

NO. A05-1686

State of Minnesota
In Court of Appeals

Hans Hagen Homes, Inc.,

Plaintiff-Respondent,

v.

City of Minnetrista,
a Minnesota municipal corporation,

Defendant-Appellant.

RESPONDENT'S BRIEF AND APPENDIX

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STATEMENT OF LEGAL ISSUE¹

WAS RESPONDENT HANS HAGEN HOMES, INC.'S ZONING APPLICATION AUTOMATICALLY APPROVED UNDER MINN. STAT. § 15.99, BECAUSE THE CITY FAILED TO PROVIDE RESPONDENT WITH WRITTEN NOTICE OF DENIAL OF THE ZONING APPLICATION WITHIN THE 60-DAY TIME DEADLINE REQUIRED BY MINN. STAT. § 15.99?

The district court held: That because the City failed to provide respondent with written notice of denial of respondent's zoning application within the 60-day time deadline imposed by Minn. Stat. § 15.99, respondent's application was automatically approved under Minn. Stat. § 15.99.

Minn. Stat. § 15.99 (2004)

Concept Properties, L.L.P. v. City of Minnetrista, 694 N.W.2d 804 (Minn. App. 2005).

Minnesota Towers, Inc., et al. v. City of Duluth, No. 04-5068, 2005 WL 1593044 (D. Minn. July 1, 2005).

STATEMENT OF THE CASE

This dispute concerns respondent Hans Hagen Homes, Inc.'s ("Hans Hagen") land use application to appellant City of Minnetrista (the "City") and the consequences of the City's untimely denial of the application in violation of Minn. Stat. § 15.99 (2004), commonly known as the 60-Day Rule. Hans Hagen applied for a Comprehensive Plan amendment and rezoning from the City for certain real property under an application dated May 18, 2004. RA2, RA10-25. Under Minn. Stat. § 15.99, the City was required to approve or deny Hans Hagen's application within 60 days from the date of the

¹ On September 7, 2005, respondent Hans Hagen filed a Notice of Review of the district court's decision not to extend the automatic approval of Hans Hagen's zoning application to the site plan that Hans Hagen submitted with its application. Hans Hagen withdraws its Notice of Review and its challenge to this aspect of the district court ruling. Accordingly, this brief only responds to the City's first issue in its brief and not to its preemptive arguments in anticipation of the now-withdrawn Notice of Review issue.

application. Hans Hagen agreed to extend the deadline until November 30, 2004. RA3, RA26. Thereafter, the City Council held a public hearing and made a final decision denying Hans Hagen's application on October 4, 2004. RA3, RA27-32. The City did not adopt written findings simultaneously with its October 4, 2004 denial. At the next City Council meeting on October 18, 2004, the City Council adopted "Resolution No. 89-04 Denying a requested Comprehensive Plan amendment and rezoning on multiple properties along State Highway 7 for Hans Hagen Homes" (the "Resolution"). RA3, RA33-34, RA35-38. The City failed to provide Hans Hagen with a copy of the Resolution by the November 30, 2004 deadline, in violation of Minn. Stat. § 15.99. RA4. In fact, the City did not provide the Resolution to Hans Hagen until December 9, 2004, when Hans Hagen requested it from the City after discovering its existence. *Id.*

After the City rejected demands from Hans Hagen to recognize that its zoning application was approved as a matter of law on account of the City's 60-Day Rule violation, Hans Hagen commenced this mandamus action in Hennepin County District Court. Hans Hagen and the City filed cross-motions for summary judgment. RA50-62, RA63-71. Hans Hagen argued that because the City violated Minn. Stat. § 15.99 when it failed to provide Hans Hagen with a written denial within the deadline and consistent with the reasons stated in the record at the time of the denial, Minn. Stat. § 15.99 mandated automatic approval of Hans Hagen's land use application in its entirety, including the approval of a concept plan that Hans Hagen submitted with its application. A.11. The City argued on summary judgment that, while it admittedly did not provide Hans Hagen with a copy of the City's written denial until after the statutorily-mandated

time deadline, it nevertheless complied with the 60-Day Rule because it made the denial available at City Hall and on its website. The district court granted for the most part Hans Hagen's motion for summary judgment and denied the City's.² The district court ordered the City to approve Hans Hagen's application, rezoning the property from Rural/Agriculture to R-4-PUD, and amending the City's Comprehensive Plan to adjust the Metropolitan Urban Services Area ("MUSA") to place the property in line for development in the 1998-2005 phase. The City now appeals from the district court's decision automatically approving Hans Hagen's application under Minn. Stat. § 15.99.

