limit or deny an application after a clear violation of Minn. Stat. § 15.99, while simultaneously removing mandamus relief from applicants who have a right to challenge the agencies' decisions. In doing so, the Court of Appeals is removing any incentive for an agency to comply with Minn. Stat. § 15.99 and eroding clear law that the legislature purposefully created to ensure timely decisions.

IV. UNDER THE FACTS OF THIS CASE, RESPONDENT HAD AUTHORITY TO GRANT APPELLANT'S APPLICATION.

The Court of Appeals further erred in this case by concluding that it was not within the City's authority as LGU under the WCA to allow the fill placed by Breza to remain. The Court of Appeals misapplied the WCA by failing to recognize that two forms of exemption are available: restoration and replacement. The Court of Appeals erred in concluding that the City's only exemption authority was to allow, at most, a 400 square-foot exemption from restoration of the 5,737 square feet that Breza filled and

LGU was constrained by law to allow only a 400 square-foot *de minimis* exemption as a legal alternative to complete wetland restoration.

A. The Court of Appeals Erred in Characterizing the Wetland at Issue as Solely Type 3 Wetland and Erroneously Held that Only a *De Minimis* Exemption Applied.

The Court of Appeals incorrectly analyzed the exemption provisions under the WCA and applied its erroneous analysis to erroneously-understood facts. Although the record was clear that the wetland was a Type 2, 3/4, and 7, the Court of Appeals mistakenly stated:

In this case, it is undisputed that the wetland at issue is a Type 3 wetland. The only statutory exemption to which an individual filling a Type 3 wetland is entitled, without satisfying one of the enumerated purposes (e.g. agricultural activities, drainage, etc.), is a *de minimis* exemption. Minn. R. 8420.0122, subp. 9. A *de minimis* exemption is 400 square feet. *Id.*, subp. 9(A)(5).

Breza, 706 N.W.2d at 516. The Court of Appeals further stated that

the LGU, in this case the city, must base its exemption decisions on the standards provided in the rules. And the only exemption that applies to *Breza* is the *de minimis* exemption. Therefore, the city lacks the authority to grant an exemption to *Breza* that is more than 400 square feet.

Id. at 517.

The wetland at issue in this case is not purely Type 3 wetland; it is a combination of Types 2, 3/4, and 7. Not only was this fact clearly delineated in *Breza*'s appellate brief but the brief also cited to, and attached, the 1995 wetland delineation report for the Property that shows there were Types 2, 3, and 7 on the Property. AA 23. When looking at the *de minimis* exemptions under the WCA, the type of wetland dictates the available

The wetland at issue in this case is not purely Type 3 wetland; it is a combination of Types 2, 3/4, and 7. Not only was this fact clearly delineated in Breza's appellate brief but the brief also cited to, and attached, the 1995 wetland delineation report for the Property that shows there were Types 2, 3, and 7 on the Property. AA 23. When looking at the *de minimis* exemptions under the WCA, the type of wetland dictates the available exemptions an agency can grant. The type of wetland, however, does not limit an agency's authority with respect to a replacement plan. With an after-the-fact replacement plan, the City had authority to allow Breza to keep his 5,737 feet of fill intact, while replacing wetland in another designated area at ratio not to exceed twice the otherwise required replacement ratio. Minn. R. 8420.0290, subp. 4 (1999). AA 209.

B. The City Had the Authority to Grant Appellant Relief Under the After-the-Fact Replacement Plan Provisions of the WCA.

Not only did the Court of Appeals apply the wrong type of wetland when it analyzed the exemptions, it also completely overlooked the after-the-fact replacement plan option that the City Council considered and denied. Under Minn. R. 8420.0290, subp. 4, a landowner can apply for an after-the-fact replacement plan under which the LGU may require the landowner to replace the affected wetland at another location and at a two-to-one ratio. Minn. R. 8420.0290, subp. 4 (1999). AA 209.

On February 3, 2003, the City Council met to consider Breza's exemption request as well as a compromise replacement plan proposal from Breza. Breza's replacement plan proposal was to restore more than half of the area to wetland and to make a cash payment to the City of \$4,800.00 that the City could use for restoration elsewhere.

