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Property: Lost at Sea: Does the Sixty-day Rule Apply to County Subdivision Applications?—Calm Waters, LLC v. Kanabec County Board of Commissioners

Kelly F. Hudick

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PROPERTY: LOST AT SEA: DOES THE SIXTY-DAY RULE APPLY TO COUNTY SUBDIVISION APPLICATIONS?

—CALM WATERS, LLC V. KANABEC COUNTY BOARD OF COMMISSIONERS

Kelly F. Hudick†

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I. INTRODUCTION

The development of lakeshore property sparks intense debate in the Land of 10,000 Lakes. Stakeholders’ competing interests often clash: local governments try to increase tax revenue, property owners oppose development of neighboring properties to maintain property values and reduce lake traffic, and developers seek to maximize their return on investment by putting the property to its “highest and best use.”

The land-use application approval process is extremely complex, and developers often need approval from the local government and other regulatory agencies. For example, the Minnesota Department of Natural Resources (DNR) oversees shoreland management and has established minimum standards for setbacks, dock management, invasive species growth, and lot sizes. To further complicate matters, if these applications are not approved within the statutory timeframe, they can be deemed approved by operation of law. As a result, many legal battles are fought over the development of lakeshore property, and there is never a shortage of media coverage to go around.

Calm Waters, LLC v. Kanabec County Board of Commissioners is one recent example. A Twin Cities metro-area developer, Calm Waters, LLC (“Calm Waters”), sought to subdivide lakeshore property in northern Kanabec County, Minnesota, in order to install an access road and build cabins on the individual lots. The

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1. See, e.g., Larry Oakes, Is There Such a Thing as a Landlocked Lakefront Lot?, STAR TRIB. (Minneapolis), Aug. 31, 2008, at 1B (describing a controversial proposed development in Emily, Minnesota where homeowners would have access to the shoreline held in common ownership).
2. BLACK’S LAW DICTIONARY 1681 (9th ed. 2009) (defining highest and best use as “the use that will generate the most profit”).
4. MINN. R. 6120.2500–3900 (2007). Statutory authority for the Shoreland Management Rules is based on Minnesota Statutes section 103F.211, subdivision 1. The policy behind the Rules is “to preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of water and related land resources of the state.” MINN. R. 6120.2600.
5. See infra Part II.D.
7. 756 N.W.2d 716 (Minn. 2008).
8. Jay Corn, State’s Highest Court Rules in Favor of Kanabec County, KANABEC COUNTY TIMES, Sept. 26, 2008, available at http://www.moraminn.com/ (search...
county denied the application because Calm Waters planned to subdivide the land into approximately five-acre parcels, and this plan did not comply with the twenty-acre minimum lot size required by township and county ordinances. The developer argued, among other things, that the county had approved the application as a matter of law by failing to deny it within sixty days of submission.

Reversing the court of appeals, the supreme court assumed without deciding that county subdivision applications constitute “a written request relating to zoning” under the sixty-day rule. The court then held that the county denied the subdivision application within the required timeframe. Therefore, it was unnecessary to specifically determine whether the sixty-day rule applied. In a concurring opinion, Justice Dietzen agreed with the disposition of the case but was very critical of the majority for failing to answer the “threshold issue” presented for review. He argued that the court should have determined applicability of the statute and then verified that the county had complied.

This note examines the background of zoning and subdivisions, automatic approval statutes in other states, the details and history of the sixty-day rule, exclusions from the deadline, and applicable Minnesota case law. Next, it describes the facts of the Calm Waters case and the Minnesota Supreme Court decision.

9. Id.; see also KROSCHEL, MINN., TOWN ZONING ORDINANCE, § 4, subdiv. 5 (2007), available at http://www.kanabeccounty.org/ (follow “Township Information” hyperlink; then follow “Kanabec Township Zoning Ordinance” hyperlink) (requiring “[a] lot area of not less than twenty (20) acres for each dwelling unit, of which an area of at least one (1) acre is determined to be buildable”). The plan that Calm Waters submitted to the County averaged five acres per plot. Corn, supra note 8.


11. See generally BRYAN A. GARNER, A DICTIONARY OF MODERN LEGAL USAGE 84 (2d ed. 1995) (stating that “[t]he phrase ‘we assume, without deciding’ is a favorite of common-law courts”). Assumptions are more hypothetical, as opposed to presumptions which are more inferential and authoritative and lead to decisions. Id.


13. Calm Waters, 756 N.W.2d at 722.

14. Id.

15. Id. at 723 (Dietzen, J., concurring).

16. See id.

17. See infra Part II.
including the concurring opinion. It then analyzes the decision, focusing on (1) the court’s refusal to reach the issue of whether the sixty-day rule applied to a subdivision application, (2) the policy that supports the court’s decision, and (3) the legislative history of the statute. Finally, this note concludes that the majority should have decided the issue and held that the sixty-day rule applied to subdivision applications made to a county, because they are requests “related to zoning” within the meaning of Minnesota Statutes section 15.99.

II. BACKGROUND

Governmental entities seek compatibility between the interests of private property owners and the greater community. The implementation of land-use regulations such as zoning and subdivision regulations are two methods of accomplishing this goal.

A. The History of Land Use Regulations

Public regulation of land dates back to approximately 450 B.C. when the Romans adopted building regulations similar to modern setback requirements. During American colonial times, several colonies passed laws that banned noxious or offensive uses of property. The modern system of land-use regulation, as we know it, began in 1916 when New York City enacted the first comprehensive zoning code in the United States. The United States Department of Commerce published what is known as the Standard State Zoning Enabling Act in 1922, with the purpose of encouraging municipalities to adopt zoning ordinances. Within a
few years, 368 municipalities and 43 states had enacted zoning ordinances.

Although adoption of zoning ordinances was widespread during this time, accusations began to mount that zoning was unconstitutional and represented a taking of property without just compensation. In 1926, the Supreme Court upheld the constitutionality of comprehensive zoning in the landmark case of Village of Euclid v. Ambler Realty.

The states, pursuant to their police powers, hold the ultimate authority to regulate land use through zoning. States then delegate their police power to local governments through zoning enabling legislation. In Minnesota, the Municipal Planning Act grants authority to municipalities and townships. The Act authorizes cities to control land use by imposing four types of official controls: zoning ordinances, subdivision regulations, dedication requirements, and official maps. Minnesota counties have similar authority as municipalities under separate enabling legislation.