STATEMENT OF THE FACTS

Hans Hagen controls through purchase, option agreements, and planning agreements, property that consists of six parcels of land in the City; the property contains approximately 220 acres located south of State Highway 7, east of Highland Drive, and west of Oak Road (the "Subject Property"). RA2. RA8-9. On May 18, 2004, Hans Hagen submitted a Comprehensive Plan amendment and rezoning application to the City for the Subject Property under a land use application dated May 18, 2004. RA2, RA10-25. In its application, Hans Hagen specifically requested that the City rezone the Subject Property from Rural Agriculture to R-4-PUD. Hans Hagen also requested that the MUSA line be adjusted to provide public services to the Subject Property. *Id.*

² The district court denied Hans Hagen's arguments that (a) the after-the-fact written reasons given by the City were not consistent with the reasons stated in the record at the time of the denial; and (b) the concept plan submitted by Hans Hagen along with its zoning application must also be deemed approved on account of the untimely denial by the City. Neither of these aspects of the district court's ruling are before this court. *See n. 1, supra.*

Through a letter to the City Planner dated July 26, 2004, Hans Hagen consented to extend the 60-day time limit prescribed by Minn. Stat. § 15.99 to November 30, 2004, to allow the City more time to make a decision on Hans Hagen's application. RA3, RA26. On October 4, 2004, the City Council held a public hearing and made a final decision denying Hans Hagen's application. The meeting minutes report that the denial was "[b]ased on the findings of fact it is not in the Comprehensive Plan and further studies on transportation should be done." RA3, RA27-32. The City did not adopt any written findings in support of its denial on October 4, 2004.

On October 18, 2004, the City Council adopted "Resolution 89-04 Denying a requested Comprehensive Plan amendment and rezoning on multiple properties along State Highway 7 for Hans Hagen Homes" (the "Resolution"). RA3, RA33-34, RA35-38. The City did not provide Hans Hagen notice of its adoption of the written Resolution, or a copy of the Resolution by the deadline under the 60-Day Rule, Minn. Stat. § 15.99, of November 30, 2004. RA4. Eventually, weeks following the adoption of the written Resolution, Hans Hagen became aware of its existence and requested a copy from the City. *Id.* Pursuant to Hans Hagen's request, the City provided an unexecuted copy of the Resolution on or about December 9, 2004. *Id.* Hans Hagen has never received a copy of the final executed and adopted written Resolution from the City. *Id.*

ARGUMENT

I. STANDARD OF REVIEW.

On appeal from a grant of summary judgment, the court of appeals determines whether there are any genuine issues of material fact and whether the district court erred

in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). No genuine issue of material fact exists “[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party.” *DLH Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (alteration in original) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986)). “[T]he party resisting summary judgment must do more than rest on mere averments.” *Id.* at 71. A genuine issue for trial must be established by substantial evidence. *Id.* at 69-70 (quoting *Murphy v. Country House, Inc.*, 307 Minn. 344, 351, 240 N.W.2d 507, 512 (1976)). The parties do not dispute that this case was suitable for disposition on motions for summary judgment.

II. THE DISTRICT COURT PROPERLY HELD THAT RESPONDENT HANS HAGEN’S ZONING APPLICATION WAS AUTOMATICALLY APPROVED UNDER MINN. STAT. § 15.99, BECAUSE THE CITY FAILED TO PROVIDE RESPONDENT WITH WRITTEN NOTICE OF ITS DENIAL WITHIN THE 60-DAY TIME DEADLINE REQUIRED BY MINN. STAT. § 15.99.

