

8420.0905 APPEALS.

Subpart 1. **Appeal of replacement and restoration orders to the board.** A landowner or responsible party may appeal the terms and conditions of a restoration or replacement order issued according to part 8420.0900 to the board's executive director within 30 days of receipt of the order by filing a written request for review and paying a nonrefundable filing fee to the board. The time frame for appeal may be extended beyond 30 days upon mutual agreement, in writing, between the landowner or responsible party, the local government unit, and the enforcement authority. The filing fee is an amount determined by the board not to exceed \$1,000. If the written request is not submitted within 30 days, the restoration or replacement order is final. The executive director must review the request and supporting evidence and render a decision within 30 days of the request for review. The executive director may stay the restoration or replacement order until the appeal is resolved.

Subp. 2. Appeal of local government unit staff decisions.

A. A decision made by local government unit staff is final if not appealed to the local government unit within 30 days after the date on which the decision is sent to those required to receive notice of the decision. Notwithstanding the time frames of Minnesota Statutes, section 15.99, or any other law to the contrary, the local government unit must make a ruling within 30 days from the date of the filing of the appeal, unless the appellant and local government unit mutually agree, in writing, to an extension of time beyond the 30 days.

B. Appeal of a final decision made by staff may be made by the landowner, by any of those required to receive notice of the decision, or by 100 residents of the county in which a majority of the wetland is located.

C. An appeal is effective upon mailing the petition and payment of any applicable fees to the local government unit. A filing fee is not required for appeals petitioned by state agencies or members of the technical evaluation panel.

Subp. 3. Appeal of local government unit decisions to the board.

A. The decision of a local government unit to approve, approve with conditions, or deny an application is final if not appealed to the board within 30 days after the date on which the decision is sent to those required to receive notice of the decision unless the applicant and local government unit mutually agree, in writing, to an extension of time beyond the 30 days. Appeals of decisions made by local government staff must be made to the local government unit as provided for in subpart 2. This subpart also applies to decisions made under comprehensive wetland protection and management plans.

B. Appeal may be made by the landowner, by any of those required to receive notice of the decision, or by 100 residents of the county in which a majority of the wetland is located.

C. An appeal is effective upon mailing the petition and payment of a nonrefundable filing fee in an amount determined by the board, not to exceed \$1,000, to the board with evidence that a copy of the petition has been mailed to the local government unit. The petition should include information to establish sufficient grounds for the appeal. The filing fee is not required for appeals petitioned by state agencies or members of the technical evaluation panel. Another filing fee is not required for appeals that have been remanded if the filing fee was paid and the same party appeals the new decision made under remand. After receipt of a petition, the local government unit must send a copy of the petition to all those to whom it was required to send a notice of the decision.

Subp. 4. Board appeal procedures.

A. Within 30 days after receiving the petition, the board, its dispute resolution committee, or its executive director must decide whether to grant the petition and hear the appeal. After considering the size of the proposed impacts and the quality of the affected wetland, any patterns of similar acts by the petitioner or responsible party or by the local government unit in administration of this chapter and the act, and the consequences of the delay resulting from the appeal, the board, its dispute resolution committee, or its executive director shall grant the petition unless the appeal is deemed to be without sufficient merit, trivial, or brought solely for the purposes of delay; the petitioner has not exhausted all local administrative remedies; or the petitioner has not submitted the required filing fee.

B. The board, its dispute resolution committee, or its executive director may stay the local government unit decision until the appeal is resolved.

C. The board, its dispute resolution committee, or its executive director may remand the appealed decision back to the local government unit if the petitioner has not exhausted all local administrative remedies, such as a local government unit evidentiary public hearing, if expanded technical review is needed, or if the local government unit's record is not adequate. If an appeal is remanded, a new application is not required and additional information may be submitted before a decision is made by the local government unit. The local government unit must make a decision on an appeal that has been remanded within 60 days unless the remand order, or a subsequent order, specifies a longer period.

D. After the petition is granted, the appeal must be heard by the dispute resolution committee and decided by the board within 60 days after filing of the local government unit's written record, submittal of written briefs for the appeal, and a hearing by the dispute resolution committee. Parties to the appeal are the appellant, the landowner, the local government unit, and those required to receive notice of the local government unit decision.

E. The board or its executive director may elect to combine related appeals and process as one decision, either multiple appeals on the same project or appeals of different local government unit decisions on the same project.

F. Within 30 days of the grant of the appeal, unless an extension of time is approved by the board, the local government unit must forward to the board the written record on which it based its decision. The board must forward one copy of the record to each of the parties to the appeal. The board shall make its decision on the appeal after hearing. The board must give the parties 30 days' notice of the hearing. The board must base its review on the record and the argument presented to the board by the parties. However, if the local government unit did not consider fundamental information, such as aerial photographs, soil maps, or wetland maps, or did not make formal findings contemporaneously with its decision; if there is not accurate verbatim transcript of the proceedings; if the proceedings were not fairly conducted; or if the record is otherwise incomplete or deficient, the board may remand the matter or receive additional evidence. If, before the date set for the hearing, application is made to the board for leave to present additional evidence on the issues in the case and it is shown to the satisfaction of the board that additional evidence is material and that there were good reasons for failure to present it in the proceeding before the local government unit, the board may order that the additional evidence be taken before the local government unit upon such conditions that the board deems proper. The local government unit may modify its findings and decision by reason of the additional evidence and must file with the board, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

G. The board shall affirm the local government unit's decision if the local government unit's findings of fact are not clearly erroneous; if the local government unit correctly applied the law to the facts, including this chapter; and if the local government unit made no procedural errors prejudicial to a party. Otherwise, the board shall reverse the decision, amend it, or remand it with instructions for further proceedings. The board must provide notice of its decision to the parties to the appeal.

Subp. 5. **Appeal of board decisions.** An appeal of a board decision may be taken to the state Court of Appeals and must be considered an appeal from a contested case decision for purposes of judicial review under Minnesota Statutes, sections 14.63 to 14.69.

Statutory Authority: *MS s 103G.2242*

History: *34 SR 145*

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