STATE OF MINNESOTA DISTRICT COURT

COUNTY OF OLMSTED THIRD DISTRICT COURT

Court File No. 55-CV-20-1084
Case Type: Civil Other/Misc.

Sun ACQ, LLC,

Plaintiff,

vs.

ORDER

City of Stewartville, Minnesota,

Defendant.

This matter came on for hearing before the Honorable Joseph F. Chase on the 14th day of December 2020, at the Olmsted County Courthouse, Rochester, Minnesota, on the motions of Plaintiff Sun ACQ, LLC and Defendant City of Stewartville for summary judgment based on the court's review of the agreed record.

Justin L. Templin, Hoff Barry, P.A., 775 Prairie Center Drive, Suite 160, Eden Prairie, MN 55344 appeared on behalf of Defendant City. Howard A. Roston and Jessica R. Sharpe, Fredrikson & Byron, P.A., 200 South Sixth Street, Suite 4000, Minneapolis, MN 55402 appearedon behalf of Plaintiff Sun.

Now, therefore, based upon the files, records, and proceedings herein, the court orders as follows:

1. Defendant City of Stewartville's motion for summary judgment is GRANTED;

2. Plaintiff Sun's motion for summary judgment is DENIED;

3. Plaintiff Sun's Complaint is dismissed with prejudice in its entirety;

4. Defendant City of Stewartville, as the prevailing party, is awarded its reasonable costs and disbursements incurred herein.

Let judgment be entered accordingly.

The court's memorandum, filed herewith, is incorporated herein.

Dated: March 11, 2021

BY THE COURT:

Chase, Joseph
2021.03.11
16:19:23 -06'00'

Joseph F. Chase
Judge of District Court

JUDGMENT

I hereby certify that the forgoing Order dated _____, by the Honorable Joseph F. Chase constitutes the judgment of this Court.

Dated _____.

Hans Holland
Court Administrator

By: 2021.03.11
17:18:49 -06'00'

Deputy Clerk

MEMORANDUM

Factual and Procedural Background

Plaintiff Sun ACQ, LLC is a subsidiary of Sun Communities, a Michigan Limited Liability company (Sun). Sun "is one of the nation's premier owners and operators of manufactured housing communities." (MHC) Stewartville (the City) is an Olmsted County town with a population of approximately 6,100[1] located south of Rochester.

Sun owns an MHC in Stewartville called Southern Hills / Northridge (referred to herein collectively as Southern Hills).[2] Located on the northwest side of Stewartville, Southern Hills is currently comprised of approximately 475 residential units. Sun purchased Southern Hills in 2014. In early 2019, Sun brought forward plans to expand Southern Hills by 300 units.[3] Sun has a contract to purchase adjacent land (the Development Property) for this expansion. The Development Property is roughly T-shaped and borders the existing Southern Hills MHC on Southern Hills' west side. A pre-existing subdivision of site-constructed houses is adjacent to the Development Property on the Development Property's other (west and south) side.[4] Below is an aerial view / map of the existing Southern Hills MHC, the proposed Development Property, and the site-constructed home development.

[1] The United States Census Bureau 2019 American Community Survey Five Year Estimate, https://data.census.gov/cedsci/table?q=Stewartville%20city,%20Olmsted%20County,%20Minnesota%20Populations%20and%20People&tid=ACSST5Y2019.S0101&hidePreview=false

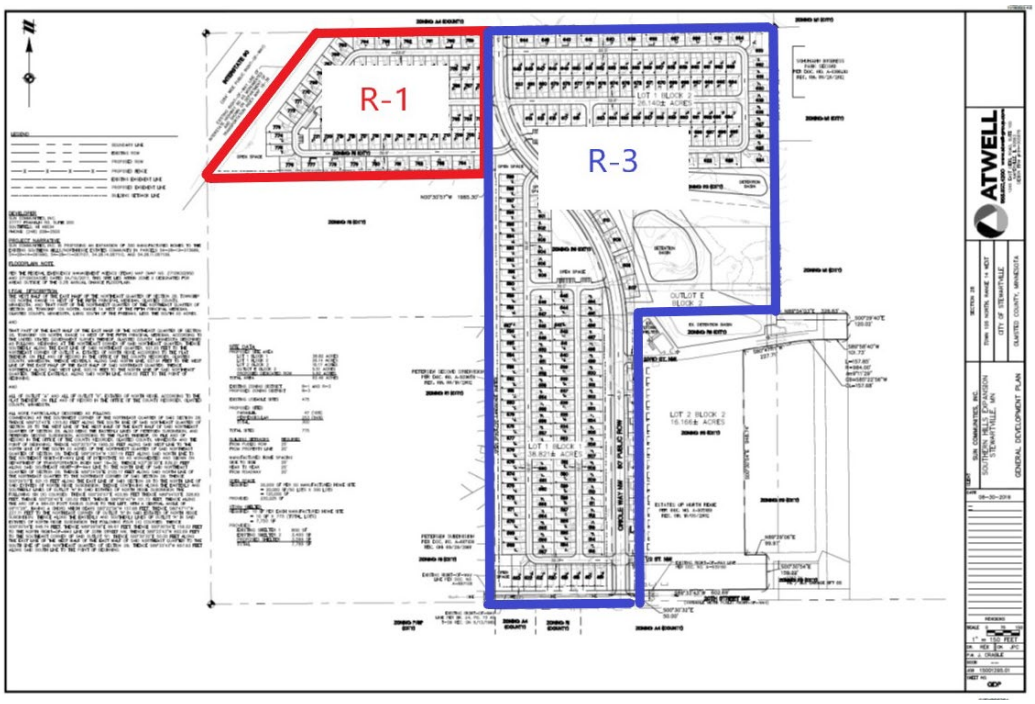
[2] Some residents own their manufactured homes and pay a lot rent to Sun. Sun owns and rents out the remainder of manufactured homes in the development.

[3] The number first discussed was 293, but ended up at 300 by the time the City considered the proposal.

[4] This appears to be the area referred to as the "Peterson Subdivision."

CITY000203.

The larger portion of the Development Property (perhaps 80% of the total acreage) is currently zoned R-3 (Multi-Family, High Density Residential), while the other portion is zoned R-1 (Single Family, Low Density Residential). A map of the current zoning of the Development Property is below:



See CITY000204[5]

Manufactured housing communities are a conditionally permitted use in Stewartville in an R-3 zoned district; meaning that MHCs are an allowable use if a Conditional Use Permit (CUP) is secured from the City. MHCs are not an allowable or conditionally allowable use in R-1 districts. Without rezoning, an MHC could not be built in the portion of the Development Property currently zoned R-1.

On April 18, 2019, in response to Sun's expansion proposal, the City commissioned preparation of an Environmental Assessment Worksheet (EAW) (including a traffic study) on the proposed project.

[5] For ease of understanding, the court has used the map provided at CITY 000204 and superimposed colored zoning labels and approximate zoning boundaries.

The configuration of the proposed development changed to a degree over time. CITY 000203-204 show the main north-south street on the east side of the southern part of the proposed expansion (the upright of the project's T-shape), curving west as the street crosses the north part of the project. A later plan, depicted in CITY 000711 and 000861, shows that street on the *west* side of the southern part, curving *east* as the street proceeds north.

On August 23, 2019, Sun submitted two applications to the City. The first was an Application for Planning Request. Within that application, Sun sought: (1) a rezoning of the R-1 portion of the Development Property to R-3, and; (2) a conditional use permit for an MHC on all parcels included within the proposed expansion. *See* CITY 000166. The engineering plans submitted with the application showed a 300-unit MHC expansion. *Id*. Sun also submitted a "Plat Application." This second application sought amendment to the City's plat map and General Development Plan. CITY 000168.

