

Memorandum to Municipal Clients  
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from the close of the public hearing on the special permit application (or an agreed upon extended time, if applicable) will be deemed a constructive grant of the special permit.

When a constructive grant of zoning relief occurs, the Zoning Act requires that the municipal clerk issue a certificate to the applicant stating the date of the constructive approval, the fact that the board failed to take final action, and that the approval resulting from such failure has become final. The statute further provides that such certificate is to be issued, however, only after certain events have occurred. Specifically:

- the petitioner must give written notice to the city or town clerk, within fourteen days from the expiration of the applicable deadline, that there has been a constructive approval and that notice of such approval has been mailed to all parties in interest;
- the petitioner must mail the notice to the parties in interest, and include in the notice a statement that appeals, if any, shall be taken pursuant to G.L. c.40A, §17 and shall be filed within twenty days after the date the city or town clerk received the petitioner's notice that the board failed to act within the prescribed time frame ("the 20-day appeal period"); and then,
- either the 20-day appeal period must expire without a notice of appeal having been filed, or if an appeal is taken, the clerk must have received certified records of the court in which the appeal is adjudicated that the constructive approval has become final. G.L. c.40A, §§ 9 and 15. It should be noted that an applicant's failure to follow the statutory notice requirements will nullify a constructive approval. See Uglietta v. City Clerk of Somerville, 32 Mass. App. Ct. 742 (1992).

Before issuing a certificate of constructive approval for zoning relief, the municipal clerk should carefully verify:

- (1) The actual date of the original filing of the petition or appeal with the municipal clerk's office;
- (2) Whether there was an extension of the statutory deadline by agreement;
- (3) That the applicable statutory deadline or extended deadline has, in fact, expired without board action;
- (4) That the notice of constructive approval itself has been timely filed, and includes a statement that notice has been mailed to the parties in interest;
- (5) That proper notice was, indeed, mailed to the parties in interest; and
- (6) That twenty days has elapsed from the date of notice without any appeal having been taken under G.L. c.40A, §17; or, if an appeal was filed, that certified court records confirming the constructive approval have been received in the clerk's office.