STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF OLMSTED | THIRD JUDICIAL DISTRICT

Sun ACQ, LLC,

Plaintiff,

v.

City of Stewartville, Minnesota,

Defendant.

Case Type: Other Civil
Court File No.: 55-CV-20-1084
Judge: Joseph Chase

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S REQUEST FOR DECLARATORY RELIEF AND A WRIT OF MANDAMUS

I. INTRODUCTION

Sun ACQ, LLC and its affiliate GCP Stewartville, LLC, subsidiaries of Sun Communities ("Sun Communities"), submits this memorandum of law in support of its Petition for a Writ of Mandamus and Request for Declaratory Relief reversing the City of Stewartville's ("City") denial of its conditional use permit, (or "CUP"), rezoning application and plat application necessary to complete the development and expansion of an existing manufactured housing community. The City denied Sun Communities' applications for one reason — intense and misinformed citizen opposition to manufactured home parks. Though the City's own attorney advised the City Council that its denial of the requested conditional use permit would violate Minnesota law, the City capitulated to the public's prejudice and denied the applications anyway. Only months later, the City approved the groundbreaking for a 55-unit apartment complex, citing a "housing shortage" and a "boost to the economy." The City's denials of the requested approvals are (a) contrary to Minnesota law, (b) pre-empted by Minn. Stat. 426.357 subd. 1, and (c) in violation of the equal protection clauses of the Minnesota Constitution and of the Fourteenth Amendment of the United

States Constitution and therefore invalid. Sun Communities is therefore entitled to a Writ of Mandamus.

Sun Communities respectfully requests that the Court grant its writ of mandamus and immediately compel the City to issue the conditional use permit, the plat application, and the rezoning application.

II. STATEMENT OF RELEVANT FACTS

1. Sun Communities is a Michigan limited liability company authorized to conduct business in the State of Minnesota. Sun Communities (and its affiliates) is one of the nation's premier owners and operators of manufactured housing communities. (Record #45, p. 9) (City 001055-1063); (Record #31) (City 000871).

2. The City is a public corporation organized under the laws of the State of Minnesota.

The Property

3. Sun Communities[1] is the owner of certain real property in the City of Stewartville legally described as follows ("Existing Developed Property"):

[1] Through a subsidiary.

Parcel 1:
Lot 1, Block 1, and Outlots A, B, C, and D, Estates of North Ridge, according to the recorded plat thereof, Olmsted County, Minnesota.

(Abstract Property)

Parcel 2:
That part of the East Half of the East Half of the Northeast Quarter of Section 28, Township 105, Range 14, according to the United States Government Survey thereof, Olmsted County, Minnesota described as follows: Beginning at the Northeast corner of said Northeast Quarter; thence southerly along the East line of said Northeast Quarter, 921.20 feet to the Northeast corner of Outlot A, Estates of North Ridge; thence westerly, along said North line, 657.91 feet to the West line of the East Half of the East Half of said Northeast Quarter; thence northerly along said West line, 920.16 feet to the North line of said Northeast Quarter; thence easterly, along said North line, 658.02 feet to the point of beginning.

(Abstract Property)

Parcel 3:
The Southeast Quarter of the Northwest Quarter of Section 27, Township 105, Range 14, Olmstead County, Minnesota, except the North 171 feet of the East 264 feet of that part of said Southeast Quarter of the Northwest Quarter lying West of the West Right—Of—Way line of Trunk Highway No. 63, and the Southwest Quarter of the Northwest Quarter of Section 27, Township 105, Range 14, Olmsted County, Minnesota, EXCEPT the West 10 acres thereof.

(Abstract Property)

4. Sun Communities purchased the Existing Developed Property in approximately 2014 and has since invested more than $2,000,000 in the care, maintenance, and upgrade of the Existing Developed Property. (Record #35) (City 000918).

5. In addition to the Existing Developed Property, Sun Communities is under contract to purchase certain real property also in the City of Stewartville, legally described as follows:

LEGAL DESCRIPTION:

PER FIRST AMERICAN TITLE INSURANCE COMPANY, COMMITMENT NUMBER 17526S, DATED NOVEMBER 5, 2018

THE WEST HALF OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 105, RANGE 14, OLMSTED COUNTY, MINNESOTA; AND
THAT PART OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 105, RANGE 14, OLMSTED COUNTY, MINNESOTA, LYING SOUTH OF THE FREEWAY, LESS THE SOUTH 20 ACRES.

AND

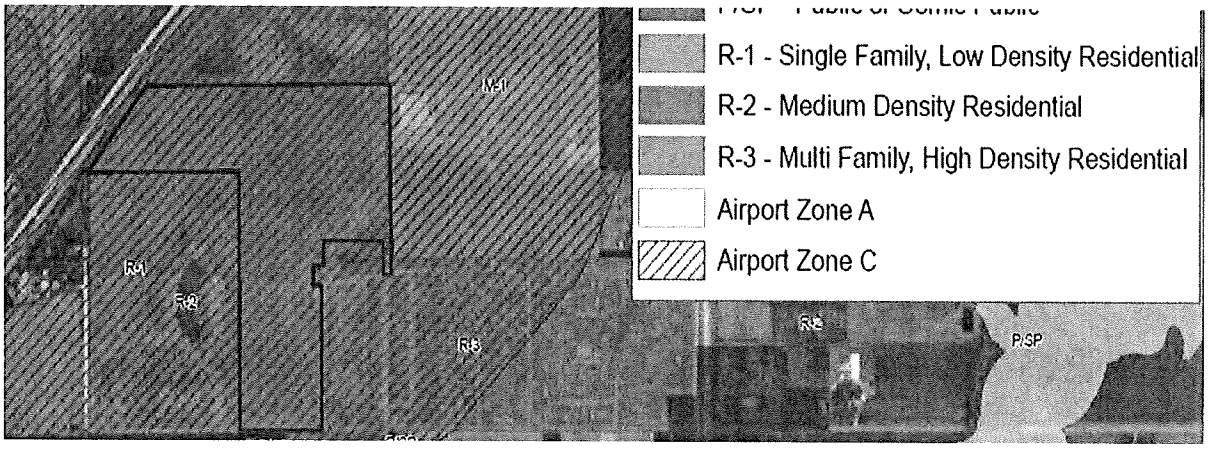
PER FIRST AMERICAN TITLE INSURANCE COMPANY, FILE NUMBER NCS-650226-4-CHI2

THAT PART OF THE EAST HALF OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 105, RANGE 14, ACCORDING TO THE UNITED STATES GOVERNMENT SURVEY THEREOF, OLMSTED COUNTY, MINNESOTA DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, 921.20 FEET TO THE NORTHEAST CORNER OF OUTLOT A, ESTATES OF NORTH RIDGE; THENCE WESTERLY, ALONG SAID NORTH LINE, 657.91 FEET TO THE WEST LINE OF THE EAST HALF OF THE EAST HALF OF SAID NORTHEAST QUARTER; THENCE NORTHERLY ALONG SAID WEST LINE, 920.16 FEET TO THE NORTH LINE OF SAID NORTHEAST QUARTER; THENCE EASTERLY, ALONG SAID NORTH LINE, 658.02 FEET TO THE POINT OF BEGINNING.

("Development Property"). (Record #4) (City 000013-16). The Development Property is generally adjacent to the Existing Developed Property.

