

Nos. A06-2019 and A06-2361

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State of Minnesota  
**In Supreme Court**

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

*Appellants,*

vs.

Calm Waters, LLC, a Minnesota limited liability corporation,

*Respondent.*

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**APPELLANTS' BRIEF AND APPENDIX**

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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).

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## STATEMENT OF ISSUES

### **I. WHETHER MINN. STAT. § 15.99 APPLIES TO SUBDIVISION APPLICATIONS**

The Court of Appeals held that the statute applied to these applications because they were written applications related to zoning under Minn. Stat. § 394.27.

Most apposite case. Advantage Capital Management v. City of Northfield, 664 N.W.2d 421 (Minn. App. 203).

### **II. WHETHER KANABEC COUNTY DELEGATED COMPLETE DECISION-MAKING AUTHORITY ON SUBDIVISION APPLICATIONS TO THE PLANNING COMMISSION?**

The Court of Appeals held that the Ordinance's language only gave the Planning Commission the authority to approve a preliminary plat, but not the power to deny a preliminary plat.

Most apposite case: Southern Pacific Co. v. Southern Dredging Company, 260 U.S. 205, 43 S. Ct. 26 (1922).

### **III. IF MINN. STAT. § 15.99 APPLIES TO SUBDIVISION APPLICATIONS, DID KANABEC COUNTY REQUIRE A TOWNSHIP APPROVAL LETTER IN ORDER FOR THERE TO BE A COMPLETE APPLICATION?**

The Court of Appeals held that no statute or ordinance required such an approval letter, and the fact that the application form used by the County required such materials was meaningless.

Most apposite case: American Tower L.P. v. City of Grant, 636 N.W.2d 309 (Minn. 2001).

**IV. WHETHER THE KANABEC COUNTY ENVIRONMENTAL SERVICES OFFICER HAD THE AUTHORITY TO MAKE AN EXTENSION OF THE TIME FRAME IN WHICH TO ACT UNDER MINN. STAT. § 15.99?**

The Court of Appeals held that even though the County's Ordinance gave the Environmental Services Director the power to enforce the Ordinance, she did not have the authority to extend the timeline for a decision under Minn. Stat. § 15.99.

Most apposite case: Cleveland v. Rice County, 56 N.W.2d 641 (Minn. 1952).

## STATEMENT OF THE CASE

Respondent submitted a preliminary plat application to the Kanabec County Environmental Services Department on July 26, 2006. See Appendix at p. 118. The application did not include a Township approval letter, and was therefore returned as incomplete on August 8, 2006. Appendix at p. A-128. Respondent resubmitted the application on August 14, 2006, arguing that a Township approval letter was not required. Appendix at pp. A-129 to A-131. In a letter dated September 18, 2006, the County extended the time for considering Appellant's application, through the action of its Environmental Services Officer, for an additional 60 days. Appendix at p. A-135.

In a petition dated September 27, 2006, Respondent sought a Petition for Writ of Mandamus, arguing that 60 days had expired as a matter of law, and that it was entitled to approval of the preliminary plat as a matter of law. Appendix at p. A-15. The District Court, acting through District Court Judge Krista K. Martin, denied the request for both preemptory and alternative writs in an Order dated October 17, 2006. Appendix at p. A-57. The Appellant's Answer in response to the Petition, together with ten exhibits, was mailed by the Appellant on October 17, received by the Court on October 18, and returned thereafter due to the Court's already having issued an Order in the case. Appendix at p. A-45. Appellant's Appendix in A06-2019 (hereinafter "RA") at pp. 1-143.

Respondent appealed the District Court Order in Court of Appeals Case No. A06-2019. Appendix at p. A-65. Appellant made a motion to expand the Record in Case No. A06-2019. In an Order dated July 16, 2007, the County's Motion to Expand the Record

was granted in part as to those documents designated in the County's Appendix as pp. RA-1 through RA-150, RA-156 through RA-159, and RA-170 through RA-209. The decision on the balance of the County's Motion to Expand the Record was deferred until the appeal was decided on the merits. Appendix at p. A-87.

On October 18, 2006, the County Planning Commission conducted a hearing on Respondent's application for a preliminary plat approval. The Planning Commission denied the application on October 18, and on October 24, 2006, sent a letter to Respondent's counsel indicating the application had been denied. Appendix at pp. A-71 to A-75. On December 14, 2006, Respondent filed a Petition for Writ of Certiorari with the Court of Appeals challenging the decision of October 18, 2006. Appendix at p. A-76. This case was assigned Appellate Court File No. A06-2361. After briefing was concluded, Appellant moved to consolidate the two pending Court of Appeals' appeals. In an Order dated March 26, 2007, the Court of Appeals granted the Motion to Consolidate for purposes of oral argument and decision. Appendix at p. A-82. On March 27, 2007, Respondent made a motion pursuant to Rule 110.05 of the Minnesota Rules of Civil Procedure to supplement the Record with three letters it contended were omitted from the Record submitted by Appellant to the Court of Appeals. In an Order dated July 16, 2007, Respondents' Motion to Correct the Record was granted with respect to a letter dated August 8, 2006, but denied with respect to letters dated September 19, 1983, and July 27, 2006. Appendix at p. A-87.

On October 23, the Court of Appeals, acting through Judges Schumaker, Stoneburner, and Toussaint reversed the District Court's decision on the Writ of Mandamus and held that the preliminary plat application was approved by operation of law under Minn.

Stat. § 15.99. In light of that decision, the Court of Appeals dismissed the certiorari challenge as moot. Appendix at p. A-1.

## STATEMENT OF THE FACTS

Appellants Kanabec County Board of Commissioners, Kanabec County Planning Commission and Kanabec County Environmental Services are all official departments or officers of Kanabec County (hereinafter “County”) and will be referred to collectively throughout this brief.

Respondent Calm Waters owns land located in a shoreland area of Kroschel Township (“Township”). Respondent submitted a preliminary plat application to the Kanabec County Environmental Services Department on July 26, 2006. Appendix at p. A-118. The application did not include a Township approval letter, which was stated to be a requirement on the application form. Id.<sup>1</sup>. Because of this, Teresa Bearce, the Kanabec County Environmental Services Director, returned Calm Waters’ application as incomplete on August 8, 2006. Appendix at p. A-128. Respondent wrote to the County Attorney and resubmitted the application on August 14, 2006, arguing that a Township approval letter was not required. Appendix at pp. A-129 to A-131. This application did not include a Township approval letter. Id. Record No. 15.

The County prepared a Notice of Public Hearing (“September 20 Notice”) and notified Appellant that a hearing would be held on September 20, 2006 regarding its

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<sup>1</sup> Mindful of the fact that Rule 130.01 cautions against unnecessary duplication and that this Court has the entire record available to it, Appellant has cited to the Record, Appendices below, and the Appendix attached herein. The “Record” is that record submitted by the County in Case No. AS06-2361, the Petition for a Writ of Certiorari. The County’s Appendix in the Appeal of the Denial of the Writ of Mandamus in case No. A06-2019 is referred to as “RA.” The Calm Waters’ Appendix in case no. A06-2019 is “AA.” The Appendix to this brief is “Appendix.”

