STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1501

Lance J. Johnson,
Appellant,

vs.

Cook County,
Respondent.

Filed August 4, 2009
Reversed
Bjorkman, Judge

Cook County District Court
File No. 16-CV-06-269

Roy J. Christensen, Johnson, Killen & Seiler, P.A., 230 West Superior Street, Suite 800, Duluth, MN 55802 (for appellant)

Paul D. Reuvers, Susan M. Tindal, Iverson Reuvers, LLC, 9321 Ensign Avenue South, Bloomington, MN 55438 (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Toussaint, Chief Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

In this appeal from summary judgment, appellant argues that his 2001 rezoning request was granted by operation of law when respondent-county failed to issue a written

statement of its reasons for denying his request. Because the district court erred in denying him a declaratory judgment recognizing that approval, we reverse.

FACTS

Appellant Lance Johnson owns two contiguous parcels of real property in Cook County along Highway 61 between Lutsen and Grand Marais. Johnson purchased one parcel (parcel A) in January 2001; parcel A was zoned for residential use. Johnson subsequently acquired the second parcel (parcel B) on a contract for deed from Matthew Pedersen in 2003; approximately one-half of parcel B, the portion abutting parcel A, was zoned for residential use, and the other half was zoned for general commercial use.

On or about May 15, 2001, Johnson and Pedersen submitted a request to the Cook County Office of Planning and Zoning, asking that parcel A and the portion of parcel B zoned as residential be rezoned for general commercial use. The request was intended to bring the zoning into accord with existing and planned use of the properties. The Cook County Planning Commission (the planning commission) considered the rezoning request at a public meeting on June 13, 2001. After the meeting, the planning commission issued written findings and recommended to the Cook County Board of Commissioners (the board) that it deny the request. Johnson received a copy of the planning commission's written findings and recommendation.

The board considered the rezoning request at a public meeting on September 11, 2001; Johnson was present. The board reviewed the request, the rezoning criteria, public comments, and the planning commission's recommendation. According to the meeting

minutes, "[f]ollowing discussion," the board voted four to one to deny the request. The board did not issue a written statement of its reasons for denying the request.

In May 2006, Johnson initiated this action against respondent Cook County (the county), seeking a declaration that the county had "erroneously denied Johnson's rezoning request" and asserting various claims regarding the county's 2005 approval of a rezoning request concerning an adjoining property.[1] The county moved for summary judgment, arguing, among other things, that laches barred review of the 2001 rezoning decision. Johnson countered that he, not the county, was entitled to summary judgment because the county's 2001 denial was defective as a matter of law for failure to comply with Minn. Stat. § 15.99, subd. 2 (2000) (requiring zoning decision, with written reasons for a denial, within 60 days of request), resulting in automatic approval of his request, and that laches did not bar his claim because he had no reason to assert it earlier.

The district court granted the county's motion. After the parties negotiated the dismissal of the remaining claims, final judgment was entered. This appeal follows.

D E C I S I O N

"On appeal from summary judgment, a reviewing court must view the evidence in a light most favorable to the nonmoving party and determine whether any genuine issues of material fact exist and whether the district court erred in applying the law." *Wedemeyer v. City of Minneapolis*, 540 N.W.2d 539, 541 (Minn. App. 1995). Statutory

[1] All claims related to the 2005 rezoning approval were either rejected by the district court or dismissed through negotiation and are not at issue in this appeal.

interpretation presents a question of law subject to de novo review. *Metro. Sports Facilities Comm'n v. County of Hennepin*, 561 N.W.2d 513, 515 (Minn. 1997).

Johnson argues that Minn. Stat. § 15.99, subd. 2, required the county to issue a written explanation for its denial of his request and that the county's failure to do so rendered the denial ineffective, with the result that his request was automatically approved by operation of law. Section 15.99, subdivision 2, sets forth the requirements for ruling on a zoning request:

> Except as otherwise provided in this section and notwithstanding any other law to the contrary, an agency must approve or deny within 60 days a written request relating to zoning, septic systems, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action. Failure of an agency to deny a request within 60 days is approval of the request. If an agency denies the request, it must state in writing the reasons for the denial at the time that it denies the request.[2]

We have interpreted the last sentence of subdivision 2 to require a written statement of reasons for denial before the 60-day time limit can be satisfied. *Demolition Landfill Servs., LLC v. City of Duluth*, 609 N.W.2d 278, 281-82 (Minn. App. 2000), *review denied* (Minn. July 25, 2000); *see also Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 540 (Minn. 2007) (stating that denial of a request is "complete" under section 15.99 "when [the agency] votes to deny the application and adopts a written statement of its reasons for denial"). We also have held that without a written statement

[2] Section 15.99 has been amended since 2001, but the relevant language from subdivision 2 of the 2000 version of the statute is currently codified in subdivision 2(a) and the intervening amendments of the statute have not substantively altered that language. *See* Minn. Stat. § 15.99, subd. 2(a) (2008); 2003 Minn. Laws ch. 41, § 1, at 321-22.

of reasons before expiration of the 60-day period "the permit application is approved." *Demolition Landfill*, 609 N.W.2d at 282. *But see Hans Hagen Homes*, 728 N.W.2d at 540 n.1 (positing that "[t]he automatic approval penalty . . . could be read even more narrowly . . . to apply only where the [agency] has not acted on the request . . . before the expiration of the response deadline").