The Relevant Zoning Provisions

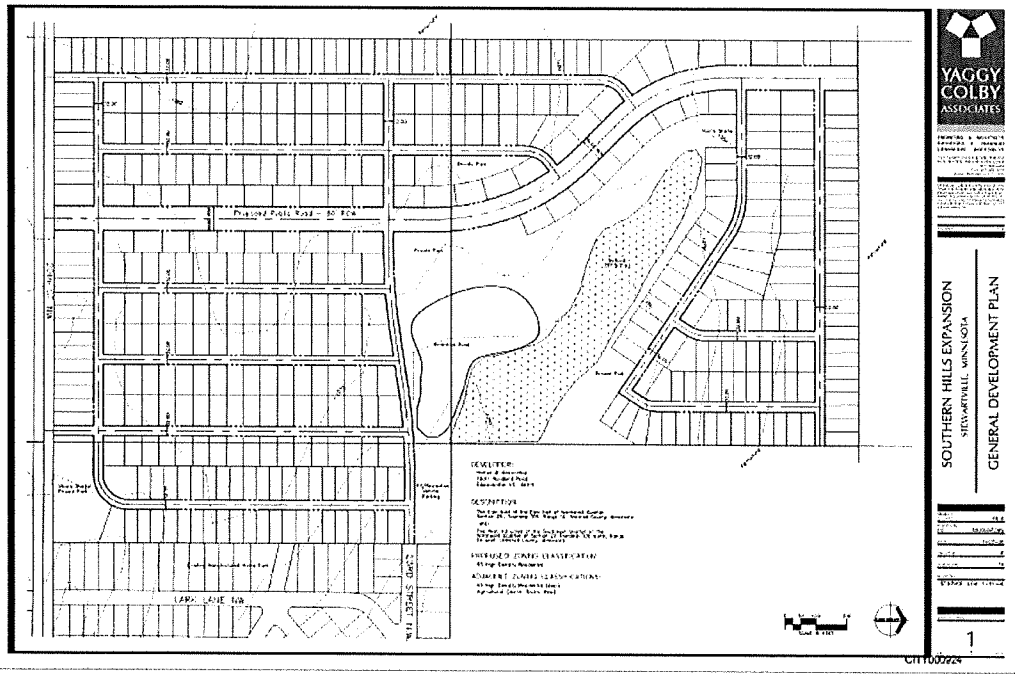
6. A portion of the Development Property is zoned by the City as R-3 (Multi-Family, High Density Residential) and a portion of the Development Property is zoned by the City as R-1 (Single Family, Low Density Residential):



7. The R-1 zoning is directed to low density residential development with permitted uses, including single family homes. City of Stewartville Zoning Code § 1325.01. (Record #46)

(City 001064-1079). Sun Communities does not dispute that, without a zoning change, a manufactured housing community is not permitted or conditionally permitted in an R-1 District.

8. Since at least 2000, however, the City has expressly designated R-3 zoning for the property currently zoned R-1. A General Development Plan for the Southern Hills Expansion that is from the City's record depicts the entire property at issue as both zoned for R-3 and built out as a manufactured housing community. (Record #39) (City 000924):



9. For the portion of the property zoned R-3, the express intent of the City's R-3 *High Density* Residential Zoning includes manufactured housing. According to the City's ordinance, "The intent of the R-3 High Density Residential District is to provide area primarily for residential uses of high relative density for the City that includes multifamily dwellings, *manufactured home subdivisions and manufactured home parks,* or development compatible with multifamily dwellings." City of Stewartville Ordinance § 1335.01. (Record #46) (City 001064-1079)

(emphasis added). A manufactured home park is a conditionally permitted use. City of Stewartville Ordinance, § 1335.04(H). (Record #46) (City 001064-1079).

10. The City's Ordinance also includes the criteria to review and consider requests for conditional use permits as follows:

A. Standards. The Planning Commission shall recommend a conditional use permit and the City Council order the issuance of such permit only if it finds that such use at the proposed location:

1. Will be harmonious with the general and applicable specific policies of the comprehensive guide plan of the City and this Chapter;

2. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the surrounding area and will not change the essential character of that area;

3. Will not be hazardous, unhealthy or unsafe to existing or future neighboring uses;

4. Will be served adequately by essential public facilities and services, including streets, police and fire protection, drainage structures, refuse disposal, water and sewer systems, and schools; or will be served adequately by such facilities and services provided by the persons or agencies responsible for the establishment of the proposed use;

5. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;

6. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare because of excessive production of or offensive traffic, noise, smoke, fumes, dust, glare, vibrations, odors or other pollutants;

7. Will have vehicular approaches to the property which are so designed as not to create traffic congestion or an interference with traffic on surrounding public thoroughfares;

8. Will not result in the destruction, loss or damage of a natural, scenic, or historic feature of major importance;

a. Shall conform to specific standards of this Chapter applicable to the particular use and location;

b. Will be compatible with surrounding buildings, circulation, open space, landscaping, parking, and compatible with existing natural topography, natural water courses, vegetation, exposure to sunlight and wind, and views.

(City Ordinance § 1310.13(A)(4)).

The Zoning Applications

11. On approximately August 23, 2019, Sun Communities submitted its Application for Planning Request to the City. (Record #10) (City 000166-167); (Record #11) (City 000168). In the Zoning Application, Sun Communities sought a Conditional Use Permit for the Development Property that is zoned R-3 and an Amendment to the Zoning Map and Conditional Use Permit for the Development Property zoned R-1. The Zoning Application seeks the expansion of the Existing Development referred to as the "Southern Hills Expansion" ("Project"). *Id.* Sun Communities also submitted a plat application (Record # 11) (City 000168).

The City Engaged in Extensive Environmental Review.

12. In connection with the Project, the City engaged its *own* engineer (SEH) to complete an environmental assessment worksheet ("EAW"). The EAW studied, among other things, water resources, *traffic,* geology, soils, stormwater and contamination. (Record #15) (City 000205-565) (emphasis added).

13. On behalf of the City SEH and its consultants conducted an exhaustive environmental review in connection with the EAW[2].

[2] An EAW is prepared for the purposes of evaluating whether additional environmental review is necessary based on the proposed project. Minn. R. 4410.0020, Subp. 24 ("Environmental assessment worksheet" means a brief document which is designed to set out the basic facts necessary to determine whether an EIS [Environmental Impact Statement] is required for a

14. With respect to Traffic, the EAW concluded:

> The minor approach stop-controlled intersections within the study area are expected to operate well under all scenarios. The traffic signal at TH 63 and 20th Street currently has turning movements that experience a LOS D or LOS E due to the existing signal timing. The minor approaches operate with split phasing due to a geometry-based crash problem, which results in a longer cycle and more delay for the minor approach movements and left turn movements on TH 63. The new trips from the development create slightly longer queues and delay *but the overall impact is minimal compared to the existing traffic volumes and operation at TH 63 and 20th Street.* Geometric improvements and/or signal timing adjustments at the intersection of TH 63 and 20th Street would likely improve existing operational and safety issues which are expected to be marginally affected by the increased background and development related trips.

(Record #15) (City 000205-565) (emphasis added).

16. On October 25, 2019, the City issued a negative declaration in response to the EAW, formally finding and concluding that the proposed "project does not have the potential for significant environmental effects." According to City of Stewartville Resolution 2019-25:

> **WHEREAS**, the Stewartville City Council makes the following findings of fact:
>
> 1. An EAW has been prepared by SEH on behalf of the City of Stewartville.
>
> 2. An EAW was prepared and the City Council approved its distribution to the Minnesota Environmental Quality Board Environmental Review Program EAW Distribution List.
>
> 3. The information contained within the EAW is accurate and complete to the best of our knowledge.
>
> 4. The public comment period ended on October 9, 2019.
>
> 5. The extent to which environmental effects are subject to mitigation by ongoing public regulatory authority indicates that this project does not have the potential for significant environmental effects.

