

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1496**

Dayton Holding, Inc., d/b/a West Lakeland Freeway Properties,
Respondent,

vs.

Town of West Lakeland, et al.,
Appellants.

**Filed June 1, 2026
Reversed and remanded
Johnson, Judge**

Washington County District Court
File No. 82-CV-24-2246

Rob A. Stefonowicz, Benjamin T. O’Laughlin, Larkin Hoffman Daly & Lindgren, Ltd.,
Minneapolis, Minnesota (for respondent)

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Considered and decided by Schmidt, Presiding Judge; Johnson, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

This appeal concerns a property owner’s request for zoning variances and a conditional use permit. The district court concluded that the request was approved by operation of law on the ground that the responsible government agency did not act on the request within 60 days. We conclude that the district court erred because the request was

incomplete and the agency gave timely notice to the property owner of the request's incompleteness. Therefore, we reverse the district court's grant of the property owner's motion for summary judgment and remand for further proceedings.

FACTS

Dayton Holding Inc. (DHI) owns a 1.7-acre triangular parcel of land in West Lakeland Township in Washington County, at the southwest corner of interstate highway 94 and Stagecoach Trail. The property is difficult to develop because of its small size, steep grading, and limited access. Nonetheless, in 2023, DHI made plans to build an outdoor self-storage facility on the property.

On September 19, 2023, an attorney representing DHI sent a five-page letter to the members of the town board and the town planning commission. The introductory paragraph stated, "please accept this letter and the enclosed materials as a formal request to the township for a conditional use permit (CUP) for self-service storage and variances to lot area and outdoor storage requirements to allow for the reuse of the property." The attorney explained that DHI was seeking a CUP to develop an outdoor self-service storage facility that could accommodate recreational vehicles, boats, campers, and trailers. DHI requested variances for the five-acre minimum-lot-size requirement, the prohibition on outdoor storage, and the requirement of an asphalt or concrete parking surface. Accompanying the letter was a completed one-page form entitled "Application for Consideration of Planning Request" and a \$600 check.

On the same day, the attorney's assistant sent digital copies of the letter and its enclosures to the town clerk via e-mail. Later that day, the town clerk responded with the following e-mail message:

I am confirming receipt of your letter and request to meet with the Planning Commission (PC). I have cc'd the PC Chairman, Mark Votava, on the email. Their next meeting is scheduled for Thursday, October 26, 2023, at the West Lakeland Town Hall. As for formal applications and fees, I would suggest submitting them after you meet with the PC. The applications and fees would be as follows:

CUP Application–Commercial
Application Fee \$500
Escrow \$5,000

Variance Application
Application Fee \$100
Escrow \$800

In the meantime, I'd be happy to answer any questions regarding this process.

For reasons that are not apparent in the record, the town did not receive the September 19, 2023 letter and its enclosures by U.S. mail until October 12, 2023.

On November 16, 2023, the town planning commission met and considered DHI's request. DHI's attorney appeared at the meeting and made a presentation. The meeting minutes reflect concerns that a variance would be required for the substandard lot size, that screening would be desired, and that access is governed by the county and the state.

On December 4, 2023, DHI's attorney sent an e-mail message to the town clerk to confirm that DHI's request would be discussed at the town board's next meeting. The next day, the town clerk responded as follows:

I will place you on the agenda. My understanding is that you need to apply for a variance and CUP. The \$600 check would cover the application fees; however, you also need to submit a check for escrow. It should be in the amount of \$5,800 (Variance \$800 [and] CUP \$5,000). I will forward your attached documents to the board for Monday's meeting.

Please let me know if you have any other documents you'd like the board to review. If so, I will need those by Thursday, December 7 at noon. You are certainly welcome to bring additional documents to the meeting as well. We would need 5 copies of each document.

Please let me know if you have any questions.

DHI's attorney replied one day later, saying that a \$5,800 check had been mailed. Later that day, December 6, 2023, the town clerk sent the following e-mail message to DHI's attorney:

Due to Minnesota Statute 15.99, I am obliged to inform you that the CUP request received on October 12, 2023, is incomplete since you did not submit the required escrow fees with the application. Per your email below, you have mailed the escrow check for both the CUP and variance applications; however, I do not have a variance application on file.

