

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT

File No.

John N. Allen, and Joel T.
Buttenhoff, MinnStar Builders,
Inc., a Minnesota corporation,

CASE TYPE: MANDAMUS

Petitioners,

**ALTERNATIVE WRIT OF
MANDAMUS**

v.

City of Mendota Heights, a
municipal corporation,

Respondent.

TO: Respondent City of Mendota Heights.

GREETINGS:

WHEREAS, it manifestly appears to this court by the verified complaint and petition of MinnStar Builders, Inc., John N. Allen, and Joel T. Buttenhoff that:

1. Petitioner MinnStar Builders, Inc. ("MinnStar") is a Minnesota corporation with offices located at 7500 West 78th Street, Edina, MN 55439. Minnstar is in the business of developing real property.

2. Petitioner John N. Allen ("Allen") is a resident of the State of Florida but owns real property in Dakota County, Minnesota.

3. Petitioner Joel T. Buttenhoff ("Buttenhoff") is a resident of the State of Minnesota and owns real property in Dakota County, Minnesota.

4. Respondent City of Mendota Heights is a municipal corporation organized and operated under the laws of the State of Minnesota.

5. Allen and Butenhoff own approximately 8 acres of real property located in the City of Mendota Heights, County of Dakota, State of Minnesota (the "Property"). The Property is along Pilot Knob Road and Highways 110 and 55.

6. On August 28, 2002, MinnStar entered into a purchase agreement with Allen and Butenhoff to acquire the Property. MinnStar planned to develop the Property along with adjacent property into a residential development.

7. On November 5, 2002, MinnStar made a number of requests relating to zoning in connection with its development. MinnStar sought preliminary plat approval, rezoning, site plan approval, a conditional use permit for a planned unit development, a variance, and a street vacation. The City did not inform MinnStar that its requests were in any way incomplete within ten days after their submittal.

8. On or about December 2, 2002, various opponents of MinnStar's zoning requests filed a petition seeking the preparation of an environmental assessment worksheet (EAW) with the Minnesota Environmental Quality Board.

9. On December 18, 2002, the City sent a letter to MinnStar informing MinnStar that it was extending the 60-day deadline under Minn. Stat. § 15.99 an additional 60 days. The letter also incorrectly stated that the 60-day timeline was "stayed" during the EAW process.

10. On January 7, 2003, the City granted the petition for an EAW.

11. On February 5, 2003, the mandatory timeline under Minn. Stat. § 15.99 for acting on MinnStar's zoning requests expired. The City failed to act on the requests within the required timeline. Pursuant to Minn. Stat. § 15.99, MinnStar's zoning requests for preliminary plat approval, rezoning, site plan approval, a conditional use permit for a planned unit development, a variance, and a street vacation are deemed approved as of February 5, 2003.

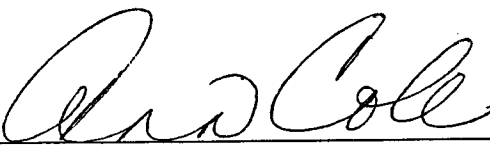
12. On February 19, 2003, MinnStar submitted information to the City in connection with the EAW. The submittal was a request relating to zoning that the City decline to require an environmental impact statement (EIS) for the project. The City did not inform MinnStar that its request was incomplete within 10 days of its submittal.

13. On April 21, 2003, the timeline under Minn. Stat. § 15.99 for the City to act on MinnStar's request to not order an EIS expired. Pursuant to Minn. Stat. § 15.99, on April 21, 2003, the City is deemed to have approved the request to decline to order an EIS.

NOW, THEREFORE, you are commanded, immediately upon receipt of this writ, to grant forthwith petitioner MinnStar's requests for preliminary plat approval, rezoning, site plan approval, a conditional use permit for a planned unit development, a variance, a street vacation, and no EIS as required by Minn. Stat. § 15.99, subd. 2, and to take other appropriate action consistent with this writ with all deliberate speed, or to show cause before this court, at a special term thereof, to be held at the Dakota County Government Center on MARCH 16, 2004, at 9:00 a.m./~~p.m.~~, why you have not done so, and that you then and there make return to this writ with your certificate of such return of having done as you are commanded.

WITNESS, the Honorable LESLIE METZEN, judge of said court, and the seal thereof this 29 day of JANUARY, 2004.

Court Administrator of Dakota County District Court

By: 

Its: 