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STATE OF MINNESOTA
IN SUPREME COURT

Calm Waters, LLC,

Respondent;

vs.

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

Petitioners.

BRIEF OF AMICUS CURIAE MINNESOTA COUNTY ATTORNEYS ASSOCIATION

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INTRODUCTION

Amicus Curiae Minnesota County Attorneys Association is an independent, voluntary organization of county attorneys throughout Minnesota dedicated to improving the quality of justice in the State.¹ Members of the Association accomplish this mission by developing consensus on legal and public policy issues of statewide significance. Individual members of the Association, in their role as elected County Attorneys, advise and represent county officials and zoning staff with regards to an endless variety of issues pertaining to land use administration, including the processing of subdivision applications. Therefore, Amicus Curiae presents a demonstrated history of advocating for the just and fair administration of justice balancing the interests of property owners while, simultaneously, protecting the health, safety, and general welfare of the public at large. Consequently, Amicus Curie has a strong investment in any decision of this Court impacting the administration of land use controls.

Amicus respectfully requests this Court to reverse the decisions of the Court of Appeals in each and every respect. As discussed in this Brief, the Court of Appeals erred in holding that preliminary plat applications are controlled by the timing requirements set forth in Minn. Stat. Sec. 15.99, Subd. 2(a). Additionally, the Court of Appeals erred in all other rulings, including that the County Environmental Services Director lacked authority to extend the time limits pursuant to Minn. Stat. Sec. 15.99, Subd. 3(f) and

¹ The Undersigned appears as Counsel for the Association, and authored this Brief in whole. The Undersigned is an Assistant Sherburne County Attorney. The Sherburne County Attorney's Office, which bore all costs and expenses in the preparation and distribution of this Brief, is a member of the Minnesota County Attorneys Association.

determine what was required to be included as part of the preliminary plat application. The ramifications of the Court of Appeal's decision, if not reversed by this Court, will detrimentally impact the abilities of county officials to properly exercise their authority and discretion to protect the public health and general welfare when considering plat applications. In this regard, the Minnesota County Attorneys Association agrees with and supports all arguments and authorities as set forth in the briefs filed on behalf of both the Appellant and Amicus Curiae Association of Minnesota Counties.

ARGUMENT

I. MINN. STAT. SEC. 15.99, SUBD. 2(a) DOES NOT APPLY TO PLAT APPLICATIONS.

1. Standard of Review:

This case presents the legal issue of whether Minn. Stat. Sec. 15.99 applies to plat applications filed with a county pursuant to Minn. Stat. ch. 505. This Court reviews questions of statutory construction *de novo*. Houston v. Int'l Data Transfer Corp., 645 N.W.2d 144, 149 (Minn. 2002).

2. The Statute:

Minn. Stat. Sec. 15.99, the so-called "60-day Rule," was enacted in 1995. See 1995 Minn. Laws Ch. 248, Art. 18, Sec. 1. Effective June 1, 2003, Subd. 1 of the statute was amended to define "request" as a "written application relating to zoning . . . submitted in writing to the agency on an application form provided by agency." 2003 Minn. Laws Ch. 41, Sec. 1. Additionally, Subd. 2 of the statute was amended as follows:

(a): Except as otherwise provided in this section, section 462.358, subdivision 3b, or 473.175, or chapter 505, and notwithstanding any other law to the contrary, an agency must approve or deny within 60 days a written request relating to zoning . . . for a permit, license, or other governmental approval of an action. . . .

Id. (new language underscored). Thus, in 2003, the Legislature added language that specifically exempted from the statute items “provided in chapter 505.”