For your convenience, below is a link to our variance application for you to complete. As stated earlier, the check you submitted with the CUP application (check #278663 for \$600) will cover application fees for both the CUP and variance requests.

[https://westlakeland.govoffice2.com/vertical/sites/%7B4302F8BA-2E20-46AE-A97A-E6644431668F%7D/uploads/Variance_Application_\(2021\).pdf](https://westlakeland.govoffice2.com/vertical/sites/%7B4302F8BA-2E20-46AE-A97A-E6644431668F%7D/uploads/Variance_Application_(2021).pdf)^[1]

If you have any questions, please don't hesitate to contact me.

¹<https://perma.cc/5T5X-ZTCU>.

The town board met on December 11, 2023. DHI's attorney appeared and made a presentation. The meeting minutes indicate some support for DHI's proposed use, "given that this is a very unique nonconforming lot," but also concerns regarding "sufficient access and screening." The board chair noted that outdoor storage is not an allowed conditional use. The board decided to schedule a public hearing.

On January 12, 2024, the town board chair and the town clerk sent written notice to DHI that the town was "extend[ing] the time limit for approval or denial of a conditional use permit and variance application submitted by the applicant on December 11, 2023."

On January 17, 2024, the town clerk gave notice of a public hearing on February 5, 2024. Five days later, the town clerk sent an e-mail message to DHI's attorney, stating:

After [an attorney] reviewed West Lakeland's town code, she determined that there are 2 additional variances (see public notice) that will need to be approved in addition to the one variance and CUP requests submitted already.

Please see the public notice that will be published, posted and mailed to residents this Friday, January 26. It is not necessary to provide additional escrow monies, but application fees do apply. Each variance request is \$100, so please submit \$200 at your earliest convenience. If it's more convenient, you may bring the check to the public hearing on February 5, 2024.

Please let me know if you have any questions.

The town board conducted a public hearing on February 5, 2024. The board considered DHI's application for three variances (concerning minimum lot size, prohibition on outdoor self-storage facilities, and parking surface) and its application for a CUP. Some board members expressed concerns about steep grading, screening, managing rodents, and the significant difference between the 1.7-acre lot size and the five-acre

minimum lot size in the town ordinance. Members of the public also expressed concerns about the number of variances needed, potential traffic noise, the suitability of outdoor self-storage in the township, and lighting.

After the chair closed the public hearing and convened a regular meeting of the board, DHI's attorney stated that the 60-day statutory deadline for the town's decision on the applications had passed. The town clerk disagreed and stated that she had informed DHI on December 6, 2023, that its application was incomplete on that date. The board proceeded to consider and deny DHI's request. The board adopted a three-page resolution stating the reasons for its denial.

In May 2024, DHI commenced this mandamus action against the town in district court, seeking a writ directing the town to grant the variance and CUP applications on the ground that the town had not approved or denied the applications within 60 days, as required by Minnesota Statutes section 15.99, subdivision 2(a) (2024).

In March 2025, the parties filed cross-motions for summary judgment. DHI argued that its applications were automatically approved due to the lack of a formal decision before the statutory 60-day deadline and, in the alternative, that the town's denial was arbitrary and capricious. In response, the town argued that its denial was not untimely, that it lacked authority to approve the applications, and that its denial was not arbitrary and capricious.

In July 2025, the district court filed an order in which it granted DHI's motion, denied the town's motion, and ordered the town to grant DHI's variance and CUP applications. The district court reasoned that DHI submitted complete applications as of October 12, 2023, that the town did not notify DHI of any deficiencies within 15 days

thereafter, and that the applications were automatically approved because the town did not approve or deny them within 60 days of October 12, 2023. In addition, the district court concluded that the town had authority to grant the variances and to approve the applications. In light of its decision that the applications were automatically approved, the district court did not consider DHI's alternative argument that the town's denial was arbitrary and capricious. The town appeals.

