

MINNESOTA
NO. A05-1686

State of Minnesota
In Court of Appeals

Hans Hagen Homes, Inc.,

Respondent,

v.

City of Minnetrista,

Appellant.

**BRIEF AND APPENDIX OF
APPELLANT CITY OF MINNETRISTA**

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TABLE OF CONTENTS

| | |
|---|----|
| TABLE OF AUTHORITIES | ii |
| STATEMENT OF ISSUES | 1 |
| STATEMENT OF THE CASE | 2 |
| STATEMENT OF FACTS | 3 |
| ARGUMENT..... | 6 |
| I. Standard of Review | 6 |
| II. Minn. Stat. §15.99 cannot compel approval of the Application when the City denied the Application within the time limit set by Minn. Stat. 15.99, made written findings and Hans Hagen had notice of the decision within the time limit | 6 |
| III. Minn. Stat. § 15.99 cannot compel approval of Respondent’s “Conceptual Site Plan” submitted with its Application when no approval was sought for the “Conceptual Site Plan” and the “Conceptual Site Plan” was not a request under Minn. Stat. § 15.99, subd. 1(c)..... | 13 |
| CONCLUSION | 15 |
| INDEX TO APPENDIX..... | 16 |

TABLE OF AUTHORITIES

CASES

| | |
|--|----------|
| <u>Arizonans for Official English v. Arizona,</u> 520 U.S. 43 (1997)..... | 12 |
| <u>Brandt v. Hallwood Management Co.,</u> 560 N.W.2d 396 (Minn. Ct. App. 1997)..... | 9, 12 |
| <u>Concept Properties, LLP v. City of Minnetrista,</u> 694 N.W.2d 804 (Minn. Ct. App. 2005)..... | 11 |
| <u>Frost-Benco Elec. Ass’n v. Minnesota Pub. Utils. Comm’n,</u> 358 N.W.2d 639 (Minn. 1984) | 6 |
| <u>Hubred v. Control Data Corp.,</u> 442 N.W.2d 308 (Minn. 1989) | 6 |
| <u>Lefto v. Hoggsbreath Enters., Inc.,</u> 581 N.W.2d 855 (Minn. 1998) | 6 |
| <u>Manco of Fairmont, Inc. v. Town Board of Rock Dell Township,</u> 583 N.W.2d 293 (Minn. Ct. App. 1998)..... | 1, 7, 10 |
| <u>Minnesota Towers, Inc. et al. v. City of Duluth,</u> No. 04-5068, 2005 WL 1593044 (Minn. Dist. Ct. July 1, 2005) | 12, 13 |
| <u>Moreno v. City of Minneapolis,</u> 676 N.W.2d 1 (Minn. Ct. App. 2004)..... | 1, 7 |
| <u>Offerdahl v. University of Minnesota Hospitals and Clinics,</u> 426 N.W.2d 425 (Minn. 1998) | 6 |
| <u>Tollefson v. City of Elk River,</u> 665 N.W.2d 554 (Minn. Ct. App. 2003)..... | 1, 7 |
| <u>Wallin v. Letourneau,</u> 534 N.W.2d 712 (Minn. 1995) | 6 |

STATUTES

| | |
|--|------------------|
| Minn. Stat. § 15.99, subd. 1(c) | 1, 13, 14 |
| Minn. Stat. § 15.99, subd. 2 (c) | 1, 9, 10, 11, 12 |
| Minn. Stat. § 15.99, subd. 2(a) | passim |
| Minn. Stat. § 15.99, subd. 3(c) | 11, 12 |
| Minn. Stat. § 462.351 | 10 |
| Minn. Stat. § 462.355 | 10 |
| Minn. Stat. § 473.851 | 10 |
| Minn. Stat. § 473.858 | 10 |
| Minn. Stat. § 480A.08, subd. 3..... | 12 |
| Minn. Stat. § 645.17(4)..... | 10 |

STATEMENT OF ISSUES

1. MINN. STAT. § 15.99 CANNOT COMPEL APPROVAL OF THE APPLICATION WHEN THE CITY DENIED THE APPLICATION WITHIN THE TIME LIMIT SET BY MINN. STAT. § 15.99, MADE WRITTEN FINDINGS AND HANS HAGEN HAD NOTICE OF THE DECISION WITHIN THE TIME LIMIT.

