

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF OLMDSTED

THIRD JUDICIAL DISTRICT

Sun ACQ, LLC,

Plaintiff,

v.

City of Stewartville, Minnesota,

Defendant.

Case Type: Other Civil

Court File No.: _____

Judge: _____

SUMMONS

THIS SUMMONS IS DIRECTED TO THE ABOVE-NAMED DEFENDANT:

1. **YOU ARE BEING SUED.** Plaintiff has started a lawsuit against you. Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file numbers on this Summons.

2. **YOU MUST REPLY WITHIN 21 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this summons a **written response** called an Answer within 21 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this summons located at:

Howard A. Roston
Danny Deveny
Fredrikson & Byron P.A.
200 South Sixth Street, Ste. 4000
Minneapolis, MN 55402-1425

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer, you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

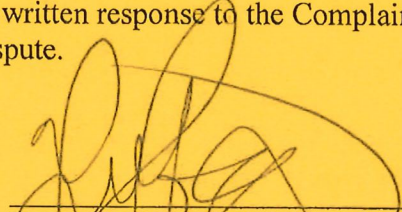
4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint. If you do not want to contest the claims stated in the

complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the complaint.

5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

ALTERNATIVE DISPUTE RESOLUTION. The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: February 5, 2020



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STATE OF MINNESOTA
COUNTY OF OLMSTED

DISTRICT COURT
THIRD JUDICIAL DISTRICT

Sun ACQ, LLC,
Plaintiff,

Case Type: Other Civil
Court File No.: _____
Judge: _____

v.

City of Stewartville, Minnesota,
Defendant.

**COMPLAINT AND PETITION
FOR WRIT OF MANDAMUS
AND INJUNCTIVE RELIEF**

Plaintiff, for its Complaint against defendant states and alleges as follows:

Summary of Claims:

1. By this action, plaintiff Sun ACQ, LLC (“Plaintiff” or “Sun”) seeks judicial review of and reversal of the City of Stewartville’s (“Defendant” or “City”) unlawful refusal to grant certain entitlements to Sun in connection with Sun’s rights to expand and develop an existing manufactured housing community in the City of Stewartville. In particular, Sun seeks an order and judgment:

(A) Adjudging and declaring pursuant to the Minnesota Municipal Planning Act (Minnesota Statutes Chapter 462) including but not limited to Minn. Stat. §§ 462.361, subd. 1 and pursuant to Minn. Stat. § 555.01, that the City unlawfully denied Sun’s application for a conditional use permit and General Development Plan.

(B) Adjudging and declaring pursuant to the Minnesota Municipal Planning Act (Minnesota Statutes Chapter 462) including but not limited to Minn. Stat. § 462.361, subd. 1 and pursuant to Minn. Stat. § 555.01 that the City acted arbitrarily, capriciously and without a reasonable basis by denying Sun’s request for an amendment to the Zoning Ordinance;

(C) Issuing, pursuant to Minn. Stat. § 586.01, et seq. and the Court's equitable powers, a writ of mandamus and an affirmative injunction compelling the City to approve Sun's proposed Conditional Use Permit, General Development Plan and re-zoning request.

Parties

2. Sun is a Michigan limited liability company authorized to conduct business in the State of Minnesota. Sun (and its affiliates) is one of the nation's premier owners and operators of manufactured housing communities.

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

The Property

4. Sun is the owner of certain real property in the City of Stewartville legally described as follows ("Existing Developed Property"):

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, Olmsted 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)

