

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

File No.

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

CASE TYPE: Mandamus

Petitioners,

**VERIFIED PETITION FOR WRIT OF
MANDAMUS**

v.

City of Mendota Heights, a
municipal corporation,

Respondent.

For their verified petition for writ of mandamus against respondent City of Mendota Heights, petitioners John N. Allen, Joel T. Buttenhoff, and MinnStar Builders, Inc., state and allege as follows:

THE PARTIES

1. Petitioner John N. Allen ("Allen") is a resident of the State of Florida but owns real property in Dakota County, Minnesota.
2. Petitioner Joel T. Buttenhoff ("Buttenhoff") is a resident of the State of Minnesota and owns real property in Dakota County, Minnesota.
3. 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.
4. Respondent City of Mendota Heights is a municipal corporation organized and operated under the laws of the State of Minnesota.

BACKGROUND FACTS

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. A true and correct copy of the application containing the zoning requests is attached hereto as Exhibit A. 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. A true and correct copy of the letter is attached hereto as Exhibit B. 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 March 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 March 5, 2003.

12. On February 19, 2003, MinnStar submitted information to the City in connection with the EAW. A true and correct copy of the submittal is attached hereto as Exhibit C. 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 not to 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.

**COUNT ONE
PEREMPTORY WRIT OF MANDAMUS**

14. Allen, Bутtenhoff, and MinnStar restate and reallege paragraphs 1 to 13 as though stated in their entirety herein.

15. This cause of action is brought pursuant to Minn. Stat. §§ 586.01, *et seq.*, for a peremptory writ of mandamus directing the City to grant MinnStar's written 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, because the City did not act either to grant or deny the requests within 60 days from the date of MinnStar's written requests, or any lawful extension thereof, as required by Minn. Stat. § 15.99, subd. 2.

16. The City's failure to comply with its legal duty to grant the requests in accordance with the mandatory requirements of Minn. Stat. § 15.99 constitutes a public wrong specifically injurious to Allen, Bутtenhoff, and MinnStar and there is no plain, speedy and adequate remedy in the ordinary course of law. Therefore, Allen, Bутtenhoff, and MinnStar are entitled to a

peremptory writ of mandamus ordering the City to grant immediately the requests, along with the damages it has incurred, which are in excess of \$50,000.00, the exact amount to be determined at trial.

**COUNT II
ALTERNATIVE WRIT OF MANDAMUS**

17. Allen, Buttenhoff, and MinnStar restate and reallege paragraphs 1 to 16 as though stated in their entirety herein.

18. The City's failure to timely act on MinnStar's requests entitles Allen, Buttenhoff, and MinnStar, in the alternative, to the issuance of an alternative writ of mandamus ordering the City to show cause why an alternative writ of mandamus should not issue directing the City to immediately grant the requests, along with the damages Allen, Buttenhoff, and MinnStar have incurred, which are in excess of \$50,000.00, the exact amount to be determined at trial.

WHEREFORE, petitioners John N. Allen, Joel T. Buttenhoff, MinnStar Builders, Inc., request judgment from the court as follows:

1. Ordering that a peremptory writ of mandamus issue immediately compelling the City to grant 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.
2. Ordering in the alternative that an alternative writ of mandamus issue compelling the City to show cause why the writ should not issue to grant the 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.
3. Awarding Allen, Buttenhoff, and MinnStar damages in an amount in excess of \$50,000.00, the exact amount to be determined at trial.
4. Granting and awarding Allen, Buttenhoff, and MinnStar their costs, disbursements and reasonable attorneys' fees recoverable by law incurred in bringing this action.
5. Granting and awarding such other and further relief as the court deems just and equitable.

Dated:

1/29/04



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ACKNOWLEDGMENT

I hereby acknowledge that sanctions may be awarded pursuant to Minn. Stat. § 549.211, subd. 3, if the court determines that this document violates Minn. Stat. § 549.211, subd. 2.



Christopher J. Deike