Application. Record Nos. 16, 17. As it always did for public meetings, the Environmental Services Department (“Environmental Services”) used a checklist to ensure that all proper parties were notified. Record No. 18. Appellant and its counsel received notice of the September 20, 2006 meeting. Record No. 23. Appellant’s counsel notified Ms. Bearce by letter dated September 15, 2006 that he believed that the September 20 Notice did not comply with Minn. Stat. § 394.26, subd. 2. Id. Since there was very little time between receiving Appellant’s counsel’s letter and the scheduled hearing, Ms. Bearce decided to continue consideration of Appellant’s Application until the next meeting of the Kanabec County Planning Commission (“Commission”). Appendix at p. A95. In a letter dated September 18, 2006, the County, through its Environmental Services Officer, extended the time for considering Appellant’s application an additional 60 days, pursuant to Minn. Stat. § 15.99, subd. 3(f). The stated reason was due to Respondent’s assertion that the notice did not comply with the statute. Id.

The County notified Appellant and Appellant’s counsel in early October, 2006 that it would consider Appellant’s Application at the October 18, 2006 meeting of the Planning Commission. Record Nos. 30, 31, 32. The notice was sent to the same addresses as all previous communications. Record No. 37. As it had with the September 20, 2006 meeting, Environmental Services used a checklist to ensure that all appropriate parties received notice of the meeting. Id. The County published a notice of the meeting in the October 5, 2006 Kanabec County Times. The notice indicated that the meeting of October 18 would include a public hearing on Appellant’s preliminary plat application. Record Nos. 30-33.

The Planning Commission considered Appellant's Application at its meeting on October 18, 2006. Appendix at p. A-71; Record Nos. 34, 35. Bill Erickson and Rodney Nelson, two Kroschel Township Supervisors, and Barb Peterson, a member of the Kroschel Township Planning Commission, attended the meeting on behalf of the Township. Id. They noted that the proposed subdivision did not comply with the minimum lot size requirement of the Kroschel Township Zoning Ordinance. Id. The Planning Commission considered the impact the subdivision would have on the land, the non-compliance with minimum lot sizes, and the road proposal submitted with the Application, and denied Appellant's Application. Id.

The Commission relied on several Kanabec County and Kroschel Township Ordinances in making its decision. All of these documents were publicly available when Appellant submitted its application to the County.

The County has a Subdivision Ordinance. Appendix at p. A-93. Section 4.29 of the Subdivision Ordinance states that cul-de-sac roads designed to be permanent may not exceed 800 feet in length. Id. at p. A-103. Section 2.18 of the Subdivision Ordinance defines "cul-de-sac" as "[a] permanent road terminating at one end without connecting with another road and designed so that it cannot be further extended without taking property not dedicated as road." Id. at p. A-96.

Sections 4.16 and 4.17 of the County Subdivision Ordinance state that "proposed subdivisions shall be coordinated with existing nearby municipalities or neighborhoods...." They require that any proposed subdivision "shall conform to any county or township zoning ordinance in effect." Id. at p. A-102. Section 4.47 of the Subdivision Ordinance

states that “[n]o lot shall have less area or width than is required by zoning regulations applying to the area in which it is located.” Id. at p. A-105.

Kanabec County does not engage in county-wide zoning. It regulates only shoreland areas, as defined in the County Shoreland Ordinance. The County’s Comprehensive Plan addresses planning and zoning in the County. Record No. 5. It acknowledges that in Kanabec County, area-wide zoning is coordinated between the County and the townships in the County. It states that “planning and zoning are implemented at the township level.” Id. at p. 29-31. Table 13 of the Comprehensive Plan sets out the density requirements for each Township. Id.

Kroschel Township has a valid Comprehensive Plan and a Zoning Ordinance. Record Nos. 1, 2, 3, 4. The Township is rural and agricultural, with very little development, and its Comprehensive Plan and Zoning Ordinances reflect this. Record Nos. 1 at p. 5-7, 14; No. 2. Section 4, Subd. 5 of the Township Zoning Ordinance sets out a minimum lot area requirement of not less than 20 acres for each dwelling, at least one acre of which must be buildable. Record No. 2 at p. 15. Kroschel Township also has a Planning Commission and a Town Board, neither of which Appellant submitted its preliminary plat to for approval. Record Nos. 7, 15, 24, 28, 35.

The County Planning Commission made formal findings in support of its denial of Appellant’s preliminary plat based on the above Ordinances and Regulations. First, it found that the proposed road exceeded the 800’ maximum length for a cul-de-sac road, in violation of Kanabec County Zoning Ordinance Section 4.29. Appendix at p. A-71. Appellant’s Application violated this requirement, and Appellant did not attempt to get a

variance. Id. The Commission also found that the County Subdivision Ordinance, Shoreland Ordinance, and Comprehensive Plan require preliminary plat applications to comply with all local regulations, and that Appellant's Application did not comply with the minimum lot size required by the Township Zoning Ordinance. Id.

The County prepared written findings in support of its denial and sent Appellant's counsel a letter on October 24, 2006, stating that Appellant's application had been denied. Appendix at p. A-75

. The stated reasons for denial were the fact that the road exceeded the maximum length, and the lack of township approval. Id.

#### **STANDARD OF REVIEW**

The standard of review is the same for all land use matters, namely, whether the local government authority's action was reasonable. VanLandschoot v. City of Mendota Heights, 336 N.W.2d 503, 508 (Minn. 1983); Honn v. City of Coon Rapids, 313 N.W.2d 409, 417 (Minn. 1981); St. Croix Development, Inc. v. City of Apple Valley, 446 N.W.2d 392, 397-98 (Minn. Ct. App. 1989)(review denied). Courts will not interfere in a land use decision as long as there was a rational basis for it, even if the decision is debatable. Id.; BECA of Alexandria, L.L.P. v. County of Douglas, 607 N.W.2d 459, 463 (Minn. Ct. App. 2000); SuperAmerica Group, Inc. v. City of Little Canada, 539 N.W.2d 264, 266 (Minn. Ct. App. 1996)(review denied); Larson v. County of Washington, 387 N.W.2d 902, 905 (Minn. Ct. App. 1986)(review denied).

The party seeking review bears the burden of demonstrating that the municipality's reasons are legally insufficient, or that there is an absence of record support for the reasons.

Yang v. County of Carver, 660 N.W.2d 828, 832 (Minn. Ct. App. 2003); Hubbard Broadcasting, Inc. v. City of Afton, 323 N.W.2d 757, 763 (Minn. 1982); Corwine v. Crow Wing County, 244 N.W.2d 482, 486 (Minn. 1976).

When dealing with ordinances and statutes, the interpretation of them is a question of law for the Court, which the Court reviews de novo. Billy Graham Evangelistic Ass'n. v. City of Minneapolis, 677 N.W.2d 117 (Minn. 2003).