The district court properly held that the City failed to comply with Minn. Stat. § 15.99, because the City neglected to provide Hans Hagen with its written decision denying Hans Hagen’s application upon adoption and by the statutorily-mandated deadline. In its appellate brief, the City admits that it failed to send a copy of the written statement denying Hans Hagen’s application within the applicable 60-day time deadline. City’s Appellate Brief, p. 7. The City attempts to excuse its fatal omission, however, by arguing that the district court erred as a matter of law. Contrary to the unambiguous, mandatory requirements of the 60-Day Rule, the City argues that by making the written

denial available at City Hall and eventually on the City's website (without notice to Hans Hagen), the City met the mandatory statutory requirements under Minn. Stat. § 15.99. The statute and the applicable case law do not support the City's position.

A. **The District Court Properly Applied Both Minn. Stat. § 15.99 and the Case Law in Concluding that Hans Hagen's Zoning Application Was Approved as a Matter of Law.**

In order for an agency to comply with the statutory requirements of the 60-day time deadline, it must state in writing the reasons for the denial, these reasons must be consistent with the reasons stated at the time of the denial, and the agency must document that the response to the written request was sent within 60 days of receipt of the request.

These mandatory requirements are expressly stated in the statute as follows:

Subd. 2. Deadline for response. ****

(c) [I]f 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.

Subd. 3. Application; extensions. ****

(c) An agency response meets the 60-day limit if the agency can document that the response was sent within 60 days of receipt of the written request.

Minn. Stat. § 15.99, subs. (2)(c), 3(c)(emphasis added).

This court recently held in another case against the City that from the plain language of Minn. Stat. § 15.99, “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.” *Concept Properties, LLP v. City of Minnetrista*, 694 N.W.2d 804, 826 (Minn. App. 2005) (emphasis added). In *Concept Properties*, plaintiff argued that the City violated Minn. Stat. § 15.99 by neglecting to provide plaintiff with its written decision by the May 27, 2003 deadline. *Id.* at 826. This court held that pursuant to the plain language of the statute, in order for an agency to meet the statutory deadline, it must provide documentation that the response was *sent* by the deadline. *Id.* In *Concept Properties*, the City presented evidence to the court that it had in fact mailed a copy of the resolution denying plaintiff’s application to plaintiff’s representative on the May 27, 2003 deadline. *Id.* This court held that under these facts, the City had complied with Minn. Stat. § 15.99 by issuing a timely decision and sending it to the applicant by the statutory deadline. *Id.* (“[a]pplying the plain meaning of the rule to the circumstance when the parties have agreed to their own deadline, 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*” (emphasis added)).

Here, the City denied Hans Hagen’s application at the October 4, 2004 City Council meeting after a public hearing. RA29-32. The City Council minutes from the October 4, 2004 meeting state that the denial was “based on the findings of fact it is not in the Comprehensive Plan and further studies on transportation should be done.” RA32.

At the next City Council meeting on October 18, 2004, the denial was taken up as a Consent Agenda item to adopt a Resolution “[d]enying a requested Comprehensive Plan amendment and rezoning on multiple properties along State Highway 7 for Hans Hagen Homes.”³ RA33. The City Council failed to provide Hans Hagen notice of its adoption of the written Resolution, or to send a copy of the written Resolution to Hans Hagen as mandated by Minn. Stat. § 15.99. RA40. Eventually, weeks following adoption of the written Resolution, Hans Hagen became aware of its existence and requested a copy from the City. RA41. Pursuant to Hans Hagen’s request, the City provided an unexecuted copy of the Resolution on or about December 9, 2004, well after the November 30, 2004 deadline. *Id.*

Here, unlike *Concept Properties*, the City did not *send* a copy of the resolution by the November 30, 2004 deadline to Hans Hagen. RA41. In fact, the City *never* provided Hans Hagen with a copy of the resolution until Hans Hagen asked for it after discovering its existence. *Id.* Under the plain language of Minn. Stat. § 15.99 and the holding of *Concept Properties*, the City violated Minn. Stat. § 15.99 by failing to send a copy of the Resolution to Hans Hagen upon adoption and by the deadline. The district court correctly relied upon *Concept Properties* to conclude that the City failed to provide Hans Hagen with written notice of its denial as required by Minn. Stat. § 15.99.

