

Nos. A06-2019 and A06-2361

State of Minnesota
 In Supreme Court

Kanabec County Board of Commissioners,
 Kanabec County Planning Commission, and
 Kanabec County Environmental Services,

Appellants,

vs.

Calm Waters, LLC, a Minnesota limited liability corporation,

Respondent.

BRIEF OF AMICUS CURIAE
 ASSOCIATION OF MINNESOTA COUNTIES

RATWIK, ROSZAK & MALONEY, P.A.
 Scott T. Anderson (#157405)
 300 U.S. Trust Building
 730 Second Avenue South
 Minneapolis, MN 55402
 (612) 339-0060

Attorneys for Appellants

IVERSON REUVERS
 Paul D. Reuvers (#217700)
 Jason J. Kuboushek (#304037)
 9321 Ensign Avenue South
 Bloomington, MN 55438
 (952) 548-7200

*Attorneys for Amicus Curiae
 Association of Minnesota Counties*

LINDBERG & MCKINNIS, P.A.
 Grant W. Lindberg (#0347644)
 Jimmy A. Lindberg (#63290)
 200 Third Avenue N.E.
 Suite 300
 Cambridge, MN 55008
 (763) 689-9596

Attorneys for Respondent

SHERBURNE COUNTY ATTORNEY
 Arden Fritz (#1754658)
 Assistant Sherburne County Attorney
 Government Center
 13880 Highway 10
 Elk River, MN 55330
 (763) 241-2565

*Attorneys for Amicus Curiae
 Minnesota County Attorneys Association*

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

INTRODUCTION 1

STATEMENT OF ISSUES, CASE AND FACTS..... 2

STANDARD OF REVIEW2

ARGUMENT2

 I. THE LANGUAGE AND HISTORY OF MINNESOTA
 STATUTES § 15.99 DOES NOT SUPPORT THE COURT OF
 APPEALS’ DETERMINATION THAT ZONING INVOLVES
 SUBDIVISIONS..... 2

 II. MINNESOTA STATUTES § 15.99 SHOULD NOT APPLY
 TO PLAT APPLICATIONS BECAUSE OF THE COMPLEXITY
 OF THE NECESSARY REVIEW..... 6

 III. THE PLANNING COMMISSION HAS THE AUTHORITY
 TO APPROVE AND DENY..... 9

 IV. THE COURT OF APPEALS IMPROPERLY USED
 MINNESOTA STATUTES § 15.99 TO REGULATE COUNTIES’
 ABILITY TO DELEGATE AUTHORITY..... 11

CONCLUSION 12

TABLE OF AUTHORITIES

	Page
Case Law	
<i>Amcon Corp. v. City of Eagan</i> , 384 N.W.2d 686 (Minn. 1984)	2
<i>Breza v. City of Minnetrista</i> , 725 N.W.2d 106 (Minn. 2006)	11
<i>Cleveland v. Rice County</i> , 56 N.W.2d 641 (Minn. 1952)	10
<i>County of Hennepin v. County of Houston</i> , 39 N.W.2d 858 (Minn. 1949)	3
<i>Hans Hagen, Inc. v. City of Minnetrista</i> , 728 N.W.2d 536 (Minn. 2006).....	3
<i>Harris v. County of Hennepin</i> , 679 N.W. 2d 728 (Minn. 2004).....	2
<i>Hurrle v. County of Sherburne</i> , 594 N.W.2d 246 (Minn. App. 1999)	8
<i>Moreno v. City of Minneapolis</i> , 676 N.W.2d 1 (Minn. App. 2004).....	11
<i>Roinestad v. McCarthy</i> , 82 N.W.2d 697 (Minn. 1957)	3
<i>Unger v. County of Dodge</i> . No. A06-1771, 2007 Minn. App. LEXIS 1033 (Minn. App. Oct. 16, 2007)	11
Minnesota Statutes	
Minnesota Statutes § 15.99.....	passim
Minnesota Statutes § 375.163.....	1
Minnesota Statutes § 394.25.....	5
Minnesota Statutes § 394.30	9, 10
Minnesota Statutes § 505.021.....	6
Minnesota Statutes § 505.03	6