### ARGUMENT

#### **I. THE 60-DAY RULE DOES NOT APPLY TO SUBDIVISION APPLICATIONS.**

The Court of Appeals held that the automatic approval provisions of Minn. Stat. §15.99 applied to the preliminary plat application submitted by Respondent in this case. The Court concluded the plain language of Minn. Stat. § 394.25, subd. 7(b) compels that conclusion. The language the Court cited states that the “county must approve a preliminary plat that meets the applicable standards and criteria contained in the county’s zoning and subdivision regulations” unless the County adopts written findings explaining why it is not being approved. The Court of Appeals also relied upon the case Kramer v. Ottertail County Board of Commissioners, 647 N.W.2d 23 (Minn. App. 2002). Because of this conclusion, the Court of Appeals dismissed as moot the certiorari challenge to the decision of the Planning Commission, and held the application was approved by operation of law. Appellant contends that this conclusion ignores pertinent statutory provisions, is inconsistent with other rulings of the Court of Appeals, and ignores salient factors involved in the Kramer, supra, case.

The starting point for this analysis is Minn. Stat. § 15.99, subd. 2(a). By its terms, the 60-Day Rule applies to “a written request relating to zoning, septic systems, watershed district review, soil and water conservation district review, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action.” The specificity of the listed subjects indicates that the statute is tailored to only particular actions. Advantage Capital Management v. City of Northfield, 664 N.W.2d 421 (Minn. App. 2003). Although there is a significant listing of a number of subjects to which the timing mechanism of Minn. Stat. § 15.99 applies, there is no listing of subdivisions or plat applications within the rule. If the Legislature had wished subdivisions to be regulated that way they would have listed them therein. Where a statute clearly limits its application to specifically enumerated subjects, its application is not to be extended to other subjects by a process of construction. Griswold v. Ramsey County, 242 Minn. 529, 65 N.W.2d 647 (Minn. 1954). In construing statutes, courts are not to supply that which the Legislature purposely omits or even inadvertently overlooks. See, e.g., Wallace v. Commissioner of Taxation, 289 Minn. 220, 184 N.W.2d 588 (Minn. 1971); State v. Corbin, 343 N.W.2d 874 (Minn. App. 1984).

In the case of Advantage Capital Management v. City of Northfield, 664 N.W.2d 421 (Minn. App. 2003), the Court of Appeals squarely faced the issue of what comes within the ambit of a “written request relating to zoning.” In looking at that section, the Court of Appeals deemed the phrase “relating to zoning” to be ambiguous, and turned to legislative history as an aid to its interpretation. The Court noted that during the Senate floor debate, the Senate version of the bill was amended to delete a reference to the term “land use” a

much broader term, and replace it with a more precise and limited term, “zoning.”

Advantage Capital, *supra*, at 427. The Advantage Capital court also looked to what the phrase “zoning” meant. Surprisingly, nowhere in Minnesota Statutes is that phrase defined. Turning to 8 E. McQuillin, *The Law of Municipal Corporations*, Section 25.07 (Third Ed. 2000), the Court of Appeals stated that zoning involves “governmental regulation of the uses of land and buildings according to districts or defined areas.” *Id.* at 426. In determining the specific issue in the case before it, the Advantage Capital court held that a building permit was not a zoning permit within the meaning of Minn. Stat. § 15.99.

In its most basic sense, the subdivision of land is neither a “use” of land nor is it a regulation of “buildings” according to “districts or defined areas.” In Chapter 394 of Minnesota Statutes, the enabling legislation for county zoning and land use, districts are those areas which are by “zoning ordinances” established, within which certain uses of the land are by official controls encouraged, regulated, or prohibited. Zoning, while not defined in Chapter 394, is given meaning in Minn. Stat. § 394.25, subd. 3. That provision states that within each district zoning ordinances or maps may be adopted that designate or limit 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. These zoning ordinances may provide for the minimum and maximum size of yards, setbacks, controls relating to appearance, signs, lighting, hours of operation and other aesthetic performance characteristics. They may provide for the requirements of off-street loading and parking facilities, and the height of trees and structures near airports. Looking at this provision, zoning relates to the implementation of controls that include “performance characteristics”

as set forth in subdivision 3, and the uses for which dwellings, buildings and structures may be erected.

The subdivision process is not in any sense of the word zoning. In its most basic sense, a subdivision is merely what the word states: It is taking one parcel of land and turning it into more than one parcel. Turning once again to McQuillin, a subdivision is defined as the division of a parcel of land into smaller parcels or lots so that the new lots may be sold or developed individually. 8 E. McQuillin, *Municipal Corporations*, § 25.118.10 (3d ed. 2000). The American Heritage Dictionary, Fourth Ed., 2000 defines subdivision as the act or process of subdividing, or a subdivided part, or an area of real estate comprised of subdivided lots. To subdivide is to divide a part or parts into smaller parts. *Id.* Applying the plain and ordinary meaning to the word subdivide or subdivision, a subdivision application is not an application relating to zoning. One need look no further than Chapter 394 of Minnesota Statutes for proof of this proposition.

Minn. Stat. § 394.22 sets forth certain definitions. Subdivision 6 is the definition for “official control.” Official controls are said to include, but are not limited to, “ordinances establishing zoning, subdivision controls, site plan rules, sanitary codes, building codes, housing codes, and official maps.” *Id.* A basic concept of statutory construction is that all words have a meaning. No word is superfluous. Only in interpreting a statute may a court give effect to all of its provisions. See e.g., Kirkwald Construction Co. v. M.G.A. Construction Co., 513 N.W.2d 241 (Minn. 1994); Gayle v. Commissioner of Taxation, 37 N.W.2d 711 (Minn. 1949). Thus, a number of different regulations are official controls – and not all official controls are zoning. To rule otherwise ignores the language of the

statute. It also ignores the language of Minn. Stat. § 15.99. A listing of areas of official control includes sanitary codes and building codes. Yet building codes have been determined not to be zoning, and a building permit has been determined not to be a permit within the coverage of Minn. Stat. § 15.99. See Advantage Capital, supra. Similarly, Minn. Stat. § 15.99 lists not only zoning permits as within its coverage, but permits relating to septic systems. That is an acknowledgement that these areas set forth in the definition of official controls do not all constitute zoning. While they all regulate and control different aspects of land use, only one area is actually zoning.

If we look at the principle of *noscitur a sociis*, a term that is capable of several meanings is defined by the words with which the term is associated. Wayne v. Master Shield, Inc., 597 N.W.2d 917 (Minn. App. 1999); See also State v. Sues, 236 Minn. 174, 52 N.W.2d 409 (Minn. 1952) (stating “the meaning of doubtful words in a legislative act may be determined by reference to their association with other associated words and phrases”).

At the very beginning of Chapter 394 the Legislature sets forth a listing of subjects covered by official controls. One area listed is zoning. Another listed is subdivisions. These are not and cannot be one and the same. Statutes are presumed to be passed with deliberation and with full knowledge of all existing statutes on the same subject. See, e.g., County of Hennepin v. County of Houston, 39 N.W.2d 858 (Minn. 1949); Roinestad v. McCarthy, 82 N.W.2d 697 (Minn. 1957). Therefore we must assume, that in establishing § 15.99, that the Legislature understood that zoning and subdivision are used separately in Chapter 394, and are not one in the same.

