

**STATE OF MINNESOTA**  
**COUNTY OF ST. LOUIS**

**DISTRICT COURT**  
**SIXTH JUDICIAL DISTRICT**

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Stop the Hermantown Data Center, LLC,

Case Type: Civil

Court File Number: \_\_\_\_\_

Plaintiff,

vs.

City of Hermantown,

**COMPLAINT**

Defendant.

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**INTRODUCTION**

This action arises from Defendant’s arbitrary and capricious actions taken in violation of Minnesota law in drafting and approving their 2045 Comprehensive Plan and rezoning the Adolph neighborhood of Hermantown. Plaintiff Stop the Hermantown Data Center seeks declaratory and equitable relief in the form of a writ of mandamus vacating the 2045 Comprehensive Plan and all subsequent land use decisions in the Adolph area, including rezoning of property. The City’s actions in approving the changes to the 2045 Comprehensive Plan and the rezoning of the Adolph area were not only arbitrary and capricious but were done in secret and in bad faith to assist the developer of a hyperscale data center. The approximately 70 homeowners in this residential area are now facing a substantial reduction in the value of their homes and property as a result of the rezoning — a result that was clearly foreseeable when the City essentially spot zoned an

incompatible industrial use in the middle of a rural residential area with forests, wildlife, streams and wetlands.

Plaintiff Stop the Hermantown Data Center formed quickly in response to the disclosure of the plans for the hyperscale data center in September of 2025. The residents did not learn about the development from the City, as would be expected, but rather from an investigative report in the Minnesota Star Tribune. The report revealed that for well over a year-and-a-half, the City had been surreptitiously collaborating with a developer —eventually disclosed to be Google — to ensure the development of a data center in the Adolph area.

Residents immediately began attending Council meetings to voice their concerns and frustrations over the lack of information provided by the City, but they were met with silence and obfuscation. The City appears to have no interest in the health, safety or welfare of the people directly impacted by this development.

The secrecy exposed by the City has been attributed to Non-Disclosure Agreements (NDAs) signed on May 31, 2024, by City Administrator, John Mulder, and Assistant City Administrator, Joe Wicklund with the Developer. Operating as if they are restricted by the NDAs has led to the City repeatedly misrepresenting and denying information regarding the existence of the data center project. Additionally, the City has violated the Minnesota Open Meeting Law, Minn. Stat. § 13D, by closing meetings on at least three occasions, March 3, March 17, and June 16, 2025, all of which occurred during the time the City was actively working in secret with the developer and drafting the needed changes to the 2045 Comprehensive Plan.

The City has abandoned its ethical and legal responsibilities to its residents in favor of assisting Google with their data center. The City knowingly and willfully repeatedly took actions in furtherance of the development that intentionally circumvented Minnesota's Open Meeting Law

(OML) and the Minnesota Government Data Practices Act (MGDPA), and resulted in both malfeasance and nonfeasance in contradiction to their duties and responsibilities as public officials and in violation of the residents' procedural and substantive due process rights under the State of Minnesota Constitution.

In addition to a writ of mandamus vacating the 2045 Comprehensive Plan and all subsequent land use decisions in the Adolph area, including rezoning of property in the Urban Services Boundary Future Expansion Area of the proposed data center site, Plaintiff seeks declaratory relief, costs and equitable relief, including an Order finding the City in violation of the OML, ordering the City to produce the tapes of the three aforementioned closed meetings for an in camera review by the Court to determine if there were further violations of the OML, and an award of reasonable costs, disbursements, and reasonable attorney fees of up to \$13,000 for violations of the OML.

### **PARTIES**

1. Plaintiff, Stop the Hermantown Data Center, Inc. (SHDC), is a non-profit organization comprised of residents of Hermantown, Minnesota, and surrounding affected communities.

2. Defendant City of Hermantown is a municipal corporation under the Minnesota Constitution, article XII, section 4, located in St. Louis County, Minnesota.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the claims asserted under Minn. Stat. § 484.01, subdivision 1; Minn. Stat. § 555.01; and Minnesota Rule 4410.0400, subpart 4.

4. Venue is proper in this Court under Minnesota Rule 4410.0400, subpart 4, as the County where the proposed project would be undertaken.

### **FACTUAL BACKGROUND**

5. The City of Hermantown, hereinafter referred to as the “City” was incorporated in 1975. The City is a statutory city governed by Chapter 412 of the Minnesota Statutes and led by a City Council consisting of an elected Mayor and four elected council members. The Mayor is a voting member of the Council.

#### **The History of the Adolph Neighborhood Small Area Plan**

6. In 2015, the City adopted the Adolph Neighborhood Small Area Plan, hereinafter the “2015 Plan”, as an amendment to the City’s 2001 Comprehensive Plan. At that time, there was concern that the area needed additional protection to maintain its rural character.

7. The area studied for the 2015 Plan included a 3.5 square mile area located in the Southwest corner of the City, centered by the intersection of Highway 2 and Midway Road – known as Adolph. Adolph is further described as largely undeveloped and rural with many long-established families. Residents reported that the longevity of their neighbors, rural character with open space, and history of the area, are key attributes of the Adolph area.