In October of 2019 the EAW was completed. Regarding traffic volume from the proposed MHC expansion, the EAW concluded that while volumes would likely increase, the increase would not require signalization or configuration changes at affected intersections. The EAW did note that the intersection of most concern—Highway 63 and 20th Street—currently operates at a C grade during evening peak hours. The EAW noted that Sun promised to complete road maintenance and improvement projects for the MHC's internal road network.

The EAW also addressed submitted public concerns about unit density and insufficient open space in the proposed expansion:

> Public Concern Number 2 (2 comments received): Project layout and landuse (sic) Concerns: The project is too dense, has too many units, and not enough community and open space has been dedicated.
>
> Response: **The proposed project is requesting a zoning change for the northwest portion of the site, which would allow for a higher density of units for the entire development.** This needs to be approved by the City of Stewartville as part of the project review. The current design will incorporate public and open spaces that conform with minimum City requirements.

CITY 000696 (bold added).

On October 25, 2019, the City issued a negative declaration in response to the EAW—a decision not to pursue any further environmental review.

On November 7, 2019, the City's Planning Commission took up Sun's application and heard comments regarding the proposed expansion from members of the public, Stewartville City Attorney Melanie Leth, Olmsted County Sheriff Kevin Torgerson, and Stewartville Public Schools Superintendent Belinda Selfors. A member of the Governor's housing task force also gave a presentation on the housing shortage in Minnesota, and the role of MHCs in filling the deficit.

While some members of the public offered supportive remarks about the benefits of MHCs and the need for affordable housing in the Stewartville area, others voiced concerns and negative opinions about a proposed expansion of Southern Hills. Some commenters identified themselves as current residents of the existing MHC and stated that it was poorly maintained or managed. They cited potholes and poor road maintenance, inadequate storm drainage, dead trees, and inadequate park space. These residents expressed concern that an expansion owned by Sun would also be similarly inadequately maintained. For instance, a member of the public identifying herself as a resident of the existing Southern Hills MHC commented as follows:

> Hi, [J.N.B.], 603 23rd Street. I live in Southern Hills. It's not well kept. Our roads are horrible. The small stretch right in front of my house just got redone. I've needed a new driveway since I moved in almost five years ago. I was told I wasn't going to get a driveway because of the trees that needed to be removed. Those trees still are there, minus the one that was almost coming out of the ground right behind my house, this spring once the ground thawed. I took pictures, submitted it to the manager, who was Jeremy at the time, and it was removed about a month later. Luckily no storms came so the tree didn't fall on my house. But, two houses down from me one of the trees that was slated to be removed three years ago fell on their house. There's tons of dead trees. The roads, you can't even drive down without hitting a pothole, now that it's winter (inaudible), if you're going to add all this new property and mobile homes take care of what's there first.

CITY 000788.

Non-MHC residents in the surrounding area voiced concerns about traffic congestion, diminution in the value of their properties, increase in taxes, too-close proximity of the expansion to the existing site-constructed development, and too many manufactured homes being placed in Stewartville (versus other towns in the area). Representative of citizen comments critical of the proposed expansion was the following:

> I have no problem with people that live in the trailer park. Just like everywhere else there's good and bad everywhere. Good people can afford stuff, people who can't afford stuff. 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, which I do not believe this place is low income housing. It's not affordable.
>
> ***
>
> They make it sound like if you don't go for this you hate poor people. You scum, because, oh, my god, this is the greatest opportunity for people to have a house. Well, it's the same cost factoring that the rest of us pay for houses, it's just in a lot more condensed area, and the basics, what I've said about this whole thing is, 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.
>
> ***
>
> And the pictures, the beautiful pictures that were presented to us, I'm going out a limb here, and somebody can argue with me, but I'll guarantee you that's the best most beautiful homes that could possibly go in there, that's not the standard. So that's the old expression, putting lipstick on a pig, I don't know if that really applies. But, you know, are we really gaining anything or are we just trying to surrender to society saying, oh, this is the right thing to do, when it really in many ways is not the right thing to do. Thank you.

CITY 000819-21.

Citizens also raised questions about the impact of the proposed expansion on policing and on Stewartville's public schools. Sheriff Kevin Torgerson, whose department provides law enforcement services to Stewartville, addressed policing concerns. He disputed the misconception—apparently disseminated in a "flyer" that had been "passed around"

Stewartville—that the existing MHC generates a grossly outsized share (87% is the figure he mentioned) of Stewartville's calls for law enforcement service. Sheriff Torgerson pointed out that, as Stewartville's population grows calls for police service will increase. His department has been monitoring police activity in Stewartville to determine when a second deputy (one deputy is currently assigned to Stewartville) will be needed to adequately serve Stewartville's needs. Sheriff Torgerson stated as follows regarding the concern that:

> …additional law enforcement resources will be needed to be accountable for [increased calls for service], to keep up – or to keep our community safe. We've been tracking this, it's something we keep track of regularly, it's not all that complicated to pull together.
>
> [W]e recognize with the density in all likelihood for calls for service and that is generated because people are living close together. It's pretty simple. . . . [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 that (sic) may be that **there may be more need for officers, and we just talked to the city council last week about the current contract** and what we're doing there and it is something specifically to look at this in regards to when do these calls happen....
>
> ***
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> Anyway, we recognize that and it's one of the things that we've been tracking now for the last few years, is our number of calls for service here in Stewartville and is it -- is there **a tipping point when we may need to have a second deputy that's down here on specific assignment to Stewartville, and that's a conversation we'll have with the city as we watch this** and that's exactly why we keep track of some of these numbers calls for service.

November 7, 2019 Planning Commission Meeting Transcript, CITY 000797-801 (bold added).

Sheriff Torgerson also summarized and provided a document outlining his department's 2016-2019 statistics on calls for police service in Stewartville as a whole and from the City's northwest quadrant (comprised of Southern Hills plus the Peterson Subdivision):

Calls for Service ONLY. *2019 Numbers only through October 31st, 2019.

	2016	2017	2018	2019*
So. Hills/Northridge Place	533	576	661	600
Stewartville	2339	2185	2162	1590
Total	2872	2761	2823	2190
Percentage	23%	21%	23%	27%

Total is the total number of Calls for Service throughout Stewartville.
Percentage is the percentage of those total calls in the Manufactured Home Community.

Below is the additional activities in Stewartville including Community Service activities like checks at business, greeting kids at daycares or checking Parks.
Traffic Stops are just that Traffic initiated activites across the entire City.
**2019 Numbers only through October 31st, 2019.

	2016	2017	2018	2019**
Community Service	251	415	449	654
Traffic	1169	1273	1011	1666
Calls for Service	2872	2761	2823	2190
Total Activity	4292	4449	4283	4510

CITY 000870.[6]

Later in the meeting Sheriff Torgerson was questioned by and responded to Planning and Zoning Commission member Maren Schroeder as follows:

[6] I note one discrepancy in the Sheriff's 2016 statistics. 533 calls for service from Stewartville's northwest quadrant would be 18.5% of the 2,872 total calls from Stewartville (not 23% as his table indicated).

> MS. SCHROEDER: Based on what you – the information you gave us earlier, I understand you probably can't say definitively right now, but were we to approve these 300 new lots, would that likely require the City to contract a second officer?
>
> SHERIFF TORGERSON: It's hard to say. **I think the likelihood is yes**, and that's why we've been tracking it and that's why I said earlier we've been looking at the numbers to see, this year is at 27 percent (inaudible) of the calls to service are in that community (inaudible) northwest. Is that comparatively more than other similar geographic areas in the city? Yes.
>
> ***
>
> I mean, we're watching those numbers and we're getting to that point where as the city grows, and if this gets approved, whether it's here or if it's another part of the city, that calls for service continue to climb, then we have to do something. There's no question.

CITY 000855-57 (bold added).

Superintendent Belinda Selfors also addressed inaccuracies "that were on the flyer" as to the alleged concentration of poverty within the MHC (regarding which the school district has information because it serves children eligible for free and reduced-cost meals):

> [I]n [the] school district, poverty knows no boundaries. We know we have families living in poverty throughout our community of Stewartville, throughout the community of Racine [also part of the Stewartville school district], 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 came from this neighborhood, there is no data to support that.