	Page
Minnesota Statutes § 505.09	7
Minnesota Statutes § 505.11.....	8
Minnesota Statutes § 505.14	6
Minnesota Statutes § 645.17.....	2, 6

INTRODUCTION

The Association of Minnesota Counties (“AMC”) is a voluntary association of all 87 Minnesota counties and is organized pursuant to Minnesota Statutes § 375.163.¹ AMC works closely with the legislative and administrative branches of government on issues involving adoption, enforcement, and modification of laws which affect counties, and represents the position of counties before state and federal government agencies and the public. This perspective permits AMC to offer a broad explanation of the significant impact this case will have on the way counties adopt and implement land use and plat regulations throughout Minnesota.

Municipalities throughout Minnesota are routinely faced with preliminary plat and subdivision applications. AMC’s Brief focuses upon the history and legislative intent of Minnesota Statutes § 15.99, the so-called 60-day rule, and its impact upon counties’ ability to effectively process land use applications. AMC submits the Minnesota Court of Appeals’ decision creates confusion and impairs a county’s ability to properly handle these often complicated and time-intensive land use applications. Because of the harsh and penal nature of the statute, there are strong public policy considerations which weigh in favor of a much more narrow

¹ AMC received contribution only for the binding and printing costs from the Minnesota Counties Insurance Trust (“MCIT”). MCIT is a joint powers entity that provides risk management advice and coverage for land use cases for its county members.

application of the 60-day rule, than improvidently advanced by the Minnesota Court of Appeals.

STATEMENT OF ISSUES, CASE AND FACTS

AMC concurs with the Appellant's statement of the issues, case and facts.

STANDARD OF REVIEW

Statutory construction is a question of law and is reviewed de novo. *Harris v. County of Hennepin*, 679 N.W. 2d 728, 731 (Minn. 2004).

ARGUMENT

I. THE LANGUAGE AND HISTORY OF MINNESOTA STATUTES § 15.99 DOES NOT SUPPORT THE COURT OF APPEALS' DETERMINATION THAT ZONING INVOLVES SUBDIVISIONS.

A careful examination of the language of the statute, the legislative history and the relevant case law demonstrates the Legislature did not intend Minnesota Statutes § 15.99 to apply to subdivision applications. When statutory language is either ambiguous or undefined, the prior history and intent of the drafters can be relevant. *See Amcon Corp. v. City of Eagan*, 384 N.W.2d 686 (Minn. 1984). Furthermore, the Legislature intends the entire statute to be effective and certain. The Legislature also intends to favor the public interest as against any private interest. *See Minn. Stat. § 645.17*. Statutes are also presumed to be passed with deliberation and with full knowledge of all existing statutes on the same subject. This means it is the duty of the courts to give effect to all related statutory

provisions if possible. *See County of Hennepin v. County of Houston*, 39 N.W.2d 858 (Minn. 1949); *Roinestad v. McCarthy*, 82 N.W.2d 697 (Minn. 1957). No clause, word or sentence will be superfluous, void or insignificant. Moreover, any statutes which are penal in nature are construed narrowly against the penalty. *See Hans Hagen, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 643 (Minn. 2006).

In this case, the legislative history of Minnesota Statutes § 15.99 and its 2003 amendments demonstrate the Legislature intended to exempt subdivision and platting applications from the 60-day time limitation. In the spring of 2003, the Legislature sought to clarify the statute and discussed amendments. *See* RA 188-90. House Floor Bill No. 433 (“HF 433”) was introduced in the House of Representatives, and a companion bill was introduced in the Senate as Senate Floor Bill No. 486 (“SF 486”). *Id.* These bills proposed adding language to Minnesota Statutes § 15.99, subd. 2 which would exclude certain zoning actions from the 60-day limit if other laws provided timelines for decision. RA 191-93, 194-96. Prior to the 2003 amendments, Minnesota Statutes § 15.99, subd. 2(a) read: “[e]xcept 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 related to zoning.” RA 191.

