

# Understanding Your Property Tax

By John Steffenhagen and Lisa Dahlquist

Not surprising, the bulk of your local government's revenue is generated from the property taxes you pay. The county or municipal assessor's job, by law, is to estimate the fair market value of your land and any improvements on your property to determine the amount of property taxes you will pay each year.

## Where does this valuation come from?

To calculate the amount of your property taxes county assessors generally rely on the Computer Assisted Mass Appraisal system, also known as CAMA. According to Houston County Assessor, Thomas Dybing, the CAMA system is an essential tool in determining the property's fair market value. The property's fair market value is defined as the most likely price the property would capture in an open market during an arm's length transaction.

The CAMA system generates values based on a mass of compiled data in the county where the assessment occurs. County assessors can look at a variety of factors that distinguish your property from the next to determine its fair market value, such as the property's square footage, whether the property has a fireplace, the number of bathrooms, parking space, etc.

Some assessors may contact you attempting to solicit information regarding any financial, appraisal or lease information you may have on your property. You are not required to provide any information to the assessor unless and until you have filed a property tax appeal.

The adage that "no good deed goes unpunished" applies in the tax realm and any information you provide to the assessor may be used against you in determining the amount of your property taxes. The property tax valuation occurs on January 2nd of each year. Chances are, you have yours by now.

## Does the system treat landowners fairly?

Mr. Dybing says that the county assessor's ultimate objective is to obtain equalization. In other words, similarly situated properties should have similar values and be taxed at a similar rate. To ensure that happens, county assessors look to a yearly Minnesota Department of Revenue Sales Ratio Study to check the accuracy of the

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data compiled in the CAMA system. The yearly Sales Study evaluates the actual sales prices of all properties in the county and compares that data to what is in the CAMA system. The CAMA system data is then updated to be consistent with the local market sales. However, this system of checks and balances for determining a fair tax assessment does not always work.

## How do property owners seek redemption when the assessment is too high?

Despite the state's efforts to come up with an equitable fair market value, mistakes may happen, in which case you can look to appeal your property assessment in Minnesota Tax Court as a remedy under Minnesota Statutes Chapter 278 by filing a petition. The deadline to file a petition is on April 30th of the tax payable year. Once the appeal is filed, the case will then be heard in the county where the property is located.

## What makes tax appeals unique from other types of litigation?

First, unlike other forms of litigation that tend to be adversarial by nature, open communication is encouraged in the tax court system. As a matter of public policy, the legislature intended the tax court system to be accessible by the public. Assessors are encouraged to be available to landowners to discuss the basis of the assessment and when appropriate make adjustments to the assessment.

Dakota County has spearheaded a program to promote communication between assessors and landowners by

offering "open book" meetings each spring during tax time. These meetings allow tax payers to speak with a member of the county's appraisal staff for information purposes only. Tax payers should not expect any action to be taken at one of these meetings.

Second, when negotiations fail, the next step in the tax appeal process is the exchange of information, also known as discovery. The discovery process in tax court is unique from other types of litigation. When dealing with income-producing property, the assessor is entitled to access a broad range of information regarding the property's value. Moreover, the assessor is entitled to that information in short order. Minnesota law requires landowners to produce documents and any other information pertaining to the property's value within 60 days from the petition filing deadline. This information may include income and expense figures related to the property, lease information, expenses and rental information.

Beware that the 60-day deadline has bite as failure to comply with the assessor's request for information within the 60 days could mean the end of your property tax appeal. The Minnesota Tax Court has dismissed petitions for failure to comply with the 60-day deadline. Talk to an attorney about your obligations prior to filing your property tax appeal.

## Understanding Your Property Tax

As a property owner in Minnesota you contribute to your local government through your property tax payment. County and municipal assessors make efforts to tax your property fairly, but that is not always the end result. If your tax assessment is too high, your remedy is to file a petition appealing your property tax assessment in Minnesota Tax Court. While many assessors are open to negotiations, in some instances, pursuing your claim in tax court may be the only way to remedy an unfair tax assessment. ●



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# LITIGATION

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## Letter From The Department Head

By Gary Van Cleve

Welcome to the inaugural issue of Re:Litigation a newsletter dedicated to the broad and varied world of real estate litigation. We hope that our newsletter will be useful to you and your business as we work to inform you of current issues in real estate litigation.

What is real estate litigation? I'd like to think that Larkin Hoffman has come to define this highly-specialized litigation practice area due to the work of our founding partner Jim Larkin and former partner Judge Chris Dietzen of the Minnesota Court of Appeals. In 1987, when I joined this firm to practice real estate litigation, I wasn't sure what real estate litigation entailed. Since then, at Larkin Hoffman real estate litigation has come to mean providing client services in legal disputes on topics ranging from condemnation to mechanic's lien foreclosure, construction defects to property

tax appeals and breach of real estate contracts to zoning. In short, any dispute that touches and concerns real property is part of the work of Larkin Hoffman's Real Estate Litigation practice group.