The District Court denied the City's motion for summary judgment, finding that while the City denied Hans Hagen's request at two public hearings, Hans Hagen had actual notice of the denial and the City adopted written reasons for the denial, all within the statutory time limit, the City's failure to mail a copy of its decision to Hans Hagen compelled approval of the Application.

Minn. Stat. § 15.99, subd. 2(a)(c)

Manco of Fairmont, Inc. v. Town Board of Rock Dell Township, 583 N.W.2d 293, 296 (Minn. Ct. App. 1998)

Tollefson v. City of Elk River, 665 N.W.2d 554, 558 (Minn. Ct. App. 2003)

Moreno v. City of Minneapolis, 676 N.W.2d 1, 6 (Minn. Ct. App. 2004)

2. MINN. STAT. § 15.99 CANNOT COMPEL APPROVAL OF HANS HAGEN'S "CONCEPTUAL SITE PLAN" SUBMITTED WITH ITS APPLICATION WHEN NO APPROVAL WAS SOUGHT FOR THE "CONCEPTUAL SITE PLAN" AND THE "CONCEPTUAL SITE PLAN" WAS NOT A REQUEST UNDER MINN. STAT. § 15.99, SUBD. 1(c).

The District Court denied Respondent's motion for summary judgment, finding that Respondent had not sought approval for its "Conceptual Site Plan" and consequently, Respondent's "Conceptual Site Plan" was not automatically approved.

Minn. Stat. § 15.99, subd. 1(c)

STATEMENT OF THE CASE

Plaintiff-Respondent Hans Hagen Homes, Inc. (“Hans Hagen”) commenced this action on March 28, 2005 seeking a writ of mandamus to compel the City of Minnetrista (“City”) to approve Hans Hagen’s application to rezone property from Rural Agricultural to R-4-PUD and amend its Comprehensive Plan by adjusting the Municipal Urban Services Area (“MUSA”) line to allow sewer service to the property. (“Application”). A.14-19; A.23-38.

Both the City and Hans Hagen moved for summary judgment. The City argued that it was entitled to summary judgment because it fully complied with the purposes of Minn. Stat. § 15.99 by denying Hans Hagen’s Application with written reasons for denial within the time limit. Hans Hagen argued that the City’s failure to mail the written reasons for denial resulted in automatic approval of its Application. Hans Hagen also sought automatic approval of its “Conceptual Site Plan.”

Despite the City’s full compliance with the purpose of Minn. Stat. § 15.99, the District Court granted Hans Hagen’s motion in part and denied it in part by Order dated July 14, 2005. The District Court ordered the City to approve Hans Hagen’s Application for rezoning and to amend its Comprehensive Plan. The District Court found that Hans Hagen had not made an application for approval of its “Conceptual Site Plan” and denied Hans Hagen’s motion for summary judgment to approve the “Conceptual Site Plan.” A.2-13. This appeal of the denial of the City’s motion for summary judgment followed.

STATEMENT OF FACTS

The City has adopted a Comprehensive Plan to guide development within the City. A.130, ¶4. The Comprehensive Plan was most recently updated in 1999 and the same was approved by the Metropolitan Council. A.130, ¶5. The Comprehensive Plan is currently scheduled to be updated in 2007-2008. A.130, ¶6; A.81.