8. The 2015 Plan noted that the Adolph area included several zoning districts, with the largest being S-1 Suburban, which applied to most of the western half of the study area. The predominant land use in the study area was noted as undeveloped land, with 70 single-family housing structures in the study area. The plan specifically noted that there are areas outside of the City boundaries that are not included in the study area but that share a border with the area, including additional residential properties located in both Midway Township and Solway Township.

9. Additionally, a significant amount of the Adolph area was covered by a Shoreland Overlay (SO) zone because several rivers and streams cross through the area. In fact, a recent article in the Minnesota Star Tribune stated that the Minnesota Pollution Control Agency had conducted a four year study of the Midway River Watershed that originates in Hermantown and is concerned that the Google data center could harm healthy, newly discovered brook trout streams flowing through the area's watershed. According to the article the MPCA has sent a copy of its report to the City.

10. The 2015 Plan was developed with the help of a Steering Committee comprised of several community members selected by the City. The 2015 Plan's vision and recommendations included, expanding and protecting the rural character and history of the Adolph study area and maintaining traditionally rural land uses.

11. Specifically noted in the 2015 Plan was that the existing light industrial zone did not reflect the demands and desires of the area and that many of the businesses located within the M-1, Manufacturing and Light Industrial zone, were non-conforming uses and many of the lands zoned M-1 were not suited for light industrial development due to wetlands, lack of public utilities, and poor transportation access.

12. The decision to locate the data center in Adolph was made with total disregard for the 2015 Plan and its stated goals of limiting development and retaining the rural character of Adolph. The 2045 Comprehensive Plan completely overrides the most important elements of the 2015 Adolph Neighborhood Small Area Plan.

### **The 2045 Comprehensive Plan**

13. In September 2022, the City began meeting to draft a new Comprehensive Plan, hereinafter the "2045 Plan". The City hired the consulting firm, Hoisington Koegler Group, Inc.

The City included detailed information on its website about the various steps in the process and the desire for public input. A Steering Committee, made up of City residents and businesspersons, was appointed, some of whom were also members of the 2015 Plan Steering Committee, including Jonathan Thornton, a citizen member of the committee.

14. The 2045 Plan's Steering Committee included City residents: Joe Peterson, a now-sitting City Councilor, Jonathan Thornton, Beth Wentzlaff, a now-sitting member of the Planning & Zoning Commission, JP Brooks, Karen Pionk, Micki Mojtyasiak, Bart Porter, Sam Clark, Lynne Williams, and Sandi Peterson.

15. The City's Project Staff Team included Gloria Nelson, then-sitting City Councilor, John Mulder, City Administrator, Joe Wicklund, Assistant City Administrator, Eric Johnson, Community Development Director, David Bolf, City Engineer, Northland Consulting Engineers, and Paul Senst, Public Works Director.

16. The 2045 Plan Steering Committee met on September 27, 2022, June 1, 2023, July 19, 2023, April 9, 2024, May 16, 2024, and July 11, 2024, to review materials and discuss the needs and desires of the community with regards to the future plans for development and zoning. At no point during the planning process was there ever a discussion about changing the rural character of the Adolf area from S-1 Suburban to Business Light Manufacturing.

17. When the Steering Committee met on July 11, 2024, the meeting agenda included "Draft Land Use Goals" and identified numerous remaining project tasks still to be completed. Goals included developing the draft 2045 Plan document by July to September 2025 and having approval of the final 2045 Plan occur by October to November 2025.

18. The Steering Committee never completed these tasks however, because from that point forward the City decided to eliminate citizen input from the process. No additional meetings

were scheduled after July of 2024 and the City did not consult any further with the Steering Committee, not even giving them an opportunity to review the final draft of the completed 2045 Plan.

19. Although no reason was ever provided to Steering Committee members as to why they were removed from the process, and in fact, the Steering Committee members were never officially notified by the City that they were no longer a part of the process, documents reveal that by July 2024 City staff had already begun working covertly with the developer of the hyperscale data center. So, without the Steering Committee and in contradiction of the detailed planning process set out on the City's website, City staff took over the drafting of the 2045 Plan. The entire vision of the Adolph area as defined in the 2015 Plan was changed by rezoning the area, including a large section City staff determined should be rezoned as Business Light Manufacturing (BLM). These changes were needed by Google and Minnesota Power to move forward, unhindered by the 2015 Adolph Plan. This was all done with no input from the Steering Committee that was initially said to be so essential to the process.

20. The City was informed by an email on February 28, 2025, from Leila Bunge, of Kimley-Horn, who was conducting the AUAR environmental review, that she did not believe the City's existing Comprehensive Plan would justify the development of the data center. Bunge's email to Community Development Director Eric Johnson further advised that changes would need to be made to it before she could proceed with the review.