The Senate Committee on State and Local Government Operations (“Senate Committee”) met on March 12, 2003 to discuss SF 486, which would amend

Minnesota Statutes § 15.99, subd. 2(a). RA 170-80. The purpose of the amendment was to clarify whether Chapter 505, which relates to the subdivision platting process, trumps the 60-day time limit set out by Minnesota Statutes § 15.99. Pages 3:3-11, 8:24-9:14, at RA 170-72.² The Senate Committee met again on March 26, 2003 to discuss SF 486. RA 181-83. At this time, Senator Solon stated “[s]ubdivision 2 provides an exemption from the “60-day rule” for subdivision approvals and plat approvals due to the timeline established by the respective statutes.” Page 3:24-4:4, at RA 181. The Committee passed SF 486 with the language listed above. Page 8:13-16, at RA 182. The House Local Government and Metropolitan Affairs Committee (“House Committee”) considered the same language and passed HF 433 on April 8, 2003. Page 13:21-25, at RA 187.

A Bill Summary was created for HF 433 on April 9, 2003. In its “Overview” section, the summary states the amended bill “exempts subdivision regulation review process and plat review process from the 60-day rule.” RA 197-98. The summary also states Subdivision 2 of the amended Minnesota Statutes § 15.99 “[p]rovides that the time for response in the laws governing subdivision regulations review and platting govern those actions (and therefore the “60-day rule” does not apply).” *Id.* The House passed HF 433 on April 22, 2003, based on

² AMC was one of the main supporters of this bill.

the Bill Summary. RA 188-89. The Senate approved the bill on May 7, 2003. *Id.* The bill was signed into law on May 13, 2003. *Id.* The legislative history demonstrates the Legislature intended to exclude subdivision and platting processes from the time limits set forth in Minnesota Statutes § 15.99. Therefore, the court of appeals' decision must be reversed as it is contrary to both the language of the statute and the Legislature's intent.

The distinction between zoning and the subdivision of land is also evident in other statutes and case law, where they are clearly viewed as separate and distinct concepts. For instance, Minnesota Statutes Chapter 394, which gives counties the authority to regulate the use of land, clearly distinguishes between "zoning" and "subdivision/platting." Minnesota Statutes § 394.25 authorizes counties to adopt "official controls" to regulate the use of land. Specifically, this provision authorizes a county to adopt "zoning ordinances," and "specific controls pertaining to other subjects...including but not limited to subdividing land and the approval of land plats." Minn. Stat. § 394.25. This statute makes it clear the Legislature has distinguished between "zoning" and "subdivision" regulations as separate and distinct areas of land use control. The Minnesota Court of Appeals incorrectly merged these two distinct areas. This improper merger will cause significant administrative and practical difficulties for counties, particularly where subdivision applications often involve complex and intensive land use applications. AMC

respectfully submits this Court should effectuate the intent of the Legislature and hold plat applications do not come within the ambit of the 60-day rule.

II. MINNESOTA STATUTES § 15.99 SHOULD NOT APPLY TO PLAT APPLICATIONS BECAUSE OF THE COMPLEXITY OF THE NECESSARY REVIEW.

Preliminary plat applications and their enclosures are complex submissions which go beyond items “related to zoning.” Because of this, they must be reviewed by multiple agencies and municipalities. To apply the restrictions of Minnesota Statutes § 15.99 to subdivisions would limit municipalities’ ability to adequately review and receive comment on the submissions and be contrary to the public’s interest in such review. *See* Minn. Stat. §645.17(5) (2006) (stating, in the context of statutory construction, “the legislature intends to favor the public interest as against any private interest.”)