Zoning ordinances are the most common form of land-use regulations. Zoning ordinances divide land into districts, specifying the principal and accessory uses, which then regulate

29. DUKEMINIER ET AL., supra note 27, at 827.
30. 272 U.S. 365 (1926) (holding that zoning ordinances are a “valid exercise of authority” and for an ordinance to be declared unconstitutional it must be “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare”). Id.
31. Id. at 387. “Police power” is defined as “the general governmental power to protect the health, safety, morals, and general welfare of the citizenry.” PETER W. SALSICH, JR. AND TIMOTHY J. TRYNIECKI, LAND USE REGULATION 3 (2d ed. 2003).
32. See SALSICH & TRYNIECKI, supra note 31, at 5–6.
33. MINN. STAT. §§ 462.351–365 (2008). Townships have the same land use authority as municipalities under the Municipal Planning Act, subject to the additional requirements of sections 366.10–181. In addition, townships may only be as restrictive or more restrictive than the county. MINN. STAT. § 394.33 (2008).
34. See § 462.352 (defining municipality as “any city, including a city operating under a home rule charter, and any town”).
36. See MINN. STAT. § 394.21, subdiv. 1 (2008) (authorizing counties with populations of less than 300,000 to carry on planning and zoning activities “[f]or the purpose of promoting the health, safety, morals, and general welfare of the community”).
37. POWELL, supra note 21, at § 79B.01[1].
38. See GITELMAN ET AL., supra note 23, at 288.
the “construction, reconstruction, alteration, repair, or use of buildings, structures, or land” within those districts. 39 Zoning laws also regulate nonconforming uses, 40 variances, 41 special use permits 42 and rezoning requests. 43 If the landowner seeks to use the property in a manner that does not comply with the zoning ordinance, the landowner must obtain an approved variance from the local board of appeals. 44

In Minnesota, local governments, such as municipalities, use zoning ordinances to establish standards and procedures for regulating the use of land “[f]or the purpose of promoting the public health, safety, morals, and general welfare.” 45 These zoning ordinances impose regulations such as minimum lot size, location of buildings on a lot, building size and number of stories, business or residential use, and population density.

B. Subdivisions and Their Relationship to Zoning

In many states, regulation of subdivisions evolved after zoning ordinances to ensure that new developments had adequate infrastructure such as streets, sidewalks, and utility lines. 47 Minnesota law defines a subdivision as:

the separation of an area, parcel, or tract under single ownership into two or more parcels, tracts, lots, or long-term leasehold interests where the creation of the leasehold interest necessitates the creation of streets, roads, or alleys, for residential, commercial, industrial, or

40. See Gitelman et al., supra note 23, at 288 (defining nonconforming use as “[a] use of land that was in existence when a zoning restriction was adopted and that is prohibited by that restriction”).
41. Id. at 289 (“variances allow property owners to use their buildings and parcels for purposes otherwise prohibited by the zoning law”).
42. Id. (stating that special or conditional use permits obtained from the local administrative agency “authorize other uses to be made of the land” than those permitted in zoning districts).
43. Id. at 289–290 (explaining that owners can request rezoning when a proposed use is not permitted under current zoning law).
44. Id. at 290.
45. Minn. Stat. § 462.357, subdiv. 1 (2008); see also Standard State Zoning Enabling Act, supra note 26, § 1. Most states have adopted this model statute in some form. See Gitelman et al., supra note 23, at 282.
46. See § 462.357, subdiv. 1; see also Standard State Zoning Enabling Act, supra note 26, § 1 (describing various purposes of zoning ordinances).
47. Powell, supra note 21, § 79B.01[3][b].
other use or any combination thereof, except those separations:

1) where all the resulting parcels, tracts, lots, or interests will be 20 acres or larger in size and 500 feet in width for residential uses and five acres or larger in size for commercial and industrial uses;

2) creating cemetery lots;

3) resulting from court orders, or the adjustment of a lot line by relocation of a common boundary. 48

Subdivision regulations sometimes compel developers to dedicate a portion of the land for public facilities like parks and schools, or pay a fee in lieu of such a dedication. 49 These are known as subdivision exactions, 50 and they are commonly used by local governments. 51

In Minnesota, subdivisions must be platted if they create “five or more lots or parcels of 2½ acres or less in size.” 52 A plat is defined as “one or more existing parcels of land drawn to scale . . . depicting the location and boundaries of lots, blocks, outlots, parks, and public ways.” 53 While courts and practitioners often use the words “plat” and “subdivision” interchangeably, it is important to note that not all subdivisions are platted and not all plats are subdivisions. 54

Both subdivision controls and zoning ordinances are means of ensuring that new developments meet prescribed standards. 55

50. See id. § 79D.04[1][a]; see also BLACK’S LAW DICTIONARY 1560 (9th ed. 2009) (defining subdivision exaction as “[a] charge that a community imposes on a subdivider as a condition for permitting recordation of the subdivision map and sale of the subdivided parcels.”).
51. See POWELL, supra note 49, § 79D.04[1][a].
52. MINN. STAT. § 462.358, subdiv. 3a (2008).
53. MINN. STAT. § 505.01, subdiv. 3(f) (2008). In addition, section 462.352, subdivision 13 of the Minnesota Statutes defines a plat as “the drawing or map of a subdivision prepared for filing of record pursuant to chapter 505 and containing all elements and requirements set forth in applicable local regulations adopted pursuant to section 462.358 and chapter 505.”
55. Marygold Shire Melli, Subdivision Control in Wisconsin, 1953 Wis. L. REV.
While subdivision regulations must be consistent with underlying zoning ordinances, the two controls are not mutually exclusive. Zoning restrictions regulate the type of development allowed on land, whereas subdivision controls regulate the way in which land is divided and developed. In other words, zoning restrictions are focused on separating uses and regulating population density, whereas subdivision regulations are focused on ensuring that individual lots used as zoned will not impose any burden or expense on the community. Zoning regulations tend to remain static over a number of years, while subdivision regulations deal with ongoing development.

In practice, the most important distinction between subdivisions and zoning is their administration. Zoning is a legislative act, while subdivision regulations are entirely administrative.

C. Subdivision Applications

When a landowner decides to seek subdivision of a parcel of land, he must obtain the approval of a local planning commission or board. In Minnesota, subdivision applications are submitted to the controlling government entity, which could be a city, county, or township. It is very difficult to find precise data on the number of subdivision applications submitted for approval each year because there is no known organization that aggregates the information for

389 (1953).
56. MINN. STAT. § 462.358, subdiv. 2a (2008).
57. ZIEGLER, JR. ET AL., supra note 26, § 89:4; see also Melli, supra note 55, at 389 (stating that zoning and subdivision controls “are mutually dependent because the layout of an area is inseparable from the character of the use to be made of the land.”).
61. Id. § P9.04[3][b].
62. Id. (Changing a zoning ordinance involves “an amendment to a map that is adopted as part of a local ordinance or law” whereas subdivision regulation “simply involves comparing the proposed subdivision to standards set forth in adopted regulations.”).
63. See id. § P9.04[5][a].
64. E-mail from Paul Merwin, Senior Land Use Attorney, League of Minnesota Cities, to Kelly F. Hudick, Student, William Mitchell College of Law (Aug. 28, 2009, 03:42 CDT) (on file with William Mitchell Law Review).
all three of the entity types.\textsuperscript{65}

1. Approval Process

The approval process is complicated, to say the least. It is always a phased review, often in three stages: (1) a pre-application conference, (2) a preliminary plat approval, and (3) a final plat approval.\textsuperscript{66} Local subdivision regulations set forth the required documents for preliminary plat approval, and these typically include a drawing showing the lot boundaries, location of utilities, and open space.