21. The author of the changes to the 2045 Plan is now known to be Chad Ronchetti, the City's Economic Development Director. During public comments made at a Solway Township meeting he attended on October 14, 2025, Ronchetti stated that he had modified the 2045

Comprehensive Report after the Steering Committee was adjourned and that he did not invite the Steering Committee to review the report prior to introducing it to the Planning and Zoning board.

22. By April of 2025, six months earlier than the original timetable set out by the City, the 2045 Comprehensive Plan had been drafted and was scheduled to be presented to the Council.

23. At the April 21, 2025, Council Meeting, City staff presented the 2045 Plan — a glossy, 94-page booklet full of pictures, graphs, and repetitive language – including language emphasizing the importance of the Steering Committee in the process. In fact, the names of the Steering Committee members are prominently listed first in the Acknowledgment Section at the beginning of the 2045 Plan. This is clearly intended to give the public the impression that the Steering Committee had been involved throughout the process and had approved, or otherwise supported, the 2045 Plan as submitted.

24. In fact, the Steering Committee is mentioned at least 12 times in the 2045 Plan, including as part of the community engagement phase and in introductions to at least four different sections of the Plan. The City cites to its consultation with the Steering Committee to set goals and strategies, without noting that consultation with the Steering Committee had ended over eight months before the final draft was completed. The City allowed for the misrepresentation of the Steering Committee’s approval, support, and recommendation of the 2045 Plan — knowing full well that the Steering Committee had never even been asked to review the final draft.

25. The changes to the Adolph area appear to be intentionally buried within the 94-page document.

26. The 2045 Comprehensive Plan was approved by the Council at the April 21, 2025, meeting by unanimous vote — even after two long-term residents, Tim Resberg and Michael Ralph, spoke during the public comment period and asked repeatedly and very directly if this had

anything to do with a data center. The Council remained silent as they witnessed City Administrator Mulder and Mayor Boucher deny what they knew to be true regarding the changes to the 2045 Plan and the plans for the data center development.

27. In the process of drafting and approving the 2045 Plan essential information was hidden from the public and public input was ignored. The Council was aware of the misinformation stated on their behalf to the public.

28. Now, just one year after approving the new 2045 Plan, the City announced at the April 21, 2026, Planning and Zoning Meeting, that the 2045 Plan needs amending to change the Urban Services Boundary area and other changes it has determined are necessary for making infrastructure changes needed for the data center development.

#### **The Non-disclosure Agreements – (NDAs)**

29. On May 31, 2024, City Administrator Mulder and Assistant City Administrator Wicklund signed NDAs, with the developer of the data center, on behalf of the City.

30. Under Minnesota law and City Code, the authority to contract is with the Council. Mulder and Wicklund did not have Council approval to sign the NDAs. The NDA specifies that it must be signed by someone with the authority to represent the parties and neither Administrator Mulder, nor Wicklund, had authority to sign the NDAs on behalf of the City nor obligate the City to its terms.

31. The NDA identifies the City of Hermantown as the “Participant” and Mortenson Development, Inc. as the “Company,” and as the signatory of the NDA. The NDA defines the Company as an agent for a third-party client — now known to be Google or some subsidiary of Google. The NDA empowers the Company to act on the Client’s behalf in connection with the Transaction —which is now known to be the plans for the data center development.

32. The NDA designates the unnamed Client (Google) as a third-party beneficiary and grants the third-party beneficiary joint and several rights to enforce the terms of the NDA against the Participant, which is the City.

33. Neither the City, City staff, nor the Council were ever bound by the NDA as it was not a legally executed contract and violates the MGDPA.

34. After signing the NDAs on May 31, 2024, the City Administrator and Assistant City Administrator operated as though all information regarding the data center development was confidential and it appears from records that involved City staff operated as though they were subject to the terms of the NDAs as well — conducting communications and planning in secret and withholding information about the data center development from the public.

35. The NDAs were intentionally used to circumvent the requirements of Minnesota's open meeting laws, the Data Practices Act, and to hide the information from the public by redefining public information as confidential.

#### **Open Meeting Law Violations – Improperly Closed Meetings**

36. During meetings on March 3, March 17, and June 16, 2025, the Council unanimously approved motions to close the meetings pursuant to Minn. Stat. § 13D.05, Subd. 3(b)(3) to develop or consider offers or counter offers for the purchase of real property. The Council did not identify on the record the real estate being considered for discussion prior to closing the meetings and did not provide a list to the public of all persons and Council members attending the meeting as required by Minnesota law. Because of the closed nature of the proceeding, it is unknown what real property was discussed or whether the real property discussed is, or was, related to the data center development.

### **Open Meeting Law Violations – Serial Meeting Violations**

37. Minutes of Council meetings from May 2024 through September 2025 indicate that no information or discussion concerning a possible data center development occurred during an open Council meeting. The Mayor was not informed of the data center project until September of 2024 and it is unknown when the Council was informed. Despite the lack of any open discussion regarding the matter, numerous decisions were made by the Council that involved the data center project.