In this issue of Re:Litigation, we try to help you understand your property taxes; inform you of legal developments concerning an important time deadline statute for land use approvals; and provide news of a recent Minnesota Supreme Court decision that may affect the law of government regulatory takings. We hope that you will both learn something and come

to see that we have the knowledge and experience to help you with any real estate-related dispute that you may encounter. All told, our eight attorneys and paralegal have combined experience of over 50 years in handling real estate litigation disputes.

Please enjoy this first issue of Re:Litigation and feel free to call any one of us if we can be of service on any of your real estate or land use issues. ●



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# Recent Limits On The 60-Day Rule

By Jessica Small

In 1995, the Minnesota Legislature created a rather powerful tool known as the “60-Day Rule” for property owners

trying to obtain zoning and other specified approvals from government agencies. Although the 60-Day Rule has been heavily litigated since its inception, the Minnesota Supreme Court accepted two cases this past year dealing with the statute and Larkin Hoffman’s Real Estate Litigation practice group represented the applicant in both cases.

Before hearing these two cases, the supreme court had not examined the statute since 2001. In addition to the Minnesota Supreme Court, Minnesota federal courts and the Minnesota Court of Appeals have also recently grappled with this statute. The effect of some of these most recent decisions suggests that courts are starting to limit the power of the 60-Day Rule.

## What is the 60-Day Rule?

Minn. Stat. § 15.99 is commonly referred to as the 60-Day Rule because the basic time deadline for government agencies to act upon these written requests is 60 days. In 1995, Minnesota joined approximately two dozen states, including our neighbor Wisconsin, in adopting an “automatic approval” statute for written requests relating to zoning and other specified approvals. The fundamental requirement is that an agency has 60 days to grant or deny an applicable written request and if the agency fails to approve or deny the request within 60 days, the request is automatically approved by operation of law. The underlying purpose behind the 60-Day Rule is to prevent government agencies from taking too long in deciding zoning and other specified requests.

The “club” of the 60-Day Rule, as defined by legislators in 1995, is the automatic approval of the application, which ensures that a property owner will not be burdened with a limitless application process.

## Who Does the 60-Day Rule Apply To?

The 60-Day Rule applies to an applicant who submits a zoning or other specified written request to an “agency.” The statute defines agency to include:

- 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
- Any other political subdivision of the state

## What Types of Requests Does the 60-Day Rule Apply To?

The 60-Day Rule applies to “a written application related to zoning, septic systems, watershed district review, soil and water conservation district review or the expansion of the metropolitan

urban service area, for a permit, license or other governmental approval of an action.” The applicant must submit the request to the agency on an agency-provided application, if one exists. If an agency does not have an application, the applicant must clearly identify the specific approval being requested. In 2003, the Minnesota Court of Appeals held that the 60-Day Rule does not apply to a building permit.

## What Have Recent Cases Said About the 60-Day Rule?

On December 21, 2006, the Minnesota Supreme Court issued its first ruling on the 60-Day Rule since 2001. Larkin Hoffman’s Real Estate Litigation practice group represented the applicant in *Breza v. City of Minnetrista*, who had applied for a 5,737 square-foot wetland-exemption for the fill he had placed in his backyard. The city failed to respond to the applicant’s request for over two years. When the city finally responded, the city attempted to deny the request. The applicant responded to the city citing the 60-Day Rule and maintaining that the statute required the city to approve his application. The city agreed that it had violated the statute and that the applicant’s exemption request was granted, but the city claimed that it could only grant a 400 square-foot exemption because that is the only exemption the applicant qualified for under the Wetland Conservation Act.

The pivotal issue the supreme court decided in *Breza* was the meaning behind the automatic approval language in the statute that states an agency, notwithstanding any other law to the contrary, must approve or deny a written request within 60 days. The applicant argued that even if the city did not have the legal authority to approve the request, it is nonetheless approved by operation of the 60-Day Rule. The supreme court held, however, that the operation of the 60-Day Rule can only preempt other timelines, not other substantive laws.

The U.S. Court of Appeals for the Eighth Circuit also addressed the 60-Day Rule on January 10, 2007. In *Minnesota Towers, Inc. v. City of Duluth*, the district court held that the city violated the 60-Day Rule by not adopting a written statement denying the applicant’s request before the expiration of the 60-day deadline. The Eighth Circuit reversed the district court’s decision holding that a government agency is only required to state its reasons for denial on the record when a resolution to approve a request fails. The Eighth Circuit determined that when a resolution to approve a request fails, the provisions in the statute that require a government agency to adopt a written statement of reasons and provide the statement to the applicant before the 60 days are irrelevant.

This same piecemeal approach to analyzing the statute that was adopted in *Minnesota Towers* was argued before the Minnesota Supreme Court by the City of Minnetrista. Larkin Hoffman’s Real Estate Litigation group also represented the applicant in *Hans Hagen Homes, Inc. v. City of Minnetrista*, where the Minnesota Court of Appeals affirmed the district court’s decision ruling in favor of Hans Hagen. The court took a holistic approach to reading the statute that the city violated the statute when it failed to provide the applicant with a written statement of reasons denying the application within the 60-day deadline.