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proposed project or to initiate the scoping process for an EIS."). By issuing a negative declaration, the City concluded no further environmental review was necessary.

6. In considering the type, extent, and the reversibility of environmental effects, there will be no significant environmental effects resulting from the proposed Southern Hills Development.

7. The City Council must make either a negative declaration or a positive declaration on the need for an Environmental Impact Statement (EIS).

NOW, THEREFORE, BE IT RESOLVED *that the Stewartville City Council makes a negative declaration regarding the need for an EIS, meaning that an EIS is not needed for the Southern Hills Development as currently proposed.*

(Record #36) (City 000919) (emphasis added).

There Was Significant Citizen Opposition

17. Following the resolution that Sun Communities' project will have no significant environmental effects, the City directed the Applications to the City's Planning Commission. (Record #24) (City 000753-860). The City's Planning Commission heard public testimony. What is clear from the entirety of the public record is that there was significant public opposition to the project. As only some examples, the following are excerpts from the public opposition at the planning commission meeting:

> We talked about some of the things in the flyer (inaudible), we got a couple statistics wrong, that doesn't mean the argument isn't valid, we throw out a couple points. We still have a reasonable expectation of the city to make the right to protect our values, protect the community. We have to look at the bigger pictures. Density of population, what about fire and (inaudible), sticking trailers that close together, what's the catch here, what if one catches on fire, the next one catch on fire, so on and so on. (Record #24, p. 76) (City 000753-860).

> I look at this and it looks like they just want to shove 300 trailers in there, you know. It would be nice for us who have a house, have our houses in there, to have a density thing down towards us, you know, boom, boom, boom, just cram them in all the way to the end there. Look at the map, you have a nice community, nice backyards and stuff, and they want to shove more trailer homes in there, mobile homes or however you want to say it, trailer home or whatever. ...but just talk about (inaudible) some people coming in. Think about that. (Record #24, p. 56-57) (City 000819).

> So I guess my concern is there's a really big difference in the value of homes in these two neighborhoods, and I think the people that have invested should be protected. And I want

my investment protected for the future lots that I have to sell and develop. (Record #24, p. 59) (City 000819).

That said, one thing I do want to tell all of you who are on this council and on this board, this little zone right here that right now can't have manufactured homes in it, if I get a vote I don't want you to change that, because frankly I think part of the reason behind this push for us to get all this manufactured homes in such with a big hurry has to do with DNR, and frankly I'm tired of feeling like suburban Rochester. Let's have (inaudible) and all the other surrounding communities get some more manufactured home parks. . . I think if we need all this affordable housing, and it sure sounds like we do, then it needs to get spread around a little bit and it doesn't all need to happen right here in Stewartville. (Record #24, p. 65-66) (City 000819).

I think it's just important that the city's -- we manage how we want our city to be perceived. (Record #24, p. 66) (City 000819).

Where I'm concerned is, from my house there is a stigma of trailer park, good, bad or indifferent, I didn't make it up, it's there. If the trailer park goes in without all the buffering areas and safeguards, I hate to use that term, but my house is going to lose a good chunk of value. That may sound greedy and unconcerning for low income housing, ... (Record #24, p. 67) (City 000819).

...is this concentration of this many trailer houses really an improvement to our community. It doesn't make us better, doesn't make our schools better. (Record #24, p. 68) (City 000819).

18. The public opposition was so vehement that members of the public circulated a flyer with misleading information suggesting that the development would bring crime and poverty to Stewartville. Fortunately, the County Sheriff corrected the misinformation. According to the Sheriff:

> In 2019, through October 31st, so through five or six days ago, Stewartville has 2,190 calls for service, and the northwest quadrant, including 20th Street, has 600 calls for service, at a 27 percent rate as far as calls (inaudible). *So as far as the information that was sent out, I really have no idea where that came from.* Whoever authored that didn't contact me for sure. And you can see that the percentages of the last four years, including this year, 22 percent, 21 percent, 22 percent, 27 percent calls for service in that area, (inaudible) I can't. Say some things (inaudible) direct them, tell them various things. In regards to what I think I can say one thing. Calls for service, and the people that I do know -- I agree they -- there's labels put on people of all kinds, including law enforcement, we have labels too, as I'm sure all of you are aware. There's a lot of good people that live in these areas, it's not just that there are -- just as Janey stated -- that it's all a certain type and it brings all

> kinds of challenges for our communities. You could argue that in apartment buildings, you could argue that in various neighborhoods as well.

(Record #24, p. 47) (City 000799, 800) (See also Record #30) (emphasis added)).

19. Likewise, the School District's Superintendent also had to dispel inaccurate and misleading public statements about the manufactured housing community. As she stated:

> We know that we have families living in poverty throughout the community of Stewartville, throughout the community of Racine, in our rural areas, farm areas. Poverty exists in all of those sites, and so the statement or the statistic that stated that 90 percent of our free and reduced students come from this neighborhood, **there is no data that supports that.**
>
> (Record #24, p. 40) (City 000802) (emphasis added).

20. After several hours of public opposition, the Planning Commission continued the public hearing to December 2, 2019. (Record #28) (City 000864-868). The Planning Commission recommended denial of the rezoning and the conditional use permit. (Record #28) (City 000864-868).

21. The City Council heard the matter on January 14, 2020. In the hearing, the mayor acknowledged the vehement public opposition but still capitulated to the public outcry. The City Council adopted the following resolution with respect to the conditional use permit and rezoning:

> NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL THAT, the Map Amendment and Conditional Use Permit are denied based on the following Findings of Facts:
>
> - Based on public testimony received regarding potholes, broken windows, flooded roads and other maintenance issues in the existing manufacture (sic) home park owned and operated by Sun Communities, the proposed project is unlikely to be operated and maintained to be harmonious and appropriate in appearance with the existing and intended character of the surrounding area, particularly the adjacent Peterson Subdivision.
>
> - The proposed project will not be adequately served by essential public facilities and services, including police and fire protection and schools. As discussed by Sheriff Torgerson and Superintendent Selfors during the public hearing held on Nov 6th, Stewartville will most likely need an

additional dedicated deputy and the school district would unlikely be able to absorb the increase in students in a short amount of time, as projected.

- The proposed project will create excessive additional requirements at public cost for public facilities and services and will be detrimental to the economic welfare of the community.

- The proposed project may create additional traffic congestion and interference with traffic on surrounding public thoroughfares by increase traffic.

(Record #37) (City 000920-921).

22. The City also adopted the following resolution with respect to the requested plat:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL THAT, the applications for a General Development Plan revision and Preliminary Plat are denied based on the following Findings of Facts:

- The application for a Conditional Use Permit for the property as a manufactured home park has been denied.

- Based on the testimony received regarding the condition of the existing Manufactured Home Park, the development would not create a neighborhood which will be of lasting credit to the community.

- The development could adversely affect the local tax base.

(Record #38) (City 000922-923).

The City's Approval of An Apartment Complex

23. Shortly after the City denied Sun Communities' applications, the City granted two variances and a tax abatement request to a 55-unit apartment complex. (Declaration of Howard Roston, ("Roston Declaration" Exhs. A-B). The City made several accommodations and even gave a $500,000 tax credit to the new housing project. *Id.* Exhibit C. (Groundbreaking Ceremony in Stewartville for New Housing Project, https://krocnews.com/groundbreaking-ceremony-in-stewartville-for-new-housing-project/). According to the article, "[t]he city and developer worked out an agreement that provides upfront funding for the project through tax abatement, special assessments, eased zoning restrictions, and deferred city fees." *Id.* Bill Schimmel, Jr., the

Stewartville City Administrator, stated "It's no secret there is a housing shortage . . . Flats 55 will provide much-needed housing for new families and ultimately result in additional local economic activity that will benefit our community." *Id.*

While Sun Communities would have preferred to work with the City (and tried to), it is clear that the City Council bowed entirely to the politically overwhelming (but not factually supported) citizen opposition – and it is incumbent on this Court to protect Sun Communities' rights and the rights of its residents and future residents.