38. Minutes of Council meetings from May of 2024 through September of 2025 indicate that no information or discussion concerning amending the Comprehensive Plan to include changing zoning of the Adolph area occurred during an open Council meeting, yet the changes were in the final 2045 Comprehensive Plan the Council unanimously approved.

39. The Council members and Mayor either obtained information necessary to allow them to make decisions regarding moving the project forward through serial communications in violation of the Minnesota Open Meeting Law (OML), or they approved the changes to the 2045 Comprehensive Plan, including the changes to zoning in the Adolph area, in an arbitrary and capricious manner by voting without any knowledge on the issue.

40. At the July 7, 2025, Council Meeting, the Council considered several resolutions for actions that were clearly intended and needed for moving forward on the data center project. Again, without any discussion, the Council voted unanimously in favor of the resolutions. These included a Resolution Accepting Large Specific Project Scoping Document and Authorizing the Preparation of the Draft Alternative Urban Areawide Review (AUAR) Document for the Section 31 Hermantown Industrial Project. The Council members and Mayor either obtained information necessary to allow them to make decisions regarding these matters through serial communications

in violation of the OML, or they approved the requests in an arbitrary and capricious manner by voting without any knowledge on the issue.

41. At the October 20, 2025, Council Meeting, over 200 people filled City Hall, and sixty-four individuals spoke during the public comment period — most of them voicing opposition to the rezoning or requesting the Council at least table the ordinance for further review. Following public comments that lasted nearly five hours, the Council, knowing full well that the change was intentionally being made to assist with the rezoning needed for the data center development project and without any discussion or attempt to address the issues raised by the residents, voted unanimously to approve the rezoning. The Council members and Mayor either obtained information necessary to allow them to make decisions regarding these matters through serial communications in violation of the OML, or they approved the requests in an arbitrary and capricious manner by voting without any knowledge on the issue.

#### **Acts of Bad Faith and Malfeasance by the City**

42. In mid-January of 2025, Robert Kohlmeier, a decades-long resident, whose 15 acres directly abut the proposed development was contacted by the Developer concerning possible sale of his land for an industrial project. Mr. Kohlmeier attempted to contact the City for clarification of the project. He sent two emails to Community Development Director Eric Johnson, and a text message to Mayor Boucher, asking whether the project had to do with a data center.

43. Director Johnson, knowing the truth of the situation, emailed City staff and Mayor Boucher seeking guidance as to how to respond and noting that he intended to respond that the only application the City has received in this area is for a wetland delineation, in the fall of 2024 and otherwise suggesting the resident contact Chris Bates at Mortenson with his questions. Mayor Boucher, also knowing the truth of the situation, responded that he should leave out the suggestion

to contact Mortenson or their representative. In the end, the City did not respond to Kohlmeier's inquiries.

44. During the April 7, 2025, Council Meeting when discussing an amendment to change the definition of Business Light Manufacturing (BLM) zoning to include "communication service facilities" Community Development Director Johnson, knowing full well that the change was intentionally being made to assist with the rezoning needed for the data center development project, stated that the City was looking at different trending industries — merely preparing for a hypothetical, future project.

45. At the April 21, 2025, meeting, again while discussing an amendment to change the definition of Business Light Manufacturing (BLM) zoning to include "communication service facilities" the City made numerous misrepresentations to the public. Specifically, when responding to inquiries from the public regarding the need for the changes, Director Johnson repeatedly misrepresented the information even though he had intimate knowledge that the changes were necessary to ensure the data center project would be able to continue, including the following:

- a. During his comments regarding changing the definition of BLM zoning to include "communication services facilities", he stated "we just thought it was just proactive that we be able to add communication facilities to our definitions and then look into where these could occur at a later date." Notably, on October 21, 2025, Harmony Group, one of the entities working on the project, submitted a Commercial Industrial Development Permit request for a Communication Services Facility from the Planning Commission.

- b. Regarding the amendment to change the zoning of 14 parcels owned by Minnesota Power or the Rendfeld Land Company from S-1 Suburban to BLM, he attempted to lead the public to believe the purpose of the amendment was to simply align existing uses by Minnesota Power to BLM, knowing full well that there was no need to make such zoning changes for Minnesota Power and that the real reason for the changes was to pave the way for a data center to be powered by Minnesota Power's substation in that specific area.

46. City Administrator Mulder also made knowingly false and misrepresentative statements at the April 21, 2025, meeting — specifically to Tim Resberg and Michael Ralph, who were in attendance at the meeting. Notwithstanding his knowledge to the contrary, Mulder repeatedly denied any knowledge of a data center and told them it was a private land sale that the City knew nothing more about. Mayor Boucher, who had been aware of the data center planning and development for at least six months, echoed Mulder, and denied the City's planning was related to the development of a data center.

47. The Council sat silently during the misrepresentations made at the April 21, 2025, meeting and without any discussion or attempt to address the concerns of the public or correct the statements of City staff and the Mayor, voted unanimously to approve each amendment that came before it in furtherance of the data center development.