In Kanabec County, Minnesota, the subdivision ordinance requires the applicant to submit copies of the preliminary plan and protective covenants, topographic information, soils information and septic treatment, and a township approval letter.\textsuperscript{68} The County recommends, but does not require, that the applicant have a discussion with the planning commission in order to “familiarize himself with this ordinance” and “avoid costly revision of plans and plats.”\textsuperscript{69}

After the applicant submits the preliminary plat materials, staff members review the materials at various stages to ensure compliance with zoning and subdivision regulations.\textsuperscript{70} A public

\textsuperscript{65} See id. The Metropolitan Council runs what is called a Plat Monitoring Program, which collects and reports data on residential development within the Twin Cities metro area. See Metropolitan Council, Community Development Committee Information Item (May 19, 2008), available at http://www2.metrocouncil.org/planning/assistance/PlatMonitoringReport2007.pdf. To put some perspective on development volumes in any given year, in 2007 the council collected plat data from communities of Andover, Blaine, Brooklyn Park, Chanhassen, Cottage Grove, Eagan, Eden Prairie, Empire Township, Farmington, Hugo, Inver Grove Heights, Lakeville, Lino Lakes, Maple Grove, Medina, Minnetrista, Orono, Ramsey, Rogers, Rosemount, Savage, Shakopee, Victoria, Waconia, and Woodbury, and found that the number of approved plats was 83, the number of developable acres platted was 811.7, and the number of platted units totaled 3,028. Id. The breakdown of units was 1,464 single-family units and 1,564 multi-family units, and the report states that this is “significantly fewer than platted in previous years.” Id.

\textsuperscript{66} Powell, supra note 21, § 79D.03[5][c].

\textsuperscript{67} See id. § 79D.03[5][c][i] (describing what a drawing would include).

\textsuperscript{68} See Kanabec County, Minn., Ordinances No. 4, art. III, § 3.11 (2006), available at http://www.kanabeccounty.org/ (follow “County Ordinances” hyperlink; then follow “#4, Plats & Subdivisions.pdf” hyperlink). Section 3.17 describes the data that is required in the preliminary plan. Id. § 3.17.

\textsuperscript{69} See id. § 3.10.

\textsuperscript{70} Powell, supra note 49, § 79D.03[5][b]–[d].
hearing may also be required at this stage. If the planning commission approves the preliminary plat, the applicant can begin development and seek final plat approval. But if the commission denies the preliminary plat, the applicant can pursue an administrative or judicial appeal.

2. Appealing a Denial

Zoning enabling statutes must provide for appeal of the zoning enforcement officer’s decisions. Generally, a party has two stages of appeals: administrative and judicial. The first stage is an appeal to the board of adjustment, if one exists, and the second is directly to a state court.

Landowners frequently seek a writ of mandamus, which asks the court to compel the administrative body to approve the land-use application. A writ of mandamus is an “extraordinary legal remedy” and the district court will not issue such a writ unless the injured party shows that there is “no other adequate remedy.” In the alternative, a party may also file for a writ of certiorari directly to the appellate court, but that alternative is “more expensive, more time-consuming, and more complicated” than requesting a writ of mandamus.

D. Automatic Approval of Land-Use Applications

In many states, the process of approving or denying land-use applications falls within statutory time limits. Generally, these time limits are directive rather than mandatory. In some cases, if

71. Id. § 79D.03[5][c][ii].
72. Id.
73. See infra Part II.C.2.
74. SALSICH & TRYNIECKI, supra note 31, at 245.
75. Id.
76. Id.
77. BLACK’S LAW DICTIONARY 1046–47 (9th ed. 2009) (defining mandamus as “[a] writ issued by a court to compel performance of a particular act by a lower court or a governmental officer or body, usually to correct a prior action or failure to act”).
78. Kramer v. Otter Tail County Bd. of Comm’rs, 647 N.W.2d 23, 26 (Minn. Ct. App. 2002); see also Breza v. City of Minnetrista, 725 N.W.2d 106, 109–10 (Minn. 2006).
80. Poulin, supra note 3, at 610.
the planning commission does not approve or deny the application within a certain period of time, it is automatically approved.\(^{82}\)

Automatic approval statutes are also referred to as “deemed approval statutes,” “streamlining statutes,” and “reverse pocket veto.”\(^{83}\) An automatic approval is a serious consequence for a local governing body because it can unintentionally result in a negative effect on landowners or the community and also denies any opportunity to impose conditions on application approval.\(^{84}\) Because of the decisive consequence, both county officials and applicants are wise to closely monitor the calendar.

1. **Automatic Approval in the Other Forty-nine States**

Automatic approval statutes are quite common. More than half of the states have an automatic approval statute for zoning, plat, or subdivision-related applications made to a government agency.\(^{85}\) While the general theme is automatic approval of the application if there is no action after a certain time period has expired, there are many variations among the statutes.\(^{86}\)

The timeline for required agency action varies by state, but is generally between thirty and sixty days.\(^{87}\) The time at which the

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82. Id. at 440.
83. Poulin, supra note 3, at 610.
84. Brooker & Cole, supra note 81, at 439.

86. For more information on automatic approval statute variations and the policies behind them, see 2 James A. Kushner, Subdivision Law and Growth Management § 8:4 (May 2009); Poulin, supra note 3; Brooker & Cole, supra note 81.
clock starts is another variable. In some states it starts when the application is submitted, while in others it starts only after a meeting of the agency or a public hearing. Many of the statutes have provisions for extending the timeline—some allow agencies to unilaterally extend the timeline, while others require the agency to obtain the consent of the applicant. Other states, such as Florida and Vermont, feel that automatic approval is an excessive result and have refused to enforce these statutes.

2. Minnesota: The Sixty-day Rule

In 1995, the Minnesota Legislature enacted Minnesota Statutes section 15.99, commonly referred to as the “sixty-day rule.” This automatic approval statute established a sixty-day deadline for governmental agencies to approve or deny a written request related to zoning. The purpose of the rule was straightforward: “to keep government agencies from taking too long in deciding issues like the one in question.” Although this procedural rule seems simple, the sixty-day rule is a heavily litigated issue in Minnesota land-use law.