III. ARGUMENT

A. Scope and Standards of Review.

This is what is commonly referred to as a "record review." The "evidence" that the court may consider in this matter generally consists of the public record. *Swanson v. City of Bloomington*, 421 N.W.2d 307, 313 (Minn. 1988). ("When the review is conducted on the record, the district court should receive additional evidence only on substantive issues raised and considered by the municipal body and then only on determining that the additional evidence is material and that there were good reasons for failure to present it at the municipal proceedings.")[3]

B. Standard of Review for Conditional Use Permits Plats and Rezoning

The standards of review for a conditional use permit and rezoning differ. It is true that a local governing body generally has discretion in zoning matters, particularly when it enacts a zoning ordinance or rezones property. In these situations, the zoning authority is acting in its legislative capacity. However, when the zoning authority considers a conditional use permit, it acts in a quasi-judicial capacity and is subject to more extensive judicial oversight. *Honn v. City*

[3] Sun Communities submits evidence of other projects. There is "good cause" for introducing this information because it was not available at the public hearings for this project and therefore is not excluded by *Swanson*.

of Coon Rapids, 313 N.W.2d 409, 416–17 (Minn. 1981); *Odell v. City of Egan,* 348 N.W.2d 792, 796 (Minn. Ct. App. 1984). Conditional use permits are for uses that the City Council has *already determined* are permitted uses under the applicable zoning code. A denial of a conditional use permit is arbitrary where the applicant establishes that the standards in the ordinances have all been met. Moreover, the applicant's burden on appeal seeking reversal of a denial of a conditional use permit is "lighter" than seeking reversal of an approval of a conditional use permit. *Yang v. County of Carver,* 660 N.W.2d 828, 832 (Minn. App. 2003) *(citing Schwardt v. County of Watonwan,* 656 N.W.2d 383, 389 n. 4 (Minn. 2003) (stating conditional use permit denials are held to less deferential standard of review than conditional use permit approvals)).

The Minnesota Court of Appeals summarized reviews of conditional use permits as follows:

> A [] denial of a conditional use permit is arbitrary where the applicant establishes that all of the standards specified by the zoning ordinance as conditions of granting the permit have been met."

Id. By comparison, in connection with a zoning request (as opposed to conditional use permits), the City acts in a quasi-legislative capacity, the scope of judicial review is narrow, and the City's actions are subject to an arbitrary and capricious standard. *Freundshuh v. City of Blaine,* 385 N.W.2d 6, 8 (Minn. Ct. App. 1986) *citing Amcon v. City of Eagan,* 348 N.W.2d 66, 72 (Minn. 1984). However, as discussed below, the failure of the City to follow its own planning documents renders a denial of a rezoning application arbitrary and capricious. *Amcon,* 348 N.W.2d at 74.

Regarding plat applications, if the city's zoning ordinances specify standards to which a proposed plat must conform, it is "arbitrary as a matter of law to deny approval of a plat which complies in all respects with the ordinances." *Hurrle v. County of Sherburne,* 594 N.W.2d 246, 250 (Minn. App. 1999) (quotation omitted). In other words, "under Minnesota law, when an

ordinance specifies minimum standards to which subdivisions must conform, local officials lack discretionary authority to deny approval of a preliminary plat that meets those standards." *PTL, L.L.C. v. Chisago Cty. Bd. of Comm'rs*, 656 N.W.2d 567, 571 (Minn. Ct. App. 2003).

In addition to the general legal standards of review above, two more rules are important in the instant case. First, zoning and conditional use permit decisions must be based on and supported by facts – not emotion, whim or political pressure. Citizen opposition without more is never enough to justify a denial of a rezoning request or conditional use permit matter. *Yang,* 660 N.W.2d at 833-34) (neighbors anecdotal comments contain no detail and board's denial based on neighborhood opposition was arbitrary and capricious); *see also Minnetonka Congregation of Jehovah's Witnesses, Inc. v. Svee,* 226 N.W.2d 306, 309 (1975) (unsubstantiated speculation about increased traffic does not support denial of a conditional use permit."); *BECA of Alexandria, L.L.P. v. Cty. of Douglas ex rel. Bd. of Comm'rs*, 607 N.W.2d 459, 464 (Minn. Ct. App. 2000) ("[C]omments of residents and a vague letter from a Department of Natural Resources (DNR) Fisheries Supervisor, was insufficient to support decision conditioning the grant of a Conditional Use Permit."). Second, as set forth immediately below, the City's denial of the CUP for the manufactured housing development has been preempted and violates Minnesota law.

C. The City's Denial of the CUP Is Preempted by State Law.

The City has no inherent powers beyond those expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred. *Country Joe, Inc. v. City of Eagan*, 560 N.W.2d 681, 683 (Minn. 1997); *see also Harstad v. City of Woodbury*, 902 N.W.2d 64, 71 (Minn. Ct. App. 2017), *aff'd*, 916 N.W.2d 540 (Minn. 2018). A city council's decision may be modified or reversed if the city violated constitutional provisions or exceeded its statutory authority. *In re On-Sale Liquor License, Class B.*, 763 N.W.2d 359, 365-66 (Minn. Ct. App. 2009).

The Minnesota Legislature has preempted cities from rejecting CUPs for manufactured housing communities.[4]

Minn. Stat. 462.357 provides, in relevant part that "A manufactured home park, as defined in section 327.14, subdivision 3, is a conditional use in a zoning district that allows the construction or placement of a building used or intended to be used by two or more families." The City's attorney recognized this statute when she rightfully advised the City that:

> A city's zoning regulations may not prohibit manufactured homes built in conformance with the manufactured home building code and in compliance with all other zoning ordinances. Furthermore, a city cannot regulate a [sic] manufactured homes more strictly than single-family homes in the City. For example, the City cannot require that the homes within a manufactured home park be owner-occupied.
> (Record #22) (City 000734-741).

The Minnesota Legislature has expressly told cities that manufactured housing communities are conditionally permitted uses. The City cannot simply deny a proposed community by manufacturing facts to deny the manufactured community or adopting vague and ambiguous "findings." The City attorney got it right when she told the City that its denial of the requested CUP would violate Minnesota law. (Record # 22) (City 000734-741).

D. Sun Communities has the Right to Judicial Review.

According to Minn. Stat. 462.361, Subd. 1, a municipal body's decisions are reviewable by the district courts. "Any person aggrieved by an ordinance, rule, regulation, decision or order of a governing body or board of adjustments and appeals acting pursuant to sections 462.351 to 462.364 may have such ordinance, rule, regulation, decision or order, reviewed by an appropriate remedy in the district court, subject to the provisions of this section." A writ of mandamus is the

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[4] Moreover, the Minnesota Governor's Task Force on Housing recommends and promotes manufactured home parks as a solution to the housing crisis and a way to promote entry-level homeownership.
See https://mn.gov/gov-stat/pdf/Housing%20Task%20Force%20Report_FINAL.pdf.

proper remedy. *See Minnetonka Congregation of Jehovah's Witnesses, Inc. v. Svee,* 226 N.W.2d 306, 308 (1975) (concluding that mandamus would lie to enable a property owner to secure a conditional use permit from a city to construct a church where the evidence did not support the city's council's reasons for denying the permit).