48. During the December 15, 2025, meeting, the Council was asked to execute a second amendment to an engineering agreement for consulting services to address a second water connection. Resident Paul Fish asked the Council if the extension of the waterline had anything to do with the proposed data center. Mayor Boucher, fully aware of the truth of the matter,

responded that it did not, however, there are emails indicating that the extension is clearly for the data center development.

**The City's Actions Were Arbitrary and Capricious in Amending  
the Comprehensive Plan and Rezoning the Adolph Area**

49. At the public hearing on October 20, 2025, to rezone a portion of the Adolph area from S-1 Suburban to Business Light Manufacturing, a large majority of the citizens and property owners who spoke objected to the rezoning to allow a data center. Many of the property owners stated that the development would substantially diminish the value of their homes and property. In spite of the repeated claims by the property owners, the Council failed to investigate or have the City staff investigate the impact of the rezoning of a data center site on surrounding property values. Rather, the Council sat mute and passed the ordinance without knowledge as to what impact the data center would have on property values.

50. Based on information and belief, the rezoning and proposed data center has caused a dramatic drop in price listings for homes in the area. For example, a home which is located next to the data center site was listed for sale in August 2025. News of the data center came out in September 2025. There was no activity on the listing, and the home was taken off the market in October 2025. The home was relisted in March 2026 at a reduced price. There have been several showings but no offers with buyers expressing concerns about the data center development.

51. Minn. Stat. Sec. 462.357, Subd. 9 provides that a city such as Hermantown that is outside the Twin Cities metropolitan area, when adopting official controls such as rezoning “SHALL consider restricting new residential, commercial, and industrial development so that the new development takes place in areas subject to the following goals and objectives” as outlined in the statute (emphasis added). The goals and objectives outlined in the statute which would limit light manufacturing rezoning in the Adolph area are: minimizing the fragmentation and

development of forest, wildlife, and open space lands, including consideration of appropriate minimum lot sizes, minimizing further development in sensitive shoreland areas, and encouraging development close to places of employment, shopping centers and other public and private service centers.

52. The Adolph area is exactly the type of area Minn. Stat. Sec. 462.57, Subd. 9 is designed to protect. The area consists of approximately 70 homes located in a forested area with many streams and wetlands along with abundant wildlife. The statute is meant to protect the fragmentation and development of such areas. In this instance the City's rezoning for the data center has done the opposite. It has essentially allowed spot zoning of a large incompatible, industrial use in the existing rural area which surrounds the rezoned property.

53. There is no record of the Council making the required consideration of limiting the location of the data center site in approving the changes to the 2045 Plan and zoning ordinance. In approving the changes to the 2045 Plan and the rezoning, the Council sat mute at the end of both public hearings even though there was overwhelming opposition to the proposed changes. The lack of any rationale for their decisions was not only a violation of the state statute but is further evidence that the decision to rezone was arbitrary and capricious.

### **COUNT ONE**

#### **THE CITY'S ACTIONS IN APPROVING THE 2045 COMPREHENSIVE PLAN AND REZONING WERE DONE IN BAD FAITH, WERE ARBITRARY AND CAPRICIOUS, AND DONE IN VIOLATION OF MINNESOTA LAW**

54. Plaintiff incorporates herein by reference the allegations set forth in the foregoing paragraphs.

55. The City failed to investigate or consider the substantial negative impact the rezoning for the data center would have on the homes surrounding the data center.

56. The City failed to follow the requirements of Minn. Stat. Sec. 462.57, Subd. 9 when it essentially spot zoned an industrial use in a location surrounded by a rural residential area with forests, wildlife, streams, and wetlands. See Count Seven below.

57. The Council and City staff violated Open Meeting laws and the Data Practice Act in an attempt to keep the plan for the data center secret from the public for approximately a year and half. During this time period the Council and City staff worked with the Developer to move the project forward unbeknownst to the public. The decision to amend the Comprehensive Plan and the Zoning Ordinance so as to benefit the data center development was a foregone conclusion well before the public knew about the project and before the public hearings were held. Accordingly, the public hearing process was a sham. See Counts Two, Three, and Four below.

58. The Council and City staff knowingly misrepresented public data to citizens during Council meetings when asked about issues relating to the data center.

## **COUNT TWO**

### **THE CITY VIOLATED THE MINNESOTA DATA PRACTICES ACT TO MAINTAIN THE SECRECY OF THE DATA CENTER PROJECT**

59. Plaintiff incorporates herein by reference the allegations set forth in the foregoing paragraphs.

60. Minnesota Stat. § 13.03 ACCESS TO GOVERNMENT DATA, commonly referred to as the Data Practices Act or the MGDPA, states that “All government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification pursuant to section 13.06, or federal law, as nonpublic or

protected nonpublic, or with respect to data on individuals, as private or confidential.” Minn. Stat. § 13.03, Subd. 1.

61. Minn. Stat. § 13.03, subd. 3, creates a “presumption that government data are public and are accessible by the public for both inspection and copying.”

62. The use of the NDAs by the City violated the MGDPA by dictating data as private and confidential that is presumed to be public under the law.