This statute was designed to improve the efficiency and operation of government. Allen v. City of Mendota Heights, 694 N.W.2d 799, 802 (Minn. Ct. App. 2005), *rev. denied*. More specifically, Sec. 15.99 was enacted to establish deadlines for local governments to take action on *zoning applications*. Hans Hagen Homes, Inc., v. City of Minnetrista, 728 N.W.2d 536, 540 (Minn. 2007) (emphasis added). Sec. 15.99, Subd. 2, requires local units of government to accomplish two things before the response deadline: (1) approve or deny an application related to zoning, and (2) if denied, set forth in writing the reasons for the denial. Id. If not, the statute provides the penalty for failure to deny a request before the deadline is “approval of the request.” Id., Minn. Stat. Sec. 15.99, Subd. 2(a)² The statute requires a local government agency to take an individual approach, on a case-by-case basis, with regards to the specifics of each applicant’s specific zoning request. Am. Tower, L.P., v. City of Grant, 636 N.W.2d 309, 313 (Minn. 2001).

² That said, however, the penalty provision of the statute does not operate to approve any license, permit, or approval beyond the legal authority of the local government unit to grant. Breza v. City of Minnetrista, 725 N.W.2d 106, 114 (Minn. 2006).

(a): *Statutory Construction and Limitations:*

The automatic approval penalty as set forth in Sec. 15.99, Subd. 2(a) should be narrowly construed against its application. Hans Hagen Homes, 738 N.W.2d at 543. Several important public policies, and rules of construction, support this narrow, restricted interpretation. First, this Court has ruled that the decision to approve or deny a preliminary plat application must not be unreasonable, arbitrary or capricious. Hurre v. County of Sherburne, 594 N.W.2d 246, 249 (Minn. 1999). Yet, approval of a land use application as a matter of law because the agency failed to act in a timely manner results in approval without any reason and without the support of the majority of the planning commission and/or county board. Thus, automatic approval of preliminary plat applications under the penalty clause of Section 15.99, Subd. 2(a) are *per se* unreasonable, arbitrary and capricious. See Hans Hagen Homes, 728 N.W.2d at 544, n.4 (automatic city approval of conditional use permit under Sec. 15.99 penalty clause arbitrary, capricious and unreasonable).

Second, the automatic penalty provision must be construed narrowly because it conflicts with the affirmative responsibilities placed on a local government unit when dealing with a land use application. Id. at 543. These affirmative responsibilities include published notice, a public hearing, input from neighboring property owners, and due consideration by both the county planning commission and the county board. Id. at 543-44.

Third, the statute is penal in nature, as it calls for automatic approval as the result of untimely agency action, and statutes that are penal in nature are construed narrowly against the penalty. *Id.*, citing Brekke v. THM Biomedical, Inc., 683 N.W.2d 771, 774 (Minn. 2004) and Chatfield v. Henderson 252 Minn. 404, 410, 90 N.W.2d 227, 232 (1958). In fact, the Minnesota Court of Appeals characterized the statute as a harsh legislative remedy for governmental delay or indecision. See Moreno v. City of Minneapolis, 676 N.W.2d 1, 6 (Minn. Ct. App. 2004) (characterizing remedy provided by Sec. 15.99 as “harsh” and “extraordinary), *overruled on other ground by Breza*, 725 N.W.2d at 114, n. 16.

Fourth, another relevant rule of construction is the presumption that the legislature intends to favor the public interest against any private interest. Minn. Stat. Sec. 645.17(5)³.

Finally, the legislature does not intend a result that is absurd or unreasonable. Minn. Stat. Sec. 645.17(1).

Thus, the timing and automatic penalty provisions as set forth in Sec. 15.99 must be narrowly construed and in favor of county government. To hold otherwise directly

³ In this regard, since the platting of large tracts of undeveloped or agricultural land into multiple lots for residential or mixed residential-commercial use often impacts deforestation, ground and surface water quality, surface water runoff, and air quality, plats are subject to the responsible government unit’s strong interests in preserving the environment and natural resources. See Domtar, Inc. v. Niagara Fire Ins. Co., 533 N.W.2d 25, 34 (Minn. 1995), *reh. denied* (“Minnesota’s interest in conserving natural resources, decreasing environmental pollution and protecting the environment are ‘unquestionably . . . state interest of great magnitude’”) (citation omitted); see also Minn. Stat. Sec. 116B.01 (2006) “it is in the public interest . . . to protect air, water, land, and other natural resources located within the state from pollution, impairment, or destruction.”