88. E.g., LA. REV. STAT. ANN. § 33:113 (2009).
89. E.g., KAN. STAT. ANN. § 12-752(b) (2008) (stating that if the planning commission does not make a determination whether the plat conforms to subdivision regulations within sixty days after the first meeting, the plat shall be approved).
90. E.g., MINN. STAT. § 15.99, subdiv. 2(c) (2008) (stating that an agency must provide reasons in writing for the extension, but the applicant’s consent is not required); MO. REV STAT. § 89.420 (2009) (allowing commission to extend sixty-day approval period with the applicant’s consent).
91. See Caliente P’ship v. Johnston, 604 So.2d 886, 887 (Fl. Dist. Ct. App. 1992) (per curiam) (holding that “default approval” is too harsh a sanction for noncompliance with the statute where the agency was only two days late); see also In re Newton Enters., 708 A.2d 914, 918 (Vt. 1998) (refusing to apply automatic approval statute because it may result in approval of projects that are not designed to protect safety and welfare).
94. Manco of Fairmont, Inc. v. Town Bd. of Rock Dell Twp., 583 N.W.2d 293, 296 (Minn. Ct. App. 1998). In addition, “the original 60-day time limit in subdivision 2 and the additional 60-day extension allowed under subdivision 3(f) serve as evidence of the legislature’s intent to require government to make decisions within 120 days of its initial consideration.” Id.
95. See e.g., Hans Hagen Homes, Inc. v. City of Minnetrista, 728 N.W.2d 536.
Under the rule, if the agency fails to deny a request within sixty days, that request is approved as a matter of law. The statute defines an agency as “a 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; any metropolitan agency or regional entity; and any other political subdivision of the state.”

The clock begins when the agency receives the written request containing all required information. If the request is incomplete, the sixty days will start over only if the agency sends notice to the applicant of the missing information within fifteen business days. In addition, the time limit can be extended before the expiration of the first sixty-day period if the agency provides written notice to the applicant, essentially allowing the agency a maximum of 120 days to make a decision.

The Minnesota Legislature has modified the statute five times since it was enacted: in 1996, 2003, 2006, and twice in 2007, with the most substantial changes in 2003. The 2003 amendment added the definition of “request,” including within this definition “a written application related to zoning.” An agency can reject...
an incomplete request that is missing required information, and if a request does not comply with the statutory definition it is deemed not to have been made.\footnote{103}

In addition, the 2003 amendment added clarifying information about denial, stating that if the agency denies a request, it must state the reasons for denial in writing at the time the denial is made and provide the written statement to the applicant.\footnote{104} It also added that the applicant, not just the agency, may extend the time limit by requesting it in writing.\footnote{105}

The exemption of the subdivision and plat review processes from the sixty-day deadline was the largest change resulting from the 2003 amendment.\footnote{106} The rule does not explicitly state that subdivision applications and plat reviews are exempt; instead, it enumerates specific laws that are excluded from the sixty-day deadline: section 462.358, subdivision 3b and chapter 505.\footnote{107} In 2007, the legislature added a third exclusion: section 473.175.\footnote{108} Under the current sixty-day rule, issues arise regarding which exclusions should apply and how to interpret the statutes when read together.

\textit{a. Exclusions from the Sixty-day Rule}

The first exclusion, section 462.358, subdivision 3b, addresses review procedures for subdivision applications submitted to a \textit{municipality}.\footnote{109} The statute sets a 120-day deadline for preliminary approval or denial of the subdivision application.\footnote{110} If the municipality fails to approve or deny the application, it is deemed preliminarily approved.\footnote{111} The law was originally enacted in 1965,
three decades before the sixty-day rule was enacted. The legislature’s purpose for the law was to provide municipalities with a “uniform procedure for adequately conducting and implementing municipal planning.”

The second exclusion from the sixty-day rule is section 473.175, which focuses on the review of comprehensive plans by the Metropolitan Council. The Council is required to return a written statement to the local government unit that submitted the comprehensive plans within 120 days; otherwise the plans are deemed approved.

The third exclusion is the plat review process in chapter 505. It requires that plats be approved by the city or town council, or if the land is outside the city limit, by the board of county commissioners. The statute sets forth requirements for review by the commissioner of transportation and county engineer and corresponding time deadlines, but provides no automatic approval provision. If the county engineer recommends changes to the plat that are not accepted by the city, representatives from both sides are required to meet. However, the statute explicitly states that this requirement does not extend the time deadlines in section 15.99 and section 462.328 or prohibit final approval.

Unless the application falls under one of the specific subdivision-related exceptions discussed above, a written request relating to zoning must be approved or denied within sixty days, pursuant to section 15.99.
b. Minnesota Case Law

Although the court of appeals has decided many sixty-day-rule cases since the law was enacted, the Minnesota Supreme Court had only addressed the statute three times before the Calm Waters decision. In all three prior cases, the applications were made to a municipality rather than a county.

In 2001, the supreme court decided American Tower, L.P. v. City of Grant. The appellant sought approval to build a communications tower in the City of Grant, which required the company to obtain a conditional use permit. At that time, the city’s practice was to send out a notice with the application stating that it was prospectively granting an extension of the sixty-day deadline under section 15.99. The court held that, “an extension must be made after the application is received by the agency.” The supreme court rejected the court of appeals’ holding that the extension was only allowed in extenuating circumstances, clarifying that the statute can be extended as long as the reasons are provided in a written notice.

In 2006, the supreme court again addressed the sixty-day rule in Breza v. City of Minnetrista. Appellant Breza bought property on Lake Minnetonka in the City of Minnetrista for the purpose of building a home. He filled approximately 5,737 square feet of wetlands on the property—an action that resulted in a cease and desist order from the Minnesota Department of Natural Resources. Breza applied for an exemption with the city, and the city denied the application approximately two years later.

123. See Hans Hagen Homes, Inc. v. City of Minnetrista, 728 N.W.2d 536 (Minn. 2007); Breza v. City of Minnetrista, 725 N.W.2d 106 (Minn. 2006); Am. Tower, L.P. v. City of Grant, 636 N.W.2d 309 (Minn. 2001).
124. Hans Hagen Homes, 728 N.W.2d at 538; Breza, 725 N.W.2d at 108; Am. Tower, 636 N.W.2d at 311.
125. 636 N.W.2d 309 (Minn. 2001).
126. Id. at 310.
127. Id. at 310–311.
128. Id. at 313 (emphasis added).
129. Id. at 314.
130. 725 N.W.2d 106 (Minn. 2006).
131. Id. at 108.
132. Id.
133. Id.
city agreed that it violated the sixty-day rule, but stated that the Wetland Conservation Act only allowed for a 400 square foot exemption. Breza was ordered to restore the balance of the wetlands, but sought a writ of mandamus instead.