63. The NDAs were intentionally used to circumvent the requirements of the MGDPA and Minnesota’s open meeting laws by creating a presumption that the data being shared by the Developer was confidential.

64. The name of the “Client”, now known to be Google, and information pertaining to the “Transaction”, now known to be a hyperscale data center, do not qualify as private, confidential, or non-public data under the MGDPA.

65. The City used the NDA to justify keeping the plans for the data center secret and hidden from public scrutiny.

66. Only the Council has the authority to contract on behalf of the City. The Council did not authorize the signing of the NDA by City Administrator Mulder and Assistant City Administrator Wicklund.

67. The City was not bound by the NDA, nor were the individual Council members or the Mayor.

68. At the March 16, 2026, Council meeting, Councilor Geissler stated that as an elected City Council official he did not sign an NDA. Mayor Boucher added that no one on the Council had signed an NDA for this project. The Councilors and Mayor knew they were not covered by the NDA.

69. These violations occurred over the course of the City's clandestine planning for the data center without transparency to the public.

### **COUNT THREE**

#### **THE CITY VIOLATED THE OPEN MEETING LAW BY IMPROPERLY CLOSING PUBLIC MEETINGS**

70. Plaintiff incorporates herein by reference the allegations set forth in the foregoing paragraphs.

71. Minnesota's Open Meeting Law (hereinafter the "OML") is based on the assumption that all meetings of local governing bodies are open unless expressly permitted or required to be closed. The purpose of the law is to ensure transparency in the decision-making process of elected bodies.

72. The OML only allows meetings to be closed under seven statutory exceptions. Before a meeting may be closed under one of the exceptions, the Council must state on the record the specific grounds permitting the meeting to be closed and describe the subject to be discussed.

73. On March 3, 2025, March 17, 2025, and June 6, 2025, the Council closed meetings in violation of the OML. In each instance the Council closed the meeting pursuant to Minn. Stat. 13D.05 Subd. (b)(3) to develop or consider offers or counteroffers for the purchase of real property. Before closing the meeting, this statute requires the Council to identify on the record the real estate being considered for discussion, The statute also requires that the Council provide a list of all persons and Council members attending the meeting. The Council failed to identify the parcel being discussed and has not provided a list of the people attending the closed meeting in violation Minn. Stat.13D.05 Subd. (b)(3.) Additionally, this section requires the Council to keep a tape recording of the closed meeting for eight years after the closed meeting.

74. Upon information and belief, the Plaintiff claims that the Council conducted public business other than the discussions allowed by Minn. Stat.13D.05 Subd. (b)(3.). Pursuant to Minn. Stat. 13D.03 Subd. 3, Plaintiff requests the Court to order the City to turn over the tapes of the three closed meetings for an in camera review by the Court to determine whether the Council discussed public matters at the closed meeting which are not subject to the exception of closing the meeting.

75. There is no separate statutory language in Minnesota law that allows for the use of an NDA to justify the closing of a meeting.

76. The decision not to share critically important public information in an open meeting because an NDA has been signed creates a violation of the OML.

#### **COUNT FOUR**

#### **THE CITY VIOLATED THE MINNESOTA OPEN MEETING LAW AND DATA PRACTICES ACT BY OBTAINING INFORMATION THROUGH SERIAL MEETINGS**

77. Plaintiff incorporates herein by reference the allegations set forth in the foregoing paragraphs.

78. Serial meetings violate the OML and constitute an intentional circumvention of the OML. Serial meetings occur when members of an elected body each receive the same information individually or in groups that are less than a quorum. A violation of law occurs if the process was “designed” to avoid public hearings, to forge a majority in advance of a public hearing, or to hide improper influences.

79. The records show that at no time from May of 2024 through August of 2025 was there ever any public discussion or information shared with the public either through Council meetings or release of public data regarding the hyperscale data center. Rather, City staff and

entities working with the Developer made plans for data center well before any zoning was enacted or the Comprehensive Plan was changed to allow for the data center. City staff used the code name “Project Loon” in order to keep information secret, including data that was public under the Data Practices Act. Nonetheless, the Council members and Mayor repeatedly voted unanimously in favor of matters that were in furtherance of the data center development, including, but not limited to, the following:

- a. approval of the 2045 Comprehensive Plan, which needed to be changed to allow for Business Light Manufacturing zoning in the Adolph area,
- b. changing the definition of Business Light Manufacturing to include telecommunication services or communication services facilities,
- c. changing the zoning of the parcels in the Adolph area owned by Minnesota Power from S-1 Suburban to Business Light Industrial, and
- d. approving the changes to the zoning map which were necessary to facilitate the Planning and Zoning Commission approving a special use permit for the parcels in Adolph on which the data center is to be built.

80. From May of 2024, when the NDAs were signed, and continuing until after the issue came to light in September of 2025, there were no discussions and no information shared at any public meetings concerning the data center development as it related to the decisions of the Council during any open segment of any Council meeting or pre-agenda meeting.