This is not the only place within Chapter 394 where zoning and subdivision controls are noted to be separate and distinct things. As noted earlier, Minn. Stat. § 394.25, subd. 3, addresses zoning ordinances. A separate subdivision, that subdivision cited by the Court of Appeals in its decision in this case, deals with specific controls on other subjects. Minn. Stat. § 394.25, subd. 7(a) states that specific controls pertaining to other subjects may be employed in land development, including, but not limited to, “subdividing of land and the approval of land plats.” We construe statutes as a whole. We give effect to all related statutory provisions. County of Hennepin, supra; Roinestad, supra. Minn. Stat. § 394.25, subd. 3 addresses zoning. Subdivision 7(a) of that same statutory section lists specific controls “pertaining to other subjects.” To give effect to this language the Court must find that zoning and subdivisions are two separate and distinct “subjects.” They are not the same, and a timing statute that deals with permits and decisions relating to zoning matters does not apply to subdivisions.

There are other examples of this distinction within Chapter 394. Minn. Stat. § 394.26 dictates when public hearings are required. The statute indicates that public hearings are required to be held prior to the adoption by ordinance of any comprehensive plan or amendments thereto, any official control or amendments thereto, and before any conditional use permit, variance, and any proposal for a subdivision is approved or denied. See Minn. Stat. § 394.26, subd. 1(a). Once again, we have a long listing of topics with subdivisions being specifically listed as well as conditional use permits and variances, (zoning permits) those permits to which Minn. Stat. § 15.99 has been applied.

In Minn. Stat. § 394.26, subd. 2, written notice of public hearing regarding the application of official controls to specific properties is to be sent to certain property owners. In this section too, we see a statutory distinction between zoning regulations and subdivision regulations. Finally, in Minn. Stat. § 394.30, subd. 5, dealing with the County Planning Commission, there is a distinction drawn between actions on conditional use permits and the authority to approve some or all categories of subdivisions of land.

Given this overwhelming evidence set forth by statutory distinctions, the plain and ordinary meanings of terms, the specific listing of subjects that are covered within Minn. Stat. § 15.99 itself, and the clear distinction being drawn between zoning and subdivision within Chapter 394, all of the normal rules of statutory construction have to be thrown out and ignored to conclude that zoning and subdivisions are the same thing.

While the Court of Appeals cites to Minn. Stat. § 394.25, subd. 7(b) in support of its position, that goes too far. All that says is that a lot, prior to being approved, must meet all applicable standards. But that could be said for a building permit also. Heights of buildings are regulated by a zoning ordinance. Placement of buildings are regulated by a zoning ordinance. That does not mean that the permit to build is a zoning permit or is related to zoning. The placement of septic systems is regulated by zoning ordinances. That does not mean that a septic permit is a zoning permit or that a septic system is therefore “related” to zoning. The plain language of Minn. Stat. § 15.99 recognizes that septic permits and zoning permits are different types of permits. Therefore, the fact that septic systems may be referenced in zoning ordinances does not make them zoning. We know that is the case, because if they did constitute zoning, or they were “related to zoning,” the Legislature

would not have separately listed them in Minn. Stat. § 15.99. Similarly, the fact that lot size is regulated in a zoning ordinance, does not make the subdivision of land zoning or related to zoning. Although the Court of Appeals cites Kramer v. Ottertail County Board of Commissioners for the proposition that the writ of mandamus was ordered in that case because of a preliminary plat application, in fact the case involved a conditional use permit also, which clearly would be a permit relating to zoning. Kramer, supra.

Lastly, the language of Minn. Stat. § 15.99, subd. 2(a) excludes preliminary plat applications from its timeline. That provision states “except as otherwise provided in this section, Minn. Stat. § 462.358, subd. 3(b), or Chapter 505,” an agency must approve or deny within 60 days a written request relating to certain topics. The legislative history of that provision shows that it was meant to be a clarification of the statute, making it clear subdivisions did not come within the parameters of the statute. See RA at pp. 170-199. Chapter 505 allows a county to control and regulate the subdivision approval process. See, e.g., Minn. Stat. § 505.09. For example, Minn. Stat. § 505.12 gives counties the power to extend concurrent approval timelines, indicating that the Legislature intended for counties to have the power to establish and manage timelines under Chapter 505, and not under Minn. Stat. § 15.99. In fact, if one looks at the Kanabec County Subdivision Ordinance there is a specific timeframe set forth in that ordinance for consideration of preliminary plat applications. RA at p. 79, Section 3.31.

There is a clear distinction between subdivision regulations and zoning regulations. They are not the same. Kanabec County recognizes this distinction, as do other counties. Kanabec County maintains a Shoreland Zoning Ordinance. That is where its performance

standards and use restrictions are contained. The County Subdivision Platting Ordinance, on the other hand, governs the subdivision of land. Minn. Stat. § 15.99 does not apply to subdivision applications.

**II. THE PLANNING COMMISSION HAD THE AUTHORITY TO DENY RESPONDENT'S APPLICATIONS.**

In the court below, Respondent claimed that the County Board could not delegate the power to deny preliminary plat applications to the Planning Commission. It claimed that Minn. Stat. § 394.30 supported that argument. Respondent also claimed that the County Board did not properly delegate the power to the Planning Commission via the Subdivision Ordinance. It argued that only approval authority was granted. The Court of Appeals agreed that only approval authority had been granted. The Court cited a provision of the Subdivision Ordinance that stated the Planning Commission could determine whether such plan conforms to design standards set forth in this Ordinance and conforms to adopted County plans, and that said the Commission may approve a preliminary plan subject to certain revisions. App. at p. 98, Subdivision Platting Ordinance § 3.31. The Court of Appeals held that the plain language of the statute did not give the Commission the authority to deny a preliminary plat, and that instead that authority remained with the County Board. Appellant contends that the Court of Appeals erred in its interpretation of the scope and intent of the delegation of power in this case, and of the plain and ordinary meaning of words and phrases.

The Court of Appeals cited to Minn. Stat. § 394.30, subd. 4, in the discussion regarding this issue. However it appears to have ignored an important reading of that

statute. If we accept that delegating approval authority does not constitute a delegation of denial authority, then we have imposed such an exacting standard on our state and municipal lawmakers that a wholesale rewriting of statutes and ordinances will need to be done. And there will likely be unending challenges and litigations facing government entities, based on language not specific enough to meet the Court of Appeals' expectations.

Appellant maintains that rules of statutory construction and municipal power do not warrant the conclusion made by the Court of Appeals that the power to approve does not encompass within it the power to deny. Proof of that lays in our statutes. Proof of that lays in the County Subdivision Ordinance. Proof of that exists through the rules of statutory construction.