CITY 000802.

Superintendent Selfors talked about the potential impact that 300 new homes would have on Stewartville's public school system, if those new residences arrived in the abbreviated timeframe contemplated by Sun:

> I do want to respond to the question or concern that was expressed about the impact on schools and the part of the statute 4D. Given the **extreme situation, where over 300 homes added within five years** and one of the statistics that I've read, I don't know if it's accurate, was 1.5 children on average per home, so that would be 450 students. Would this district be able to absorb 450 students in three to five years? The flat answer is no. **We will be very over crowded. There would be a tremendous impact on our school system.** One of the alternatives to that is, students move in to Stewartville they are ours. They deserve to attend Stewartville

> Public Schools. So there would be a couple decisions that would need to be made. Would we close completely open enrollment? We do get in about 400 students per open enrollment, about 130 enroll out, so we're netting about 270 students through open enrollment at our school system. So 450 students in three to five years, there would be some **very big challenges and difficult decisions that would have to be made**. So when we consider the density and consider what would come along with that, I would encourage the Planning Commission to consider that piece. **The more homes you place, the (inaudible) more children,** it all falls together in that way.
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> [City Administrator] SCHIMMEL: Can you just clarify that, if any aspect of our community grew by that much, whether it's single family homes, apartments, manufactured homes, we might face those kind of questions.
>
> MS. SELFORS: If any part of the community in which we gain 450 students in five years, that is **a dramatic impact, dramatic impact on the school system,** yes. **I don't know that single family homes could pop up that quickly in three to five years, but a manufactured home community possibly could.** 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. **So it could be one extreme or the other, but the potential is there and it should be considered.**

CITY 000836-38 (bold added).

The Planning Commission hearing continued on December 2, 2019. Meeting minutes[7] indicate that at that hearing Sun presented several proposed changes to the expansion plan, made in response to previously expressed citizen concerns. These included a shift in the location of the public road (described above) and increased buffers and open space. But there was no decrease in project size nor any reduction in the pace of development. Sun was questioned by commission members about the size and timeframe of the project:

> [Planning and Zoning Commission member] Robertson **asked if Sun Communities was open to lowering the density/number of lots, noting that he understands it's a math issue and was wondering what the number that they are willing to live with was. He also stated that speaking on behalf of the**

[7] Unlike the November 7, 2019 hearing, only meeting minutes of the December 2 meeting were submitted for judicial review. The City indicates that "There is no recording of the December 2, 2019 Planning & Zoning Commission meeting available due to a City staffing issue on the evening of that meeting. The record contains extensive Minutes of that meeting that were prepared by the City Clerk." *See* the City's November 16, 2020 Memorandum, p. 8, n. 4.

> **Planning Commission, 300 isn't an acceptable number.** [Sun Communities representative] **Bennett responded that lowering the density hasn't been considered and noted that 300 is less than what would be allowed.** He mentioned again that the amount of open/green space is actually higher than what is required by city ordinance. Bennett noted that the last expansion (71 lots) was filled in just over 2 years and that they couldn't create the housing fast enough. He noted that they feel they can fill 5 sites in a month.

December 2, 2019 Planning Commission Meeting Minutes, CITY 000866 (bold added).

Concerns about schools, fire, and police protection were also raised again:

> [Planning and Zoning Commission member] Swanson stated that residents are concerned with the tax base and felt that the expansion would create the need to build a school. Bennett responded that they are unable to answer how many are school age and that there are so many different variables to consider, noting that not all families will have school age children and it's hard to say how many current residents would be leaving the district either by graduating or moving.
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> ***
>
> [Planning and Zoning Commission member] Beyer indicated that in regards to fire protection and law enforcement **the expansion of 300 homes in a short amount of time would have a big impact for a community of 6,200**. Bennett responded that there are benefits that the city isn't considering with people moving to our community, noting that the residents will be buying groceries, gas and food which benefits the business community. He also stated that the city has been preparing for growth as shown by their water/sewer facilities. Beyer stated that although Sun Communities pay taxes, along with the homeowners it is a lower percentage.
>
> ***
>
> [Planning and Zoning Commission member] Schroeder agreed it was felt that the growth of 300 additional homes would put a burden on the school district and not just specific to this project.
>
> [Planning and Zoning Commission member] Lehrman asked [City Administrator] Schimmel if he could elaborate on taxes and the cost of fire protection/law enforcement. Schimmel informed the Planning Commission that there was information in their packets for current taxes. He stated that currently the city has 24 hour coverage for law enforcement. He stated that Council recognizes that as demand for calls come in, the city may have to increase coverage, noting that the public would weigh in on response time and most likely drive the demand for more coverage. He also elaborated on the past few years of talking with the fire department regarding their issue with not finding volunteers to cover daytime hours. He said that they have been researching hiring to help with the daytime hour shortage.

> Beyer questioned whether a feasibility study was done to show whether there would be a high demand on fire/police protection. Bennet stated that a study hasn't been done in any other community and they didn't plan on doing one for this project. He noted that the city has planned properly in regards to utilities and students can't be predicted.

CITY 000866-67 (bold added).

At the conclusion of the hearing, the Planning Commission recommended denial of rezoning. After that denial, staff inquired whether Sun wanted time to reconsider the project, or move forward with voting on the CUP request. The minutes read as follows:

> Motion by Beyer, second by Schroeder to recommend to the City Council, denying the zone change as it would not be appropriate because the proposed use would create a significantly negative impact on traffic and safety in the area. Unanimously approved.
>
> Staff questioned Sun Communities on **whether they wanted to proceed further with the Conditional Use or would like to take time to reconsider the proposal**. Crable & Bennett indicated that they would like to **proceed with the vote and move on to City Council consideration.**
>
> Lehrman asked for consideration of the GDP/Preliminary Plat.
> Motion by Robertson, second by Poss to recommend to the City Council denying the GDP/Preliminary Plat, as **without the rezoning, the project needs to be re-designed**. Unanimously approved.

CITY 000867 (bold added).

On January 14, 2020, the City Council heard the matter. Sun advocated for approval of the rezoning (referred to from time to time as the "Map Amendment") and the CUP. Sun's representatives contended to the Council that the proposed expansion meets all applicable MHC regulations, including required setbacks, foundations, parking, unit density, and open space. A discussion between Sun's representatives and City Council members preceded the Council's vote. Some council members expressed concern over the size of the project:

> [City Council Member] JEREMIAH: No questions. I am hung up on this one in our point and in our ordinance, under standards, there's the bulk of this that are requirements, and requirement E, **Will not create excessive additional**

> **requirements at public cost for public facilities and services** that will not be detrimental to the economic welfare of the community. **I feel like that requirement is not necessarily being met with what we've heard from the sheriff and from the superintendent of schools.** That's a hang up for me.
>
> [Sun Representative] ROSTON: Can I give some response to that. I'd like to point out that the sheriff said there's no more indication of calls to manufactured housing communities than any other type of area in the city, and the school superintendent, I believe she said there was a 70 lot expansion, I could be wrong, but I think it was a 70 lot expansion could experience any particular impact on the schools themselves. Not only that, the city attorney told you you can't treat this differently than you would a single family neighborhood and I would submit to you that if this were a single family neighborhood we wouldn't be sitting here discussing the impacts on school---
>
> [JEREMIAH] ---We would if you tried to put 300 houses in that amount of property, it makes a big difference. I do think —— I know what the superintendent did say, she did say that the last expansion didn't hit them as hard as they thought, but the reality is they still have to prepare and we have to be cognizant of the numbers that come in and studies of what the average number of children potentially per household are. Just like you guys have to be. I mean, it's not an easy decision. I'm not for it the way it is now. I know that.