IV. THE CITY'S FINDINGS ARE LEGALLY INSUFFICIENT AND UNSUPPORTED BY THE RECORD.

This Court should reverse the City's denial of all of Sun Communities' requested approvals because the "findings" are both factually and legally insufficient. *See, e.g., Curtis Oil v. City of N. Branch*, 364 N.W.2d 880, 883 (Minn. Ct. App. 1985) ("In this case, it is impossible to determine whether there was a rational basis for North Branch City Council's denial of the rezoning. . . These documents do not contain the evidence necessary to determine whether there was a rational basis for the city council's action"). The City's findings (Record #37) and (Record #38), discussed further below, fail to specify or refer to any of the applicable ordinances while denying the conditional use permit. Also, the City's findings are also insufficient because they are vague, generalized fears that are unsupported by the record.

In *Bartheld v. County of Koochiching*, Jeff and Dana Bartheld appealed the County of Koochiching's denial of their CUP application to operate a bed and breakfast. 716 N.W.2d 406, 408 (Minn. Ct. App. 2006). In their application, the Barthelds asserted that they met all the requirements under the county's CUP ordinance to gain approval for the project. *Id.* At a public hearing, neighbors signed a petition opposing the Barthelds' application on the grounds that the proposal would (1) increase noise, traffic, and parking in the area; (2) require additional dock space along the lake; (3) possibly block their views of the lake; (4) possibly impact the adequacy of the neighborhood sewer system; (5) decrease the value of their properties; (6) introduce strangers into the neighborhood; and (7) be like having a hotel in the area. *Id.* at 408-09. At a later hearing,

board members stated they received many phone calls opposing the issue and that a petition with more signatures was forthcoming. *Id.* at 409. The County of Koochiching denied the recommendation of the zoning commission to grant the CUP, stating it could not support the application because the neighborhood opposed it. *Id.* at 409.

The Minnesota Court of Appeals found that the county's denial of the Barthelds' CUP application was arbitrary and capricious because the Barthelds met all ordinance requirements. *Id.* at 412-13. The Barthelds presented evidence in their application that they met all requirements under the county ordinance, and the zoning commission similarly concluded that the original application satisfied the reasonable concerns of the neighbors. *Id.* The county "failed to make any findings that addressed the CUP factors in the county ordinance." *Id.* at 413 (citing *Earthburners, Inc. v. County of Carlton*, 513 N.W.2d 460, 463 (Minn.1994) (reversing and remanding CUP denial because the board did not state the rationale for its decision with specific reference to relevant provisions of ordinance governing determination of these permits). Just like this case, the county argued that there was a factual basis for denial in the record, pointing to neighborhood concerns regarding noise, traffic, and neighborhood compatibility. *Id.* at 412-13, Record # 37. However, the court noted that the County Board of Koochiching failed to adopt findings regarding noise, traffic, or compatibility or findings addressing the ordinances. *Id.* In addition, the testimony was "in the nature of vague, generalized concerns, rather than in the nature of actual facts or experience regarding the potential impact of the project on the neighborhood." *Id* at 413. There was no testimony regarding actual observations of traffic congestion or potential traffic impact. *Id.* Since the neighborhood opposition lacked concrete information, the court found the unsupported neighborhood opposition was not a legally sufficient reason for a CUP denial. *Id.* Ultimately, the court concluded that the record did not support the county's denial of the Barthelds'

CUP application and reversed the decision with directions that the county issue the permit. *Id.* at 413-14.

Similarly, in *C. R. Investments, Inc. v. Vill. of Shoreview*, the appellant presented an application for a special use permit for quad-home units. 304 N.W.2d 320, 322 (Minn. 1981). The village planning commission held a public hearing and denied the permit for the following reasons: "no sufficient buffer; plat incompatible in orientation; not consistent with general intent of the comprehensive plan. *Id.* The city council then held a hearing and also denied the application for the reasons above and further reasons related to traffic, neighborhood compatibility and parking availability. *Id.* at 323-24.

The Supreme Court of Minnesota later reversed the Village's denial, finding that although some of its' stated reasons may have been legally sufficient, they were not supported by the record. *Id.* at 325. The court held that "the minutes of the commission's meetings show only that several owners of single-family homes opposed use of the tract for construction of multiple dwellings and expressed 'concerns' about traffic, property values, and density . . . and that the "commission members expressed 'doubts' concerning the effect of the proposed use on traffic, the adequacy of buffering and parking space, and the compatibility of the proposed use with the comprehensive municipal plan." *Id.* The court found that though some of the reasons, like traffic congestion, were legally sufficient, the "stated reasons do not have factual support in the vague reservations expressed by either the single-family owners or the commission members." *Id.* Other reasons, such as the finding that the plan did not meet the "highest design standards" to "achieve neighborhood compatibility" were rejected by the Court as "unreasonably vague and subjective." *Id.* at 328.

The decisions in *Bartheld* and *C.R. Investments* are controlling in this case. Here, Sun Communities presented evidence in its application showing it met all applicable ordinances and requirements for the conditional use permit (*e.g.* Record #45) (City 001055-106300).[5] The City, like the county in *Bartheld*, failed to make any findings that address the CUP factors in the relevant provisions of the ordinances. *Bartheld,* 716 N.W.2d at 412. Additionally, the City's stated reasons for the denial of the CUP are based off vague, generalized concerns about population growth, economic welfare, and property density. *Id.* at 413. There is quite literally no evidence of any of these concerns. Not a single expert or credible witness provided any reliable information or testimony that would support the City's conclusory findings. There is no data, no studies, no appraisals, and no written reports. Like generalized concerns in *CR Investments*, the stated reasons by the City do not have factual support in the record. 304 N.W.2d at 325. Likewise, the City's stated reason that the "proposed project is unlikely to be . . . harmonious and appropriate in appearance" is "unreasonably vague and subjective." *Id.* at 328. Finally, the stated concern about "property density" is refuted by the City's own actions in approving a dense residential apartment development. Because the findings are vague and ambiguous, there is no reason for the Court to even evaluate the claimed factual "findings." On their face, the denials are without support. However, should the Court decide to review the findings each one is discussed below in section V(a).

V. THE CITY'S DENIAL OF A CONDITIONAL USE PERMIT MUST BE OVERTURNED.

Any review of a zoning ordinance starts with the requirement that a zoning ordinance should be construed (1) according to the plain and ordinary meaning and terms, (2) in favor of the

[5] There has been no evidence submitted by the City that is contrary to the detailed information, data and comments in (Record #45) (City 001055-1063) (January 14, 2020 Atwell Letter).

property owner and (3) in light of the ordinance's underlying policy goals. *Frank's Nursery Sales, Inc. v. City of Roseville,* 295 N.W.2d 604, 608-09 (Minn. 1980). A zoning ordinance is in derogation of common law and must be construed strictly against the city and in favor of a property owner. *Frank's,* 295 N.W.2d at 608. While a city may consider public testimony, it may not reject expert testimony based on "non-specific" neighborhood opposition. *Chanhassen Estates Residents Ass'n v. City of Chanhassen,* 342 N.W.2d 335, 340 (Minn. 1984) (holding that "non-specific testimony that the proposed McDonald's poses potential traffic hazards" fails to rebut "the city engineer's testimony that the intersection could handle the anticipated traffic"); *Scott County Lumber Co. v. City of Shakopee,* 417 N.W.2d 721, 727-28 (Minn. Ct. App. 1988) (reversing denial of conditional use permit to operate a gravel pit because neighbors generally opposed it but experts recommended granting the permit.); *BECA of Alexandria,* 607 N.W.2d at 464 (concluding that the City's reasons for imposing conditions on a CUP were "vague, based solely on unscientific concerns rather than factual data, and are insufficient to support the board's decisions.").