On or about May 18, 2004, Hans Hagen submitted its Application for Comprehensive Plan amendment and rezoning. A.84-99. The land Hans Hagen seeks to rezone consists of six parcels of land within the City containing approximately 220 acres located south of State Highway 7, east of Highland Drive, and west of Oak Road (the "Subject Property"). A.94. In its Application, Hans Hagen specifically requested that the City rezone the Subject Property from Rural Agriculture to R-4-PUD. A.94. Hans Hagen also requested a Comprehensive Plan amendment adjusting the MUSA line to provide public services to the Subject Property. A.94. Along with its Application, Hans Hagen submitted a drawing entitled "Conceptual Site Plan" as an example of what could be built on the Subject Property in the event its Application was approved, but did not file an application for Site Plan approval. A.99; A.107, p. 4, 1.2-9.

In a letter dated June 30, 2004, the City requested an extension of time in which to make a decision on Hans Hagen's Application until September 25, 2004. A.130, ¶7. By letter dated July 26, 2004, Hans Hagen agreed to extend the 60-day time limit prescribed by Minnesota Statute § 15.99 to November 30, 2004, to allow the City more time to make a decision on its Application. A.129.

Prior to the October 4, 2004 City Council meeting, the City Planner provided a report to the City Council concerning Hans Hagen's Application. A.75-83. On October 4, 2004, the City Council held a public hearing on the Application at which Hans Hagen's representative made a presentation regarding the Application. A.100-122. At the public hearing, both the City Planner and Hans Hagen's representative stated that the matter before the City Council was Hans Hagen's Application for Comprehensive Plan amendment and rezoning of the Subject Property. A.107, p. 4, l. 8-9. The drawing labeled "Conceptual Site Plan" attached to the Application was for demonstrative purposes only. No application was made on the City's application form for "Conceptual Site Plan" approval. A.75; A.107, p.4. Following Hans Hagen's presentation, public comments and City Council discussion, a motion was made and carried to deny the Application because the proposal was not consistent with the Comprehensive Plan and further studies were needed on traffic and other issues. A.105; A.122, p.64, l.3-19.

On October 18, 2004, at the next regularly scheduled meeting of the City Council, the City Council approved the minutes of the October 4, 2004 meeting and also adopted Resolution No. 89-04 (the "Resolution") denying the Application. A.123-128. The Resolution included the following reasons for denial:

- (i) the Subject Property is located in an area of the City which is not currently within the MUSA and is not designated for development at urban densities;
- (ii) the Subject Property is currently zoned A which permits 10 acre zoning for single family dwellings and could be subdivided under the current zoning and comprehensive plan to allow up to 23 single family dwellings;
- (iii) the comprehensive plan continues to reflect the City's vision for the Subject Property and there is no compelling reason to amend the plan;
- (iv) development of the Subject Property would increase the already heavy traffic on TH 7;

- (v) the Subject Property is not the appropriate area for more development at this time;
- (vi) any decision regarding the development of the Subject Property should be made in connection with a review of the entire comprehensive plan, not a small isolated area; and
- (vii) the City will have the opportunity to consider development of the Subject Property when the comprehensive plan is next revised in 2008.

A.125-128. The minutes of the October 18, 2004 City Council meeting were approved on November 3, 2004, the next City Council meeting. A.131, ¶10. The minutes of both the October 4, 2004 and October 18, 2004 City Council meetings were posted on the City's website prior to November 30, 2004. A.131, ¶11. A copy of the Resolution was available from City Hall within 24 to 48 hours after the October 18, 2004 City Council meeting. A.131, ¶12.

After the expiration of the November 30 deadline, Hans Hagen requested a copy of the Resolution. Consistent with the request, the City mailed a copy of the Resolution on or about December 9, 2004. A.131, ¶13. Hans Hagen initiated this lawsuit on March 28, 2005, claiming that it was entitled to approval of its Application by default due to alleged violations of Minn. Stat. § 15.99. A.14-20.