January 14, 2020 City Council meeting, CITY 001047-48 (bold added).

At the conclusion of the discussion, the City Council voted to "den[y] the zone change amendment and [deny] the GDP amendments and preliminary conditional use." CITY 001051. When asked to clarify whether the denial was based on the findings of fact made by the Planning Commission, the Mayor answered in the affirmative. *Id*. The City subsequently adopted two written resolutions, both dated January 14, 2020. Resolution 2020-3 addressed the zoning change and the CUP. It stated, in relevant part:

> WHEREAS, the City Council of the City of Stewartville hears requests for Zoning Map Amendments and Conditional Use Permit approval pursuant to City Ordinance, Sec. 1310.01 Sub B (3) and Sec. 1335.04;
>
> WHEREAS, the Planning Commission held a public hearing to consider the Applicant's request for a Map Amendment and Conditional Use Permit at its November 6, 2019 meeting;

WHEREAS, the Planning Commission held a follow-up meeting to consider the Applicant's request for a Map Amendment and Conditional Use Permit on December 2, 2019, and recommended to the City Council to deny the applications;

WHEREAS, the City Council of the City of Stewartville received the applications at its regular City Council meeting held on January 14, 2020; and

WHEREAS, City Council of the City of Stewartville has reviewed the proposed applications for a Map Amendment and Conditional Use Permit as per City Ordinance; and

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.

CITY 000920-21 (bold added). Resolution 2020-4 addressed the plat application:

> WHEREAS, Sun ACQ LLC, ("Applicant") has submitted an application for General Development Plan revision and Preliminary Plat for the following described property:
>
> Parcels 54.24.112.073689; 54.28.14.061990; 54.28.11.067107; Outlot "A" and Outlot "B" of Estates of Northridge
>
> WHEREAS, the City Council of the City of Stewartville hears requests for General Development Plan and Preliminary Plat approval pursuant to City Ordinance, Sec. 1200 and Section 1335.04 (h);
>
> WHEREAS, the Planning Commission held a public hearing to consider the Applicant's request for a General Development Plan revision and Preliminary Plat at its November 6, 2019 meeting;
>
> WHEREAS, the Planning Commission held a follow-up meeting to consider the Applicant's request for a General Development Plan revision and Preliminary Plat on December 2, 2019 and recommended to the City Council to deny the applications;
>
> WHEREAS, the City Council of the City of Stewartville received the applications at its regular City Council meeting held on January 14, 2020;
>
> WHEREAS, City Council of the City of Stewartville has reviewed the proposed applications for a General Development Plan revision and Preliminary Plat as per City Ordinance; and
>
> 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.

CITY 000922.

On February 12, 2020, Sun filed a Complaint and Petition for Writ of Mandamus and Injunctive Relief seeking judicial review and reversal of the City's decision to deny Sun's application. Sun sought declaratory relief finding that the City unlawfully denied the applications, acting arbitrarily, capriciously, and without a reasonable basis. Sun sought a writ of mandamus and injunctive relief, compelling the City to approve its applications for the zoning change and conditional use permit.

On February 25, 2020 the City filed its Answer opposing Sun's requested relief. The parties agreed that the matter could be decided via record review, and a trial would not be necessary. Counsel agreed to the items that would be submitted to the court as the record of the City's decisions; the parties filed cross-motions for summary judgment with supporting memoranda; and a hearing was held on December 14, 2020 at which parties presented oral argument.

Analysis

Scope and Standard of Review

1. Summary Judgment Standard

Under Rule 56.01 of the Minnesota Rules of Civil Procedure the trial court "shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to a judgment as a matter of law." A party is entitled to summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue of any material fact. *See Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). Summary judgment is proper when a

determination of the applicable law will resolve the matter. *Gaspord v. Washington County Planning Comm'n*, 252 N.W.2d 590, 591 (Minn. 1977). Additionally, when a moving party makes and supports a summary judgment motion, the nonmoving party has the burden to "present specific facts showing that there is a genuine issue for trial." *DHL Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (quoting Minn. R. Civ. P. 56.05).

Here the parties agree that there are no disputed issues of material fact, and that when the law is properly applied, one of them is entitled to summary judgment.

2. Record Review

Under Minn. Stat. § 462.361:

> 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.

The parties have agreed to what is commonly referred to as a "record review." *See Swanson v. City of Bloomington*, 421 N.W.2d 307, 313 (Minn. 1988) ("Where the municipal proceeding was fair and the record clear and complete, review should be on the record."). Neither party disputes that the proceedings were fair and that the record here is complete. In this procedural posture the court considers only the public record agreed on by parties and submitted as exhibits, which here consists of more than a thousand pages of: Planning Commission meeting transcripts and minutes; City Council meeting minutes and resolutions; written reports, studies, and other information submitted to the Planning Commission and City Council; and maps and other documents showing the historical designation, regulation, and character of the property at issue.

3. Standard of Judicial Review of Municipal Decisions

In cases involving challenges to municipal decisions, Minnesota courts employ a deferential standard of review. *Swanson* at 421 N.W.2d 313. The general standard of review for

zoning matters is "whether the municipal body's decision was unreasonable, arbitrary or capricious, with review focused on the legal sufficiency of and factual basis for the reasons given." *Id*. *See also Honn v. City of Coon Rapids*, 313 N.W.2d 409, 417 (Minn. 1981) ("The standard of review is the same for all zoning matters, namely, whether the zoning authority's action was reasonable.")

a. Legislative versus Quasi-Judicial Action

However, review of denial of a rezoning application and denial of a CUP are different; and this is because the two actions are different:

> **Amendment of a zoning ordinance is a legislative act.** *See State by Rochester Ass'n of Neighborhoods v. City of Rochester,* 268 N.W.2d 885, 888 (Minn.1978). Legislative acts affect the rights of the public generally, unlike quasi-judicial acts which affect the rights of a few individuals analogous to the way they are affected by court proceedings. *See State ex rel., Huntley Sch. Dist. No. 4 (Appeal of Common Sch. Dists. Nos. 27, 20, 5 and 3 Faribault County) v. Schweickhard,* 232 Minn. 342, 345, 45 N.W.2d 657, 659 (1951). **Ruling on a conditional use permit application is a quasi-judicial act.** *See Honn v. City of Coon Rapids,* 313 N.W.2d 409, 416 (Minn.1981).

Interstate Power Co. v. Nobles Cty. Bd. of Comm'rs, 617 N.W.2d 566 at 573-74 (Minn. 2000) (bold added). In *Honn* the court compared and contrasted the two types of review:

> Our case law distinguishes between zoning matters which are **legislative** in nature (**rezoning**) and those which are **quasi-judicial** (variances and **special use permits**). Even so, the standard of review is the same for all zoning matters, namely, whether the zoning authority's action was reasonable. Our cases express this standard in various ways: Is there a "reasonable basis" for the decision? or is the decision "unreasonable, arbitrary or capricious"? or is the decision "reasonably debatable"?
>
> Nevertheless, while the reasonableness standard is the same for all zoning matters, the nature of the matter under review has a bearing on what is reasonable. **In enacting a zoning ordinance or in amending an ordinance to rezone, the approach is legislative; what is involved is a kind of municipal planning in which a wide range of value judgments is considered.** On the other hand, in granting or denying a special use permit, the inquiry is more judicial in character since the zoning authority is applying specific use standards set by the zoning ordinance to a particular individual use. *State, by Rochester Association of Neighborhoods v. City of Rochester*, 268 N.W.2d 885, 889 (Minn.1978).