A zoning ordinance should be construed according to its plain and ordinary meaning and in favor of the property owner. *Yang,* 660 N.W.2d at 832. A municipal government's denial of a conditional use permit is "arbitrary" where the applicant establishes that the standards specified by the zoning ordinance as conditions of granting the permit have been met. *Id.* Here, there is no dispute that Sun Communities met all the applicable standards specified by the zoning ordinances. As set forth above, Sun Communities submitted detailed evidence demonstrating that the proposal met all applicable ordinances. (Record #45) (City 001055-1063). The City failed to refute or submit any contrary evidence instead relying on unsubstantiated conclusions, with no supporting facts.

A. The City's Reasons for Denying the Conditional Use Permit are Unlawful and Not Supported by the Record.

As stated above, the court must focus on the **legal sufficiency** of a City's denial of a conditional use permit. *C.R. Investments,* 304 N.W. 2d at 325 (emphasis added). When determining whether the city acted arbitrarily, courts follow a two-step process. *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75 (Minn. 2015). First, the court determines whether the reasons given were legally sufficient. *Id.* at 75–76. Second, if the reasons are legally sufficient, the court determines if the reasons had a factual basis in the record. *Id.* at 76. Here, the City failed to provide both legally sufficient reasons for its denials and its findings were unsupported by the factual basis in the record.

To the extent that the Court does conduct a more in-depth analysis, each "finding" of the City is addressed below:

> *Finding 1 "Based on public testimony received regarding potholes, broken windows, flooded roads and other maintenance issues in the existing manufacture (sic) home park owned and operated by Sun Communities, the proposed project is unlikely to be operated and maintained to be harmonious and appropriate in appearance with the existing and intended character of the surrounding area, particularly the adjacent Peterson Subdivision."*

There are two parts to this "finding." The City both concludes that the property was not maintained and then hypothesizes that the property will not be maintained in the future. Legally, there is nothing in the City's ordinance that would condition a *new conditional use permit* or a rezoning on the condition of an existing property. The ordinances and city standards do not tie the condition of the existing park to the grant of a future conditional use permit. Thus, the City cannot legally consider the existing property in evaluating a future conditional use permit. If the City

believes that the existing property is not in compliance with its permit, it has separate enforcement rights it can employ to ensure compliance.[6]

Factually, this finding is not based on any expert analysis, site condition review or study by the City. There is no evidence in the record that the City has ever taken any enforcement action or even reached out to Sun Communities with any complaints, comments or concerns prior to the requested CUP. There is no evidence in the record that the condition of the property violates any state, federal or local law, building code or building standard. The City did not conduct a site inspection with any engineer, architect or other expert. Moreover, the "citizen comments" are directly contradicted by the testimony of Sun Communities that since it purchased the existing property approximately five years ago, it has invested more than $2,000,000 in upgrades and planned for more capital repairs. (Record #35) (City 000918).[7]

Further, there is no evidence in the record that the neighborhoods will not be "harmonious"[8], only that certain neighbors believe the park will decrease their property value. However (to the extent that this is even a legitimate basis), the city offered no testimony of an appraiser, a broker or anyone else. There are no statistics and no reports. There is quite literally no support in the record. Indeed, directly contrary to the City's "findings", the City has already concluded that a manufactured housing community would be harmonious in the formal process by (a) zoning part of the property as R-3 which specifically allows manufactured housing and (b)

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[6] If the City believes Sun Communities is not following the applicable ordinances, it may enforce its rights under Stewartville Ordinance 462.362 "Enforcement And Penalty." To date, the City has **not** sought to enforce any violations against Sun Communities for non-compliance with applicable ordinances.

[7] There is no dispute that the property needed upgrades when Sun Communities purchased it; it has been diligently upgrading the property.

[8] There is no definition of "harmonious" in the City's ordinance or another objective way to define the term.

adopting the prior 2000 plan which shows the entire property as a manufactured home community. (Record #39) (City 000924); (Record #41) (City 000949). Moreover, the existing neighborhood has no rights to control the development next door, which it is seeking to do.

In summary, the City's speculation that Sun Communities will not take care of the property is unfounded and unsupported by the record. Moreover, the City has enforcement authority if Sun Communities fails to do so.

> *Finding 2 "The proposed project will not be adequately served by essential public facilities and services, including police and fire protection and schools. As discussed by Sheriff Torgerson and Superintendent Selfors during the public hearing held on Nov 6th, Stewartville will most likely need an additional dedicated deputy and the school district would unlikely be able to absorb the increase in students in a short amount of time, as projected."*

Regarding fire protection, the City offered no reports, evidence or analysis of any fire protection concerns. There is no evidence of any past fire protection concerns with the Existing Developed Property. To be sure, there were unsupported citizen comments. However, a 34-year veteran of the fire department testified "From a fire standpoint, I don't think its an issue." (Record #24, p. 106) (City 000858). Regarding water pressure, the City's Public Works Department rejected any concerns about water service as a result of the project. (Record #24, p. 105) (City 000857).

As noted above, the Sheriff refuted any public safety concerns, going as far as letting the City know that the information that was being circulated was simply wrong. Regarding potential calls for service the Sheriff stated "[w]e recognize that any time a city grows or an area grows that there may be more calls for service. We also recognize that .... there may be need for officers." (Record #24) (City 000800-81). However, even before the expansion of Southern Hills was suggested the Sheriff was already in discussions with the City about staffing concerns. *Id.* (Record #24) (City 000801). Virtually any new housing development resulting in a large increase in

population could cause a need for more officers, including the 55-unit apartment.[9] Notably, the City did not prevent the construction of Flat 55 out of a concern for a lack of public safety resources, despite the "impacts" of the resulting increase in population.

Furthermore, Superintendent Selfors' testimony clarified that though the school enrollment may increase dramatically, enrollment was actually flat after the last development in the City. *Id.* (Record #24) (City 000838) ("And again, those are extremes and those are variables that we can't predict. With the last development of 80 homes was added, we did not increase our enrollment by 120 students. Our enrollment was flat.").

Moreover, the City is legally prohibited from treating a manufactured housing community differently than any other multi-family development in an R-3 District. The evidence shows the City did exactly that — the City recently approved a 55 unit apartment building that broke ground this April. (Roston Declaration, Exhs. A-C). In fact, the City eased zoning restrictions and deferred city fees to aid the apartment complex project, citing a "housing shortage," and a need to provide "much needed housing for new families." *Id.* The City cannot have it both ways. If there are not enough resources for an unpopular manufactured home park, then there should also not be enough resources for a popular 55-unit apartment complex – that the City helped fund through tax abatements. However, when applied to the apartment complex, the concerns over a lack of resources entirely disappeared, and the City claims the apartment complex is "much-needed" "housing for new families."

Finally, generalized fears about population growth or impact of development are not enough to deny a conditional use permit when they are unsupported by the factual record and would apply to all development projects. *C. R. Investments, Inc.* 304 N.W.2d 320 at 325.

[9] Presumably the City is not suggesting that it is closing its borders.

(reversing denial of CUP when "[t]he minutes of the commission's meetings show only that several owners of single-family homes opposed use of the tract for construction of multiple dwellings and expressed 'concerns' about traffic, property values, and density"); *BECA of Alexandria* 607 N.W.2d at 464) (reversing denial of a CUP because the declared bases are "vague and overbroad; any type of development will have an impact on the aquatic environment").