When preliminary plat applications are received by counties, they must be reviewed for content and then sent to the appropriate agencies. *See* Minn. Stat. § 505.021 (setting forth platting format and requirements). These agencies may include the County Engineer, the County Surveyor, the County Environmental Services Department, MnDOT, DNR, and the appropriate Township. *See* Minn. Stat. §§ 505.021, subd. 9 (land surveyor certificate requirement); 505.03, subd. 2(a) (State Commissioner of Transportation review requirement); 505.14 (DNR review requirement). Each of these agencies or departments must carefully review

each and every project which is often an extremely time-consuming and arduous undertaking. From an engineering standpoint, this means reviewing the grading plans, the street layouts, the utility layouts and stormwater designs. These plans need to be compared to the applicable standards to ensure they meet the appropriate engineering standards. Similarly, the other agencies and departments must confirm the plat submissions meet their appropriate standards and guidelines, such as a forestry plan, shoreland requirements, and transportation guidelines.

Additionally, townships which have zoning and planning commissions, like Kroschel Township, must review the plat and approve “the plat and the laying of streets and other public ways shown on it.”³ Minn. Stat. § 505.09. The township must then endorse the plat and sign it. This additional step takes time, especially since townships and their planning commission only meet once a month.

Depending upon when the submissions are sent to the township, a plat review may take a minimum of two months. It is a near impracticality to have adequate review at both the township and county level within the strict timeline of Minnesota Statutes §15.99.

A cursory review of these steps demonstrates the subdivision approval process does not lend itself to a 60-day rule, or even a 60-day rule analysis.

³ It is undisputed the Respondent never received the appropriate approvals and signatures from Kroschel Township. The court of appeals erred in ignoring this item and it alone justifies the reversal of the decision.

Actions of the applicant control the timing of the final plat approval. Thus, this multi-step process simply cannot be completed within 60 days under most circumstances. Under the circumstances, the Legislature could not have intended for this narrow time limit to apply to subdivision applications. Review of the words of the statute and cases on the subject compel this conclusion.

Moreover, these additional levels of review and public hearings are exactly why the Legislature specifically excluded Chapter 505 and “any other law to the contrary” from the strict timelines of Minnesota Statutes § 15.99. Otherwise, the other levels of review required by Chapter 505 and counties’ subdivision regulations⁴ would be rushed and ineffective. This, in turn, would subject counties to additional liability. *See Hurre v. County of Sherburne*, 594 N.W.2d 246, 249 (Minn. App. 1999) (holding the decision to approve or deny a preliminary plat application must not be unreasonable, arbitrary or capricious). Accordingly, the Minnesota Court of Appeals’ decision should be reversed to effectuate the intent of the Legislature, which recognizes the subdivision approval process is not amenable to the application of the 60-day rule.

⁴ Counties are given the authority under Minnesota Statutes § 505.11 to make regulations regarding the platting of subdivisions of land.

III. THE PLANNING COMMISSION HAS THE AUTHORITY TO APPROVE AND DENY.

The Minnesota Court of Appeals incorrectly determined the County Board cannot delegate the power to “deny” preliminary plat applications to the Planning Commission. In making this determination, the court of appeals misconstrued Minnesota Statutes § 394.30, subd. 5 and its related sections.

Minnesota Statutes § 394.30, subd. 5 states the County Board may “assign additional duties and responsibilities to the planning commission including but not restricted to the conduct of public hearings, the authority to order the issuance of some or all categories of conditional use permits, *the authority to approve some or all categories of subdivisions of land.*” (emphasis added). Additionally, Minnesota Statutes § 394.30, subd. 4 states: “[i]n all instances in which the planning commission is not the final authority, as authorized in subdivision 5, the commission shall review all applications for conditional use permits and plans for subdivisions of land and report thereon to the board.” Thus, the “approval authority” in Subdivision 5 is meant to be “final authority.”