AA 66. After examining both options, the City Council adopted a resolution rejecting Breza's replacement plan proposal, allowing only 400 square feet of fill to remain on the Property and requiring Breza to restore the remainder of the filled area back to wetland.

AA 74. At no time during this meeting, did the City disavow the authority to grant such a replacement plan.¹³ In fact, the WCA Agent advised the City that Breza's replacement plan presented a viable compromise: "A compromise could potentially involve restoring half of the wetland on-site and replacing the remaining off-site at a 2:1 ratio as required by the Wetland Conservation Act." AA 61. But in perverse defiance of the 60-Day Rule, the City chose merely to allow the *de minimis* exemption instead and ordered Breza to remove all but 400 square feet of the fill-- notwithstanding that the City's egregious 60-Day Rule violation had deprived it of any power to do anything other than grant Breza's exemption request in full.

Accordingly, the Court of Appeals further erred when it ruled as a matter of law that the City did not have the authority to grant anything other than a 400 square foot *de minimis* exemption and for this additional reason, its decision should be reversed in its entirety.

¹³ Nor could it, given the replacement plan parameters allowable under the WCA and its regulations. Minn. R. 8420.0290, subp. 4 (1999) (allowing a landowner to apply for an after-the-fact replacement plan under which the LGU may require the landowner to replace the affected wetland at a ratio not to exceed twice the otherwise required replacement ratio). AA 209.

C. Appellant Applied for a Full Exemption Under the Application Form Provided by the DNR.

Further, the Court of Appeals also ignored that the DNR provided Breza with the Cease and Desist Order and Exemption Application which told him only that if he did not “apply for an exemption or no loss determination within three weeks of the date of the issuance of this order ... then whatever drain or fill work has been done may require restoration ...” AA 41. The Exemption Application was nothing more than a check-off that allowed Breza to indicate only whether he sought an “Exemption” or “No Loss”—with no explanation of what either term meant. AA 43. Breza provided the City with a timely Exemption Application and at no time during the operative 60 days—let alone within the ten-business day period that would have allowed a tolling of the 60 days¹⁴—following Breza’s submission did the City as LGU or the DNR inform Breza that his application was in any way deficient, or that he was applying for an exemption that could not be granted. Based on the language of both the Cease and Desist Order and the Exemption Application, Breza understood that by making this application, he was seeking relief from regulations requiring all areas filled on the Property to be returned to wetland status and allowing the fill that he had placed to remain. AA 110. Breza specifically testified at trial that he “was applying for an exemption for all the fill-in work that had been done,” and the District Court found that he did in fact apply for an exemption for the 5,757 square feet that had been filled. AA 113, 16.

¹⁴ Minn. Stat. § 15.99, subd. 3(a). AA 201.

Breza was not informed that he was seeking an exemption that purportedly could not be granted until well after the City violated Minn. Stat. § 15.99. AA 45, 51-55. Here, the City essentially accepted without question or review an application for an exemption, which the City now argues it could never technically grant, and then sat on the application for over 14 months. The City's blatant failure to respond to Breza's request under the mandatory time requirements is a clear violation of the letter of the 60-Day Rule, and the City's actions during this process violate the intent of the law.

The legislative history of Minn. Stat. § 15.99 demonstrates that this law was not only adopted to ensure a timely answer to a zoning application, but it was also adopted to ensure that the process was more efficient; meaning that the agency receiving the request was expected to be responsive, to coordinate with any other agencies implicated by the application and to make a decision expeditiously.

Once again, while the 60-Day Rule is clear, its legislative history shows an intent to place the burden on the City to provide a user-friendly system where an applicant can seek and obtain a prompt response to the relief requested. This is evident throughout the Senate hearing on the bill that became the 60-Day Rule, which hearing includes the following illuminating statements (in the context of the expected effect of the time deadline requirements on wetland regulation, no less) by members of the Senate Committee on Governmental Operations and Veterans:

[Glenn Dorfman:] But just so that you all know, because I think it will – I hope it will come before you, is that we have all of these agencies that are involved in some wetlands issue, and there's virtually no coordination. So again, all we want is a user-friendly system. If you ask the DNR to question – that

they should coordinate the answer to that question across all agencies that deal with wetlands, and then give you a coordinated answer so that you can go on with your business.