81. The Council members and Mayor either obtained information necessary to allow them to make decisions regarding moving the project forward through serial communications in violation of the (OML), or they approved the matters in an arbitrary and capricious manner by voting without any knowledge on the issue. This conduct was in violation of their ethical and

legal responsibilities of public office in that they were blindly following the directives of the City Administrator and other City staff as to how they should vote on these matters.

82. Records indicate that the City Administrator, Assistant City Administrator, Director of Community Development, and Director of Economic Development had all been participating in meetings regarding the development of the data center for several months before informing the Mayor in September of 2024. It is not known when the data center information was shared with the Council members.

### **COUNT FIVE**

#### **THE CITY COUNCIL ABDICATED ITS RESPONSIBILITY BY ALLOWING THE CITY ADMINISTRATOR TO ACT BEYOND THE LIMITS OF ADMINISTRATIVE DUTIES IN CONTRADICTION OF MINNESOTA LAW**

83. Plaintiff incorporates herein by reference the allegations set forth in the foregoing paragraphs.

84. The City Code defines the City Administrator position as: “that person appointed by the Council under Section 220 to perform the duties specified by Section 220 and elsewhere in this Code, and by future City Council ordinances and resolutions.” The City Code Section 220 is identical to Minn. Stat. Section 412.651, Subs. 9 which defines the duties of a City Manager.

85. Minnesota law is clear that whether titled as City Administrator or City Manager, the position is restricted to providing administrative and ministerial duties of the city government and not legislative actions or decisions.

86. The only authority for entering into contracts by the City Administrator is in accordance with City Code Section 220.03.2. which states that the City Administrator shall have

authority to sign purchase orders for routine services, equipment, and supplies for which the cost does not exceed \$10,000.

87. The Council has empowered or abdicated its role in governing the City to the City Administrator and other City staff as revealed by the extensive steps taken by the City Administrator and City staff that went far beyond administrative or ministerial, prior to informing the Council or Mayor concerning the data center development project.

88. Although City staff are not regulated by the OML, they are not allowed to receive information defined as public information under the MGDPA and keep such information from the public, by redefining it as confidential or in adherence to an NDA.

89. In this case, City staff received information and made numerous “preliminary” decisions and expended public funds without any input from the elected officials – decisions that were far beyond administrative or ministerial.

90. The drafting of the 2045 Plan was manipulated by the City Administrator and City staff as they excluded the Steering Committee and proceeded to draft the language required to allow for rezoning the Adolph area and thereby facilitate the needs of the third-party beneficiary under the NDA signed by the City Administrator.

## **COUNT SIX**

### **THE CITY COMMITTED MALFEASANCE AND NONFEASANCE BY WILLFULL ACTIONS IN PERFORMANCE OF THEIR OFFICIAL DUTIES**

91. Plaintiff incorporates herein by reference the allegations set forth in the foregoing paragraphs.

92. As an Optional Plan A statutory city under Minnesota law, the City is considered a “political subdivision” of the State of Minnesota. Minn. Stat. § 609.415, Subd. 1(5).

93. Under Minnesota law, a “public officer” means an executive or administrative officer of the state or of a county, municipality, or other subdivision or agency of the state or a member of the legislature or of a governing board of a county, municipality, or other subdivision of the state. Minn. Stat. § 609.415, Subd. 1(1)(a)(b).

94. Malfeasance is defined as the willful commission of an unlawful or wrongful act in the performance of a public official’s duties which is outside the scope of the authority of the public official and which infringes on the rights of any person or entity. Minn. Stat. § 351.14, Subd. 2.

95. A public officer or employee who (1) intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the office or employment within the time or in the manner required by law; or (2) in the capacity of such officer or employee, does an act knowing it is in excess of lawful authority or knowing it is forbidden by law to be done in that capacity; or (3) under pretense or color of official authority intentionally and unlawfully injures another in the other’s person, property, or rights, may be sentenced to imprisonment for not more than 364 days or to payment of a fine of not more than \$3,000 or both. Minn. Stat. § 609.43.

96. The signing of NDAs by the City Administrator and the Assistant City Administrator, without Council approval was an unlawful act.

97. The withholding of data that is defined as public under the MGDPA is a violation of the law.

98. The City Administrator and Assistant City Administrator, along with other City staff withheld information that was clearly more than administrative or ministerial from the Mayor and the Council.

99. The City Administrator and Assistant City Administrator, along with other City staff, the Mayor and the Council members withheld information from the public that was clearly public data under the MGDPA.

100. The City Administrator and Assistant City Administrator, along with other City staff, falsely claimed they had no information about a project that they in fact had extensive, detailed information about. They misrepresented the truth and misled the public regarding the data center development and the reason for the zoning changes.

101. Mayor Boucher intentionally misled the public by claiming he had no information about the data center development and the reason for the zoning changes, when he had extensive, detailed information about the matter.

102. The Council members committed nonfeasance when they allowed the false information stated by the City Administrator and Assistant City Administrator, the Mayor and other City staff to stand. They had information about the data center project, and they knew the statements that were made misrepresented the truth and were intended to mislead the public regarding the data center development and the reason for the zoning changes.