ARGUMENT

I. Standard of Review

On appeal from a summary judgment, the Court of Appeals is to determine whether any genuine issue of material fact exists and whether the District Court erred in applying the law.¹ Offerdahl v. University of Minnesota Hospitals and Clinics, 426 N.W.2d 425, 427 (Minn. 1998).

A reviewing court is not bound by and need not defer to a district court's decision on a purely legal issue. Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n, 358 N.W.2d 639, 642 (Minn. 1984). A reviewing court need not defer to the district court's application of the law when the material facts are not in dispute as in this case. Hubred v. Control Data Corp., 442 N.W.2d 308, 310 (Minn. 1989). When the district court grants summary judgment based on the application of a statute to undisputed facts, the result is a legal conclusion, reviewed de novo by the appellate court. Lefto v. Hoggsbreath Enters., Inc., 581 N.W.2d 855, 856 (Minn. 1998) (citing Wallin v. Letourneau, 534 N.W.2d 712, 715 (Minn. 1995)).

II. **Minn. Stat. § 15.99 cannot compel approval of the Application when the City denied the Application within the time limit set by Minn. Stat. § 15.99, made written findings and Hans Hagen had notice of the decision within the time limit.**

There is no dispute that the City made the required decision in a timely fashion under Minn. Stat. § 15.99, adopted written findings within that time frame and that Hans Hagen had actual notice of the denial of the Application. Notwithstanding the clear

¹ Hans Hagen did not allege any fact disputes.

compliance with the timing requirements of the statute, the District Court granted Hans Hagen's motion for summary judgment based on the failure to mail the written Resolution until 9 days after the November 30th deadline. While the District Court properly stated that the purpose of Minn. Stat. § 15.99 is to ensure timely land-use decisions (A.9), the Court then ignores that fundamental principal and relies on an overly broad misreading of Minn. Stat. § 15.99 to support its grant of summary judgment.

Minn. Stat. § 15.99, subd. 2(a) requires that "an agency must approve or deny within 60 days a written request relating to... governmental approval of an action... Failure of an agency to deny a request within 60 days is approval of the request." Minn. Stat. § 15.99, subd. 2(a). Minnesota Courts have consistently held that "...[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. Unless the applicant agrees to allow the government a longer period of time, the ...time limit in subdivision 2 [applies]..."

Manco of Fairmont, Inc. v. Town Board of Rock Dell Township, 583 N.W.2d 293, 296 (Minn. Ct. App. 1998); Moreno v. City of Minneapolis, 676 N.W.2d 1, 6 (Minn. Ct. App. 2004); see Tollefson v. City of Elk River, 665 N.W.2d 554, 558 (Minn. Ct. App. 2003).²

Here, the parties agreed that the City's decision on its Application must be given no later

² The cases were decided before Minn. Stat. § 15.99 was amended in 2003. Subdivision 2 of the pre-2003 statute, contained the automatic approval penalty and its language, as it relates to the penalty, is identical to the current Subdivision 2(a) of Minn. Stat. § 15.99. In Manco, the court held that Subdivision 2 was a mandatory provision because it was the only section that contained a penalty for non-compliance. In the 2003 amendment, the Legislature did not add any new or additional penalty sections to Minn. Stat. § 15.99.

than November 30, 2004 and any decision on or before November 30, 2004 was timely under Minn. Stat. § 15.99.

The City Council met to consider Hans Hagen's Application on October 4, 2004, at which time Hans Hagen's representative made a presentation concerning its Application. After Hans Hagen's presentation, community comments and council discussion, the City Council moved to deny Hans Hagen's Application because the proposed use was not within the Comprehensive Plan and because additional traffic study was needed. A.100-105; A.122, p.64, 1.3-19. Hans Hagen's representative was present at the meeting and had actual notice of the City's denial. At the next regularly scheduled meeting of the City Council on October 18, 2004, the City Council adopted the Resolution containing written findings consistent with the denial that had taken place on October 4. Thus, the City Council denied Hans Hagen's Application, at the latest, approximately a month and a half before the agreed upon deadline. In short, the City did not "take too long" to decide and fully complied with the purpose of Minn. Stat. § 15.99.

