

**STATE OF MINNESOTA
COUNTY OF HOUSTON**

**DISTRICT COURT
THIRD JUDICIAL DISTRICT**

Court File No. 28-CV-14-425
Assigned Judge: _____

Donna Buckbee, Susan van Gorp, Chad
Oness, Steve Hartwick, Bruce
Kuehmichel, Lorraine Culver, and Jackie
Baker,

Petitioners,

v.

Houston County, its Board of
Commissioners, Board Chair Theresa
Walters, Commissioner Judy Storlie,
Commissioner Justin Zmyewski,
Commissioner Steve Schuldt, and
Commissioner Dana Kjome,

Respondents.

WRIT OF MANDAMUS

The State of Minnesota to the County Board of Houston County, its Chair
Theresa Walters, and its Commissioners Judy Storlie, Justin Zmyewski, Steve Schuldt,
and Dana Kjome, Greeting:

Whereas it manifestly appears to the Court by the petition of Donna Buckbee,
Susan van Gorp, Chad Oness, Steve Hartwick, Bruce Kuehmichel, Lorraine Culver, and
Jackie Baker, that:

1. At the times herein mentioned Houston County (hereinafter "County")
was and still is a duly organized county of this state and the defendant Theresa Walters is
the chair of the county board of said county, and Judy Storlie, Justin Zmyewski, Steve
Schuldt and Dana Kjome are commissioners of said county.

2. Peititioners are each taxpayers of Houston County, and are otherwise
adversely affected by the matters addressed here as set forth below.

FILED

JUN - 2 2014

COURT ADMINISTRATOR
HOUSTON COUNTY, MN

3. Your petitioners have no plain, speedy or adequate remedy in law with respect to the matters set forth in this petition.

4. Petitioner Donna Buckbee resides at 5853 Ferndale Road, Rushford, Minnesota, within two miles of the Erickson mine, and is concerned about the human health and social impact to the area, decreased property values and affect on surface and ground water from the Erickson mine.

5. Susan van Gorp resides at 4382 Ferndale Road, Rushford, Minnesota, which is one-quarter mile from the Erickson mine. Ferndale Creek flows through her property.

6. Steve Hartwick, resides at 23584 County Road 26, Houston, Minnesota, and Chad Oness, resides at 15707 Paradise Drive, Houston, Minnesota. Both are concerned about the effect of the Erickson mine on nearby trout streams.

7. Jackie Baker resides at 22848 State 16, Rushford, Minnesota, which is approximately 700 feet from the Erickson mine. She is concerned about noise and dust and truck operations from the Erickson mine, mine hours of operation, whether the mine will follow set back requirements, and reduced property values caused by operation of the Erickson mine.

8. Bruce Kuehmicel resides at 1105 East Caledonia Street, Caledonia, Minnesota. He is concerned about the mine causing adverse affects on the scenic beauty of the area and polluting the ground water.

9. Lorraine Culver resides at 101 West Spruce Street, Houston, Minnesota. She is concerned about the mine causing adverse affects on the scenic beauty of the area and dangerous traffic situations.

10. Houston County has adopted an ordinance to regulate the use of land within the County, which ordinance is known as the Houston County Zoning Ordinance (hereinafter "Zoning Ordinance" or "Ordinance").

11. The Ordinance provides in Section 27 for the regulation of mining operations within the County; and there requires that there be a conditional use permit for mining and processing of minerals, including sand within the County. Ordinance, section 0110.2704.

12. An application for a conditional use permit for mineral extraction must contain identifying information for the applicant, applicant's interest in the land, legal description, number acres to be mined, maps, an operational plan, a reclamation plan, and an estimate of duration of mining. Ordinance, section 0110.2704, subd. 1.

13. A conditional use permit approved for mineral extraction is valid for a period of five years. Ordinance, section 0110.2710.

14. A conditional use permit may be renewed for a subsequent five-year period upon written application to the Zoning Administrator, provided that the operator is not in violation of either the provisions of the conditional use permit or of other County ordinances. Ordinance, section 0110.2711.

15. One Alan Thorson received a conditional use permit to operate a mine at a site in Yucatan Township in 1992. The mine site is now known as the "Erickson" mine. The permit was renewed on the five-year anniversary in 1997, 2002, and 2008.

16. The 2008 permit expired on January 8, 2013. After this date, Erickson had no right or claim to operate under any conditional use permit regarding the mine property.

17. The mine property was transferred from Thorson to Erickson in December 2009. No formal action was taken to transfer the conditional use permit.

18. In or about 2012, Erickson leased the mine property to an entity known as Minnesota Sands. No application to assign or transfer a conditional use permit was filed with the County in regards to this lease.