In its ruling, the supreme court held that section 15.99 cannot grant relief that exceeds the agency’s authority as allowed under state law. The court also noted that the court of appeals has strictly enforced the sixty-day rule in a number of section 15.99 cases, “consistently holding that an agency’s failure to comply with the section 15.99 timeline results in automatic approval of the request at issue.”

In 2007, the supreme court decided a third sixty-day rule case, *Hans Hagen Homes v. City of Minnetrista*. Hagen controlled land in the City of Minnetrista and submitted an application to re-zone 220 acres and amend the comprehensive plan. The city denied Hagen’s application within the sixty-day deadline but did not provide written notice of the denial or reasons for the denial until after the sixty-day deadline had passed. The supreme court held that while a city is required to provide reasons for denial, failing to provide those reasons at the time of denial does not trigger automatic approval under section 15.99.

There are also several appellate cases with significant holdings that shape the interpretation of section 15.99. In *Demolition Landfill Services, LLC v. City of Duluth*, the Minnesota Court of Appeals held that the sixty-day deadline provision of section 15.99 is “unambiguous and mandatory” and a failure to deny the application within sixty days constitutes an approval.

*Kramer v. Otter Tail County Board of Commissioners* is particularly relevant to *Calm Waters* because it involved a
preliminary plat application made to a county. The court held that the sixty-day rule applied, and it then approved the application by operation of section 15.99 because the County had failed to approve or deny the application within sixty days.\textsuperscript{146}

But in \textit{Advantage Capital Management v. City of Northfield}, the court of appeals stated that section 15.99 was limited to zoning applications.\textsuperscript{146} The court discussed the legislative history and pointed out that during floor debates, the senate deleted “land use” and replaced it with “zoning” in that version of the bill.\textsuperscript{147} The court held that the sixty-day rule applied to “a written request relating to zoning,” and this specifically means a zoning application.\textsuperscript{148} It reversed the district court for issuing a writ of mandamus for a building permit, because building permits are not zoning applications.\textsuperscript{149}

\section*{III. The \textit{Calm Waters} Decision}

\subsection*{A. Facts and Procedural Posture}

Kroschel Township is a small, rural township located in Kanabec County, Minnesota, with a total area of just thirty-six square miles.\textsuperscript{150} In June 2006, Calm Waters, a real estate development company based in the Twin Cities, bought approximately 100 acres of land in Kroschel Township for $450,000.\textsuperscript{151} Michael Olsen, the owner of Calm Waters, intended to develop the land into cabins by subdividing the property into sixteen smaller lots and installing an access road.\textsuperscript{152} The following timeline of events is critical to understanding the dispute.

Calm Waters applied to Kanabec County (“the County”) for

\begin{itemize}
\item \textsuperscript{145} \textit{Id.} at 26.
\item \textsuperscript{146} 664 N.W.2d 421, 427 (Minn. Ct. App. 2003).
\item \textsuperscript{147} \textit{Id}.
\item \textsuperscript{148} \textit{Id}.
\item \textsuperscript{149} \textit{Id.} at 427–428.
\item \textsuperscript{150} U.S. \textsc{Census Bureau}, \textsc{U.S. Dept. of Commerce, Minnesota: 2000 Population and Housing Unit Counts} 18 (2003), http://www.census.gov/prod/cen2000/phc-3-25.pdf.
\item \textsuperscript{151} Corn, supra note 8; see also, Kanabec County Assessor’s Office, Mora, MN, http://qpublic4.qpublic.net/cgi-bin/mn_kanabec_display.cgi?KEY=110025500& (last visited Sept. 27, 2009) (showing Calm Waters, LLC of Coon Rapids, MN as the owner of parcel number 110025500, which has a total acreage of 96.25).
\item \textsuperscript{152} Corn, supra note 8.
\end{itemize}
approval of its proposed subdivision on July 26, 2006.\textsuperscript{153} The County’s application form required an applicant to include a township approval letter.\textsuperscript{154} Because Calm Waters did not submit a township approval letter, the County returned the application as incomplete on August 8, 2006.\textsuperscript{155} Less than a week later, on August 14, 2006, Calm Waters re-submitted an identical application, again without including a township approval letter.\textsuperscript{156}

On September 7, 2006, the County published notice of the planning commission’s regular monthly meeting in the local paper.\textsuperscript{157} Calm Waters objected to the meeting on the grounds that the County had not identified the meeting as a “statutorily-required hearing.”\textsuperscript{158} The County responded on September 18, 2006, by extending the time limit for decision on the application by an additional sixty days to comply with section 15.99.\textsuperscript{159} In addition, the County stated that it would provide official statutory notice of a public hearing for the October 2006 meeting.

On September 27, 2006, Calm Waters petitioned the Kanabec

\begin{itemize}
\item \textsuperscript{153} Calm Waters, LLC v. Kanabec County Bd. of Comm’rs, 756 N.W.2d 716, 718 (Minn. 2008).
\item \textsuperscript{154} \textit{Id.}
\item \textsuperscript{155} \textit{Id.} Calm Waters did not submit a township approval letter because it felt that “no letter was required by statute or by the Kanabec County Subdivision Platting Ordinance.” \textit{Id.} The court agreed that no statute or ordinance required Calm Waters to submit a township approval. See \textit{id.} at 720. The platting ordinance has since been modified to require a township approval letter. See KANABEC COUNTY, MINN., ORDINANCE No. 4, art. 3, § 3.11.4, available at http://www.kanabeccounty.org/ (follow “County Ordinances” hyperlink; then follow “#4, Plats & Subdivisions.pdf” hyperlink) (requiring applicant to “submit to the Environmental Services Director . . . [t]ownship approval letter”).
\item \textsuperscript{156} Calm Waters, 756 N.W.2d at 720. Calm Waters’ failure to submit the township approval letter seems to indicate that the company was unable or unwilling to obtain the letter. See \textit{id.} The court noted that “[i]t appears from the record that the County may have treated the resubmitted application as though it were complete.” \textit{Id.} at 720.
\item \textsuperscript{157} \textit{id.} at 718.
\item \textsuperscript{158} \textit{Id.} Calm Waters objected by arguing that the notice was only that of a regular monthly meeting where the application would be considered as an agenda item, and because the county did not identify the meeting as a “statutorily required public hearing,” the County violated section 394.26. \textit{Id.} “Notice of the time, place, and purpose of any public hearing shall be given by publication in a newspaper of general circulation . . . at least ten days before the hearing . . . .” MINN. STAT. § 394.26, subdiv. 2 (2008).
\item \textsuperscript{159} Calm Waters, 756 N.W.2d at 718.
\item \textsuperscript{160} \textit{id.} at 718. The September meeting proceeded as planned with Calm Waters in attendance, but no action was taken on the application for the proposed subdivision. \textit{Id.} The court also notes that during this hearing “several members of the public spoke out against the proposed subdivision.” \textit{Id.}
County District Court for a writ of mandamus, seeking to direct the County to approve the application, but the county denied the writ.\textsuperscript{161} On October 18, 2006, the County held the statutorily-required hearing on the subdivision application.\textsuperscript{162} The County denied the application because it violated the ordinance requiring lots to be at least twenty acres.\textsuperscript{163}

