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**Griffith, William C.**

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**From:** Griffith, William C.  
**Sent:** Wednesday, June 17, 2015 3:03 PM  
**To:** 'Peter Warner (peter.warner@ci.stpaul.mn.us)'  
**Cc:** 'Richard G. Erstad'; Long, Robert C.  
**Subject:** Hawkins 60-day Automatic Approval Statute

Peter,

This email is a follow up to my recent conversations with you regarding the application of the 60-day rule to Hawkins' application for a conditional use permit. Notwithstanding the fact that Hawkins has agreed to send representatives to tonight's City Council meeting, pursuant to Section 15.99, Hawkins's CUP application (the "Application") was approved by operation of law on May 15, 2015. As you are aware, the Application is subject to Minnesota Statutes Section 15.99, which established a 60-day limit for the City to act on the application. Failure of the City to deny the request within 60 days is an approval of the request. Minn. Stat. Sec. 15.99, subd.2(a). Minnesota courts have construed the 60-day deadline in section 15.99 as "definitive" and have strictly enforced the 60-day rule by consistently holding that an agency's failure to comply with section 15.99 results in automatic approval of the request at issue. *Breza v. City of Minnetrista*, 725 N.W.2d 106, 113 (Minn. 2006).

The Application was deemed complete by the City of St. Paul on March 16, 2015, which means the 60-day limit expired on May 15, 2015. On April 24, 2015, the City Planning Commission voted unanimously to approve Hawkins's CUP. On May 4, 2015, the Planning Commission's approval of the CUP was appealed by Salina Amey and Kathy Larson. The 60-day limit subsequently expired on May 15, 2015. Prior to the end of the initial 60-day period, the City did not act to extend the 60-day deadline by providing written notice of the extension to the applicant. The expiration of the 60-day limit is unaffected by the appeal, as the Minnesota Court of Appeals has held:

[A]n appeal from an adverse decision is not a 'request . . . for a permit, license, or other governmental approval of an action' as required by section 15.99. Minn. Stat. § 15.99, subd. 2. An appeal seeks to reverse or overturn the approval of the request; it is not in itself a request for a permit, license, or approval. Thus, no new 60-day time period is triggered.

*Moreno v. City of Minneapolis*, 676 N.W.2d 1, 6 (Minn. Ct. App. 2004). Therefore, the Application was approved by operation of law on May 15, 2015 when the initial 60-day period expired.

We request that you confirm that no notice extending the 60-day deadline was issued by the City and communicate that fact to the City Council tonight. Further, we will send notice to the Minnesota Pollution Control Agency that the Application was approved by operation of law on May 15, 2015 and expect the City to confirm that fact, in writing if necessary. As a result, the petition by the appellants to the Environmental Quality Board for an Environmental Review was not timely because all governmental decisions have been made. Minnesota Rules 4410.4600, subp. 2(A).

Please feel free to contact me with any questions.

Sincerely,

Bill

**William C. Griffith**  
Shareholder  
direct | 952-896-3290  
mobile | 612-988-7711

**Larkin  
Hoffman**  
ATTORNEYS