³ The 60-Day Rule allows a city to adopt an after-the-fact statement of written reasons for denial provided that (a) such adoption takes place at the meeting immediately following the meeting where the denial took place; (b) the written reasons are consistent with the reasons stated on the record at the time of the denial; (c) the applicant is provided with the written statement of reasons; and (d) the written reasons are provided to the applicant within the applicable time deadline. Minn. Stat. § 15.99, subs. 2(c) and 3(c).

The City did not send a written copy of the Resolution to Hans Hagen until some time around December 9, 2004, well after the November 30, 2004 deadline. Here, unlike *Concept Properties*, the City did not send a copy of the resolution by the November 30, 2004 deadline to Hans Hagen. The City did not provide Hans Hagen with a copy of the resolution until Hans Hagen asked for it after learning of its existence.

A.11.

Moreover, the district court also properly relied upon a recent federal district court ruling that the City's oral reasons on the record are insufficient to meet the mandatory requirements of Minn. Stat. § 15.99, because the statute requires that a written denial be provided to the applicant. A.11. *Minnesota Towers, Inc., et al. v. City of Duluth*, No. 04-5068, 2005 WL 1593044 (D. Minn. July 1, 2005). A.134. In *Minnesota Towers*, the U.S. District Court rejected the City of Duluth's argument that its denial of the applicant's special permit application was timely because the city council stated its reasons for denial on the record at the city council meeting within 60 days of plaintiff's application. *Id* at *5. ("the failure of the resolution before the City Council, accompanied by the City Council's oral reasoning on the record, was not sufficient to comply fully with the requirements of section 15.99, subdivision 2"). A.138.

The district court here properly recognized that the City's argument for all intents and purposes was the same argument rejected by the federal district court in *Minnesota Towers*: an oral denial within the statutory deadline violates the time deadline statute, as does drafting a written denial but failing to provide it to the applicant until well after the statutory deadline. A.11. Therefore, the district court properly held that in this case "as in *Minnesota Towers*, the City Council's oral reasoning on the record is insufficient to

comply fully with the requirements of Minn. Stat. § 15.99, subdivision 2.” *Id.* Also as in *Minnesota Towers*, the City here further attempts to argue that substantial compliance with Minn. Stat. § 15.99 is sufficient; the district court properly rejected this argument and held that the City’s failure to provide Hans Hagen with the written resolution violated the explicit requirements of Minn. Stat. § 15.99. *Id.*

B. The Subdivision 2(c) Mandate That the Agency Provide the Applicant with the Written Denial Upon Adoption Is Not and Cannot Be Met by the Agency Posting Its Decision in a Public Place or on Its Website.

The City argues that it came close enough to meeting the statutory requirement that it provide notice of its denial to Hans Hagen by simply posting the decision at City Hall and on the City’s website. The City argues that the district court improperly relied on Minn. Stat. § 15.99, subd. 2(c), because the City argues that the following requirements in subdivision 2(c) are not mandatory:

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.

Id. (emphasis added). The City claims that the above-quoted language—notwithstanding the ubiquitous use of the mandatory word “must”—is not mandatory, but merely directive because there is no penalty provision in Subdivision (c). The City claims that the district court erred because it failed to recognize that the City substantially complied with the requirements of Minn. Stat. § 15.99 by making the resolution available at City

Hall and by posting it on its website. These arguments read the statute too narrowly, ignore the plain language of the 60-Day Rule, and make a mockery of its requirements.