contradicts many stated public purposes, including (1) that land use decisions must not be unreasonable, arbitrary, or capricious; (2) penal statute must be construed narrowly against the penalty, (3) the public interests of county government, charged with protecting the public welfare by ensuring orderly and well-planned growth and development, must be granted precedent over private interests; and (4) this Court's express mandate that every land use application must be carefully considered with due regard to its individual characteristics. Thus, the statute must be read narrowly and against the automatic approval of preliminary plat applications to avoid an absurd and unreasonable response.

In this case; however, the Court of Appeals held that Respondent's preliminary plat application was approved as a matter of law because preliminary plat applications are subject to the timing and penalty provisions of Sec. 15.99. This ruling was error, for two reasons. First, the statute, again by its express language, excludes applications under Minnesota Statutes ch. 505 which encompasses preliminary plat applications filed with a county. Second, the statute, by its express terms, applies to "zoning" requests and a preliminary plat application, under statute, is not a zoning request. Thus, the Court of Appeals erred that Respondent's preliminary plat application was approved as a matter of law.

(b): Statutory Plain Language:

As noted, in 2003, the Legislature amended Sec. 15.99 to specifically excluded matters controlled by Minn. Stat. ch. 505 by adding the language "*Except as otherwise provided in . . . chapter 505 . . .*" (emphasis added). Thus, under the plain language of

Sec. 15.99, matters controlled by chapter 505 are outside the scope of the statute. Simply put, as plat applications to counties are authorized by chapter 505, preliminary plat applications are excluded from the statute.

A county's authority to control the platting process derives from Minn. Stat. Sec. 505.09, Subd. 1, which states:

The county board of any county shall have power to control and regulate the platting of subdivision of land and the laying out of streets and other public ways without the boundaries of municipalities.

The issue becomes how to interpret the phrase "except as otherwise provided in chapter 505." "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. Sec. 645.16 (2006). When interpreting a statute, this Court first determines whether the statute's language, on its face, is ambiguous. Am. Tower, L.P., 636 N.W.2d at 313. If the statutory language is plain and unambiguous, the Court must give it plain meaning. Wynkoop v. Carpenter, 574 N.W.2d 422,425 (Minn. 1998) (citation omitted). Only if a statute's meaning is ambiguous should this Court look outside the statutory text to ascertain legislative intent. Id. In determining whether any particular disputed language in a statute has a "plain meaning," courts also look to the full context of the language in the act or statutory provision in order to properly ascertain the meaning from context. Advantage Capital Management v. City of Northfield, 664 N.W.2d 421, 426 (Minn. Ct. App. 2003), *rev. denied*; *citing* Christiansen v. Dep't of Conservation, Game, and Fish, 285 Minn. 493, 499-500, 175 N.W.2d 433, 437 (1970).

The language “except as provided in chapter 505” is both clear and, on its face, unambiguous. The statute clearly states that applications which arise pursuant to chapter 505 – that is, plat applications under county jurisdiction – are excluded. Thus, reading Sec. 15.99 and ch. 505 together, the plain meaning of the 2003 amendments is that plat applications are not subjected to the time limits and automatic approval penalty of the statute⁴. See Allen, 694 N.W.2d at 803 (Sec. 15.99 must be read in conjunction with, and not independent from, other state statutes which set forth a process which must occur before a government agency may properly take action with regards to a land use application).