Even though the City denied Hans Hagen's Application within the statutory time limit, provided written reasons for the denial and Hans Hagen was aware of the denial, the District Court granted Hans Hagen's motion for summary judgment because the City did not mail a copy of its written reasons for denial until after November 30, 2005. A.12. Contrary to the District Court's reasoning, neither the language of Minn. Stat. § 15.99, nor the cases relied upon, support the conclusion that the draconian penalty of automatic approval should be imposed upon the City.

The District Court relied on the language in Minn. Stat. § 15.99, subd. 2 (c) to support its contention that the failure to mail within the statutory time limit results in automatic approval. However, unlike Subdivision 2(a) of Minn. Stat. § 15.99, which specifically provides that “failure to deny a request [for City action] within 60 days” results in automatic approval of the request, Subdivision 2(c) contains no penalty provision. Consequently, unlike non-compliance with Subdivision 2(a), non-compliance with Subdivision 2(c) does not result in approval of Hans Hagen’s Application by default. Subdivision 2(c) of Minn. Stat. § 15.99 provides:

Except as provided in paragraph (b), if an agency, other than a multimember governing body, denies the request, it must state in writing the reasons for the denial at the time that it denies the request. If a multimember governing body denies a request, it must state the reasons for denial on the record and provide the applicant in writing a statement of the reasons for the denial. If the written statement is not adopted at the same time as the denial, it must be adopted at the next meeting following the denial of the request but before the expiration of the time allowed for making a decision under this section. The written statement must be consistent with the reasons stated in the record at the time of the denial. The written statement must be provided to the applicant upon adoption.

When construing statutes, the court cannot supply that which the legislature omits.

Brandt v. Hallwood Management Co., 560 N.W.2d 396 (Minn. Ct. App. 1997).

Subdivision 2(c) does not contain a penalty. The District Court took it upon itself to add a penalty provision to Subdivision 2(c). If the Legislature had intended the “nuclear option” of overturning a city’s legislative decision making to be a remedy for a violation

of Subdivision 2(c), it would have included it as an option in Subdivision 2(c).³ Without such a provision, the District Court erred in imposing the automatic approval penalty in Subdivision 2(c) where none exists.

This error is even more pronounced in the context of Minn. Stat. § 15.99 where the Court of Appeals in Manco, in 1998, held that the statute contains provisions both with and without penalty. Id. 583 N.W.2d 293. Minn. Stat. § 15.99 subd. 2(c) was added in 2003 well after Manco was decided, clearly affirming that the statute could and does include some sections that have no penalty provision. The Legislature did not include a penalty provision in Subdivision 2(c), clearly indicating a lack of intent to impose the ultimate penalty for a technical violation. The statute reserves the usurpation of legislative decision making only to those cases mandated by Subdivision 2(a) where a city takes “too long” to make a decision on an application.⁴ The City of Minnetrista did not take too long to respond to Hans Hagen’s Application and a change in the City’s Comprehensive Plan by default is not warranted.

³ The overarching legislative nature and importance of comprehensive planning is difficult to overstate. The legislature has found that “municipalities are faced with mounting problems in providing the means of guiding future development of land so as to insure a safer, more pleasant and more economical environment” and gave cities the power and duty to adopt Comprehensive Plans to address development problems. Minn. Stat. §§ 462.351, 462.355, 473.851, 473.858. (The latter two citations apply to metropolitan area cities, which includes Minnetrista.) It is these difficult and important legislative decisions that Hans Hagen is asking this Court to have made by default based on a mailing being made 9 days late, despite the City’s compliance with the timing and written finding requirements of Minn. Stat. § 15.99.

⁴ Minn. Stat. § 645.17(4), “[w]hen a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language.”