> **For rezoning the standard is whether the classification is reasonably related to the promotion of the public health, safety, morals or general welfare.** *State, by Rochester Association of Neighborhoods*, 268 N.W.2d at 888. This comes from Minn. Stat. § 462.357, subd. 1 (1980), which says, "For the purpose of promoting the public health, safety, morals and general welfare" a municipality may regulate land use and improvements thereto by zoning. But **the approach is different in a special use permit case, where reasonableness is measured by the standard set out in the particular local ordinance**, not the statute. For example, the special use standard in *C. R. Investments, Inc. v. Village of Shoreview*, 304 N.W.2d 320, 323 (1981), is typical: "If the Village Council shall determine the proposed use will not be detrimental to the health, safety, morals, on (sic) general welfare of the community * * * the Village Council may grant a special use permit." As we pointed out in *Zylka v. City of Crystal*, 283 Minn. 192, 196, 167 N.W.2d 45, 49 (1969), an arbitrary denial of a special use permit may be found when "the requested use is compatible with the basic use authorized within the particular zone and does not endanger the public health or safety or the general welfare of the area affected or the community as a whole."
>
> In other words, **in legislative zoning, the municipal body is formulating public policy, so the inquiry focuses on whether the proposed use promotes the public welfare. In quasi-judicial zoning, public policy has already been established and the inquiry focuses on whether the proposed use is contrary to the general welfare as already established in the zoning ordinance**. Consequently, the reviewing courts, in determining what is reasonable, should keep in mind that **the zoning authority is less circumscribed by judicial oversight when it considers zoning or rezoning than when it considers a special use permit** or a variance.

Honn at 313 N.W.2d 416–17 (bold added).

Thus while the "arbitrary and capricious" standard is the same in both inquires, zoning authorities are "less circumscribed" when making legislative zoning decisions; and therefore the judicial review standard is more deferential. A municipality's decision on a CUP, on the other hand, is subject to more extensive judicial oversight. *Id.; see also Odell v. City of Egan,* 348 N.W.2d 792, 796 (Minn. App. 1984).

b. Factors Considered

Additionally, the specific factors a court must consider when determining whether the municipality acted arbitrarily can differ between a rezoning and a CUP decision. In reviewing a denial to rezone, the court considers whether the decision is rationally related to "promoting the

public health, safety, morals, or general welfare, or that the classification amounts to a taking without compensation." *State, by Rochester Ass'n of Neighborhoods* at 888. In reviewing a CUP decision, the court must first determine whether "all of the standards specified by the zoning ordinance as conditions of granting the permit have been met." *Yang v. County of Carver*, 660 N.W.2d 828, 832 (Minn. App. 2003), citing *Zylka v. City of Crystal*, 167 N.W.2d 45, 49 (Minn. 1969). If that is satisfied, then the court turns to the rational basis inquiry.

4. The City's Denial of Sun's Rezoning Request

The court will address the City's rezoning decision first because, for the reasons set out below, it is determinative of this action. A municipal decision on rezoning "**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**, or that the classification amounts to a taking without compensation." *State, by Rochester Ass'n of Neighborhoods* at 888 (bold added); see also *Honn* at 414.[8] This "narrow scope of review reflects a policy decision that a legislative body can best determine which zoning classifications best serve the public welfare." *White Bear Docking & Storage v. City of White Bear Lake*, 324 N.W.2d 174, 176 (Minn. 1982). Thus, "except in rare cases where there is *no* rational basis for the decision, it is the duty of the judiciary to exercise restraint and accord appropriate deference to civil authorities in routine zoning matters." *Big Lake Ass'n v. Saint Louis Cty. Planning Comm'n*, 761 N.W.2d 487, 491 (Minn. 2009) (italics added). Even where a zoning decision is debatable, courts do not interfere so long as there is at least *some* rational basis for the decision. *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 180 (Minn. 2006). The Minnesota Supreme Court in *Swanson* stressed the limited role of the court in reviewing a zoning decision:

[8] There is no contention here that the City's denial of the requested rezoning "amounts to a taking without compensation."

> Before we [turn to the case at hand], it is useful to reflect on our traditional approach to zoning matters. In *White Bear Docking and Storage, Inc. v. City of White Bear Lake,* 324 N.W.2d 174, 175 (Minn.1982), we considered the role of the judiciary in countermanding zoning decisions reached by municipal officials and concluded that "[t]he court's authority to interfere in the management of municipal affairs is, and should be, limited and sparingly invoked." We reiterated the rule we had set out in *Honn v. City of Coon Rapids* governing standard of review in zoning matters: "The standard of review is the same for all zoning matters, namely, whether the zoning authority's action was reasonable * * * Is there a 'reasonable basis' for the decision? or is the decision 'unreasonable, arbitrary or capricious'? or is the decision 'reasonably debatable'?" 324 N.W.2d at 176, quoting *Honn,* 313 N.W.2d at 417.
>
> We said that, except in those rare cases in which the city's decision has no rational basis, "it is the duty of the judiciary to exercise restraint and accord appropriate deference to civil authorities in the performance of their duties." *Id.*

Swanson, 421 N.W.2d at 310–11.

a. The City's January 7, 2000 General Development Plan

Before turning to a discussion of the City's reasons for the rezoning denial, I will address an item of evidence which Sun contends is of particular importance. Sun argues that the City adopted a General Development Plan (GDP) forecasting a future in which the R-1-zoned parcel at issue here would be zoned R-3, and would be part of a MHC similar to the expansion Sun now proposes. Sun contends:

> Since at least 2000…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)

See Sun's November 16, 2020 Memorandum, p. 5 (bold added).[9] Sun argues that "failure to rezone the property in conformance with the City's 20-year-old plan" is "strong evidence of arbitrary action." Sun Memorandum, p. 30.

In support of this argument Sun cites (and reproduces in its brief) one exhibit: CITY 000924, a map designated item #39 and attached to Mr. Templin's first affidavit. It is labeled "Southern Hills Expansion / General Development Plan," was prepared by the engineering firm of Yaggy Colby Associates, and is dated January 7, 2000.

I am confused by the citation of this exhibit for the proposition Sun asserts, in that the area depicted on CITY 000924 appears to be only the portion of Sun's current proposed MHC expansion *already* zoned R-3. Using 20th Street NW, the north-south "Proposed Public Road," and Lark Lane as landmarks, this map does not seem to include the area currently zoned R-1—the west arm of the proposed "T" shaped expansion—that is at issue in this requested rezoning. Rather, CITY 000924 seems to show only the north-south upright of the T, the east arm, and a portion of the already-built Southern Hills MHC. Assuming I am reading this plan correctly (I keep saying "seems" because my map-reading skills might be betraying me), there is reason to question, on this record, Sun's assertion that City plans have forecasted ultimate R-3 zoning of this R-1 parcel for more than 20 years.[10]

However, the *City* does not argue that CITY 000924 shows only the R-3 portion of the proposed expansion (as appears to me to be the case). Rather, in its reply memorandum, the City

[9] *See also* Sun's Memorandum at p. 24 ("[T]he prior 2000 plan…shows the entire property as a manufactured home community."); and p. 29 ("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).")

[10] I hesitate, in light of the voluminous nature of this record and the fact that I did not detect this apparent discrepancy in time to ask for clarification at hearing, to announce definitively that the record does not support Sun's assertion that 20 years of City planning has forecasted future R-3 zoning for the R-1 part of the proposed expansion. But if it is in the record, I have failed to locate it.

implies that its still-current *comprehensive* plan (a different document of wider geographical application than a more site-specific general development plan) *does* predict future R-3 zoning for the R-1 parcel at issue here. As to this comprehensive plan, the City argues: (1) A more recent *general* development plan ("approved after the previous comprehensive plan update") addressing "the property at issue…indicat[es] **present and future development at R-1** densities," and; (2) this old comprehensive plan is currently being updated and "is likely to change to reflect the current [City-approved R-1 general development plan] in that location." *See* November 30, 2020 City of Stewartville Response Memorandum, p. 6, n. 4.

Perhaps I have missed something, but it appears to me that neither the current (but allegedly obsolete) comprehensive plan (which I infer, from the City's statements, *does* forecast R-3 zoning for the R-1 parcel) nor the more recent general development plan (which the City says shows continued R-1 zoning for the R-1 parcel) is part of this record.