DECISION

The town argues that the district court erred by granting DHI's summary-judgment motion. The town makes two arguments. First, the town argues that the district court erred by reasoning that DHI's request was complete as of October 12, 2023, and, thus, erred by concluding that the 60-day automatic-approval provision of Minnesota Statutes section 15.99, subdivision 2(a), was triggered on that date. Second, the town argues that it lacks authority to grant the applications under a state statute and a town ordinance, which limits or precludes the application of section 15.99, subdivision 2(a). *See Breza v. City of Minnetrista*, 725 N.W.2d 106, 112-14 (Minn. 2006).

A district court must grant a motion for summary judgment "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. The evidence must be viewed in the light most favorable to the nonmoving party. *Henry v. Independent Sch. Dist. No. 625*, 988 N.W.2d 868, 880 (Minn. 2023). A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court applies a *de novo*

standard of review to a district court's grant of a motion for summary judgment. *Henry*, 988 N.W.2d at 880.

A.

A state statute provides that a government agency, including a town, “must approve or deny within 60 days a written request relating to zoning . . . for a permit, license, or other governmental approval of an action.” Minn. Stat. § 15.99, subd. 2(a); *see also id.*, subd. 1(b) (defining “agency”). “Failure of an agency to deny a request within 60 days is approval of the request.” *Id.* The purpose of this statute is “to establish deadlines for local governments to take action on zoning applications.” *Perschbacher v. Freeborn Cnty. Bd. of Comm’rs*, 883 N.W.2d 637, 642 (Minn. App. 2016) (quotation omitted).

The statute defines the term “request,” the existence of which triggers an agency’s obligation to make a decision within 60 days, to mean “a written application,” which “must be submitted . . . on an application form provided by the agency, if one exists.” Minn. Stat. § 15.99, subd. 1(c). “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.” *Id.* Accordingly, a “‘request’ can be made in one of two ways: either (1) ‘on an application form provided by the agency, if one exists’ or (2) ‘not on a form of the agency,’” so long as the applicant includes the information required by the agency. *State v. Sanschagrin*, 952 N.W.2d 620, 626 (Minn. 2020) (quoting Minn. Stat. § 15.99, subd. 1(c)). “A request not on a form of the agency must clearly identify on the first page the specific permit, license, or other governmental approval being sought.” Minn. Stat. § 15.99, subd. 1(c).

The statute makes clear that an agency’s obligation to act within 60 days is triggered only by a complete request. The 60-day period “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.” *Id.*, subd. 3(a). “If an agency receives a written request that does not contain all required information, the 60-day limit starts over only if the agency sends written notice within 15 business days of receipt of the request telling the requester what information is missing.” *Id.* In other words, “The 60-day timetable begins when the agency receives a written request containing all the necessary information and any applicable fee.” *Sanschagrin*, 952 N.W.2d at 625.

In addition, the statute provides that the agency “may extend the time limit . . . before the end of the initial 60-day period by providing written notice of the extension to the applicant.” Minn. Stat. § 15.99, subd. 3(f). “The notification must state the reasons for the extension and its anticipated length, which may not exceed 60 days unless approved by the applicant.” *Id.*

B.

The town challenges the district court’s reasoning that DHI’s request was complete as of October 12, 2023, when the town received DHI’s attorney’s September 19, 2023 letter, its enclosures, and a \$600 check by U.S. mail. The district court focused on October 12, 2023, because that was the date on which the town received DHI’s \$600 check; the other materials and information received by the town on that date were identical to those received by e-mail on September 19, 2023.

The town contends that DHI's September-October request was incomplete because it did not include the variance applications on the town's approved form. The town's position is supported by the record, which reflects that, since at least 2021, the town has had an approved form for variance applications. *See supra* note 1. The town clerk referred to the town's variance application in her September 19, 2023 e-mail message. But DHI never submitted a variance application on the town's approved form, even after the town clerk sent DHI's attorney a link to the town's variance-application form on the town's website on December 6, 2023.

If an agency receives "a request not on a form of the agency," the agency "may reject [the request] as incomplete," so long as "the request does not include information required by the agency." Minn. Stat. § 15.99, subd. 1(c). In this case, the town's approved variance-application form provides a 22-item checklist, which describes the documents and other information that must be submitted with a variance application. *See supra* note 1. DHI's September 19, 2023 letter did not include numerous items described by the checklist, including, for example, a list of property owners within a quarter mile of the subject property's boundaries, a boundary survey and site plan provided by a licensed land surveyor, and contour maps.