Additionally, construing Minn. Stat. Sec. 15.99 as excluding plat applications is the only plain meaning of the statute which is not at variance with very important public policies with regards to county land use decisions. A county is charged with carrying on land use planning to promote the health, safety, morals, and general welfare of the community. Minn. Stat. Sec. 394.21, Subd. 1. With regards to the powers conferred upon a county by Chapter 505, the Minnesota Legislature also provided:

The powers herein conferred upon the board of county commissioners shall be construed as an addition to existing powers and not as an amendment to or repeal thereof . . .

Minn. Stat. Sec. 505.12. Additionally, a county authority when faced with a subdivision application not only possesses the powers expressly delegated to it by statute but also

⁴ This conclusion is directly supported by the Minnesota House of Representatives House Research Department, which published that Minn. Stat. Sec. 15.99 does not apply to the plat review process under chapter 505 for applications made on or after June 1, 2003. See <http://www.house.leg.state.mn.us/hrd/issinfo/ss60day.htm>.

those powers fairly implied as necessary to exercise those expressed powers. Cleveland v. County of Rice, 56 N.W.2d 641, 642 (Minn. 1952); Agra Resources Co-op v. Freeborn County Bd. of Commissioners, 682 N.W.2d 681, 684 (Minn. Ct. App. 2004). Thus, a county must employ both express and implied powers to protect the public interests in any land use decision.

The denial or approval of a preliminary plat application is a quasi-judicial administrative decision which a county properly makes only after receiving and weighing evidence, making fact findings, and applying prescribed standards. Hurrel, 594 N.W.2d at 249. Therefore, apart from both broad and express authorities to protect the public interest, both this Court and the Legislature have also granted counties a high degree of deference and discretion in land use administration⁵.

Interpreting Sec. 15.99, or any other statute, as placing unnecessary and unreasonable time restrictions on a county's ability to carefully consider and make a proper quasi-judicial determination regarding a preliminary plat application creates an absurd and unreasonable result because of the complexity of the subdivision process. What separates and distinguishes a plat application for a subdivision from other zoning applications is the complexity and expanse of the application process. Minn. Stat. Sec. 505.021 sets forth some of the requirements for a plat application. For example, a plat must include a complete and accurate description of each tract of land being platted; a

⁵ The degree of discretion to which local units of government are vested with regards to land planning is further demonstrated by the processes for granting a variance or conditional use permit. See Minn. Stat. Sec. 394.22, Subds. 7 and 10.

dedication statement; identification of holders of interest; plat boundaries; all survey and mathematical information and data necessary to locate and retrace all boundary lines and monuments, with distances expressed in feet and hundredths of a foot with a tolerance not to exceed 2/100 of a foot; a depiction of all public ways within the plat; all easements; all water boundaries; and all wetlands.

A plat must also contain a certificate by a land surveyor. Minn. Stat. Sec. 505.021, Subd. 9(a). In addition, any proposed preliminary plat which includes lands abutting upon an existing, established or proposed trunk highway shall first be presented to the State Commissioner of Transportation for written comments and recommendations. Minn. Stat. Sec. 505.03, Subd. 2(a). The County must allow the Commissioner of Transportation at least 30 days to submit written comments and recommendations. Id⁶.

Additionally, any plat which proposes the vacation of any street, alley, or public ground which abuts upon or is adjacent to any public waterway requires notice to the Minnesota Department of Natural Resources and a separate hearing procedure. Minn. Stat. Sec. 505.14. In fact, notice of the vacation petition must be served at least 60 days before the term at which it shall be heard. Id.

Also, Minn. Stat. Sec. 505.03, Subd. 3, authorizes counties to employ qualified individuals to check and verify the survey and plats, determine the suitability of the plat

⁶ Minn. Stat. Sec. 505.03, Subd. 2(c) states that the 30-day time limit for a county engineer to provide written comments to a city or township regarding a plat bordering a county road, highway, or state-aid highway “shall not extend the time deadlines for preliminary or final approval as required under this section, section 15.99, or 462.358, or any other law. . .” This provision is limited in application to city or township plats, and thus is of no consequence in this case.