The city argued on appeal to the Minnesota Supreme Court that there was no requirement to provide the applicant with a written statement denying the request within the 60-day deadline. The Minnesota Supreme Court accepted the city’s interpretation of the statute holding and reversed the Minnesota Court of Appeals’ decision that Hans Hagen’s application was not automatically approved under the statute. The court held that the automatic approval penalty applies only when an agency fails to deny a request within 60 days and that denial is complete when an agency votes to deny the application and adopts a written statement of reasons for denial regardless of whether the agency provides notice to the applicant. The court also noted that the automatic approval penalty language could be read even more narrowly to mean that an agency’s denial is complete when an agency votes to deny the application, but the court left that precise issue for another day.

## Navigating the 60-Day Rule

Although the 60-Day Rule seems like a straightforward statute, the balance that the legislature tried to create by allowing government agencies to regulate land use by providing a definitive deadline for property owners continues to be tested in the courts. Although the earlier case law on the statute strictly enforced the 60-Day Rule, the recent case law suggests that courts are taking a more narrow approach to analyzing the statute. This may lessen the power of the “club,” or the automatic approval of an application.

Despite the evolving case law on this statute, one thing that remains constant is that a property owner who believes that an agency has violated the 60-Day Rule should consult with an attorney to help navigate through the sometimes murky waters this rather clear statute can present. Larkin Hoffman’s Real Estate Litigation practice group has extensive experience handling 60-Day Rule cases as we have argued five cases at the state appellate level and have handled six cases at the state and federal levels that were not appealed. ●



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## Eminent Domain Update:

# Mendota Golf, LLP v. Mendota Heights

By Mike Mergens

Since the United States Supreme Court’s decision in *Kelo v. City of New London*, governmental authority to take land

from a private individual has been at the forefront of the public consciousness. In response to public outrage over the *Kelo* decision, the Minnesota Legislature acted swiftly to calm the fears of private landowners. Technically, the *Kelo* decision did little to change the substantive law in Minnesota, the issue having been decided years earlier by the Minnesota appellate courts.

In 2006, the legislature passed sweeping changes to how governmental units are able to exercise their eminent domain powers. No longer can a governmental entity in Minnesota take land from a private citizen strictly because the land is part of a redevelopment project. The new legislation also curtails the ability to take property in the name of blight.

Governmental takings, however, can occur in many forms. In the recent Minnesota Supreme Court case, *Mendota Golf, LLP v. Mendota Heights*, at least three members of the court recognized that a city’s comprehensive plan, specifically those cities within the metropolitan area, can result in a regulatory taking of private property. The regulatory taking issue arose because of the amendments to the Minnesota Land Planning Act (“MLPA”).

When Mendota Golf, LLP purchased the property, MLPA provided that a zoning designation took priority over conflicting comprehensive plan designations. Effective August 1 1995, the MLPA was amended to provide that the comprehensive plan’s designation controls the character of the property and that if the comprehensive municipal plan is in conflict with the zoning ordinance, the city’s zoning ordinance must be brought into conformance with the plan by local government units.

The Mendota Golf property was zoned as a single-family residential property (R-1). The city’s zoning code provided that in an R-1 zoning district, a golf course was allowed, but required a permit from the city. At the same time, the city’s comprehensive plan designated the property as “GC” or golf course and when the broader zoning ordinance was controlling the property, it could be used as a golf course with a conditional use permit or developed as a residential neighborhood. When MLPA was amended by the legislature, the comprehensive plan took priority and the property could no longer be developed as a residential neighborhood.

With the legislature’s amendment of MLPA, Mendota Golf no longer had the flexibility of an R-1 zoning designation, but was bound by the more restrictive GC designation on the comprehensive plan. It is this loss of use that led three justices to note the potential claim for regulatory taking of Mendota Golf’s property.

It is likely that this is not the only scenario that may result in a regulatory taking. The MLPA requires municipalities to engage in long-term planning and when a long-term plan results in a designation on the comprehensive plan that conflicts with the current use of your property, the change may arguably result in a regulatory taking.

Unfortunately, there is no clear test for when a regulatory taking occurs. Instead, whether a regulatory taking has occurred turns largely on the particular facts underlying each case. A court considering a regulatory taking claim will consider the following factors:

- 1) The economic impact of the regulation on the person(s) suffering the loss.
- 2) The extent to which the regulation interferes with distinct investment-backed expectations.
- 3) The character of the government action at issue.

Should it appear that a comprehensive plan designation may result in a regulatory taking of your property, the proper avenue is to initiate an action for inverse condemnation against the city or other local zoning authorities. The courts have explicitly provided that the proper method to initiate an inverse condemnation is a petition for mandamus. This requirement can create technical pitfalls for the unwary, which may result in the dismissal of the lawsuit. Advice of counsel is strongly recommended for any property owner who is facing a regulatory taking situation. ●



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