19. In May 2012, Minnesota Sands filed several documents associated with an application for a conditional use permit, which documents are described as an Operation & Reclamation Plan. At this time Minnesota Sands filed other applications with other regulatory bodies. The applications were apparently filed by and in the name of Minnesota Sands, as lessee in possession of the mine property.

20. On July 10 2012, Houston County, by its Zoning Administrator, issued a stop work order against the Erickson mine stating that the mine had commenced operations in violation of the then existing conditional use permit. The Stop Work Order was amended on July 17, 2012. The purpose of a stop work order is to identify violations of a conditional use permit and direct that such violations cease.

21. In July 2012, Houston County denied modification, amendment, and renewal of the Erickson mine conditional use permit.

22. Minnesota Sands and Erickson appealed the stop work order and denial to the District Court for Houston County in Civil Action no. 28-CV-12-729. In its appeal, plaintiffs sought a preliminary injunction against the County

23. The District Court, by Judge Walters, denied the motion for a preliminary injunction by order issued November 27, 2012.

24. In January 2014, the District Court dismissed the case with prejudice when Minnesota Sands and Erickson declined to proceed with the action.

25. Minnesota Sands filed no further application to renew the existing conditional use permit after its initial filing to expand operations was rejected.

26. At several times, Minnesota Sand and/or Erickson expressed an intention to seek renewal of the 2008 conditional use permit, but neither had filed a complete, written application containing information required by the Ordinance to renew the permit before the permit expired.

27. In its Answer to First Amended Complaint, Houston County stated that as of December 19, 2012, no separate formal written application for a conditional use permit beyond January 8, 2013, for the Erickson mine had been received by the County.

28. As of one year later, no formal written application for renewal of the existing conditional use permit had been filed with Houston County.

29. On May 14, 2013, the attorney for Houston County wrote to the Zoning Administrator, stating that: "[T]he most recent CUP expired at the being of this year;" and "[T]here is no existing CUP that would allow mining."

30. On May 17, 2013, the Houston County Zoning Administrator wrote to Erickson stating that: "[T]he most recent CUP expired at the beginning of this year."

31. In or about February 2014, Erickson claimed the lease with Minnesota Sands was terminated and filed a document attempting to renew the expired conditional use permit.

32. There is no existing conditional use permit for the Erickson mine to renew.

33. On May 28, 2014, the Houston County Planning Commission recommended to the County Board that a conditional use permit be issued to Tracie Erickson for the Erickson mine. The County Board intends to take up the recommendation at a meeting to be held on Tuesday, June 3, 2014.

34. The recommendation of the Planning Commission does not address violations of the 2008 permit that exist and are documented in the records of the Houston County Planning and Zoning Department, and no hearing has been held to review such violations.

35. On March 20, 2012, the Houston County Board amended its Zoning Ordinance to adopt a temporary moratorium "on the issuance of any conditional use permit for new silica sand mining or accessory uses."

36. The County Board amended and extended the temporary moratorium on July 24, 2012, March 5, 2013, and January 28, 2014. The July 24, 2012 amendment broadened the scope of the moratorium to include "all silica sand process operations that are not expressly authorized by the terms of an existing conditional use permit." The January 28 resolution extends the moratorium through January 8, 2015.

37. A new application for a conditional use permit for the Erickson mine is subject to the moratorium ordinance and new state laws regulating and restricting silica sand mining; and cannot be heard before the County Board at this time.

38. The Ordinance provides in section 0110.1001, subd. 8, that any taxpayer of the County may institute mandamus proceedings to compel specific performance of any duty required by the Ordinance.

Therefore you are commanded immediately after the receipt of this writ to:

1. Inform Erickson that the conditional use permit issued January 8, 2008, has expired.
2. Declare that there is no existing conditional use permit for the Erickson mine that may be renewed.
3. Reject and return any alleged application for renewal of the conditional use permit issued January 8, 2008.
4. If it elects to accept any filing for a conditional use permit for the Erickson mine, treat any such application for a conditional use permit filed for the Erickson mine, as a filing for a new conditional use permit which is subject to and requires compliance with current state law.

5. If it elects to accept any filing for a conditional use permit for the Erickson mine, treat any such application for a conditional use permit filed for the Erickson mine, as a filing for a new conditional use permit which is subject to the moratorium suspending new applications for sand mining until 2015;

or to show cause before this Court, at a special term thereof to be held at the court house, in the City of Caledonia, on Friday June 6th, 2014, at 9:00 o'clock A.m., why you have not done so, and that you then and there make return to this writ with your certificate on such return of having done as you are commanded.

Witness the Honorable Robert B. Brianson, judge of District Court, and the seal thereof, this 2nd day of June, 2014.

Darlene L. Larson
Clerk
Court Administrator