As noted earlier, a basic concept of statutory construction is that all words have a meaning. None are superfluous. By looking at statutes in that way, a court can give effect to all provisions of a statute. Kirkwald Construction, supra; Gayle, supra. When the language of a statute is ambiguous, or subject to more than one interpretation, or when it appears upon a reading of the language of the statute that it would lead to a contrary or absurd result, a court attempts to ascertain the intent of the Legislature. . . . When the language of a statute is ambiguous, or subject to more than one interpretation, or when it appears upon a reading of the language of the statute that it would lead to a contrary or absurd result, a court attempts to ascertain the intent of the Legislature. Hyatt v. Anoka Police Department, 680 N.W.2d 115 (Minn. App. 204). Courts will not give effect to certain language in a statute or ordinance if it produces an absurd or unreasonable result that is plainly at variance with the policy of the legislation as a whole. That is why we review a

statute in its context and framework, construing sections of the statute together to determine the plain meaning and to harmonize and give effect to all provisions. See Chanhassen Estates Residents' Ass'n. v. City of Chanhassen, 342 N.W.2d 335 (Minn. 1984); Christiansen v. Department of Conservation, Game & Fish, 175 N.W.2d 433 (Minn. 1970). Thus even the arrangement of sections may provide plain meaning. A provision that may seem ambiguous in isolation may be clarified by the remainder of the statute or because "the same terminology [may be] used elsewhere in a context that makes its meaning clear or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." See United Savings Ass'n. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 371, 108 S. Ct. 626, 630 (1988).

Minn. Stat. § 394.30, subd. 4 states that in all instances in which the Planning Commission is not the "final authority, as authorized in subd. 5," the Commission shall review all applications for conditional use permits and plans for subdivisions of land and report thereon to the Board. One thing is clear from this. Whatever language is used in subd. 5, is language that the Legislature believed could and did constitute "final authority." Yet nowhere in subd. 5 is there a reference to anything other than approving certain types of permits and subdivisions of land. Minn. Stat. § 394.30, subd. 5, states that the Board may assign additional duties to the Planning Commission, including but not limited to "the authority to order the issuance of some or all categories of conditional use permits, the authority to approve some or all categories of subdivisions of land, and the authority to approve some or all categories of planned unit developments."

Thus the Legislature is saying that the authority it granted in Minn. Stat. § 394.30, subd. 5, is “final authority.” Final means final. The ultimate decision. The end result. American Heritage Dictionary, 4<sup>th</sup> ed. (2000). And the only words used by the Legislature in conferring final authority are “approve” and “issuance.” Nowhere within the statute does the word deny appear, and yet, the Legislature clearly believes and understands that granting the authority to issue something, and granting the authority to approve something, constitutes “final authority.” If that is the case, final authority has to include the power to deny, even though the words used are “issuance” or “approve.” Otherwise there is nothing final about it. It is not the ultimate decision without denial authority. Under the Court of Appeals’ interpretation in the instant case of Minn. Stat. § 394.30, subd. 5, if the Planning Commission were to do anything other than order the issuance of permits or approve permits, then there would have to be further review by the Board of Commissioners, and there would be no such thing as final authority.

Interpreting the authority to approve and to issue a permit as including the power to deny is clearly consistent with the canons of statutory construction. Every law is to be construed to give effect to all of its provisions. Kirkwald Construction Co., supra. The Legislature intends an entire statute to be effective and certain. Minn. Stat. § 645.17. A court is to give effect to all related statutory provisions in interpreting a statute, and construe a complete statutory scheme together. See, e.g., Roinestad, supra; Hagen v. County of Martin, 91 N.W.2d 657 (Minn. 1958). And local ordinances are also to be construed according to the recognized principles of statutory construction. Chanhassen Estates Residents’ Ass’n. v. City of Chanhassen, 342 N.W.2d 335 (Minn. 1984).

Applying the rules of statutory construction to Minn. Stat. § 394.30, and construing subdivisions 4 and 5 together as a whole, the only conclusion is that a body that is granted the power to issue a permit or to approve conditional use permits or subdivision applications has with it the authority to deny a permit. If it does not have that authority, it has no “final authority” and the phrase in subdivision 4 of this statute is meaningless, ineffective, and irrelevant. It is literally read out of existence by the manner in which the Court of Appeals ruled. Not only would the Court of Appeals’ interpretation eviscerate the plain intent of Minn. Stat. § 394.30, but other statutory provisions under Chapter 394 and Chapter 462, just to name a few.

An analysis of similar statutes shows that the legislature intended that a county board be able to delegate preliminary plat denial power to its planning commission by saying they have the power to approve. Minn. Stat. § 394.27 sets out the powers of the board of adjustment (“BOA”). Subd. 7 states that the BOA has the “exclusive power to order the issuance of variances.” *Id.* If we conclude the power to issue variances does not include the power to deny them, another body must have the power to deny them. But this provision states that the BOA has the exclusive power, demonstrating that simply because the legislature did not use the word denial, it implied the denial power by giving “issuance” power. Nowhere else is any county authority given the power to hear variances. Indeed, nowhere in Minn. Stat. § 394.27 does it say a variance can be denied. Under the Court of Appeals and Respondent’s type of statutory analysis, a county cannot deny a variance: it can only “order its issuance.”

Similarly, Minn. Stat. § 394.301, which governs conditional use permits, only discusses approval and the “approval authority,” whether that be by the county board or the county planning commission. The same is true for the city and township enabling legislation. Minn. Stat. § 462.3595 only references approval of conditional uses. Accepting Respondent’s and the Court of Appeals’ interpretation of what “approval authority” is means that no body within a county, city or township would be able to deny a conditional use permit. Yet we know that cannot be the case. Indeed, that is why we construe a complete statutory scheme as a whole. The only place in Chapter 394 where denial is even referenced is in §394.26, the notice provision. Subd. 1a of that section states in pertinent part that public hearings shall be held “before any conditional use permit, any variance, and any proposal for a subdivision is approved or denied by the responsible authority....” Thus, even though §§ 394.27, 394.30, and 394.301 do not say that such requests can be denied, we know that the statutory scheme set forth allows for an “approval” or “issuing” authority to have the power to deny such applications. We know that it is envisioned that it could be a county board, a planning commission, or a board of adjustment that approves or denies, by virtue of the legislature’s use of the all encompassing reference to “responsible authority” in § 394.26, subd. 1a. The hyper-technical argument of Respondent, and that of the Court of Appeals, leads to the absurd results, and simply has no validity when analyzed appropriately.

The above discussed principles and analysis also apply to the Board’s delegation of power in the County’s Subdivision Ordinance. The rules governing statutory interpretation also apply to ordinances. Smith v. Barry, 17 N.W.2d 324 (Minn. 1944); Chanhassen Estates

Residents Ass'n v. City of Chanhassen, 342 N.W.2d 335 (Minn. 1984). "City ordinances should be construed along broad and practical considerations, not along technical lines." Evans v. City of St. Paul, 2 N.W.2d 35, 38-39 (Minn. 1942).