The District Court also relied on the provisions of Subdivision 3(c) and its reading of Concept Properties, LLP v. City of Minnetrista, 694 N.W.2d 804 (Minn. Ct. App. 2005), review denied (July 19, 2005) as adding a mandatory mailing requirement to Minn. Stat. § 15.99. Neither the statute nor the case, support the District Court's conclusion.

Minn. Stat. § 15.99, subd. 3(c) provides: “[a]n agency response meets the 60-day time limit if the agency can document that the response was sent within 60 days of the written request.” It is clear from the language that Subdivision 3(c) is merely a method whereby an agency can prove that it has met the 60-day deadline. It does not create or impose an independent mailing requirement. The court in Concept stated that “it is clear that the agency complies with the statute as long as the agency can document that it made a decision to deny the application and sent a decision by the deadline.” Id. 694 N.W.2d at 826. Again, this language does not impose a mailing requirement; it simply reiterates that another method of proving compliance with the time limits exists.⁵ Moreover, there

⁵ It should be noted that the court in Concept found good faith to be a factor in Minn. Stat. § 15.99. In applying a good faith element to a city's actions under Minn. Stat. § 15.99, the court stated that there was no evidence of “the mischief that the simultaneous writing requirements seeks to address. The rationale for mandating written findings accompanying a decision...is to prevent a government's post hoc rationalization of a capricious decision.” Concept, 694 N.W.2d at 827. In the present case, the purpose of subdivision 2(c) is to ensure that an applicant is aware of the denial and the reasons for the denial. The mischief that subdivision 2(c) seeks to prevent is the same as that discussed in Concept. Here, there is no doubt that the City was acting in good faith as Hans Hagen was aware of the City's denial and the reasons for the denial on October 4, 2004. Hans Hagen's representative was present at the October 4, 2004 City Council meeting at which the City denied Hans Hagen's Application and stated the reasons for the denial. The written resolution adopted on October 18, 2004 was consistent with the reasons for denial stated on October 4, 2004. Thus, there is no, and can be no, allegation

is nothing in Subdivision 3(c) which provides any consequence for the failure to mail and thus, a failure to mail cannot result in automatic approval.⁶ As it did in construing Subdivision 2(c), the District Court is adding provisions to legislation which do not exist. This is clearly not the District Court's role, nor within its power. Brandt, 560 N.W.2d 396.

Finally, the District Court's reliance on Minnesota Towers, Inc. et al. v. City of Duluth, No. 04-5068, 2005 WL 1593044 (Minn. Dist. Ct. July 1, 2005)⁷ to support its grant of summary judgment to Hans Hagen is misplaced. Even leaving aside the non-binding affect of a federal district court decision construing state law on the Minnesota Court of Appeals, there simply was no holding in the case under Minn. Stat. § 15.99, subd. 2(c). Arizonans for Official English v. Arizona, 520 U.S. 43, 57 (1997) (stating a lower federal court judgment is not binding on state courts). The issue before the federal court in Minnesota Towers was whether the City of Duluth properly extended the time for making a decision under Minn. Stat. § 15.99. If the time limit had not been extended, the federal court stated that Duluth's failure to *adopt* written findings before the expiration of the time limit would have been a violation of Minn. Stat. § 15.99. Here, there is no dispute that the City *adopted* written findings well before the deadline and

of bad faith on behalf of the City. The City's good faith mailing of the Resolution to Hans Hagen upon its request cures any violation of subdivision 2(c).

⁶ Subdivision 2(a) is the only subdivision in Minn. Stat. § 15.99 that provides for a penalty.

⁷ Pursuant to Minn. Stat. § 480A.08, subd. 3, a true and correct copy of this unpublished opinion is included in the appendix to appellant's brief. A.134-141.

therefore, according to the federal court's discussion in Minnesota Towers, there was no violation of Minn. Stat. § 15.99.