In any event the City does not dispute the basic idea that *some* City-approved prior plan predicted future R-3 zoning for the R-1 parcel. Therefore I assume that to be the case for purposes of my analysis: Somewhere along the line the City changed its mind about someday rezoning this parcel R-3. Is this sufficient reason to overturn the City's decision to deny Sun's rezoning application, as Sun argues? I think not.

In *Amcon Corp. v. City of Eagan*, 348 N.W.2d 66, (Minn. 1984), the court observed that:

> The designation of land uses on such a master plan is generally viewed as **advisory and the city is not unalterably bound by its provisions.** However, the recommendations should be entitled to **some weight**, particularly where the plan has been adopted by the legislative body although not implemented.

Id. at 74 (bold added). Assuming that the Stewartville comprehensive plan at issue here is essentially comparable to the one discussed in *Amcon,*[11] it is only "entitled to some weight" and does not unalterably bind the City. Further, I am persuaded by the City's argument that the present case is distinguishable from *Amcon*, in which the municipality "fail[ed]… to advance *any* rationale for not following its comprehensive plan." *Amcon* at 75 (italics added). Here the City has presented reasons for its decision which I find—as is set out below—legally and factually sufficient.

In the different but instructive context of the requirement of the Metropolitan Land Planning Act (MLPA) that comprehensive plans in conflict with zoning ordinances must be reconciled (when the comprehensive plan prohibits a property use that is permitted under the zoning ordinance), the Minnesota Supreme Court has noted that the legislature has "delegated to municipalities the power to determine and plan the use of land within their boundaries" (See *Mendota Golf,* 708 N.W.2d at 174 (Minn. 2006)); and ruled that it is within the municipality's "legislative discretion" to decide how to reconcile comprehensive plans and zoning ordinance conflicts.[12] A court that attempts to dictate how that reconciliation should be accomplished "interfer[es] with the exercise of legislative discretion." *Id*. Here Stewartville has discretion to reconcile the conflict, if there is one, by adhering to its zoning ordinance.

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[11] This assumption may be faulty: These "comprehensive plans" seem to carry more legal clout in the Metro area. Unlike Stewartville's, Eagan's comprehensive "master plan" was statutorily required and was submitted for approval of the Metropolitan Council. Furthermore, under the Metropolitan Land Planning Act (MLPA) there is a "statutory priority of comprehensive plans over zoning ordinances." *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W. 2d 162, 174 (Minn. 2006). Indeed, under the MLPA there is a "supremacy of the comprehensive plan vis-à-vis the zoning ordinance." *Id*. at 175. I claim no expertise in the operational differences between municipal land use planning in Metro counties versus Olmsted; but no one has suggested to me that here Stewartville's old comprehensive plan has "priority" or "supremacy" over its current zoning ordinance.

[12] The *Mendota Golf* court quoted with approval as follows: "[C]ourts do not undertake to control the manner in which official acts of a discretionary nature are to be performed;" and "since zoning is a legislative function, it is beyond the judicial power to rezone property from one classification to another". *Mendota Golf* at 174.

Let us turn to the reasons given by the City for the rezoning denial.

b. Legal Sufficiency of the Bases for the Rezoning Decision

Courts reviewing rezoning requests should focus "on the legal sufficiency and factual basis for the reasons given." *Swanson* at 313. "Legal sufficiency is established if the city council's decision not to rezone is reasonably related to the promotion of the public health, safety, morals and general welfare of the community." *St. Croix Dev., Inc. v. City of Apple Valley*, 446 N.W.2d 392, 398 (Minn. App. 1989).

In this case the City issued a written resolution with findings outlining four overarching reasons for the rezoning denial—(1) Poor maintenance of the existing Southern Hills MHC, indicating, in the view of the City, that the expansion would likely also be out of harmony with the appearance and character of the surrounding area; (2) inadequate service of essential public facilities, particularly police and public schools; (3) excessive public cost for additional facilities and services, and; (4) potential additional traffic congestion. The written resolution contained brief factual findings accompanying each basis.

With the possible exception of the first, these considerations appear on their face to be legally sufficient. The adequacy of, impact upon, and cost of public services such as police and schools are matters reasonably related to the public health, safety, and welfare of a community. Scarcity of public services is well established as a legally sufficient basis on which to deny a rezoning request. *See Concept Properties, LLP v. City of Minnetrista*, 694 N.W.2d 804, 819 (Minn. App. 2005) ("A land-use decision based on the scarcity of resources to support the proposed land use is not unreasonable."). Burden on traffic infrastructure has also been found to be a legally sufficient basis. *See Super America Group, Inc. v. City of Little Canada*, 539 N.W.2d 264, 267 (Minn. App. 1995).

Sun disputes in particular the relevance and legal sufficiency of one of the City's bases, a reason that figures importantly in my own analysis of the City's action: The impact on Stewartville's public schools. Sun argues that "Minnesota's zoning laws do not include any right for a City to make zoning and land use decisions based on school district enrollment or funding." *See* Sun's November 30, 2020 Reply Memorandum, pp. 20, 23-24. In support of this contention, Sun argues that Minn. Stat. Sec. 462.357, subd. 1 includes "no reference to 'school enrollment' or 'school funding' as legitimate objectives of zoning." Sun's Reply Memorandum, p. 20. At hearing Sun took the position that school issues are the exclusive concern of another governmental entity—the community's public school board—empowered by the legislature with sole authority over school operations. Sun argues that the City Council is improperly outside its lane if it makes zoning decisions based on considerations of impact on public schools. If the arrival of 300 new homes in Stewartville over a short time creates capacity problems for Stewartville's public schools, that is the school district's problem. So goes Sun's argument.

It is true that that Sec. 462.357, subd. 1, Minnesota's statutory authorization for municipal zoning, does not contain language about schools and public education. But the subdivision begins with the list of purposes for which *all* zoning is authorized in Minnesota: "For the purpose of promoting the public health, safety, morals, and general welfare, a municipality may by ordinance regulate" land use. Considerations relating to the availability, adequacy and quality of public schools would seem to fall well within any reasonable understanding of the term "public welfare." Sun has brought to my attention no case law specifically supporting its contention on this point.

One Minnesota Supreme Court decision endorses, at least tacitly, consideration of school issues. In *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W. 2d 623 (Minn. 2007), the court

reviewed the city's denial of an application to rezone a defunct golf course for residential development. "In support of its decision, the city council made numerous findings and conclusions, including concerns about **burdening an already overcrowded school system**…." *Id*. at 629 (bold added). The court went on to find that there was a rational basis for the city's decision, and its reasoning included the following passage:

> In addition, the city cited the disruption of surrounding neighborhoods due to increased traffic and burdens on the school system. The property owner does not contend that concerns about traffic and school overcrowding cannot be a rational basis to support a land use decision. Instead, the property owner argues that there is not factual support for these concerns in the record. We disagree. Our review of the record demonstrates factual support for the city's traffic and school population concerns.

Id. at 631.[13]

The property owner in *Wensmann* did not challenge, as Sun does here, the idea that public school considerations could play a legitimate part in a municipality's zoning decisions. But if "school population" concerns were in fact as unlawful a basis for municipal zoning decisions as Sun contends here, one doubts that fact would have so completely escaped the notice of the Minnesota Supreme Court in *Wensmann*. It seems only common sense that a municipality empowered to promote the "public welfare" may properly consider the impact of its land use decisions on a pillar of any community's welfare—its public schools.