Calm Waters petitioned the Minnesota Court of Appeals to review both the district court’s denial of the writ of mandamus and the County’s denial of the proposed subdivision application.\textsuperscript{164} In a consolidated decision, the court of appeals reversed the district court and granted the writ of mandamus in favor of Calm Waters.\textsuperscript{165} The court of appeals held that the sixty-day rule applied to county subdivision applications, and the application was approved as a matter of law because the county did not approve Calm Waters’ preliminary plat application within the sixty-day deadline.\textsuperscript{166}

\textbf{B. The Minnesota Supreme Court Decision}

The Minnesota Supreme Court granted review of the case to settle two issues: first, whether the sixty-day rule applied to subdivisions, and second, whether the County complied with the sixty-day rule when it denied Calm Waters’ preliminary plat application.\textsuperscript{167} The court declined to address the first issue, holding that even if the sixty-day rule applied, the County did not violate it.\textsuperscript{168}

In order to resolve the second issue, the court addressed each of Calm Waters’ arguments in light of section 15.99, subdivision 2(a).\textsuperscript{169} First, the court addressed Calm Waters’ argument that

\textsuperscript{162} Calm Waters, 756 N.W.2d at 718.
\textsuperscript{163} Id. at 719. \textit{See also supra} note 9 and accompanying text.
\textsuperscript{164} Calm Waters, 756 N.W.2d at 719. Calm Waters appealed the denial to the County Board of Commissioners, but it “was not considered because the Platting Ordinance does not provide for such an appeal.” \textit{Id.}
\textsuperscript{165} Calm Waters, 2007 WL 3088590 at *1, rev’d, 756 N.W.2d 716 (Minn. 2008).
\textsuperscript{166} \textit{Id.} at *4.
\textsuperscript{167} Calm Waters, 756 N.W.2d at 717.
\textsuperscript{168} The court stated, “Because we conclude that even if the 60-day rule applied, the County did not violate it, we decline to reach the question of whether section 15.99 applies to subdivisions.” \textit{Id.} at 718.
\textsuperscript{169} \textit{See id.} at 719–22. Construing section 15.99 subdivision 2(a) requires statutory interpretation, which the court reviewed de novo. \textit{Id.} (citing Hans
because the County lacked authority to require the township approval letter, the application was complete when first submitted. The court held that even though no local ordinance or state statute required a township approval letter, the County had the authority to require such a letter. Failure to provide the letter meant that Calm Waters never submitted a complete application. The sixty-day period started over on August 8, 2006 when the County sent Calm Waters written notice that the application was incomplete.

Second, Calm Waters argued that the County’s Environmental Services Director lacked the authority from the County to extend the sixty-day deadline, and therefore the extension was ineffective. The court concluded that the letter extending the sixty-day deadline was the action of an agency under section 15.99, subdivision 3(f), and effectively extended the deadline for another sixty days.

Finally, the court dismissed Calm Waters’ argument that the October 18th denial was invalid because the planning commission had authority to approve an application but not deny it. The court held that the County is authorized to delegate authority to

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Hagen Homes v. City of Minnetrista, 728 N.W.2d 536 (Minn. 2007)).

170. Id. at 720.
171. Id. The court reasoned that “the County’s practice of providing subdivision applicants with a prepared application form, which includes the requirement that a township approval letter accompany the application, evinces a County policy in conformance with the Platting Ordinances and comprehensive plan requirements.” Id. The Platting Ordinance also states that land uses shall comply with township zoning ordinances.Id. Further, the county’s comprehensive plan specifies that the county seeks to maintain the “rural character and desire of the township.” Id. The Kanabec County ordinance has since been modified to require a township approval letter. See KANABEC COUNTY, MINN., ORDINANCE No. 4, art. III, § 3.11, available at http://www.kanabeccounty.org/vertical/Sites/(DF6C195B-A507-4144-A2C4-9890E5F06669)/uploads/(2F811592-57AB-495B-BDBG-620E778FA18).PDF.

172. Calm Waters, 756 N.W.2d at 720.
173. Id.
174. Id. at 719.
175. Id. at 721. The court stated that Calm Waters’ argument that the extension of the deadline was not the action of an agency as required by section 15.99, subdivision 3(f) had no merit. Id. (“Kanabec County is an agency under the plain language of subdivision 3(f). . . . Environmental Services is a department within Kanabec County. Moreover, there is nothing in the record to suggest that the Environmental Services Director did not have the authority to act on behalf of that department.”).
176. Id. at 722.
the planning commission to deny subdivision applications under section 394.30, subdivision 5.\textsuperscript{177} The County effectively delegated that authority to the planning commission through the platting ordinance.\textsuperscript{178} The planning commission had the authority to deny because it would be anomalous for the Commission to have the authority to approve but not deny.\textsuperscript{179}

The court also briefly discussed the public policy reasons for holding that the planning commission had authority to deny applications.\textsuperscript{180} Counties must have the ability to regulate competently and reliably, and holding that the planning commission does not have that authority would cause confusion and uncertainty.\textsuperscript{181} This is especially important in cases such as this where “the applicant deliberately seeks to subvert the clear County policy of cooperation with local townships’ zoning regulations.”\textsuperscript{182}

Ultimately the court reversed the court of appeals, holding that the County timely denied Calm Waters’ application within the sixty-day time limit prescribed by section 15.99.\textsuperscript{183}

C. Concurring Opinion

In a concurring opinion, Justice Dietzen\textsuperscript{184} agreed that the County complied with the sixty-day rule.\textsuperscript{185} He wrote separately,

\textsuperscript{177.} Id.
\textsuperscript{178.} Id. The ordinance specifically stated that the planning commission shall decide if an application conforms to the ordinance and county plans. Id. The court states that the lack of an appeal mechanism within the ordinance suggests that the planning commission had authority over final decisions. Id.
\textsuperscript{179.} Id. “[I]n authorizing county boards to delegate approval authority to planning commissions, [section 394.30, subdivision 5] authorizes the delegation of denial authority . . . .” Id. If the planning commission did not have authority to deny, “its authority would be rendered meaningless.” Id.
\textsuperscript{180.} Id.
\textsuperscript{181.} Id.
\textsuperscript{182.} Id.
\textsuperscript{183.} Id.
\textsuperscript{185.} Calm Waters, 756 N.W.2d at 722 (Dietzen, J., concurring).
however, because he believed the majority was wrong not to reach the issue of whether the sixty-day rule applies to county subdivision applications. 186