[Senator Riveness:] First of all, I think this is an outstanding initiative, and I especially like the provision that Mr. Dorfman pointed out, too, that kind of puts the burden of coordination on the agencies themselves. And all of us have had the experience when we go to somewhere, either we're told, oh, by the way, you also need to go somewhere else, or not told and find out later that we really need to see multiple agencies. And basically saying we expect people to have a service hat on, it's their job to help citizens solve problems.

[Senator Beckman:] That's the way it works, isn't it? So if you have five agencies interacting with each other, if they don't get their act together the permit just gets issued.

[Senator Wiener:] Senator Beckman, the bill is to try to act – when you will go to your first agency, if there are other agencies that are going to touch this land use permit, that they will direct you where you need to go and to act simultaneously. So one agency can't be responsible for giving the answers for all five agencies, but the intent is to get all agencies to act so when that person goes to desk one they may need to go to desk two, but they would be directed where they need to go, and then to get the answers within 60 days.

[Senator Beckman:] I think you got a great idea. I think the permit should be issued if the agencies can't respond. And when permits start getting issued that we don't like, then we're going to start asking the agencies why they haven't gotten together.

Yeah, that's the outcome that we expect. The people who have the resources to make the decisions are the bureaucrats. The person who's coming in and asking for the permit, you know, it doesn't have the kind of force behind it that state government does. So I think the onus should be on those folks to make the decision in a timely manner. And to me this is just simply saying if you don't do it, if you don't do your work, then the permit's going to be issued.

Hearing on S.F. No. 647 Before the Senate Comm. on Governmental Operations and Veterans (Mar. 29, 1995). AA 153-174. While the statutory language on its face is clear, direct and unambiguous, this legislative history simply reinforces that the 60-Day Rule says what it means and means what it says. Here, the City as LGU under the WCA did absolutely nothing to coordinate with the DNR, which issued the Cease and Desist Order to Breza, and utterly failed to review, evaluate, or act on Breza's exemption request for over a year. The consequence, as the statute plainly mandates, is that the City's "failure ... to deny [the] request within 60 days is approval of the request." AA 201.

CONCLUSION

This case presents undisputed facts that demand a reversal of the decision below, namely that: (1) Breza applied for a wetland exemption for 5,737 square feet of fill that he placed in his yard on the very form that the DNR provided to him; (2) the City blatantly violated the 60-Day Rule by sitting on Breza's wetland exemption application for over a year; and (3) the City admitted that it violated the 60-Day Rule, yet denied Breza's application, claiming that it could only grant a *de minimis* exemption, even though it had the authority to grant a replacement plan option. Despite these undisputed facts, the clear statutory language of the 60-Day Rule and the WCA and its regulations, the Court of Appeals reversed the District Court's decision granting Breza mandamus relief and held that the City would not suffer the consequences that the legislature clearly intended under the 60-Day Rule. In doing so, the Court of Appeals created new law that allows agencies to avoid the legislatively-intended consequence of automatic approvals for 60-Day Rule violations by identifying any number of legal constraints on its powers.

For all the above-stated reasons, Breza respectfully requests that this Court reverse the decision of the Court of Appeals and restore the enforcement of the plain meaning of the 60-Day Rule by its terms, which compels the automatic approval of appellant Richard J. Breza's request for a complete exemption from removing any of the fill placed in his wetland.

Dated: *16 March 2006*



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STATE OF MINNESOTA
IN SUPREME COURT
NO. A04-2286

Richard Breza,

Appellant,

v.

City of Minnetrista,

Respondent.

CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 13201, subs. 1 and 3, for a brief produced with a proportional font. The length of this brief is 9,651 words. This brief was prepared using Microsoft Word.

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