



KOPELMAN AND PAIGE, P.C.

The Leader in Municipal Law

101 Arch Street
Boston, MA 02110
T: 617.556.0007
F: 617.654.1736
www.k-plaw.com

June 29, 2009

MEMORANDUM TO MUNICIPAL CLIENTS

TO: BOARD OF SELECTMEN/MAYOR/TOWN AND CITY COUNCIL
TOWN MANAGER/TOWN ADMINISTRATOR/EXECUTIVE SECRETARY
CITY AND TOWN CLERK
PLANNING BOARD
ZONING BOARD OF APPEAL

Re: Certificates of Constructive Approval

We are often asked what a city or town clerk should do when presented with a request to certify the constructive approval of a subdivision plan or a zoning petition. This memorandum will address the different procedural requirements for obtaining certificates of constructive approval under the Subdivision Control Law and the Zoning Act. The memorandum will also outline the factual inquiries which a municipal clerk should make before issuing a requested certification.

Both the Zoning Act and the Subdivision Control Law specify time limits within which a permit granting authority or planning board must make and file its decision with respect to an application before it. A board's failure to comply with the specified deadlines will usually result in a "constructive approval," i.e., the requested action will be deemed to be granted by virtue of the permit authority or planning board's failure to act within the applicable, statutory time limit.

Constructive approvals are not automatic, however. In order to effectuate a constructive approval, the applicant must obtain a certification from the municipal clerk that a decision on the matter was not timely made in accordance with the relevant statutory provisions. The procedures to be followed for obtaining the necessary certification under the Zoning Act and the Subdivision Control Law are set forth in these statutes. As discussed below, unless the applicable procedures are followed correctly, a constructive approval may not become effective and a certification may not be required.

Certificates under the Zoning Act

Massachusetts General Laws, Chapter 40A, §15 provides that failure of a board of appeals to make a decision in regard to either a variance petition or an appeal under G.L. c.40A, §8 within one-hundred (100) days after the date of filing of the petition or appeal (or within an extended time as may be provided in a written agreement between the board and the applicant and on file with the city or town clerk) will be deemed to be a grant of the appeal or petition. A similar provision is contained in G.L. c.40A, §9 with respect to applications for special permits. Under §9, the failure of the special permit granting authority to file its decision within 90 days