from the standpoint of community planning, and make a full report of their findings to the county board. *See also* Minn. Stat Sec. 505.021, Subd. 9(5)(b)-(e) (plat shall contain certificate of approval from county surveyor, county recorder, and proper county official certifying all taxes are paid). In this regard, counties routinely require preliminary plats to be presented to various county departments and officials for review and comments, including the county engineer, surveyor, forester, auditor/treasurer, recorder, economic development authority, technical review board, park and recreation board, and orderly annexation board. Review by various individuals with expertise is the only way for a county board to make a carefully considered decision which not only promotes orderly and regulated development but also ensures the proposed subdivision is consistent with all other applicable land-use regulations.

The Legislature mandated that county commissioners adopt regulations governing the platting of subdivisions of land to provide for such reasonable conditions such as the location and dimension of streets, utilities, setbacks, grading, and drainage. Minn. Stat. Sec. 505.11. Counties, based upon this and other expressed authorities, may and do, by ordinance, require other steps in the plat review process to protect the public interest. These procedures include review by a county planning commission, obtaining comment letters from the respective township, requiring comments from the zoning department staff, approval by the county engineer and/or surveyor, and conducting public hearings after published notice. Other information a county may require of any subdivision applicant, in order to adequately assess the proposed development, include:

- (i) Property boundary survey;
- (ii) Topographic survey;
- (iii) Wetlands delineation survey;
- (iv) Wetland mitigation plan
- (v) Preliminary grading and utility plan
- (vi) Septic plans, and existing well tests
- (vii) Environmental reports required by the Minnesota Environmental Quality Board;
- (viii) FEMA flood data;
- (ix) Survey of significant trees;
- (x) Park land dedication plan;
- (xi) Proposed zoning classification plan; and
- (xii) Master plan for entire development.

The subdivision application process is complex and time consuming. What must not be forgotten is that, throughout all the different steps in the plat review process, a county must act to protect the public health and welfare by conducting a thorough and complete review process. Therefore, it is not simply the complexity of the plat application process, but a county's obligations in that process as well that makes it unreasonable and against public policy to interpret Sec. 15.99 as placing unreasonable time restraints on the plat review process. As noted, a county's decision with regards to a plat must be reasonable and not arbitrary or capricious, *See Hurrle* 594 N.W.2d at 249. In deciding whether or not to approve a preliminary plat a county must carefully consider

the individual characteristics of the application, receive input from a number of knowledgeable experts, analyze and review numerous reports, publish notice, conduct a public hearing, receive input from neighboring property owners, present the issue before the county planning commission and/or the county board; weigh evidence, and make detailed factual findings – and complete all these steps while balancing the public health, safety and welfare. Thus, to construe the language of Sec. 15.99 as requiring that counties must finalize consideration of this complicated process with important public welfare ramifications within 60 days is simply unreasonable, against public policy, and contrary to legislative intent⁷.

Finally, the difference between a preliminary plat and a final plat must also be considered in this regard. A final plat is designed to address concerns raised in response to the preliminary plat application by incorporating the specific changes or modifications upon which the county conditioned approval of the preliminary plat. A final plat does not require a separate application or fee. As a result, including applications under chapter 5095 within the realm of Sec. 15.99, Subd. 2(a) would result in the inevitable conclusion that a local government unit must approve or reject *both* the preliminary *and* final plat application within 60 days or run the risk of automatic approval. Such a result is clearly unreasonable, given the complexity of the platting process.

⁷ Obviously, a county cannot address this issue by simply passing an ordinance automatically grafting time extension onto each plat application; as such ordinances are void and ineffective. Am. Tower, L.P., 636 N.W.2d at 313.

3. Zoning:

The statute, as currently drafted, requires an agency to approve or deny within 60 days a written request related to “zoning.” Minn. Stat. Sec. 15.99, Subd. 2(a). Likewise, the statute defines “request” as:

A written application related to zoning, septic system, watershed district, soil and water conservation district review, soil and water conservation district review, or the expansion of the metropolitan urban service area for a permit, license, or government approval of an action.