The City's interpretation of the statute is wrong because subdivision 2(c), which requires that the City provide Hans Hagen with a copy of the written denial upon *adoption*, clarifies how the City meets the mandatory 60-day time deadline imposed by subdivision 2(a)—the express consequence for violating which is “approval of the request.” As the above-quoted language clearly states, under subdivision 2(c), the City was required to provide Hans Hagen with its written denial “upon adoption.” The City denied Hans Hagen's application on October 4, 2004, but did not make written findings until the next meeting on October 18, 2004. RA33. Because the City chose not to adopt the written statement at the same time as the denial, it was required to adopt the written statement “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.” Minn. Stat. § 15.99, subd. 2(c).

The statute further requires that the “written statement *must* be consistent with the reasons stated in the record at the time of the denial” and “**must be provided to the applicant upon adoption.**” *Id.* (emphasis added). This provision clarifies that if the City denies the applicant's request at a meeting and chooses to make its written findings at the following meeting, then it must provide the written statement to the applicant upon adoption in order for the City to meet the 60-day time limit imposed in subdivision 2(a). Just as *Concept Properties* ruled that subdivision 3(c) clarifies how the agency meets the

60-day time deadline, subdivision 2(c) clarifies how the agency meets the 60-day time deadline if it chooses not to adopt written findings at the time of the denial.

Based on *Manco of Fairmont, Inc. v. Town Board of Rock Dell Township*, 583 N.W.2d 293 (Minn. App. 1998), the City further argues that the subdivision 2(c) requirement of providing the written denial upon adoption is a directory provision requiring only substantial compliance. In *Manco*, the court was faced with deciding whether the City complied with the time deadline extension provision of subdivision 3(f). *Id.* at 295. Subdivision 3(f) provides that when an agency gives an applicant written notice that the City is extending the initial 60-day time period, it must state the reasons for the extension. Minn. Stat. § 15.99, 3(f) (1996). *Manco* held that the City complied with subdivision 3(f) when it provided a letter to the applicant stating that “it intended to take an additional 60 days to make a decision on the special use permit application.” 583 N.W.2d at 295. The court reasoned that “to take more time to make a decision is a reason” and that “without any more specific guidance from the legislature,” that reason was sufficient to comply with subdivision 3(f). *Id.* The court also concluded that because subdivision 3(f) did not specify the content, type, or extent of reasons to provide the applicant and because there was no negative consequence should the government entity not provide a reason, the subdivision was directory, not mandatory, and substantial compliance was all that was required. *Id.* at 296.

The City wrongly argues that the same reasoning should apply here: it asserts that the requirement to give written notice of denial is merely directory and not mandatory; accordingly, only substantial compliance is needed. The City further wrongly argues that

it “substantially complied” with subdivision 2(c) when it made the Resolution available at City Hall and posted the Resolution on its website. The City is wrong because the directives of subdivision 2(c) specify in expressly mandatory terms how an agency complies with the requirement to give timely notice of a decision to deny a written request. Unlike *Manco* where subdivision 3(f) did not specify the reasons required for an extension, subdivision 2(c) specifically requires that the City provide the written denial to the applicant upon adoption. The legislature made it quite clear that the City must *provide* the applicant with a copy. And the district court properly concluded that “[p]rovide does not simply mean to make available, as the City argues, but also means to ‘supply’ and to ‘furnish.’” Webster’s New World College Dictionary (Victoria Neufeldt 3rd ed. 1996).” A.11.

Moreover, the definition “to furnish; supply” is more consistent with the intent and scope of the statute. The legislature has stated that

The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. *Every law shall be construed, if possible, to give effect to all its provisions.*

Minn. Stat. § 645.16 (2004) (emphasis added); *see also Willmus ex. rel. Willmus v. Comm’r of Revenue*, 371 N.W.2d 210, 213 (Minn. 1985) (stating that “a statute is to be construed as a whole so as to harmonize and give effect to all of its parts.”) (citation omitted)). Minn. Stat. § 15.99 imposes a time deadline for agencies either to approve or deny zoning requests; if the agency fails to adhere to the time deadline, the result is that the application is statutorily approved as a matter of law. *Gun Lake Ass’n v. County of*

Aitkin, 612 N.W.2d 177, 181 (Minn. App. 2000), *review denied* (Minn. Sept. 13, 2000). The statute was intended for agencies to make prompt zoning decisions and to notify applicants of those decisions within 60 days. The City's position would make the statute meaningless if the City were only required to deny the application within 60 days, but not required to notify the applicant that it had in fact been denied and provide the reasons for the denial.