Sun contends that, however legally sufficient the reasons given for the rezoning denial may appear on their face, they are all fundamentally pretextual. What is really going on, Sun argues, is that the City has "capitulated" to the "intense and misinformed citizen opposition to manufactured home parks." *See* Sun's November 16, 2020 Memorandum, p. 1. "The true

[13] The *Wensmann* court noted that: "With regard to the school population, the city's planning report noted that the middle school and high school currently exceed capacity and are anticipated to do so for the next five years, and the estimated additional students from the proposed development would 'add to the existing school capacity situation.'" *Id*. at n. 3.

reason for the City's denials," according to Sun, "was illegal bias against manufactured home parks." *Id*. at 31. Sun points out that a short time after rejecting Sun's expansion proposal, the City welcomed a new apartment building with development incentives, describing it as an answer to a housing shortage. Sun points to this disparate treatment and argues that it has not only been illegally discriminated against because its project is an MHC, but also denied Equal Protection under state and federal constitutions.

Some strong citizen opposition to Sun's expansion proposal was voiced at the Planning Commission and City Council meetings. And some of that citizen "trailer-park-stigma" commentary fits Sun's characterization of it as vague, uninformed, unsupported and biased. There is Minnesota case law indicating that generalized community opposition *alone* is not a sufficient basis upon which to base a zoning decision. *See,* for example, *Bartheld v. County of Koochiching*, 716 N.W.2d 406, 413 (Minn. App. 2006), a CUP case in which the court held that "vague, generalized concerns" of the community were not sufficient reason for a zoning decision. "'A [county] may consider neighborhood opposition only if based on concrete information.' *Yang [v. County of Carver],* 660 N.W.2d [828] at 833 [(Minn. App. 2003)] ; *see also Chanhassen Estates Residents Ass'n v. City of Chanhassen,* 342 N.W.2d 335, 340 (Minn.1984) (concluding that generalized or unsupported neighborhood opposition does not, by itself, provide a legally sufficient reason for a CUP denial)." *Bartheld* at 413.

But no case of which I am aware holds that mere expression of such views by citizens at a meeting of a public body so taints the proceedings as to, by itself, render invalid that body's decision. The City Council's resolution does not indicate, and I am not persuaded, that the City denied Sun's rezoning request because of citizen prejudice against MHCs and their residents, unsupported loss-of-property-value complaints, or other vaguely described reasons. Sun has

directed the court to no authority for the idea that, on a "record review" like this one, a court presented with legally sufficient, factually supported bases for a municipal body's zoning decision should look behind the stated reasoning to find a "true," nefarious basis for that action.

As for Sun's assertion that the smoking-gun proof of unlawful City bias is in Stewartville's very different handling of the apartment building, the two projects are too dissimilar for the Equal Protection / illegal anti-MHC bias arguments to persuade. The apartment building was 55 units; the MHC expansion 300. City officials stated that their concern was with the extraordinary size and pace of Sun's proposal; Planning Commission member Beyer summarizing that fundamental issue as follows: "[T]he expansion of 300 homes in a short amount of time would have a big impact for a community of 6,200."

The City described in its resolution legitimate and legally sufficient reasons for denial of Sun's rezoning application, concerns rationally related to the public health, safety, morals, and general welfare of the community.

c. Factual Sufficiency

Legal sufficiency is only half the inquiry. There must also be factual support in the record for the reasons stated by the City. Sun argues that the findings in the City's resolution are unacceptably vague, conclusory, and unsupported by sufficient underlying facts.

The City's resolution is brief. However, when reviewing a zoning decision, the court may review more than simply the formally drafted resolution document. In *Mendota Golf*, the Minnesota Supreme Court made clear that the reviewing court can consider other items in the decisional record:

> [F]ocusing solely on the language of the resolution is too narrow a focus. When a municipality renders a legislative decision, we can look beyond the city's resolution and review the minutes of relevant meetings and documents considered therein to determine whether the city had a rational basis for its decision.

Mendota Golf at 180. *See also Rochester Ass'n of Neighborhoods* at 888 (upholding city's decision on rezoning request made without written findings, based on council members' statements in the record).

I find that there is sufficient factual support for at least some of the City's cited reasons for the rezoning denial, and that the decision must therefore be upheld. I will not analyze here all of the bases the City stated for this decision—for example, I will not discuss reports of poor maintenance of the existing Southern Hills MHC, lack of "harmon[y]" with the surrounding area, or anticipated traffic congestion—because I need not.[14] Neither will I discuss allegations made to the Planning Commission and the City Council that were *not* relied upon as a basis for decision—the alleged negative effect on neighboring property values, for example. Rather, the court will focus on the two, closely related reasons for the City's rezoning decision that are most clearly factually supported by this record:

- 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.

[14] "Not all of the reasons stated need to be legally sufficient and supported by facts in the record." *Hubbard Broadcasting, Inc. v. City of Afton*, 323 N.W.2d 757, 765 (Minn. 1982) citing *Barton Contracting Co., Inc. v. City of Afton*, 268 N.W.2d 712 (Minn. 1978). "[T]he city's denial of [a] rezoning request is not arbitrary when *at least one* of the reasons given for the denial satisfies the rational basis test." *St. Croix Development,* 446 N.W. 2d at 398 (italics added).

i. Police Service

The City Council determined that the proposed MHC expansion would render inadequate the City's police service without significant increased public cost. This finding, the City argues, was supported by Sheriff Torgerson's statement "that approval of the rapid population expansion that would result from the proposal would require the City to pay for an additional Sheriff's deputy to be assigned to the City." *See* City's Response Memorandum, pp. 9-10. Counsel for the City takes a bit of license in this description: The Sheriff was more guarded in what he said about the second deputy. But Sheriff Torgerson plainly stated that, as the City grows, calls for police service and need for officers increase; that there is a "tipping point" at which a second deputy would be needed for Stewartville; and when asked whether approval of Sun's 300-lot expansion would "likely require the City to contract a second officer," he responded: "I think the likelihood is yes." This is exactly what the City Council's resolution says.

There is one full-time Olmsted County Sheriff's deputy currently assigned to Stewartville. It is not unreasonable to infer that adding a second would approximately double the cost to the City of its police protection. This reasonably predictable, significant increased public cost is a sufficient factual basis on which the City could rationally base a decision to deny the rezoning necessary for the MHC expansion. Sherriff Torgerson is a credible source of information for the City. His observations were backed by data gathered in recent years by his department. And what he told the City was unrebutted.

ii. Public Schools

The City also based its rezoning decision on the strain the proposed MHC expansion would place on Stewartville's public schools. Superintendent Selfors told the Planning Commission:

> Given the extreme situation, where over 300 homes added within five years and one of the statistics that I've read, I don't know if it's accurate was 1.5 children on average per home, so that would be 450 students. Would this district be able to absorb 450 students in three to five years? The flat answer is no.

CITY 000836

The only questionable aspect of Superintendent Selfors' analysis is her estimate of 450 new students potentially coming from the MHC expansion. The source of the 1.5 children-per-household multiplier she uses is unclear. She indicated that she "read" it somewhere; she questioned its accuracy; and she noted that enrollment had remained essentially unchanged during a prior addition of eighty new homes.

However, the 1.5 children-per-household number she talked about was not obviously outlandish to Superintendent Selfors. She trusted it sufficiently to use it as a basis for her public remarks. She is a professional public education administrator. The Planning Commission and City Council could reasonably gather that, as superintendent of Stewartville's school public schools, Ms. Selfors is keenly aware of the capacity of those schools, the district's student population, the number of households with children, and other information necessary to understand and gauge the likely impact that a new housing development of this size, arriving at this pace, would have on her school district. *See Communications Properties, Inc. v. County of Steele*, 506 N.W.2d 670, 672 (Minn. App. 1993) ("[I]n small communities, city officials may rely on their general knowledge of the area."). Superintendent Selfors' testimony, overall, clearly communicated her concern that the proposed MHC expansion would place serious stress on Stewartville's public schools:

> So 450 students in three to five years, there would be some very big challenges and difficult decisions that would have to be made. So when we consider the density and consider what would come along with that, I would encourage the Planning Commission to consider that piece. The more homes you place, the (inaudible) more children, it all falls together in that way.
>
> ***
>
> If any part of the community in which we gain 450 students in five years, that is a dramatic impact, dramatic impact on the school system, yes. I don't know that single family homes could pop up that quickly in three to five years, but a manufactured home community possibly could. 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. So it could be one extreme or the other, but the potential is there and it should be considered.