> *Finding 3 The proposed project will create excessive additional requirements at public cost for public facilities and services and will be detrimental to the economic welfare of the community.*

This is precisely the type of generalized statement Courts have rejected as having no support in the record. *Yang,* 660 N.W.2d at 833 ("The planning commission's traffic estimates, as adopted by the board of commissioners, are not substantiated by independent analysis or reliable facts in the record . . . the neighbors' anecdotal comments contain no detail as to how the cars they witnessed might affect circulation or the general welfare, and are insufficiently concrete to substantiate a finding that the proposed use would create excess traffic."); *Bartheld* 716 N.W.2d at 413 (finding the denial of a CUP arbitrary and capricious when the public testimony relied upon was "in the nature of vague, generalized concerns, rather than in the nature of actual facts or experience regarding the potential impact of the project on the neighborhood.")

There is no discussion or evidence in the record of any additional costs, any additional public facilities and services or any impact on the economic welfare to the community. There are no appraisals in the record, no cost estimates, no tax impacts estimated, no expert testimony, no statements relating to any municipal finances, opportunities or challenges. There is nothing but unsupported and generalized citizen opposition. This lack of evidence must be compared to the express statement in the City's ordinance that supports manufactured housing (as discussed above) along with the very real and documented shortage of affordable housing in the community. A

representative from the Governor's Task Force on Housing ("Sheila") explained to the City that Minnesota is **52,000 homes short of the current need.** (Record #24) (City 000762) (emphasis added). Her testimony (unsolicited by Sun Communities but certainly welcome) advised the City that "manufactured homes have become part of the solution for [the lack of affordable housing]. Generally manufactured homes are not the kind of homes that we --- manufactured homes have changed a lot since the 70s, for instance, and 80s, where they were really tiny and kind of had a shelf life and they would be to a place that they were no longer really habitable, (inaudiable) short period of time." She continued:

> So as you look at your decision about Stewartville, who is growing our whole economy, the whole county is growing, we need more homes. How do we accommodate for all of our work force to have homes that they can afford to live in and be active and productive members of our communities? . . . Now manufactured homes are often built as well as well or better than stick built homes." (Record #24, pp. 19:8-13) (City 000753-860 *"Sheila"*).

She relayed that the Governor's task force recommended manufactured homes as a tool to solve the affordable housing crisis. (Record #24) (City 000770). Again, the Governor's Task Force and the Minnesota legislature have protected and recommended the construction of manufactured home parks and the City is prohibited from preventing these developments by Minn. Stat. 426.357, subd. 1. Here, there is evidence the City not only ignored real evidence—the Representative from the Governor's Task Force on Housing's testimony regarding the positive economic impact of manufactured home parks, but also violated the law by holding manufactured home parks to different standards than other high-density housing units. (See Roston Declaration Exhs. A-C) (stating that a new 55-unit apartment complex would be a boost to the economy). Therefore, the City's third finding is unreasonable and unsupported by the legal and factual record.

Finding 4: The proposed project may create additional traffic congestion and interference with traffic on surrounding public thoroughfares by increase traffic.

This "finding" is the City's version of "pay no attention to that man behind the curtain."[10] Not only did the City fail to offer any actual evidence or studies of any traffic concerns, the City's *own experts* that it hired to evaluate the same project concluded exactly the opposite. (Record #15) (City 000205-565) ("The new trips from the development create slightly longer queues and delay **but the overall impact is minimal compared to the existing traffic volumes and operation at TH 63 and 20th Street")** (Record No. 15) (emphasis added). The City then (based on the evidence submitted by its own consulting engineering firm) formally adopted a resolution approving the finding that there would be *no* environmental impacts *including* impacts from traffic. (Record #17) (City 000692-710). Later, the City's own mayor also recognized that the evidence did not show the traffic would be an issue. (Record #43) (City 001019-1053) ("The traffic, I agree again. The EAW shows that it might not have a huge impact."). Again, the City's findings are legally insufficient and not supported by the record.[11] The generalized, vague concerns of a few residents at the November 2019 hearing cannot rebut the City's expert's findings that the development would have minimal impact. *See Chanhassen Estates Residents Ass'n*, 342 N.W.2d at 340 ("On the record before us, for example, the non-specific testimony that the proposed McDonald's poses potential traffic hazards at the intersection of Dakota Avenue with Highway 5 cannot be said to rebut the city engineer's testimony that the intersection could handle the anticipated traffic.").

[10] Wizard of Oz.

[11] It is doubtful at best that a finding that something "may" be a problem is ever sufficient as a basis for a denial of conditional use permit. I "may" also win the lottery.

VI. SIMILARLY, THE CITY'S REASONS FOR DENYING THE REZONING APPLICATION WERE ARBITRARY, CAPRICIOUS AND UNLAWFUL.

A municipality acts in a legislative capacity when rezoning. *Honn,* 313 N.W.2d at 414. "As a legislative act, a zoning or rezoning classification must be upheld unless opponents prove that the classification is unsupported by any rational basis related to promoting the public health, safety, morals, or general welfare." *Id.* at 414–415 (quoting *State, by Rochester Association of Neighborhoods v. City of Rochester,* 268 N.W.2d 885, 888 (Minn.1978). In *Honn,* the Supreme Court directed city councils and zoning boards to "at a minimum, have the reasons for [their] decision recorded or reduced to writing and **in more than just a conclusory fashion.**" *Id.* at 416 (emphasis added).

As explained above, the City failed to provide reasons that are 1) supported by rational basis; and 2) more than just conclusory. *Id.* The City merely listed unsupported and generalized reasons for denying the rezoning request, even contradicting its own expert testimony. Not only do the facts in the record show these reasons are unsupported and conclusory, the City's subsequent actions show it does not apply the same reasoning to other high-density housing projects and therefore does not believe the proffered reasons itself. (See Roston Declaration, Exhs. A-C, ([Another new 55 unit- housing project] "will provide much needed housing for new families and ultimately result in additional local economic activity that will benefit our community"); *see also Molnar v. Carver Cty. Bd. of Comm'rs,* No. C6-95-2372, 1996 WL 278234, at *3 (Minn. Ct. App. May 28, 1996) (finding the "concerns of neighbors" may not be the sole basis for denying a rezoning request).

Finally, Sun Communities' rezoning request merely seeks that the City match its current zoning ordinances with the City's adopted plan of 20 years. (Record #39) (City 000924). The City not only denied Sun Communities' request to rezone the land in conformance with the City's

plan, it also failed to give any rationale for not following its own plan. *Id.* In *Amcon*, the plaintiffs submitted a request to rezone a property from an agricultural classification to a planned development classification. *Amcon Corp.*, 348 N.W.2d at 68. This request matched the property's classification in the city of Eagan's comprehensive plan. *Id.* at 74. Despite this, the city of Eagan denied the rezoning application and plaintiffs brought an action for a writ of mandamus. *Id.* at 68. The court found that though the comprehensive plan was generally advisory, the recommendations of the master plan should be entitled to some weight, particularly where the plan has been adopted by the legislative body although not implemented." *Id.* at 74. The court reasoned that the city of Eagan's failure "to advance any rationale for not following its comprehensive plan and not granting the [rezoning] classification is strong evidence of arbitrary action" and ultimately held that the city of Eagan's denial "without stating any justification for the refusal is arbitrary and capricious action. *Id.*

Similarly, Sun Communities' rezoning request was merely a request to rezone the property in conformance with the City's 20-year-old plan. (Record #39) (City 000924): Instead of following its 20-year-old plan, the City bowed to the pressure from its residents prejudiced against manufactured home parks without providing any reason for deviating from its own long-established plan. In fact, the City failed to state *any* justification for deviating from its plan. As the court found in *Amcon*, this is "strong evidence of arbitrary action." *Amcon Corp.*, 348 N.W.2d at 74. This Court in this case should issue an order directing the City to grant the rezoning request.