Hans Hagen had no notice that the City intended to address its application at the October 18, 2004 meeting, and was not at this meeting where the City adopted the Resolution. RA40-41. Subsequently, the City did not notify Hans Hagen that it had adopted the Resolution. RA41. Therefore, the district court properly held that making the Resolution available at City Hall or on a website when Hans Hagen was not aware of its existence cannot comply with a statute that expressly requires that the written denial "must be *provided* to the *applicant upon adoption*." Minn. Stat. § 15.99, subd. 2(c) (emphasis added).

C. **The City Violated the Subdivision 3(c) Requirement That the City Send the Written Denial Within 60 Days.**

Subdivision 3(c) of the 60-Day Rule mandates that "[t]he agency response meets the 60-day limit if the agency can document that the response was sent within 60 days of receipt of the written request." Minn. Stat. § 15.99, subd. 3(c). *Concept Properties* explains that subdivision 3(c) clarifies how an agency meets the mandatory time deadline requirement of subdivision 2(a), which directs that the zoning request is approved if not denied within 60 days. *Id.*, 694 N.W.2d at 826. The court in *Concept Properties* held

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.* (emphasis added).

Here, the City concedes that it did not send its written denial until December 9, 2004, which was after the November 30, 2004 deadline imposed by the statute and almost two months after it denied Hans Hagen’s application. RA53. Moreover, the City made no effort to comply with the statute. The City acknowledges that it sent the Resolution to Hans Hagen only *after* Hans Hagen became aware of its existence and requested it. *Id.*; *see also* RA41; RA69. The City improperly trivializes Minn. Stat. § 15.99, subd. 3(c), by arguing that it is simply a method for the City to prove compliance with the statute. This argument is contrary to both the plain language of the statute and this court’s holding in *Concept Properties*. Minn. Stat. § 15.99, subd. 3(c) does not state that this is merely a method for proof, but clearly defines how the agency meets the statutory time deadline: by documenting that its response to the zoning request “was sent within 60 days of the written request.” This court confirmed the statute’s plain meaning in *Concept Properties*. To argue otherwise flies in the face of unambiguous statutory language and solid precedent that the City, itself, was party to establishing in *Concept Properties*.

For the sake of administrative ease, the City is trying to limit the scope of Minn. Stat. § 15.99, which requires that the City not only deny the request within the time deadline, but also requires that the City send the applicant a copy of the written denial within the time deadline. This court has consistently rejected such arguments and has consistently held that administrative ease does not justify interpretation of a statute that is

inconsistent with its purpose. *Demolition Landfill Servs., LLC v. City of Duluth*, 609 N.W.2d 278, 281 (Minn. App. 2000), *review denied* (Minn. July 25, 2000) (citing *Olympia Brewing Co. v. Comm'r of Revenue*, 326 N.W.2d 642, 648 (Minn. 1982)). 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.” Minn. Stat. § 15.99, subd. 2(a). When a city has failed to satisfy its clear requirements, the remedy shall be granted and the courts have granted the remedy without hesitation. *N. States Power Co. v. City of Mendota Heights*, 646 N.W.2d 919, 925 (Minn. App. 2002). The City’s failure to provide Hans Hagen with the City’s written denial is a violation of the clear requirements of the statute. Therefore, the district court properly held that under Minn. Stat. § 15.99, Hans Hagen’s zoning request is approved by operation of statute.

CONCLUSION

For all the above-stated reasons, Hans Hagen respectfully requests that this court affirm the district court’s holding that Hans Hagen’s zoning application is approved by operation of law under Minn. Stat. § 15.99.

Dated:

7 October 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).