5. Sun 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.

6. In addition to the Existing Developed Property, Sun 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

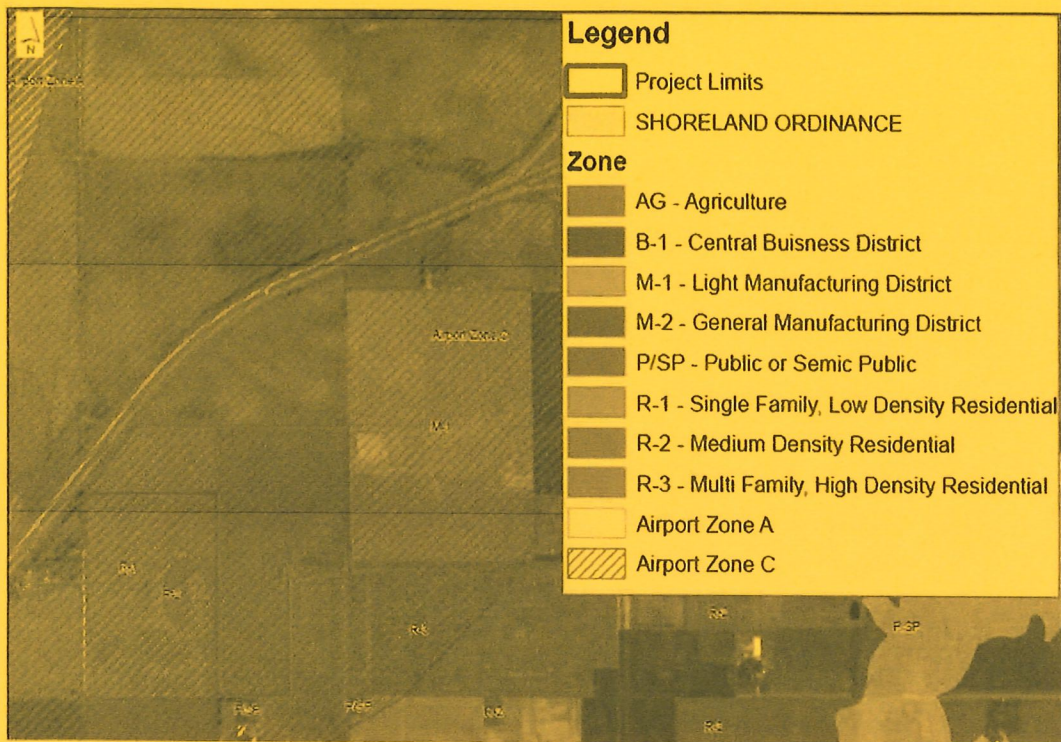
PER FIRST AMERICAN TITLE INSURANCE COMPANY, FILE NUMBER NCS-650226-4-CHI2

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”)

7. The Development Property is generally adjacent to the Existing Developed Property. 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).

8. The Development Property and zoning designations are depicted below:



9. On approximately August 23, 2019, Sun submitted an Application for Planning Request to the City (“Zoning Application”). In the Zoning Application, Sun 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 known as the “Southern Hills Expansion” (“Project”).

10. 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

- Contamination/Hazardous Materials
- Fish, wildlife, plant communities and sensitive ecological resources
- Air
- Historic properties
- Traffic

11. On behalf of the City SEH and its consultants conducted an exhaustive environmental review in connection with the EAW.

12. 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.

13. On October 25, 2019, the City issued a negative declaration in response to the EAW formally finding 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.
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).

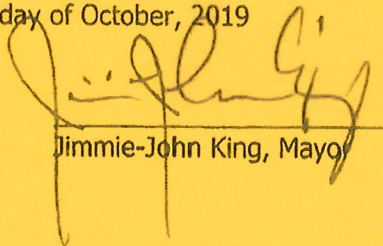
NOW, THEREFORE, BE IT RESOLVED that the Stewartville City Council makes a negative declaration regarding the need for an EIS, meaning that an EIS is not needed for the Southern Hills Development as currently proposed..

Adopted by the Stewartville City Council this 22nd day of October, 2019

ATTEST:



Bill Schimmel, City Administrator


Jimmie-John King, Mayor

14. For the portion of the Development Property already zoned R-3, the only approval required for development is a conditional use permit.

15. Minnesota Statute § 462.357 provides in relevant part:

Conditional uses. 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.

Minn. Stat. § 462.357, Subd. 1b.

16. Under the City's zoning ordinance, the intent of property that is zoned R-3 is as follows:

1335.01 Intent. The intent of the R-3 High Density Residential District is to provide areas 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. (emphasis added).

17. A manufactured home park is a conditionally permitted use in an R-3 District. Stewartville Ordinance, § 1335.04.

18. The City's zoning ordinance provisions related to manufactured housing communities are set forth in Sections 1375.18 and 1375.19 of the City's Zoning Code.

19. As proposed, the Project meets or exceeds all requirements for a manufactured housing community as set forth in the City's Zoning Ordinance.

20. The City's attorney, at the request of the City issued the following opinion with respect to the requested Conditional Use Permit for the Development Property:

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.

21. The Project as proposed by the Plaintiff meets or exceeds all lawful requirements and conditions in the City's ordinance with respect to manufactured housing communities.

22. The City previously adopted a General Development Plan in connection with the subject property.

23. The Project is consistent with the General Development Plan.

The City's Denial

24. On January 14, 2020, the City adopted Resolution 2020-3 denying the Map Amendment and Conditional Use Permit for the Project.

25. On January 14, 2020, the City adopted resolution 2020-4 denying the General Development Plan for the Project.

26. The City's denials of the Map Amendment to rezone the portion of the Development currently zoned R-1 to R-3 was unlawful, arbitrary, capricious and an abuse of discretion.

27. The findings by the City in connection with the City's denial of the requested Map Amendment violates Minnesota Statute Chapter 462 and the City's zoning ordinance.

28. The City's denial of the requested Conditional Use Permit for the Project was unlawful, arbitrary, capricious and an abuse of discretion.

29. The City's denial of the requested Conditional Use Permit for the Project violated Minnesota Statutes Chapter 462 and the City's Zoning Ordinance.

30. The findings by the City in connection with the City's denial of the requested Conditional Use Permits violate Minnesota Statute Chapter 462 and the City's zoning ordinance.