Minn. Stat. Sec. 15.99, Subd. 1(c). A preliminary plat application is generally not related to septic systems, watershed district review, soil and water conservation district review, or the metropolitan service area. Thus, under the plain language of the statute, the only rationale to hold that a preliminary plat application is subject to the statute is to define such an application as a request related to “zoning.” As will be demonstrated, under Minnesota law, zoning and subdivision regulations are entirely separate and distinct. Consequently, a preliminary plat application is not a written request related to zoning.

An “official control” is defined as “legislatively defined and enacted policies, standards, precise detailed maps, and other criteria, all which control the physical development of . . . a county.” Minn. Stat. Sec. 394.22, Subd. 6. Official controls are the means of translating into ordinances all or any part of the general objectives of the comprehensive plan. Id.

Minnesota law establishes different forms of official controls. One form of official control is a zoning ordinance. Minn. Stat. Sec. 394.25, Subd. 2. The purposes of a zoning ordinance as an official control are statutorily defined as follows:

. . . designating or limiting the location, height, width, bulk, type of foundation, number of stories, size of, and the specific uses for which dwellings, buildings, and structures may be erected or altered; the minimum and maximum size of yards, courts, or other open spaces; setback from existing roads and highways . . . ; protective measures necessary to protect the public interest including but not limited to controls relating to appearance, signs, lighting, hours of operation and other aesthetic performance characteristics including but not limited to noise, heat, glare, vibration and smoke; . . . parking . . . ; and to avoid too great concentration or scattering of the population.

Minn. Stat. Sec. 394.25, Subd. 3⁸. In contrast, the legislature specifically designated that other procedures and standards used in land development, including the subdividing of land and the approval of land plats, as forms of “specific controls pertaining to other subjects.” Minn. Stat. Sec. 394.25, Subd. 7(a). This further distinction between a zoning ordinance and the subdivision approval process, as a separate and distinct form of official control from a zoning ordinance, is further demonstrated by Minn. Stat. Sec. 394.26. This statute, which determines which adjacent landowners receive direct, mailed notice of public hearings pertaining to land use applications, states:

In the case of all other official controls [apart from variances and conditional uses], including but not limited to zoning regulations *and* subdivision regulations . . .

Minn. Stat. Sec. 394.26, Subd. 2(c) (emphasis added). Thus, the Legislature, in Minnesota Statutes Ch. 394, clearly distinguished and separated zoning ordinances and regulations pertaining to subdivisions as two entirely separate and distinct forms of

⁸ When this statutory definition of the effects of a zoning ordinance is considered, Appellant’s description of a zoning ordinance as simply implementing controls pertaining to “performance characteristics” for buildings and structures is very appropriate. *Brief of Appellant at 13 – 14*

official controls. Thus, under statute, a preliminary plat application is not a zoning request.

In Advantage Capital Management, *supra*, the Court of Appeals, in holding that a building permit is not a “written request related to zoning” and thus not subject to Minn. Stat. Sec. 15.99, interpreted the statute narrowly by holding that it did not apply to “all land-use decisions that might be tangentially connected to zoning.” 664 N.W.2d at 427. The Court of Appeals further defined a “written request related to zoning” as “a request to conduct a specific use of land within the framework of the regulatory structure relating to zoning or, in other words, a zoning application.” *Id.* Thus as correctly cited in Appellant’s brief, a preliminary plat application is simply an application to take one large parcel of land and turn it into more than one smaller, separate parcels, not a request to conduct a specific use of that land. *Brief of Appellant at 14.* A subdivision ordinance uses present specifications and focuses more on the specific details of land development rather than on the types of uses being proposed. Thus, a preliminary plat application, as part of a subdivision regulation, is not a “written request related to zoning” and, consequently, is not subject to the time requirements of Sec. 15.99, Subd. 2(a).

