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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1853**

Randy W. Stroetz, et al.,
Appellants,

vs.

Farmington Township,
Respondent.

**Filed May 25, 2010
Affirmed
Bjorkman, Judge**

Olmsted County District Court
File No. 55-CV-09-1358

Travis M. Ohly, Ohly Law Office, Rochester, Minnesota (for appellants)

Paul D. Reuvers, Andrea B. Wing, Iverson Reuvers, LLC, Bloomington, Minnesota (for respondent)

Considered and decided by Toussaint, Chief Judge; Bjorkman, Judge; and Collins, Judge.*

UNPUBLISHED OPINION

BJORKMAN, Judge

On appeal from summary judgment dismissing their mandamus petition, appellant landowners assert that their letter to members of respondent township's board of directors

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

requesting a zoning certificate constitutes a request, under Minn. Stat. § 15.99 (2008), that is approved unless the zoning agency responds within 60 days. Because the letter does not constitute a request under the statute, we affirm.

FACTS

Appellants Randy and Lucinda Stroetz (landowners) own 40 acres of farmland in Farmington Township that is improved with a barn and a driveway. On May 12, 2008, landowners sent a certified letter to every member of the board of supervisors (the board) of respondent Farmington Township (the township). The letter described landowners' desire to build a home on the property and stated, "we are requesting a zoning certificate for our home to be located near our barn."

Landowners received no response to the letter. Approximately 70 days after sending the letter, landowners contacted the township's attorney to request the zoning certificate pursuant to Minn. Stat. § 15.99. The township's attorney responded in writing, explaining that landowners needed to submit an application form and a fee, and directing them to contact the zoning administrator. Landowners contended that their letter was a proper application under section 15.99, and because they had not received a response from the board within 60 days, they considered their zoning request approved and threatened to begin building. The parties exchanged several letters concerning the applicability of the statute.

Rather than resubmitting their request on the township's application form, landowners commenced this mandamus proceeding, seeking to compel the township to

grant the zoning certificate.¹ The parties brought cross-motions for summary judgment. The township asserted that the 60-day period under section 15.99 was not implicated because landowners did not use the township's application form and did not pay the required fee. Landowners responded that the township had not made the form available, and that their letter was sufficient to comply with the statute.

The district court granted summary judgment in favor of the township and dismissed landowners' mandamus petition. The district court determined that the statutory language unambiguously requires landowners to use the township's application form to start the 60-day period. This appeal follows.

DECISION

"Mandamus is an extraordinary legal remedy that courts issue only when the petitioner shows that there is a clear and present official duty to perform a certain act." *Breza v. City of Minnetrista*, 706 N.W.2d 512, 518 (Minn. App. 2005) (quotation omitted), *aff'd*, 725 N.W.2d 106 (Minn. 2006). A petitioner must prove three elements to obtain mandamus relief: (1) the failure of an official to perform a legal duty clearly imposed by law; (2) a public wrong specifically injurious to petitioner; and (3) no other adequate legal remedy. *Demolition Landfill Servs., LLC v. City of Duluth*, 609 N.W.2d 278, 280 (Minn. App. 2000), *review denied* (Minn. July 25, 2000). We review a district court's mandamus decision de novo when, as here, it is based solely on a legal determination. *Breza*, 725 N.W.2d. at 110.

¹ The complaint specifically seeks "[a]n order from this Court directing [the township] to issue a zoning certificate to [appellants]."

Minn. Stat. § 15.99 requires agencies to act within 60 days of receiving a zoning request. Under the statute:

“Request” means a written application related to zoning . . . for a permit, license, or other governmental approval of an action. A request must be submitted in writing to the agency on an application form provided by the agency, if one exists. The agency may reject as incomplete a request not on a form of the agency if the request does not include information required by the agency. . . . No request shall be deemed made if not in compliance with this paragraph.

Minn. Stat. § 15.99, subd. 1(c). The 60-day time period “begins upon the agency’s receipt of a written request containing all information required by law . . . including the applicable application fee.” Minn. Stat. § 15.99, subd. 3(a). Failure to deny a request within 60 days results in automatic approval of the request. Minn. Stat. § 15.99, subd. 2(a). Mandamus is appropriate where a political entity clearly fails to perform its duty under Minn. Stat. § 15.99. *Breza*, 725 N.W.2d at 110.

The parties dispute whether landowners’ letter constitutes a “written application related to zoning” under section 15.99. Statutory interpretation is a question of law, which we review de novo. *Am. Tower LP v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). When interpreting a statute, we first determine whether the statutory language is clear or ambiguous. *Id.* A statute is ambiguous if the language has more than one reasonable interpretation. *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 539 (Minn. 2007). If the language of a statute is plain and unambiguous, we must enforce its plain terms. Minn. Stat. § 645.16 (2008); *Hans Hagen Homes*, 728 N.W.2d at 539.

The plain language of the statute requires persons seeking to obtain a zoning permit or certificate to use the application form of the agency, *if one exists*. Landowners acknowledge that the township had such a form at the time they submitted their letter, but argue the letter should be deemed a request because they previously obtained a building permit from the township using the same procedure of mailing letters to the board. We disagree. Landowners' prior contact with the zoning administrator, who helped them fill out an application form in connection with a prior building project, demonstrates landowners knew there was a form and how to obtain the form. But, more importantly, the fact landowners have initiated and obtained board approval of other requests through correspondence in the past is not relevant to whether the circumstances of this case entitled them to automatic approval under section 15.99.

Landowners' assertion that their letter to the township board members was sufficient to trigger the 60-day approval period because they followed the instructions provided on the township's website² is also unavailing. Although the site directed zoning inquiries to Wayne Searles, who was deceased at the time landowners sent their letter, the site listed the names and contact information of the current board members, to whom the landowners directed their letter. Landowners could have contacted any of these members to obtain the zoning application form. The fact that landowners never asked for a form defeats their argument that the township failed to comply with its duty to provide the form.

² Farmington Township's website is maintained externally by Olmsted County.

Even if landowners' submission constituted a request under section 15.99, it is undisputed that they did not pay the filing fee. Accordingly, the 60-day approval period did not commence. Minn. Stat. § 15.99, subd. 3(a).

Because we conclude that landowners did not submit a request under Minn. Stat. § 15.99, the district court did not err in dismissing the mandamus petition. We do not reach the township's alternative argument that the 60-day rule does not apply because the township has no authority to issue a zoning certificate because it would violate township ordinances.³

Affirmed.

³ Landowners also seek attorney fees and costs on appeal. We note that requests for fees on appeal must be made by motion under Minn. R. Civ. App. P. 127. Minn. R. Civ. App. P. 139.06. Applications for costs and disbursements are governed by Minn. R. Civ. App. P. 139.