31. The City's denial of the General Development Plan for the Project was unlawful, arbitrary, capricious and an abuse of discretion.

32. The City's denial of the General Development Plan for the Project violated Minnesota Statutes Chapter 462 and the City's Zoning Ordinance.

33. The findings by the City in connection with the City's denial of the requested General Development Plan violate Minnesota Statute Chapter 462 and the City's zoning ordinance.

34. The City's findings relating to the denial of the Conditional Use Permit are unlawful, arbitrary, capricious and not based on the facts and evidence presented to the City.

35. The City's findings relating to the denial of the rezoning application are unlawful, arbitrary, capricious and not based on the facts and evidence presented to the City.

36. The City's findings relating to the denial of the General Development Plan are unlawful, arbitrary, capricious and not based on the facts and evidence presented to the City.

37. All of the City's findings that purport to justify denial of the requested approvals are contrary to the facts and testimony presented to the City.

38. Each allegation set forth above is incorporated by reference into each claim for relief set forth below.

COUNT I

(Declaratory Relief and Appeal of City's Denial)

39. Minn. Stat. § 462.361, subd. 1 provides a cause of action in the district court to "any person aggrieved by an ordinance, rule, regulation, decision or order of a governing body . . . acting pursuant to [zoning authority]." Minn. Stat. § 555.01, et seq., permits the Court to make a declaration regarding the rights, status and other legal relations between the parties in this case. A justiciable controversy exists between the parties.

40. Sun is entitled to a declaration that the City's denial of the requested rezoning for the Project was unlawful, arbitrary, capricious and an abuse of discretion.

41. Sun is entitled to a declaration that the City's denial of the requested Conditional Use Permit for the Project violated Minnesota Statutes Chapter 462 and the City's Zoning Ordinance.

42. Sun is entitled to a declaration that the City's denial of the requested Conditional Use Permit for the Project was unlawful, arbitrary, capricious and an abuse of discretion.

43. Sun is entitled to a declaration that the City's denial of the General Development Plan for the Project was unlawful, arbitrary, capricious and an abuse of discretion.

44. Sun is entitled to a declaration that the City's denial of the General Development Plan for the Project violated Minnesota Statutes Chapter 462 and the City's Zoning Ordinance.

45. Sun is entitled to a declaration that the City's findings in connection with all the re-zoning request, the requested Conditional Use Permit and the requested General Development Plan are (a) not legally sufficient, (b) inconsistent with the record before the City, (c) inconsistent with the facts, law and testimony before the City and (d) arbitrary, capricious and an abuse of discretion.

46. Due to the City's denials, Sun has sustained damages in an amount in excess of \$50,000.00, the exact amount to be determined at trial.

COUNT II

(Mandamus and Injunctive Relief)

47. Minn. Stat. § 586.01, *et seq.*, permits the Court to issue a writ of mandamus to compel a municipality to take action to avoid arbitrary and capricious results.

48. The Court also has the equitable authority to issue a mandatory injunction to require the City to take appropriate action.

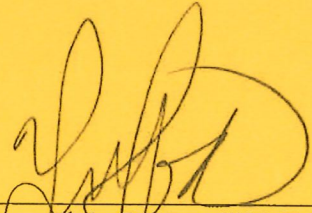
49. Sun is entitled to a writ of mandamus and a mandatory injunction compelling the City to amend its Zoning Ordinance, grant the requested conditional use permit and grant the requested development plan for the Project.

WHEREFORE, plaintiff demands judgment against defendants as follows:

1. Adjudging and declaring that the City acted arbitrarily, capriciously and without a reasonable basis by denying plaintiff's request for an amendment to the Zoning Ordinance.
2. Adjudging and declaring that the City acted arbitrarily, capriciously and without a reasonable basis by denying plaintiff's request for a conditional use permit.

3. Adjudging and declaring that the City acted unlawfully by denying plaintiff's request for a conditional use permit and General Development Plan.
4. Ordering, by writ of mandamus and by mandatory injunction, that defendant approve plaintiff's proposed amendment to the Zoning Ordinance, the proposed conditional use permit and the General Development Plan;
5. Awarding plaintiff its costs, attorneys' fees and disbursements incurred herein;
6. Awarding Sun damages in excess of \$50,000.00, the exact amount to be determined at trial; and
7. Awarding such other and further relief as the Court deems just and equitable.

Dated: February 5, 2020



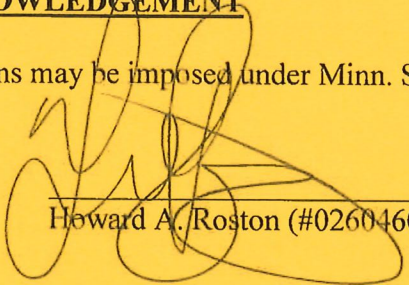
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ACKNOWLEDGEMENT

Plaintiff acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.

Dated: February 5, 2020



Howard A. Roston (#0260460)