Thus, the town was justified in concluding that DHI's September-October request was incomplete because DHI did not use the town's form and did not submit all information required by the town.

C.

The town also challenges the district court’s reasoning that the town did not notify DHI of the incompleteness of its request within 15 days, as necessary to prevent the triggering of the 60-day period. The statute provides that the 60-day period is not triggered “if the agency sends written notice within 15 business days of receipt of the request telling the requester what information is missing.” Minn. Stat. § 15.99, subd. 3(a). The district court reasoned that, after receiving DHI’s request on October 12, 2023, the town was obligated to notify DHI of any missing information within 15 days but did not do so.

The town contends that it informed DHI of the incompleteness of its request by e-mail on September 19, 2023, the same day on which the request was received by e-mail. On that date, the town clerk sent DHI’s attorney’s assistant an e-mail message stating that DHI should submit “formal applications and fees” after a meeting with the planning commission. The town clerk’s message further stated, “The applications and fees would be as follows:” The town clerk identified two different types of applications: “CUP Application—Commercial” and “Variance Application.”

We agree with the town that the town clerk’s September 19, 2023 e-mail message effectively communicated to DHI that it had not yet complied with the town’s requirements for variance and CUP applications. By directing DHI to submit “formal applications and fees” after a meeting with the planning commission, the town clerk communicated that DHI had not yet submitted the necessary “formal applications.” By specifically identifying two different types of applications, the town clerk communicated that the single form that DHI had submitted, which was entitled “Application for Consideration of Planning

Request,” was insufficient. The town clerk’s September 19, 2023 e-mail message is consistent with her subsequent December 5, 2023 e-mail message, in which she stated to DHI’s attorney that “you need to apply for a variance and CUP” and “you also need to submit a check for escrow . . . in the amount of \$5,800.” The town clerk’s September 19, 2023 e-mail message also is consistent with her subsequent December 6, 2023 e-mail message, in which she informed DHI’s attorney that she did not “have a variance application on file” and provided him with “a link to our variance application for you to complete.”

The town clerk’s September 19, 2023 e-mail message satisfied the statutory requirement that an agency give “written notice within 15 business days of receipt of the request telling the requester what information is missing.” *See id.* Having complied with that statutory requirement on September 19, 2023, it was unnecessary for the town to repeat the same message after receiving the same information by U.S. mail on October 12, 2023. Because the town notified DHI that its September-October request was insufficient on the same day it first was received—September 19, 2023—the 60-day period did not begin to run on either September 19, 2023, or October 12, 2023.

Thus, the town notified DHI of the incompleteness of its request within the statutory 15-day period, which prevented the triggering of the 60-day period in which an agency must approve or deny a request.

DHI does not contend in the alternative that its request was complete on some date after October 12, 2023. Accordingly, we need not consider any alternative date. It is sufficient for this court to conclude that the district court erred by reasoning that DHI’s

request was complete on October 12, 2023, and that the 60-day period commenced on that date.²

In sum, the district court erred by concluding that DHI submitted a complete request on October 12, 2023; by concluding that the town did not timely inform DHI of the incompleteness of its request; and, thus, by concluding that DHI's request was approved by operation of law. In light of this conclusion with respect to the town's first argument, we need not reach the town's second argument. Therefore, the district court erred by granting DHI's summary-judgment motion. We remand the case to the district court for further proceedings, including consideration of DHI's alternative argument that the town's denial was arbitrary and capricious.

Reversed and remanded.

²We nonetheless note that the evidence indicates that DHI did not submit a check for escrow fees until December 6, 2023, and that DHI never submitted variance applications on the town's forms. But the town board declared in its resolution that DHI's request would be deemed complete as of December 11, 2023. On January 12, 2024, the town board extended the 60-day deadline. *See* Minn. Stat. § 15.99, subd. 3(f) (providing that agency may extend time limit by as much as 60 additional days). DHI does not contend that the extension was invalid. The town board ultimately denied DHI's request on February 5, 2024.