The county does not dispute that its board is "an agency" within the meaning of section 15.99, subdivision 2, and, therefore, subject to the requirement that it "state in writing the reasons for the denial at the time that it denies the request." Minn. Stat. § 15.99, subd. 2. It is likewise undisputed that the board did not issue a separate written explanation of its decision to deny the request, but the parties dispute whether the minutes of the board's September 11, 2001 meeting satisfy the written-reasons requirement.[3]

These minutes are the only evidence of the basis for the board's decision. The minutes identify the criteria and input the board considered. The planning and zoning administrator presented "the criteria to consider when rezoning" and the planning commission's findings and recommendation. Fifteen citizens attended the meeting, and the board received several written comments regarding the rezoning request. The board "reviewed the request, the Planning Commission findings, and other materials presented." Then, "[f]ollowing discussion, a motion was made . . . and carried to deny

[3] The timeliness of the county's decision is not at issue, because the parties agreed to establish September 11, 2001, as the deadline for addressing the request. *See* Minn. Stat. § 15.99, subd. 3(f) (2000) (permitting agency to extend time limit for addressing zoning request).

the rezoning request . . . ." The minutes do not indicate any board member's reasons for voting to deny the request.

The county contends that the board's consideration of the planning commission's recommendation, when viewed in light of its ultimate decision to deny the rezoning request, constitutes adoption of the recommendation and the reasons for it.[4] We disagree. The minutes do not indicate that the board adopted the planning commission's reasons for recommending denial. The minutes indicate only that the board "reviewed" the planning commission's findings and do not provide any basis for inferring that the board gave the findings more weight than any of the other materials it reviewed and testimony it considered.

Both the express terms of the statute and our prior decisions establish a clear requirement that denial of a zoning request be accompanied by a written statement of reasons, and an agency's failure to issue such a statement renders the denial ineffective under Minn. Stat. § 15.99, subd. 2. *Demolition Landfill*, 609 N.W.2d at 282. The result of an ineffective denial "is approval of the request." Minn. Stat. § 15.99, subd. 2.

The county argues that even if the denial was ineffective, Johnson is not entitled to approval of his request by operation of law because of his delay in asserting this claim. We disagree. Section 15.99 plainly states that failure to deny a request "is approval of

[4] The county's reliance on *Oneka Lake Dev. Co. v. City of Hugo*, A06-0140, 2007 WL 329812 (Minn. App. Feb. 6, 2007), *review denied* (Minn. Apr. 17, 2007), is misplaced. Unpublished opinions are not precedential. Minn. Stat. § 480A.08, subd. 3 (2008). Moreover, that case involved unique facts not present here. *Oneka*, 2007 WL 329812, at *4-*5 (determining that city council's approval of consent agenda, which contained proposed written resolution denying request for expansion of Metropolitan Urban Services Area, constituted valid denial under section 15.99, subdivision 2).

the request." Minn. Stat. § 15.99, subd. 2. The statute does not require court approval or declaratory relief. Rather, the plain language of the statute indicates that approval simply occurs at the expiration of the 60-day period, regardless of anything else the agency or the applicant does, if a proper denial has not been completed. *See* Minn. Stat. § 645.16 (2008) (stating that when a statute's plain language is clear, "the letter of the law shall not be disregarded under the pretext of pursuing the spirit").

Based on this clear statutory language, we have consistently referred to the consequence of an agency's failure to properly deny a request under the statute as approval of the request "by operation of law" or as "automatic approval" of the request. *E.g.*, *Veit Co. v. Lake County*, 707 N.W.2d 725, 728 (Minn. App. 2006) ("by operation of law"), *review denied* (Minn. Apr. 18, 2006); *Breza v. City of Minnetrista*, 706 N.W.2d 512, 518 (Minn. App. 2005) ("by operation of law"), *aff'd*, 725 N.W.2d 106 (Minn. 2006); *N. States Power Co. v. City of Mendota Heights*, 646 N.W.2d 919, 926 (Minn. App. 2002) ("automatic approval"), *review denied* (Minn. Sept. 25, 2002); *Demolition Landfill*, 609 N.W.2d at 281 ("automatic approval"); *see also Hans Hagen Homes*, 728 N.W.2d at 540 ("automatic approval"). We also have determined that an agency's failure to properly deny a request results in the request being automatically approved—or approved by operation of law—on the 60th day. *Breza*, 706 N.W.2d at 515-16; *N. States Power*, 646 N.W.2d at 926.

The plain language of Minn. Stat. § 15.99, subd. 2, and our prior decisions applying that statute demonstrate that Johnson's request was approved by operation of law on September 11, 2001, by virtue of the county's failure to effectively deny his

request. Nothing further was required of Johnson to effectuate approval of his request. Because Johnson had no claim to bring until he believed his property rights were threatened, his failure to seek declaratory relief earlier does not invalidate the approval of his rezoning request that he received by operation of law on September 11, 2001.[5]

Reversed.

[5] Johnson also asserts for the first time on appeal that the county is equitably estopped from denying his rezoning request because the county has never told him that he could not continue to use his property for commercial purposes, as he has since before 2001. Because Johnson failed to raise this issue below, and because our decision that Johnson's request was automatically approved in 2001 renders the equitable-estoppel claim unnecessary, we decline to address that argument. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (limiting appellate review to those issues raised and decided by the district court).