III. Minn. Stat. § 15.99 cannot compel approval of Respondent's "Conceptual Site Plan" submitted with its Application when no approval was sought for the "Conceptual Site Plan" and the "Conceptual Site Plan" was not a request under Minn. Stat. § 15.99, subd. 1(c).

The District Court correctly found that because Hans Hagen did not seek approval for its "Conceptual Site Plan," Hans Hagen was not entitled to automatic approval of the "Conceptual Site Plan." Hans Hagen's position on appeal is that because a drawing labeled "Conceptual Site Plan" was attached to its Application, the District Court erred in refusing to order automatic approval of the development contained in the "Conceptual Site Plan." This position is directly contrary to that taken by Hans Hagen at the October 4, 2004 City Council meeting. At that City Council Meeting, the City Planner stated "[h]ere is the ghost plats for the type of development that would be requested if the current requests are approved. Note that you are not reviewing a sketch plan at this time, so this is really only intended to help you visualize the type of development that the applicants would propose to come forward with if the Comp Plan Amendment and rezone requests are approved." A.107, p.4, 1.2-9. Hans Hagen's representative did not object to the Planner's and the Council's understanding that it was not seeking approval of the "Conceptual Site Plan" as part of its Application and, in fact, confirmed this fact by stating, "as Ben has indicated we are requesting a Comprehensive Plan amendment and rezoning. We have not proposed a plat at this time." A.108, pp.8-9, 1.25-2. When questioned by the Mayor as to why the City should approve an amendment to the

Comprehensive Plan and a rezone without a preliminary plat, Hans Hagen's representative responded "[w]e are, as I indicated before would be agreeable to having the application approved subject and contingent upon a preliminary plat coming forth for the entire area...at this stage in the game, we are here with a concept to get input and feedback from you..." A.113, p.29, 1.5-12.

Just as telling as the statements made at the City Council meeting is Hans Hagen's own Application, which indicates that it was *not* applying for anything for which a sketch plan was required or for which approval of a sketch plan was sought. Thus, under Minn. Stat. § 15.99, subd. 1(c), the "Conceptual Site Plan" was not a request under Minn. Stat. § 15.99 and the time limit set forth in the statute does not apply. Minn. Stat. § 15.99, subd. 1(c) provides:

A request must be submitted in writing to the agency on an application form provided by the agency ... A request not on a form of the agency must clearly identify on the first page the specific permit, license or other governmental approval being sought. No request shall be deemed made if not in compliance with this paragraph.

Hans Hagen had five opportunities on the City's application form to apply for action regarding a sketch plan and Hans Hagen did not avail itself of any of the five.⁸ Thus, the Conceptual Site Plan was not submitted in writing to the City on the City's application form and was not a request to which the time limits of Minn. Stat. § 15.99 apply. The

⁸ The City's Land Use Application form requires a sketch plan for the following requests, Class I Subdivision, Class II Subdivision, Class III Subdivision, Planned Unit Development and Expedited Land Subdivision. A.84. Hans Hagen's Application did not check any of the foregoing. Instead, Hans Hagen's Application indicates that it is for a Comp Plan/Code Amendment, specifically a Rezone Request and MUSA Line Adjustment. A.84.

“Conceptual Site Plan” was not part of the Comprehensive Plan amendment or rezoning request, both by Hans Hagen’s own admission and its Application. The District Court’s denial of Hans Hagen’s motion for summary judgment requesting automatic approval of its “Conceptual Site Plan” should be affirmed.

Conclusion

The City complied with the mandatory provisions of Minn. Stat. § 15.99 and denied Hans Hagen’s Application within the statutory time limits for doing so, stating written reasons for its denial. The District Court incorrectly denied the City’s motion for summary judgment by reading an extra requirement and penalty into the statute. The District Court’s grant of summary judgment to Hans Hagen should be reversed and summary judgment granted to the City dismissing Hans Hagen’s complaint.

Dated: September 23, 2005



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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).