In fact, he was very critical of the majority for avoiding the issue. 187 He stated that “[t]he majority has articulated no legal or prudential reason to assess the County’s compliance with the sixty-day rule without first deciding whether it applies, and I discern none.” 188

He stated that a determination of whether the sixty-day rule applies to county subdivision applications first requires an analysis of applicable terms and phrases, such as “zoning,” “relating to,” and “subdivision.” 189 After analyzing those definitions, he concluded that a subdivision application is related to zoning, 190 and therefore the type of application covered by the sixty-day rule. 191

Next, he evaluated the three statutes excluded from section 15.99. 192 Since the deadlines articulated in those three statutes either do not apply to subdivision applications submitted to a county, or do not provide new deadlines for such applications, the sixty-day deadline must apply. 193 Justice Dietzen concluded that section 15.99 applies to subdivision applications and counties must comply with the sixty-day deadline. 194

IV. ANALYSIS

It appeared that the Calm Waters decision would finally clarify whether the sixty-day rule applied to county subdivision applications. 195 Instead, the court disposed of the case without deciding the applicability of the rule. 196 While the court understandably avoided the issue because of contradicting

186. Id.
187. See id. at 723.
188. Id. In addition, Justice Dietzen went on to say that “[a]bsent a sound reason for failing to decide the threshold issue presented in this case, the court should determine the applicability of the statute to the County.” Id. (emphasis added).
189. See id. at 723–24.
190. Id. at 724.
191. See id.
192. Id. at 724–25.
193. Id.
194. Id. at 725.
195. See id. at 717 (stating that one of the issues before the court was whether the sixty-day rule applies to a subdivision application).
196. Id. at 718.
legislative intent and the difficulty of harmonizing these statutes, the court should have held that the sixty-day rule applied.

A. The Right Result

Despite tackling only one of the issues presented, the court correctly reversed the court of appeals when it decided that the county met the sixty-day deadline.

1. The County Met The Sixty-day Deadline

Calm Waters’ had three central arguments: (1) the ordinance did not require a township approval letter; (2) the Environmental Services Director did not have the authority to extend the deadline; and (3) the planning commission did not have the authority to deny the application.

The court correctly disposed of each argument. First, the court properly recognized that the County had the authority to require the township approval letter in the spirit of cooperation with the platting ordinance, comprehensive plan, and past practices. Second, a county is an agency within the meaning of section 15.99 and Environmental Services is a department within Kanabec County. There is no reason to believe that the Environmental Services Director lacked authority to act on behalf of that department, and therefore the Director’s act of extending the deadline constituted an agency action authorized by section 15.99, subdivision 3(f). Third, since a county planning commission can approve subdivision plans if granted such authority by the board of county commissioners, it would be irrational to believe that the planning commission would not have similar authority to deny such applications.

197. See infra Part IV.B.2.
198. See infra Part IV.B.1.
199. Calm Waters, 756 N.W.2d at 719.
200. Id. at 720; see also Minn. Stat. § 15.99, subdiv. 3(a) (2008) (stating that the required information can be established based on a “rule, ordinance, or policy of the agency”).
202. Calm Waters, 756 N.W.2d at 721.
203. Id.
2. Other Policy Considerations Lurking in the Waters?

There are several additional policy issues raised in the case and associated news stories that support the court’s decision. First, Calm Waters was trying to subdivide the land into approximately five-acre parcels. The Court stated that Calm Waters deliberately sought “to subvert the clear County policy of cooperation with local townships’ zoning regulations,” which required minimum lot sizes of twenty acres. Second, the court mentioned that “several members of the public spoke out against the proposed subdivision” at the September 20, 2006 meeting of the planning commission. In addition, the local newspaper reported other allegations made by Calm Waters regarding a “back room deal” of an illegal lease of tax-forfeited land made by the County to a neighboring landowner that was designed to cut Calm Waters’ land off from a nearby state forest.

The purpose of zoning laws in general is to promote compatibility between private owners and the public as a whole. Automatic approval of an application is usually not in the community’s best interest. In this case, the court likely observed a developer seeking a loophole to subvert township policies, angry community members speaking out, and allegations of impropriety by government officials, and felt that automatic approval would not be in the community’s best interest.

B. The Court’s Failure to Reach the Threshold Issue

The majority declined to determine whether the sixty-day rule applied because the County had complied with it, and therefore the rule was irrelevant. In general, judges make as much law “as is necessary to dispose of the case before them and give guidance

205. See Corn, supra note 8.
206. Calm Waters, 756 N.W.2d at 722.
207. See Corn, supra note 8.
208. Calm Waters, 756 N.W.2d at 718.
209. E-mail from Jay Corn, Editor, Kanabec County Times, to Kelly F. Hudick, Student, William Mitchell College of Law (Aug. 28, 2009, 10:10 CST) (on file with William Mitchell Law Review). Presumably, if Calm Waters had been allowed to lease the tax-forfeited land instead, it would have increased the value of the existing parcel.
210. See supra note 21 and accompanying text.
211. Poulin, supra note 3, at 621.
212. See Calm Waters, 756 N.W.2d at 718.
Looking at the contradicting information available, it is plain to see why the court did not address the issue, preferring instead to dispose of the case without potentially making new law.

1. Statutory Confusion

In its amicus brief, the Minnesota County Attorneys Association argues that subdivision applications are not subject to section 15.99 because subdivision regulations are different from zoning regulations and therefore not related within the meaning of the statute. As articulated in the concurrence, however, the term “relating to” is very broad. Although subdivision and zoning are two separate things, they are at the very least “related” because both are forms of land-use regulations. Additional information from secondary authorities supports the notion that subdivisions are related to zoning. Although not identical in nature, or required to be used together, the two terms certainly have a logical relation to each other. These authorities mirror the conclusion reached by the concurrence.