CITY 000836-38.

Perhaps if this writer had been a member of the Stewartville Planning Commission I might have pressed Superintendent Selfors on the numbers she discussed. But that is not the reviewing judge's role or standard of analysis in considering the type of challenge Sun makes here. "The setting aside of routine municipal decisions should be reserved for those rare instances in which the City's decision has no rational basis. Except in such cases, it is the duty of the judiciary to *exercise restraint and accord appropriate deference* to civil authorities in the performance of their duties." *White Bear Docking*, 324 N.W. 2d at 176 (italics added). Judgments as to the weight and persuasiveness of the information provided by the superintendent of Stewartville's public schools in her professional capacity are for the Council and Commission to draw.

Again, Minnesota courts uphold a municipality's decision to deny a rezoning request "unless the party challenging that decision establishes that the decision is unsupported by *any* rational basis related to promoting the public health, safety, morals, or general welfare." *Mendota Golf*, 708 N.W.2d at 180. "[E]ven if the city council's decision is debatable, so long as

there is a rational basis for what it does, the courts do not interfere." *Honn,* at 415. When a legislative decision is reviewed, "the challenger bears the burden of showing that the [city's] stated reasons are either without factual support in the record or are legally insufficient." *Larson v. County of Washington,* 387 N.W.2d 902, 906 (Minn. App.1986). Sun has not carried that burden here. The information given by Sheriff Torgerson and Superintendent Selfors provided rational bases for the City's decision to deny the rezoning requested here. As those bases are both legally and factually sufficient, the court finds that the City's decision was not arbitrary.

5. Review of CUP Denial

The threshold question regarding judicial review of the City's action on the proposed CUP is whether denial of the rezoning required and justified denial of the CUP as well. The City contends that it did. Seventy-nine[15] of the lots that would be part of the MHC expansion for which Sun requests a conditional use permit were proposed for an R-1 area in which an MHC is prohibited. *See* Stewartville City Code 1330.04 and 1335.04. Denial of the request to rezone that parcel from R-1 to R-3 meant that the 300-lot expansion proposed by Sun could not happen. If part of the proposed expansion fails, it all fails. So goes the City's argument.

Sun takes a different view, asserting that the two parts of its proposed expansion are "severable." Thus Sun contends that even if the court finds that the City's denial of the rezoning was proper (as I do), the court can and should still order approval of the CUP for the 221 lots in the R-3-zoned portion of the proposed expansion.

I find the City's argument more persuasive. First, it is not *entirely* clear from this record that the R-3 part of the expansion is actually a severable, stand-alone project that could be

[15] By my count 79 lots are in the R-1 area, as the project is depicted in CITY 000203-204. The R-1 lot count might increase to 80 or 81 if one examines instead the project configuration shown in CITY 000711.

approved on its own without the R-1 part.[16] But more importantly, what was presented to the City for consideration and decision was a single MHC expansion—the 300-unit project that lay partially in an R-1 district. The court's function here is to review the City's decision on the subject matter *actually placed before it for action*. It is not the court's role on review to now entertain and make a decision on a different, pared-down partial project that the City never had an opportunity to study and consider.

The situation would be altered if Sun had in fact presented a smaller alternative for either the Planning Commission or the City Council to contemplate and act on. But it did not. Indeed Sun expressly passed up an invitation to consider doing so. The record reflects that it was *Sun's* decision, not the City's, that the full 300-lot expansion would be the subject matter considered by the Planning Commission and City Council. This was despite the fact that the Planning Commission and City Council made plain, at various points in the process, that the

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[16] Stewartville's Zoning Ordinance contains open space requirements that *may* be satisfied only if both the R-1 and R-3 portions are approved; on this record the court cannot be sure. Stewartville City Ordinance 1375.18 Subd. (E)(11) requires, at minimum, "a total of twenty thousand (20,000) square feet [of open space] for each fifty (50) manufactured home lots, or an equal portion thereof." Further, it requires minimum square footage for each individual open space area: "recreational areas shall be a minimum of ten thousand (10,000) square feet in area." 300 lots would require 120,000 square feet of open space; and Sun's materials indicate that either 230,225 square feet (CITY 000204, dated August 30, 2019) or 390,764 square feet (CITY 000861, dated November 27, 2019)—the different numbers are from plans showing the two different configurations of the project—would be provided. Both open space figures are well in excess of the minimum open space required for the 300 lot project as a whole.

However, a response in the EAW to public concerns about density and adequacy of open space indicates that inclusion of the R-1 section of the Development Property (rezoned to R-3) *may* be required to meet open space requirements for the entire project:

> The proposed project is requesting **a zoning change for the northwest portion of the site, which would allow for a higher density of units for the entire development.** This needs to be approved by the City of Stewartville as part of the project review. The current design will incorporate public and open spaces that conform with minimum City requirements.

CITY 000696 (bold added). This answer suggests the possibility that the R-3 portion *might* be dependent on the R-1 portion to provide adequate open space; and that standing alone the R-3 portion would possibly be in violation of the ordinance. I do not place a great deal of weight on this, however, because, from the record provided, the Court cannot determine whether the R-3 portion has enough open space of its own to be viable as a stand-alone development.

large size and fast pace of the proposed development were key concerns because of the potential for strain on public resources and services.

As is described above, Sun representatives were specifically asked by a Planning Commission member at the December 2, 2019 meeting whether "Sun Communities was open to lowering the density / number of lots…and…what the number that they were willing to live with was." What was at stake with this question was unmistakable: That same Commission member stated: "[S]peaking on behalf of the Planning Commission, 300 isn't an acceptable number." CITY 000866. Yet Sun's representative indicated a smaller project was not on the table:

> Bennett responded that lowering the density hasn't been considered and noted that 300 is less than what would be allowed. He mentioned again that the amount of open/green space is actually higher than what is required by city ordinance. Bennett noted that the last expansion (71 lots) was filled in just over 2 years and that they couldn't create the housing fast enough. He noted that they feel they can fill 5 sites in a month.

CITY 000866.

After its vote to recommend denial of rezoning, the Planning Commission asked Sun representatives whether they would like to "proceed further with the Conditional Use or…take time to reconsider the proposal." Here was another opportunity to present the smaller, R-3-only version of the expansion Sun now advocates the court should address. But Sun opted to proceed with the CUP vote, making clear that the only proposal with which it wished to now "move on to City Council consideration" was the rezoning-required 300-unit expansion. *See* CITY 000867.

As a result there was no R-3-only option for the City to take up and for this court to review. Therefore the City studied only a single project of a particular scale—300 lots. An EAW was not completed on a smaller alternative; and the Sherriff, Superintendent, and public did not comment on anything smaller than 300 lots. The engineering, storm water, traffic, and

environmental studies were all conducted on the whole project's footprint. R-1 and R-3 portions were not studied separately nor were compartmentalized findings made.

Sun has presented no authority supporting the idea that the court may review and approve a 221-lot, CUP-only request that never went before either the Planning Commission or City Council. If the court were to now "sever" the CUP-only portion of the project as Sun advocates, and determine that that project alone should be approved, the court would be making a decision on a question and a project not yet placed before the City. But in Minnesota *municipalities* make such decisions in the first instance; and the role of the court is only to *review* those decisions.

In sum, the City was presented one project—a 300-lot expansion. Once it had denied, for legally and factually sufficient reasons, the rezoning necessary for the R-1 portion of that expansion, its denial of the CUP and plat for the R-3 portion of that expansion was rational.

Conclusion

On this record the court cannot reverse the City's decisions. The City's motion for summary judgment is therefore granted, and Sun's is denied.

J.F.C.

Assistance with research and writing provided by Ingrid Bergstrom, J.D.