VII. THE CITY LACKED THE AUTHORITY TO DENY THE PLAT APPLICATION.

Under Minnesota law, when an ordinance specifies minimum standards to which subdivisions must conform, local officials lack discretionary authority to deny approval of a preliminary plat that meets those standards." *PTL, L.L.C.*, 656 N.W.2d at 571-72 (holding that a

municipality lacks legal authority to deny an application for approval of a preliminary plat that proposes a permitted use and complies with the regulatory standards prescribed for that use). There is no dispute that the proposed plat meets all minimum standards proscribed by ordinance. (Record #45) (City 001055-1063). The City therefore does not have the discretion to deny Sun Communities' application. *Zweber v. Scott Cty. Bd. of Comm'rs*, No. A09-1990, 2010 WL 2733275, at *8 (Minn. Ct. App. July 13, 2010) ("Because the [proposed plat] meets all the applicable enforceable standards in the county's ordinance, the respondent lacked discretion to deny approval of the proposal. Therefore, we reverse and remand for approval of the proposal."). Moreover, as with the conditional use permit and the re-zoning, the "findings" to deny the plat are equally unsupported by the record. For example, and as a highlight, there is no evidence that approving the plat "could adversely affect the local tax base as claimed by the City.

VIII. THE TRUE REASON FOR THE CITY'S DENIALS WAS ILLEGAL BIAS AGAINST MANUFACTURED HOME PARKS.

The City's disparate treatment of the project discriminates against manufactured home parks in direct violation of Minnesota statutes:

> No [zoning ordinance] may prohibit * * * manufactured homes built in conformance with sections 327.31 to 327.35 that comply with all other zoning ordinances promulgated pursuant to this section.

Minn. Stat. 426.357 subd. 1.[12] In passing this legislation, the Minnesota legislature intended to prohibit discrimination against any type of housing solely because of it having been manufactured. *See* 59a–32 Op. Att'y Gen. (Nov. 10, 1982). Municipalities possess only those powers that are conferred by statute or implied as necessary to carry out legislatively conferred powers. M.S.A.

[12] As noted above, the City's Attorney advised the City of this law at the November hearing. (Record #22) (City 000734-741).

Const. Art. 12, § 3. A municipality's zoning decision is invalid when it directly violates Minnesota statutes. In *Wright Cty v. Kennedy*, the County had two category of zoning laws--one applying to manufactured homes and the other applying to single family homes. 415 N.W.2d 728, 729-30 (Minn. Ct. App. 1987). The Minnesota Court of Appeals held that "the statute [now Minn. Stat. 426.357, subd. 1] required that site-constructed homes and manufactured homes be treated identically. . . If a county wants to regulate characteristics such as the width of homes, it must regulate the width of all homes. *Id.* at 731. The Court held that the ordinance discriminated against manufactured home parks by treating the homes differently, and that the ordinance was "in conflict with state statutes" and therefore "invalid." *Id.*; *see also Breza v. City of Minnetrista*, 725 N.W.2d 106, 114 (Minn. 2006) (finding that state law only gave the city authority to grant a 400 square foot zoning extension, the extent of the city's authority under state law.)

What is clear is that the actual reason the City denied Sun Communities' applications was because of citizen prejudice against manufactured homes parks. In the January 14th hearing, the Mayor admitted as much when he stated "[T]here's been a few surprises to me that have really got the city in an uproar that have come up but nothing has been anywhere near as negative as this, I mean, not even close. My e-mail just blows up non stop and part of it ticks me off, *because I do believe what you guys are saying, that there's a negative stigma about manufactured homes*, and I don't think that's fair." (Record #43, p. 22, 23) (City 001019-1053) (emphasis added). However, he later justifies his decision based on his doubt that manufactured homes truly provide low-income housing. *Id.* at p. 24. ("I do believe it's more affordable housing but, man, I've been trying to research this since this has been going on, and people are going to pay 120,000 for the manufactured home and then they have to pay $495 for their lot rent. I don't know how affordable

that is. . . My personal opinion, I'm not an expert in that. . . In fact, research shows there's arguments all over the place on that.")[13]

Again, the City recently gave tax abatement, special assessments, eased zoning restrictions, and deferred city fees for a recent 55-unit apartment complex on April 14, 2020. (Roston Declaration, Exhs. A-C). Though the City found the manufactured home parks would be a detriment to the Stewartville economy, the City Administrator said the exact opposite about the new apartment complex. *Id.* ("It's no secret there is a housing shortage," says Bill Schimmel Jr., Stewartville City Administrator. "Flats 55 will provide much needed housing for new families and ultimately result in additional local economic activity that will benefit our community.") The Mayor also admitted the traffic studies by experts did not support the City's finding. (Record #43, p. 23) (City 001019-1053) ("The traffic, I agree again. The EAW shows that it might not have a huge impact.").

The City must apply zoning ordinances uniformly on those similarly situated. *Nw. Coll. v. City of Arden Hills*, 281 N.W.2d 865, 869 (Minn. 1979). The equal protection clauses of the Minnesota Constitution and of the Fourteenth Amendment of the United States Constitution require that "one applicant not be preferred over another for reasons unexpressed or unrelated to the health, welfare, or safety of the community or any other particular and permissible standards or conditions imposed by the relevant zoning ordinances." *Hay v. Township of Grow*, 206 N.W.2d 19, 24 (1973). In *Hay*, the Court of Appeals reversed the Township's denial of a CUP for a mobile home park, finding that the Township was impermissibly biased against the Plaintiff's mobile home park. *Id.* at 23. The court found that the Township's vague reasoning that the project would

[13] There is no support in the record for the Mayor's speculation about the affordability of manufactured homes. The City's "findings" do not include any reference to affordability.

negatively affect "density of population, impact of the application on municipal services, [and] the pressure of this land on (Round Lake)" were legally insufficient and therefore arbitrary as a matter of law. *Id.* The Court also noted, that since other similarly situated projects were approved, the "township's denial of plaintiffs' application for a special-use permit was not only arbitrary but also impermissibly discriminatory, contravening the equal protection clause of the Fourteenth Amendment of the United States Constitution and art. 1, s 2, and art. 4, ss 33 and 34, of the Minnesota Constitution." *Id.* Here, the record also reflects that the true reason for the denial of Sun Communities' applications was impermissible discrimination against manufactured home parks.

In short, the City's real reason for denying the requested approvals is (a) contrary to Minnesota law, (b) pre-empted by Minn. Stat. 426.357 subd. 1, and (c) in violation of the equal protection clauses of the Minnesota Constitution and of the Fourteenth Amendment of the United States Constitution and therefore invalid.

CONCLUSION

For the reasons above, Sun Communities respectfully requests that the Court grant its writ of mandamus and reverse the City's denial of the CUP, the plat application and the rezoning application.

Dated: November 16, 2020

s/ Howard Roston

Howard A. Roston (#0260460)
Jessica R. Sharpe (#0400243)
FREDRIKSON & BYRON, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425
Telephone: 612.492.7000
Facsimile: 612.492.7077
hroston@fredlaw.com
jsharpe@fredlaw.com

Attorneys for Sun Communities

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Dated: November 16, 2020

s/ Howard Roston

Howard A. Roston (#0260460)
Jessica R. Sharpe (#0400243)
FREDRIKSON & BYRON, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425
Telephone: 612.492.7000
Facsimile: 612.492.7077
hroston@fredlaw.com
jsharpe@fredlaw.com

Attorneys for Plaintiff Sun ACQ, LLC