Both amicus briefs argue that the sixty-day rule should not apply to counties because the subdivision process is too “complex and time consuming” to be completed within sixty days. Subdivision applications have their own regulations in chapter 505,
but there is no separate automatic approval provision or deadline in that chapter and no language that affirmatively excludes it from the sixty-day deadline.\textsuperscript{222}

Minnesota courts operate under the presumption that “the legislature does not intend a result that is absurd, impossible of execution, or unreasonable.” \textsuperscript{223} The 120-day preliminary approval deadline in section 462.358 applies only to municipalities,\textsuperscript{224} the 120-day deadline in section 473.175 applies only to comprehensive plans,\textsuperscript{225} and chapter 505 applies to counties but does not set its own deadline.\textsuperscript{226} If the sixty-day rule in section 15.99 does not apply to county subdivision applications, then there effectively is no time limit for a county to approve or deny a subdivision application. Considering that the statute’s purpose is to prevent government bodies from taking too long to approve applications, reverting to no timeline for county subdivision applicants is an absurd result in direct contrast with the original purpose.\textsuperscript{227}

Furthermore, if the court held that the sixty-day deadline applies to county subdivision applications, but section 462.358— with its 120-day deadline—applies to city subdivision applications, then two similar applications would be subject to two significantly different time lines. The difficulty of harmonizing these statutes could be another reason the court avoided the issue.

2. Legislative History

The \textit{Calm Waters} amicus briefs and prior appellate cases addressing the sixty-day rule rely on legislative history to determine whether lawmakers intended county subdivision applications to be excluded from the sixty-day rule.\textsuperscript{228}

Section 15.99 was part of a public administration bill designed

\begin{itemize}
  \item \textsuperscript{222} See Brief for County Attorneys, \textit{supra} note 215, at 10–12.
  \item \textsuperscript{223} \textsc{Minn. Stat.} \textsection{} 645.17 (2008).
  \item \textsuperscript{224} \textsc{Minn. Stat.} \textsection{} 462.351 (2008).
  \item \textsuperscript{225} \textsc{Minn. Stat.} \textsection{} 473.15 (2008).
  \item \textsuperscript{226} \textsc{Minn. Stat.} \textsection{} 505.03 (2008).
  \item \textsuperscript{227} See \textit{Manco of Fairmont, Inc. v. Town Bd. of Rock Dell Twp.}, 583 N.W.2d 293, 296 (Minn. Ct. App. 1998) (stating that the purpose of the sixty-day rule is “to keep government agencies from taking too long in deciding issues like the one in question”).
  \item \textsuperscript{228} See, \textit{e.g.}, \textit{Am. Tower, L.P. v. City of Grant}, 621 N.W.2d 37, 40–41 (Minn. Ct. App. 2000); Brief for County Attorneys, \textit{supra} note 215, at 11–12; Brief for Minnesota Counties, \textit{supra} note 221, at 2–6.
\end{itemize}
to “improve efficiency and operation of government.” Legislators enacted it in 1995 because they felt that “Minnesota citizens . . . have the right to receive a response to their requests in a timely manner and at the same time not be entangled in delays or squabbles.”

The House Research notes state that the purpose of the 2003 amendment was to exempt the “subdivision regulation review process and plat review process from the sixty-day rule.” Amicus Curiae Association of Minnesota Counties relied on Senate Committee meeting notes from the 2003 amendment to section 15.99, which reiterate that the purpose of the amendment was to exempt subdivision approvals in favor of the timelines in their respective statutes.

While the legislative history behind section 15.99 is certainly interesting, relying on history is not permitted unless the statute is unclear. Based on the conflicting goals in the legislative history, it is understandable why the supreme court wanted to avoid ruling on the issue. However, for reasons articulated by Justice Dietzen in his concurring opinion, the statute is unambiguous, and therefore analysis of the legislative history is unnecessary.

Finally, the legislature has amended the sixty-day rule five times since it was enacted. If lawmakers truly intended that the sixty-day deadline not apply to county subdivision applications, it is well within their power to modify the law a sixth time to settle the debate once and for all.

C. Effect of the Supreme Court’s Non-Decision

The supreme court expressly overruled the court of appeals’ holding that the County violated the sixty-day rule. It did not, however, overrule the lower court’s decision that the rule applies to

229. 1995 Minn. Laws 2415.
231. See DYSON, supra note 92, at 1.
232. See Brief for Minnesota Counties, supra note 221, at 5–4.
233. MINN. STAT. § 645.16 (2008). “When the words of the law are not explicit, the intention of the legislature may be ascertained by considering . . . the contemporaneous legislative history.” Id.
235. See supra note 101 and accompanying text.
236. Calm Waters, 756 N.W.2d at 722.
county subdivision applications.\textsuperscript{237} Moreover, the Minnesota Supreme Court has never expressly overruled \textit{Kramer}, which held that the sixty-day rule applies to county subdivision applications.\textsuperscript{238} For future litigants, this means that it is very likely that the sixty-day rule will be enforced for county subdivision applications. It seems that the most prudent course of action for counties and the communities they serve is to operate under the assumption that the sixty-day rule applies.

\section*{V. CONCLUSION}

The Minnesota Supreme Court correctly held that Kanabec County timely denied Calm Waters subdivision application. But in assuming without deciding that the sixty-day rule applied to the facts of this case, the decision failed to guide Minnesota counties and future subdivision applicants and effectively leaves the door open to future litigation. The concurrence’s explanation of why the sixty-day rule should apply was persuasive. The majority should have adopted the concurrence’s position and confirmed the court of appeals ruling that section 15.99 applies to subdivision applications submitted to a county.

In the aftermath, the court awarded attorneys’ fees to the County and denied a request for rehearing.\textsuperscript{239} No one has developed Calm Waters’ parcel of land in Kanabec County that was the subject of the controversy, and the land is currently listed for sale.\textsuperscript{240} The case has already been cited by the court of appeals as precedent for failing to reach an issue when resolution would be irrelevant.\textsuperscript{241} What remains to be seen is if Justice Dietzen’s criticism of the majority for their failure to address a threshold issue without articulating a “sound reason” resurfaces in future

\textsuperscript{237} Id. at 718.
\textsuperscript{238} Kramer v. Otter Tail County Bd. of Comm’rs., 647 N.W.2d 23, 26 (Minn. Ct. App. 2002).
\textsuperscript{239} Id. at 716. The rehearing was denied on October 28, 2008. \textit{Id.}
\textsuperscript{240} As of September 23, 2009, the land located at 2788 Aleta Trl, Kroschel Twp, Minnesota, was listed at a price of $590,000. According to the remarks, there is over one mile of linear frontage on three bodies of water, and the property adjoins “1000s of acres of public land.” Realtor.com, Find Homes, http://www.realtor.com/realestateandhomes-search?mlsid=3681641 (last visited Oct. 15, 2009).
\textsuperscript{241} \textit{See} \textit{In Re} Disciplinary Action Against Anderson, 759 N.W.2d 892, 896 (relying on \textit{Calm Waters} as precedent for “declining to reach an issue where the resolution would be irrelevant”).
opinions. So far, it appears that the *Calm Waters* case will be remembered more for the court’s non-decision than anything else.

242. *See supra* note 188.