Section 3.31 of the Subdivision Ordinance states that the Planning Commission "may approve a preliminary plan." Appendix, at 99. If the Legislature's use of the word "approve" includes the power to deny, then so too does the County's use of the word. Indeed, when we look at the Subdivision Ordinance as a whole, and the manner in which it operates, and the things which the County Board has said in passing the Ordinance, it is quite clear that the County Board delegated the power to approve or deny preliminary plats to the County Planning Commission.

First, when we look at the Ordinance as a whole, nowhere in there is there any reference whatsoever to the County Board of Commissioners ever looking at anything regarding a preliminary plat. When we look at the procedures for preliminary plan approval, the Environmental Services Director is to provide copies of the preliminary plan to all individuals who have some involvement in it. Appendix at p. 99. Copies go to the Commissioner of Highways if it borders on a state or federal highway, the County Highway Engineer who is required by law to comment on it, the affected Board of Town Supervisors whose township the subdivision may be in, the municipal council of any city within two miles of the affected property, and the County Surveyor who also must comment upon the plat. Yet there is nothing involving the County Board of Commissioners in that. Id.

The only reference to any decision on the preliminary plat is to the Planning Commission making a decision. Furthermore, nowhere in the Ordinance is the provision that the Court of Appeals and the Appellant say needs to be in there: No where does it say that if the Planning Commission believes the plat should be denied, that it is to report to the Board and make a recommendation thereon. Certainly if the Board wanted to retain the power to deny preliminary plats, and not grant that power to the Planning Commission, they would have inserted such a provision into the Subdivision Ordinance. We certainly know they can. And we certainly know they know how to do that. In another area of the Subdivision Ordinance, dealing with variations from requirements in Article VI, Appendix at p. 108, the Board has shown that where it wants the Planning Commission not to have the final say, it has clearly and unequivocally specified that. Any variations from the requirements of subdivision planning procedure are not to be determined by the Planning Commission, but are to be recommended by the Commission to the County Board. § 6.30 of this Subdivision Ordinance specifies as follows:

The Commission shall consider such application, give its written recommendations thereon, with the reasons therefore, at the time of its approval or disapproval of said plan. If the Commission refuses to recommend a variation, the subdivider may at once, without preparing a final plat, petition the County Board for a review of the decision of application for variation.

Appendix at p. 108. So we know that where the County Board wants to reserve power to act it has done so within the Subdivision Ordinance. It has reserved that power for variances from the normal subdivision requirements. It has also reserved it by clearly

specifying that final plat approval is to be submitted to the County Board of Commissioners.

See Appendix, § 3.32, at 99.

Finally, there is other evidence that supports the conclusion that the County Board of Commissioners granted the Planning Commission the power to approve or deny the application. The procedure followed in this case supports that conclusion. The Planning Commission itself denied the preliminary plat. Appendix, at 71-74. The Environmental Services Director had prior to that time recommended denial, not to the County Board of Commissioners, but to the Planning Commission. Appendix, at A132-A135. After the Planning Commission acted, the Environmental Services Director wrote to the applicant indicating that the application had been denied by the Planning Commission. Appendix at p. A75. That letter did not indicate that denial was being recommended to the County Board. It indicated that it had been denied. No further action was taken by the County. We therefore know that the County's own interpretation of its Ordinance is that the statement that the Planning Commission had the power to approve a preliminary plat also included the power to deny.

Beyond all of the above, general principles of municipal law mandate that this Court reject Respondent's argument and the Court of Appeals' conclusion. The power to deny preliminary plat applications is implied as necessary by the delegation of the power to approve preliminary plat applications. Municipalities have not only those powers expressly delegated to them by statute, but also those powers implied as necessary to exercise the expressly delegated powers. Cleveland v. Rice County, 56 N.W.2d 641 (Minn. 1952); Agra Resources Co-op v. Freeborn County Bd. of Commissioners, 682 N.W.2d 681 (Minn. Ct.

App. 2004). This principle of power must apply to all levels of municipal bodies and within such municipal bodies.

The ability to give a planning commission the power to approve a preliminary plat application necessarily encompasses the power to deny. The power to delegate approval is meaningless without it. The legislature clearly saw fit to give county boards the power to delegate their decision-making power with respect to subdivisions to a planning commission.

Appellant would contend that this Court should unequivocally rule that the power to approve as a matter of law includes the power to disapprove. This principle was first enunciated by the United States Supreme Court, in discussing the powers of the Secretary of War, in the case of Southern Pacific Co. v. Olympian Dredging Co., 260 U.S. 205, 43 S. Ct. 26 (1922). Therein the United States Supreme Court said “The power to approve implies the power to disapprove and the power to disapprove necessarily includes the lesser power to condition an approval.” Id. at page 208. In a Colorado case, where the operative code provision allowed for the planning commission to have the power to review plans, the court concluded, in a case challenging the planning commission’s denial a development as being ultra vires, that “the plain language of the code authorized the planning commission to grant, or to deny, a development plan.” City of Colorado Springs v. Securcare Self Storage, 10 P.3rd 1244, 1250 (Colo. 2000). See also, State v. Crown Zellerbach Corp., 92 Wash. 2d 894, 602 P.2d 1172 (Wash. 1979).

The Court of Appeals seems to suggest that without some “automatic administrative review of the Planning Commission’s recommendation for denial” there would be no way to

appeal a denial of the Planning Commission's decision. That is simply not the case. It has long been accepted that the final decision on a preliminary plat is reviewable by the Court of Appeals by way of a writ of certiorari. See e.g., PTL, LLC v. Chisago County Board of Commissioners, 656 N.W.2d 567 (Minn. App. 2003); Hurre v. County of Sherburne, 594 N.W.2d 246 (Minn. App. 1999).

Under all of the above principles, the Kanabec County Planning Commission had the authority to either approve or deny subdivision applications. It did so in this case on October 18, 2006. The Court of Appeals erred in its conclusion to the contrary.

**III. WITHIN THE MEANING OF MINN. STAT. § 15.99 THERE WAS NEVER A COMPLETED APPLICATION IN THIS CASE BECAUSE A TOWNSHIP APPROVAL LETTER WAS NOT SUBMITTED.**

The Court of Appeals addressed this issue and held that there was no showing that at the relevant time "the statute or ordinance required an approval letter" of the Township. The fact that the application itself stated it was a requirement was of "no moment" to the Court of Appeals. The Appellants contend that the Court of Appeals erred in this determination, that the County properly notified the Respondent within the timeframe under Minn. Stat. § 15.99 that it had an incomplete application, and that as a result thereof, the time limit in § 15.99 never began to run.

Minn. Stat. § 15.99, subd. 3(a) states that "[t]he time limit in subdivision 2 begins upon the agency's receipt of a written request containing all information required by law or by a previously adopted rule, ordinance or policy of the agency, including the applicable application fee." The only requirement for the stopping of the 60-day timeframe from beginning to run is for the County to send written notice within 15 business days within

receipt of the requests telling the requester what information is missing. The statute is quite clear and unambiguous. Without a completed application, the time limit in Minn. Stat. § 15.99 never begins to run.

