

## **6105.0230 REVIEWS AND CERTIFICATION OF LOCAL LAND USE DECISIONS.**

Subpart 1. **Procedure established.** In order to ensure that the standards herein are not nullified by unjustified exceptions in particular cases, and to promote uniformity in the treatment of applications for such exceptions, a review and certification procedure is hereby established for certain local land use decisions. These certain decisions consist of any decisions which directly affect the use of land within a wild, scenic, or recreational river land use district, and are one of the following types of action:

A. Adopting or amending an ordinance regulating the use of land, including rezoning of particular tracts of land.

B. Granting a variance from a provision of the local land use ordinance which relates to the zoning dimension provisions of part 6105.0110 and any other zoning dimension provisions established in the management plan.

C. Approving a plat which is inconsistent with the local land use ordinance.

Subp. 2. **Compliance with decision guides.** No such action shall be effective unless and until the commissioner has certified that the action complies with the Minnesota Wild and Scenic Rivers Act, the statewide standards and criteria, and the management plan; and conforms to the following decision guides:

A. A land use ordinance or amendment must comply with the act, the statewide standards and criteria, and the management plan.

B. The grant of a variance requires the presence of these conditions:

(1) The strict enforcement of the land use controls will result in unnecessary hardship. "Hardship" as used in connection with the granting of a variance means the property in question cannot be put to a reasonable use under the conditions allowed by the zoning provisions. Economic considerations alone shall not constitute a hardship if any reasonable use for the property exists under the terms of the ordinance.

(2) Granting of the variance is not contrary to the purpose and intent of the zoning provisions herein established by these standards and criteria, and is consistent with the comprehensive management plan adopted by the commissioner.

(3) There are exceptional circumstances unique to the subject property which were not created by the landowner.

(4) Granting of the variance will not allow any use which is neither a permitted or conditional use in the land use district in which the subject property is located.

(5) Granting of the variance will not alter the essential character of the locality as established by the management plan.

(6) Exception: where a setback pattern from the normal high water mark has already been established on both sides of the proposed building site, the setback of the proposed structure may be allowed to conform to that pattern. This provision shall apply only to lots which do not meet the minimum lot width restrictions of the ordinance.

C. Approval of a plat which is inconsistent with the local land use ordinance is permissible only if the detrimental impact of the inconsistency is more than overcome by other protective characteristics of the proposal.

Subp. 3. **Procedures for the certification process.** Procedures:

A. A copy of all notices of any public hearings, or where a public hearing is not required, a copy of the application to consider zoning amendments, variances, or inconsistent plats under the local ordinance shall be received by the commissioner at least 30 days prior to such hearings or meetings to consider such actions. The notice or application shall include a copy of the proposed ordinance or amendment, or a copy of the proposed inconsistent plat, or a description of the requested variance.

B. The local authority shall notify the commissioner of its final decision on the proposed action, within ten days of the decision.

C. The commissioner shall, no later than 30 days after receiving notice of the final decision, communicate to the local authority either certification of approval, with or without conditions, or notice of nonapproval.

D. The action becomes effective when and only when either:

(1) the final decision taken by the local authority has previously received certification of approval from the commissioner; or

(2) the local authority receives certification of approval after its final decision; or

(3) thirty days have elapsed from the day the commissioner received notice of the final decision, and the local authority has received from the commissioner neither certification of approval nor notice of nonapproval; or

(4) the commissioner certifies approval after conducting a public hearing.

E. In the case of notice of nonapproval of an ordinance or a variance or an inconsistent plat, either the applicant, or the chief executive officer of the county or municipality, may, within 30 days of said notice, file with the commissioner a demand for hearing. If the demand for hearing is not made within the 30 days, the notice of nonapproval becomes final. Also:

(1) The hearing shall be held in an appropriate local community within 60 days of the demand for it but not before two weeks' published notice. Notice and the conduct

of the hearing and the allocation of costs of the hearing shall be accomplished in the same manner as provided in Minnesota Statutes, section 103G.311, subdivisions 2, 6, and 7.

(2) Within 30 days after the hearing, the commissioner shall either certify approval of the proposed action, or deny it. The decision shall be based upon findings of fact made on substantial evidence found in the hearing record. On concluding that the proposed action satisfies the standards and criteria of part 6105.0230, subpart 2, then the commissioner shall certify approval; otherwise, the commissioner shall deny it.

**Statutory Authority:** *MS s 104.34; 103F.321*

**History:** *17 SR 1279*

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