

NO. A05-1686

State of Minnesota  
**In Court of Appeals**

Hans Hagen Homes, Inc.,

*Respondent,*

v.

City of Minnetrista,

*Appellant.*

**REPLY BRIEF OF  
APPELLANT CITY OF MINNETRISTA**

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## INTRODUCTION

Respondent does not dispute that the City denied its Application, adopted written findings for the denial and that Respondent had actual notice of the denial all within the time limit of Minn. Stat. § 15.99. Instead, relying on the District Court's misreading of Minn. Stat. § 15.99, Respondent claims that Minn. Stat. § 15.99, subd. 2(c) contains an automatic approval penalty which does not exist. This incorrect reading of the statute should be reversed and summary judgment granted to the City.

## ARGUMENT

**Because the City denied the Application with written findings within the statutory time limit and Respondent had notice of the denial within the time limit, Minn. Stat. § 15.99 cannot compel approval of the Application.**

With Respondent's dismissal of its Notice of Review, there is one straight forward question before this Court.<sup>1</sup> Does Minn. Stat. § 15.99, subd. 2(c) contain a penalty provision? The answer is plainly no, and the District Court should be reversed.

The unquestioned purpose of Minn. Stat. § 15.99 is "to keep government agencies from taking too long" to make decisions. Manco of Fairmount, Inc. v. Town Bd. 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); Tollefson v. City of Elk River, 665 N.W.2d 554, 558 (Minn. Ct. App. 2003). While the District Court acknowledged this fundamental purpose, it then completely disregarded it by reading a penalty into the statute where no penalty exists.

Respondent does not dispute the axiomatic principal of statutory construction that a court cannot supply that which the legislature omits. Brandt v. Hallwood Management Co., 560 N.W.2d 396 (Minn. Ct. App. 1997). Yet Respondent would have an automatic approval penalty attached to Subdivision 2(c) where none exists and where the inclusion of such a penalty provision does nothing to advance the purpose of the statute.

The District Court's addition of a penalty provision to Subdivision 2(c) is especially egregious in light of this Court's decision in Manco, 583 N.W.2d 293. As the City discussed in its initial brief, this Court in Manco specifically found that Minn. Stat. § 15.99 contains penal and non-penal provisions. Following this Court's 1998 decision in Manco, Minn. Stat. § 15.99 was amended in 2003 to add Subdivision 2(c) without a penalty. Clearly, if the legislature had intended Subdivision 2(c) to contain a penalty, especially one as harsh as automatic approval, it would have provided one. The draconian penalty of automatic approval is reserved for those situations in which a municipality violates the fundamental purpose of the statute and takes too long to make a decision. That is obviously not the case here where the City denied Respondent's Application twice within the statutory time limit, with written findings, and Respondent was aware of the denial.

Respondent's reliance on Minn. Stat. § 15.99, subd. 3(c) and Concept Properties, LLP v. City of Minnetrista, 694 N.W.2d 804 (Minn. Ct. App. 2005), review denied (July 19, 2005) is misplaced. As discussed in the City's initial brief, Subdivision 3(c) and the

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<sup>1</sup> Contrary to Respondent's brief, the City is not arguing on appeal that it "provided" the written reasons for denial within the meaning of the statute by posting Resolution 89-04

language in Concept merely state that mailing within the time limit is a method of proving that a timely decision was made.<sup>2</sup>

Moreover, as this Court explained in Concept, there is a good faith element to Minn. Stat. § 15.99. With respect the present case, the “mischief” which Subdivision 2(c) seeks to prevent has obviously not occurred. Id. 694 N.W.2d at 827. That is, there were written findings adopted consistent with oral findings.<sup>3</sup> Thus, the written findings were not an ad hoc rationalization for a “capricious decision.” Therefore, the City’s actions were in good faith and the overall purpose of the statute (not taking too long to make a decision) and of Subdivision 2(c) have been satisfied.

### CONCLUSION

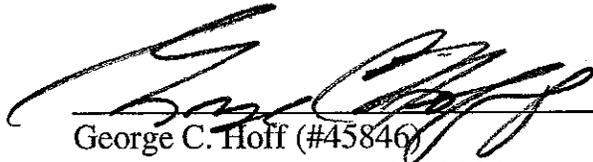
Subdivision 2(c) does not contain a penalty provision and one cannot be read into it by the courts. The City denied Respondent’s Application with written findings and Respondent had actual notice of the denial all within the statutory time limits of Minn. Stat. § 15.99, and the City acted in good faith. The District Court’s grant of summary judgment to Respondent should be reversed.

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on its website.

<sup>2</sup> If, as Respondent argues, the City were required to mail a copy of its written reasons for denial, then, even if an applicant was present at the meeting where the written reasons were adopted, the City would not be able to hand a copy of those written reasons to the applicant. The District Court’s and Respondent’s interpretation of the statute would require the City to mail a copy of the written reasons and the applicant would be required to wait for them to arrive. This is simply preposterous and is not what was intended by the legislature.

Dated: 10/13, 2005



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<sup>3</sup> The District Court found that the written findings adopted on October 18, 2004 were consistent with the oral reasons for denial provided on October 4, 2004. That finding by the District Court has not been appealed.