The Environmental Services Director in this case returned the Appellant's application as incomplete on August 8, 2006, indicating to the Appellant what was missing. Appendix, at A-128. The Appellant chose never to submit the required information. The Court of Appeals took the position that if there was no statute or ordinance requiring the Township approval letter, it could not be required. Appellant contends that is a misreading of the statute.

The statute does not indicate what information can be required by a municipality for purposes of what is a "complete application." Therefore, it is left to the discretion of the County in this case. See American Tower LP v. City of Grant, 636 N.W.2d 309 (Minn. 2001). Circumstances and ordinances vary from place to place. Thus it makes complete sense that the decision of what is necessary be left to the local governmental unit. The local governmental unit is in the best position to know what best assists it in evaluating and processing land use applications. The plain language of Minn. Stat. §15.99 does not require or mandate that only information required by a "statute or ordinance" can be made necessary by a county in reviewing an application within the reach of Minn. Stat. § 15.99. Instead, the language of the statute states "all information required by law or by a previously adopted rule, ordinance or policy of the agency." This is much broader than what the Court of Appeals ruled.

A policy is nothing but a course of action, or procedure considered expedient, prudent or advantageous. See American Heritage Dictionary (4<sup>th</sup> Ed. 2000). A rule is an established standard or principle, or a “general norm mandating or guiding conduct or action in a given type of situation”. Blacks Law Dictionary, 7<sup>th</sup> ed. (1999). There is no requirement in Minn. Stat. § 15.99 as to how or in what manner these policies or rules be put in place. That is left to the discretion of agencies. The Environmental Services Office was noted by the Court of Appeals to be given the authority to administer the Subdivision Ordinance. Appendix at p. A-12. The Environmental Services Administrator is certainly therefore entitled to determine what procedure and/or information is considered “expedient, prudent or advantageous” for purposes of properly processing any given application. That is exactly what was done in this case.

Certainly there can be no argument that this was a “previously adopted” rule or policy. By having it right on the application that a Township approval letter is required as part of the application, there can be no doubt that this policy was in existence for some time. And when one reviews the provisions of the Subdivision Ordinance, it is evident that the approval letter assists in the County making the decisions it is required to make under its Ordinance provisions.

The County has indicated in its Subdivision Ordinance that proposed subdivisions are to be coordinated with existing nearby municipalities or neighborhoods so that the community as a whole may be developed harmoniously. It specifies “proposed land uses shall conform to any county or township zoning ordinance in effect.” Appendix at p. A-102. The Ordinance specifies that no proposed lots in any subdivision can have less area or

width than is required by zoning regulations applying to the area in which it is located. Id. at A-105. One of the requirements on passing a preliminary plat is that the Planning Commission consider conformity with “adopted County plans.” Id. at A-99. The County Comprehensive Plan indicates the close cooperation between the County and townships in land use regulations in Kanabec County. The Comprehensive Plan states that County’s planning and zoning is implemented at the township level. See RA at pp. 123-125. Table 13 of the Comprehensive Plan illustrates all of the minimum lot size requirements and maximum residential densities established by each township’s zoning regulations. RA at p. 125.

From the above it is quite clear then in passing upon a subdivision application, the regulation of the township and coordination with the township is important. It is entirely reasonable under such circumstances to require a township approval letter as part and parcel of the process, for purposes of ensuring that the standards of the Ordinance are met.

The Environmental Services Director, who administers the Ordinance and has a number of duties under the Ordinance, is the person in the best situation to determine the most expedient, prudent or advantageous procedure for obtaining that information. Under the Subdivision Ordinance, when read as a whole, it is clear that it is the Environmental Services Director who gathers the information from all sources, distributes it, and in fact comments upon it. We see that comments were made in this case. Appendix, A-132. We know that the information goes to the Environmental Services Director by virtue of the application itself. Appendix, A-118. Therefore, it is entirely reasonable and is not

inconsistent with any provision in Minn. Stat. § 15.99 for the Environmental Services Office to establish a policy or procedure to aid in the administration of the Ordinance.

Beyond that, it is quite clear from all of the materials that have been submitted in the Record that Minnesota Statutes would require township approval of a plat in this case. Minn. Stat. § 505.09 requires town board approval when there has been appointed in the town a planning and zoning commission. Kroschel Township has a Zoning Ordinance. See Appendix at p. A-114; RA at pp. 16-38, 39-72. The Township Zoning Ordinance requires a minimum lot area of not less than 20 acres for each dwelling. Indeed, Township officials came to the October 18<sup>th</sup> Planning Commission meeting and provided testimony about how this proposed plat did not meet the requirements of their Ordinances. Appendix, at p. A-71-74.

The Court of Appeals gave too narrow a reading to the terms of Minn. Stat. § 15.99. It is particularly troubling to give such a restrictive reading in this case, where we have a subdivision that clearly fails to meet the County standards. The County requires that any subdivision comply with Township controls. Appendix at p. 102, § 4.17. The Township requires 20 acre lots. Appendix at p. A-14. Under this Court's ruling in Breza v. City of Minnetrista, 725 N.W.2d 106 (Minn. 2006), failure to comply with the timing requirement of Minn. Stat. § 15.00 cannot result in approval of something not allowed under the applicable substantive law. Yet that is exactly what has occurred in this case.

The County established a policy or rule, regardless of what one wants to call it, that previously existed, and that required a township approval letter in order for there to be a complete application. There are legitimate reasons for that requirement. Under Minn. Stat.

§ 15.99, the County is allowed to determine what it believes are the proper requirements for each and every type of land use application that comes before it. Minn. Stat. § 15.99 is merely a timing statute, and not a rule of substantive law. See Breza v. City of Minnetrista, 725 N.W.2d 106 (Minn. 2006). It in no way, shape or form delineates or limits what type of information may be required by a county, city, township or any other agency in dealing with applications within the parameters of the statute.

Because the application was never complete, under the plain language of Minn. Stat. § 15.99, the timeframe for action never began to run. Consistent with notions of due process, and the idea of notice and an opportunity to be heard. (See Barton Contracting Co., Inc. v. City of Afton, 268 N.W.2<sup>nd</sup> 712 (Minn. 1978)), the County processed the application in the face of the applicant stating that they would not ever submit a township approval letter. Clearly we know why the applicant refused to do so.

As this Court is noted in Hans Hagen Homes v. City of Minnetrista, 728 N.W.2d 536 (Minn. 2007), Minn. Stat. § 15.99 is to be construed narrowly against a forfeiture or penalty. It also stated that it should be interpreted with the presumption that the Legislature intends to favor the public interest as against any private interest. Applying these rules of statutory construction, unless there is a completed application, the time period under Minn. Stat. § 15.99 never begins to run, and the statute can never be used to invoke a forfeiture.