Here, Kanabec County gave its Planning Commission “approval authority.” The court of appeals, however, incorrectly determined “approval authority” did not mean the authority to approve or deny. Rather, the court of appeals determined the Legislature only meant “final authority,” as stated in Subdivision 4, to be final authority to approve. But if the authority to approve does not include the authority

to deny, it cannot be “final,” because the matter cannot end with the Planning Commission. Moreover, the clause giving Kanabec County the authority to assign additional duties to a Planning Commission starts with the phrase “including but not restricted to.” This means it is broader than what is enumerated therein and it is not meant to be a complete list. The Legislature clearly intended a county board have the power to delegate those powers it saw fit to a planning commission, and the Kanabec County Board did so in this case. *See Cleveland v. Rice County*, 56 N.W.2d 641, 642 (Minn. 1952) (stating counties possess those powers implied as necessary to exercise expressed powers).

Kanabec County is not alone in its interpretation of this statute. An informal survey of counties throughout the State demonstrates a number of other counties follow the same procedure. This practice supports the Legislature’s intent to have Planning Commissions and Board of Adjustments. They are meant to be the initial public committee to hear the applications. They hold the public meetings and narrow the issues. These Commissions also have the inherent authority to discuss the projects with the applications and to negotiate issues “not related to zoning.” This saves County Boards, who are already dealing with other countywide issues, significant time and money because they can focus on the final plat after the conditions of the preliminary plat have been met. To interpret the Minnesota Statutes § 394.30, subd. 5 differently would cost taxpayers significant dollars and

would further burden County Boards. Accordingly, the Minnesota Court of Appeals' decision should be reversed.

IV. THE COURT OF APPEALS IMPROPERLY USED MINNESOTA STATUTES § 15.99 TO REGULATE COUNTIES' ABILITY TO DELEGATE AUTHORITY.

Minnesota Statutes § 15.99 is a harsh legislative remedy for municipal delay or indecision. *See Moreno v. City of Minneapolis*, 676 N.W.2d 1,6 (Minn. App. 2004) (characterizing remedy provided by § 15.99 as “harsh” and “extraordinary”), *overruled on other grounds by Breza v. City of Minnetrista*, 725 N.W.2d 106, 114 n. 16 (Minn. 2006). The Court should not broaden its scope beyond that required by statute.

Unfortunately, the Minnesota Court of Appeals incorrectly expanded Minnesota Statutes § 15.99 when it limited who may extend the initial 60-day deadline. These types of decisions are not legislative decisions, rather they are administrative decisions which should be handled by staff. *See Unger v. County of Dodge*. No. A06-1771, 2007 Minn. App. LEXIS 1033, at *8 (Minn. App. Oct. 16, 2007) (finding planning director properly sent out rejection letter). Significantly, it is common for counties to rely on staff as the initial gatekeeper of information. This allows the boards and commissions to act effectively and appropriately.

This is true regardless of whether it is an extension letter or rejection letter. It would be ridiculous to assume only the Planning Commission or County Board

can send out a rejection letter under Minnesota Statutes § 15.99, subd. 3(a), especially since the board or commission may not meet within the fifteen business day time frame. Moreover, this assumption would be contrary to case law which indicates the 60 days begins to run when the application is received by staff, as opposed to when it is received by the County Board or Commission. Therefore, the Minnesota Court of Appeals' decision must be reversed.

CONCLUSION

If allowed to stand, the court of appeals' decision in this case would fundamentally change the way counties conduct the subdivision and plat process in Minnesota. It would force counties to approve or deny both preliminary and final plats within 60 days or risk automatic approval under Minnesota Statutes §15.99. Moreover, it would create a conflict between Chapters 394 and 505 which would act to narrow the authority of the counties' planning commissions and zoning departments. This would create confusion and result in more litigation. Accordingly, AMC respectfully requests the Court reverse the Minnesota Court of Appeals' decision.

IVERSON REUVERS

Dated: February 25, 2008.

By 
Paul D. Reuvers, #217700
Jason J. Kuboushek, #304037
Attorneys for Amicus Curiae
Association of Minnesota Counties
9321 Ensign Avenue South
Bloomington, Minnesota 55438
Telephone: (952) 548-7200