II. COUNTY AGENTS HAVE INHERENT AUTHORITY TO EXTEND TIME LIMITS AND DETERMINE PLAT APPLICATION REQUIREMENTS.

If this Court decides that Minn. Stat. Sec 15.99 does apply to preliminary plat applications, at least two of the Court of Appeal’s other holdings merits particular attention. First, the Court of Appeals also held that the County Environmental Services Director did not have authority to extend the 60-day period pursuant to Minn. Stat. Sec.

15.99, Subd. 3(f)⁹. That Subdivision states “an agency may extend the time limit.” As the Court of Appeals correctly observed, the statute defines “agency” as including a county. *See* Minn. Stat. Sec. 15.99, Subd. 1(b). As noted, the Legislature granted counties the expressed authority to carry on planning activities for the purpose of promoting the health, safety, morals, and general welfare of the community. Minn. Stat. Sec. 394.21, Subd. 1. With regards to plat applications, the Legislature granted counties the power to regulate and control the subdivision of land outside the boundaries of municipalities. Minn. Stat. Sec. 505.09, Subd 1. Nowhere did the Legislature place limits as to how a county administers the plat application process.

Thus, the Court of Appeal’s conclusion that the Kanabec County Environmental Services Director, the appointed agent of the “agency,” was without authority to extend the 60-day time period lacked legal authority. That holding is also contrary to the Legislative intent of allowing a county flexibility and discretion in determining land use matters consistent with the public interest. There is no statute mandating that all ministerial steps in a county’s land use application review process must be expressly set forth either in state statute or a county ordinance. Indeed, Sec. 15.99, Subd. 3(f) states that the “agency” which received the application may extend the time limit; the statute places no restrictions on how the agency determines which actual person within the

⁹ It is important to note that there is nothing in the Court of Appeals opinion to suggest that Kanabec County lack a valid reason for exercising its rights to extend the time limit pursuant to Sec. 15.99, Subd. 3(f). Also, there is nothing in the record suggesting the Environmental Services Director acted outside the scope of her assigned duties by notifying Respondent of the County’s extension.

agency is authorized to impose the extension. Thus, the Court of Appeal's ruling that a county agent may not, on the county's behalf, exercise the county's statutorily-granted authority to extend the 60-day time limit absent an explicit delegation of authority by the county is unsupported by law and contrary to public policy.

Likewise, the Court of Appeal's holding that Kanabec County could not require a township approval letter as part of the application, in the absence of direct authorization from a statute or county ordinance, is also without merit. The statute clearly provides that the county agency determines and provides the application form itself. Minn. Stat. Sec. 15.99, Subd. 1(c). Yet, the statute does not place limit what the application form may or may not require. Additionally, the Legislature mandated that a county must give written notice of any public hearing regarding a proposed subdivision regulation to the board of township supervisors of any township located within two miles of the affected property. Minn. Stat. Sec. 394.26, Subd. 2(c). Thus, the Legislature plainly intended for counties to consider township concerns in making plat decisions.

Limiting the information that may be required of a preliminary plat applicant to items specifically authorized by ordinance is simply unreasonable. This holding, in effect, places county zoning officials in the impossible position of having to fully anticipate, in advance, and address in ordinances every possible contingency and requirement which might arise for every possible future preliminary plat application regardless of the size, type, complexity, or location of the proposed development. It interferes with the public policy of granting full information to the county board or planning commission when making final decisions in the public interest regarding

preliminary plat applications. Thus, the Court of Appeal's decision unnecessarily restricts and impedes a county's ability to properly make reasonable, deliberate decisions consistent with the public interest with regards to preliminary plat applications.

CONCLUSION

For the aforementioned reasons, Amicus Curiae Minnesota County Attorneys Association respectfully requests an Order from this Court reversing the decision of the Minnesota Court of Appeals in each and every respect.

RESPECTFULLY SUBMITTED: **JOHN KINGREY**
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