**IV. THE KANABEC COUNTY ENVIRONMENTAL SERVICES OFFICER HAD THE AUTHORITY TO MAKE AN EXTENSION OF THE TIMEFRAME IN WHICH TO ACT UNDER MINN. STAT. §15.99**

On September 18, 2006, the County extended the 60-day time period in which to make a decision on Appellant's application, giving the County until December 12, 2006 to

make a decision on the application. The September 18 correspondence stated the extension was to enable the County to address the notice issues raised by Respondent in a letter dated September 15. Appendix, at A-135; Record No. 23. The Planning commission had been scheduled to act on the application on September 20, but the Respondent claimed that since the notice did not say it was a "public hearing" that the matter could not be heard. Record No. 23.

The Court of Appeals held that the fact that the Environmental Services Officer was to perform tasks and enforce the Subdivision Ordinance did not mean the Officer had the authority to extend the time to act under Minn. Stat. § 15.99. The Court of Appeals held that the County did not delegate the authority to issue an extension to the Environmental Services Director.

Minn. Stat. § 15.99, subd. 3(f) states:

An agency may extend the time limit in subdivision 2 before the end of the initial 60-day period by providing written notice of the extension to the applicant. The notification must state the reasons for the extension and its anticipated length, which may not exceed 60 days unless approved by the applicant.

The statute only speaks to an agency extending the timeline. It specifically says that a written notice is to be done. It specifically says that the notice must state reasons for the extension and its anticipated length. It specifically states that the length may not exceed 60 days unless approved by the applicant. The notice itself in this case said everything that a notice is to say.

Agency is defined to be any department, agency, board, commission, or other group in the executive branch of state government; a statutory or home rule charter city, county, town, or school district; etc. So an agency includes a county, but beyond that there is no definition given. The statute does not define or specify how the agency is to make a decision to extend the time limit.

The Court of Appeals' opinion suggests that there must be a specific statement made by "an agency" which we could take to mean the governing body or head of that agency, that specifically says "this person may extend the time limits under the Minn. Stat. § 15.99." However, that would seem to fly in the face of the purpose and intent of Minn. Stat. § 15.99, as well as general rules of municipal law.

The Record establishes that the Environmental Services Officer is the person who undertakes to administer the Subdivision Ordinance. She takes in the applications. She is responsible for enforcing it. She distributes information to other people. She provides advice and guidance to the Planning Commission in making decisions. The Environmental Services Officer also administers the Zoning Ordinance.

So we have the person who does the administration of these areas, who is acknowledged to have duties relating to the administration of these areas, but whom the Court of Appeals says has not been delegated the authority to do an extension of time under Minn. Stat. § 15.99. Assuming arguendo the Court of Appeals is correct, that subdivisions are subsumed within the word "zoning" under Minn. Stat. § 15.99; then there is no reason that the person who is the "administrator" of those ordinances does not have, through the general administrative power, the power to extend under Minn. Stat. § 15.99. After all,

Minn. Stat. § 15.99 is merely a timing statute. Breza, Supra. Its purpose is merely to ensure that a decision is made. It has no other purpose. It is not a rule of delegation. It does not in any way, shape or form change any other substantive law.

In this case, Ms. Bearce wrote a letter extending the time limit to act under Minn. Stat. § 15.99. The agency in this case, the County, of course only acts through its agents. That extension letter was sent to the Kanabec County Attorney. Appendix at p. A-135. From that, we can see that the County Attorney, charged with being the legal advisor for the County, and the County Environmental Services Director, charged with enforcing zoning and subdivision ordinances, amongst other things, both believed that her authority extended to acting on behalf of the County in doing an extension under Minn. Stat. § 15.99.

And that makes perfect sense. In other areas of the law, we consider that an employee is acting within the scope of his or her authority when the employee's conduct is substantially within work related limits of time and place and is reasonably related to that person's employment. When looking at the imposition of liability on an employer for the acts of an employee, we say that an employee acts within the scope of his or her authority when that employee's conduct was substantially within work-related limits of time and place; and the employee's conduct is of a kind authorized by the employer or reasonably related to that employment. Certainly those standards are met in this case.

The time limits under Minn. Stat. § 15.99 are simply an incident of the processing of an application within the parameters of the statute. The processing of an application for a zoning permit, a subdivision, a septic system, is something commonly within the realm of responsibility of a zoning office or an environmental services office, whatever the county

happens to call it. The amount of time that any particular permit decision will take can be seen to be part of the processing of that application. Certainly it is the administrator, the director, the person in charge of the office, who is in the best position to assist in that processing, and is the person to whom the responsibility for an extension should and does rest with.

This is not a novel or unique idea. If a person has been given the responsibility to administer and/or enforce a particular ordinance scheme, then basic rules of municipal law would support the notion that they have all powers expressly granted, plus those necessarily implied, to carry out those duties. The extension of the timeframe in which to act in a permit application is one of those duties that falls under the administration and enforcement of such an ordinance.

Even if this Court finds that the Environmental Services Department did not have the authority to extend the 60-day time period, this Court should find that the County's extension was valid under the doctrine of substantial compliance. Under the doctrine of substantial compliance,

the law does not mandate in all cases strict and literal compliance with all procedural requirements. Technical defects in compliance which do not reflect bad faith, undermine the purpose of the procedures, or prejudice the rights of those intended to be protected by the procedures will not suffice to overturn governmental action...

City of Minneapolis v. Wurtele, 291 N.W.2d 386, 391 (Minn.1980). Minnesota courts interpreting Minn. Stat. § 15.99, subd. 3(f) have found that it is directory rather than mandatory, and have applied the doctrine of substantial compliance to its provisions. See

Manco of Fairmont, Inc. v. Town Board of Rock Dell Township, 583 N.W.2d 293, 295

(Minn. Ct. App. 1998).

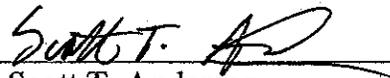
In this case, certainly the County substantially complied with the requirements of Minn. Stat. § 15.99, subd. 3(f). Even if the Environmental Services Department was not “expressly” authorized to extend the time for consideration of an application by the County, it did so in good faith, as a representative of the County, believing it was in its power to do so. The concerns and purpose of Minn. Stat. § 15.99 were not thwarted, and in fact were served. The extension complied with all other requirements of subd. 3(f), and should be upheld.

### CONCLUSION

For all the foregoing reasons, the Appellant respectfully requests that this court reverse the Court of Appeals, and rule that the County properly acted in denying the application for preliminary plat in this case.

**RATWIK, ROSZAK & MALONEY, P.A.**

Dated: February 13, 2008

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STATE OF MINNESOTA  
IN SUPREME COURT

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

Appellants,

**CERTIFICATE OF  
BRIEF LENGTH**

v.

Clam Waters, LLC, a Minnesota limited  
liability corporation,

Respondent.

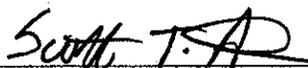
**COURT OF APPEALS  
CASE NOS.: A06-2019 and A06-2361**

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I hereby certify that this Brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a monospaced font. The length of this Brief is 1,085 lines, 11,515 words. This Brief was prepared using Microsoft Word.

**RATWIK, ROSZAK & MALONEY, P.A.**

Dated: February 13, 2008

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