## **COUNT SEVEN**

### **THE CITY FAILED TO FOLLOW MINN STAT § 462.357 SUBD 9 IN REZONING**

#### **THE ADOLPH AREA TO LIGHT INDUSTRIAL**

103. Plaintiff herein incorporates by reference the allegations set forth in the foregoing paragraphs.

104. Minn. Stat. § 462.357, Subd. 9 provides that a city such as Hermantown that is outside the Twin Cities metropolitan area when adopting official controls such as rezoning “SHALL consider restricting new residential, commercial, and industrial development so that the

new development takes place in areas subject to the following goals and objectives” as outlined in the statute (emphasis added). The goals and objectives outlined in the statute which would limit light industrial rezoning in the Adolph area are: minimizing the fragmentation and development of forest, wildlife, and open spaced lands, including consideration of appropriate minimum lot sizes, minimizing further development in sensitive shoreland areas, and encouraging development close to places of employment, shopping centers and other public and private service centers.

105. There is no record of the Council making the required consideration of limiting the location of the data center site in approving the change to the Comprehensive Plan and zoning ordinance. In approving the changes to the Comprehensive Plan and the rezoning, the Council sat mute at the end of both public hearings at which there was overwhelming opposition to the proposed changes. The lack of any rationale for their decisions was not only a violation of the state statute but is further evidence that the decision to rezone was arbitrary and capricious.

### **COUNT EIGHT**

#### **THE CITY DENIED CITIZENS PROCEDURAL DUE PROCESS IN VIOLATION OF ARTICLE I, SECTION 7 OF THE MINNESOTA CONSTITUTION**

106. Plaintiff incorporates herein by reference the allegations set forth in the foregoing paragraphs.

107. The City violated residents’ right(s) to procedural due process by failing to provide adequate notice and/or a meaningful opportunity to be heard regarding changes to the City’s 2045 Comprehensive Plan and zoning changes in violation of Article I, Section 7 of the Minnesota Constitution.

108. The City's actions to change the 2045 Plan and rezone the Adolph area from residential to business and light manufacturing to accommodate development of a hyperscale data center, negatively affecting residents' real and personal properties, health, safety, and security, without public disclosure, was an arbitrary and unjust deprivation of residents' interests.

### **COUNT NINE**

#### **THE CITY DENIED CITIZENS SUBSTANTIVE DUE PROCESS IN VIOLATION OF ARTICLE I, SECTION 7 OF THE MINNESOTA CONSTITUTION**

109. Plaintiff incorporates herein by reference the allegations set forth in the foregoing paragraphs.

110. The City violated residents' right(s) to substantive due process by changing the 2045 Comprehensive Plan and rezoning the Adolph area from residential to business and light manufacturing in an unreasonable, arbitrary, and/or capricious manner related to the health, safety, and welfare of the public and area residents and infringing on residents' liberty, property and/or privacy in violation of Article I, Section 7 of the Minnesota Constitution.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff requests the Order of the Court as follows:

1. Entering an order for declaratory relief and equitable relief in the form of a writ of mandamus vacating the 2045 Comprehensive Plan and all subsequent land use decisions in the Adolph area, including rezoning of property in the Urban Services Boundary Future Expansion Area of the proposed data center site,
2. Enjoining the City of Hermantown from approving, or otherwise furthering, any land use decisions related to development of a data center in the Adolph area of Hermantown until final resolution of this action or until further order.

3. Finding the City of Hermantown in violation of the Minnesota Open Meeting Law and/or Data Practices Act and requiring the City to fully disclose all communications and expenditure of public funds related to the proposed data center development and/or Project Loon.
4. Finding the City of Hermantown in violation of Minn. Stat. 13D.05 Subd. (b)(3) of the Open Meeting Law and ordering the City to turn over to the Court the tape recordings of the three closed meetings on March 3, 2025, March 17, 2025, and June 17, 2025, for an in-camera review by the Court to determine whether public business other than what is allowed under statute was discussed. If the Court finds that public business was discussed, the Plaintiff requests the discussion be released as public data. The Plaintiff further requests an award of reasonable costs, disbursements, and reasonable attorney fees of up to \$13,000 for violations of the Open Meeting Law.
5. Finding the City of Hermantown in violation of Minnesota law by allowing the City Administrator to perform duties of elected officials and entering an Order requiring the City Administrator to comply with City Code and Minnesota law.
6. Finding that the NDA(s) executed by City Officials and/or the indemnification agreement between the City and the Company violates the Minnesota Open Meeting Law and/or the Minnesota Data Practices Act and finding the NDA(s) and/or indemnification agreement(s) null and void.
7. Finding the City Administrator, John Mulder, and/or the Assistant City Administrator, Joe Wicklund, and/or the Mayor, Wayne Boucher, and/or City Council Members committed malfeasance in violation of Minn. Stat. § 609.43.

8. Finding the City of Hermantown in violation of Article 1, Section 7 of the Minnesota Constitution by failing to provide procedural due process related to development of a hyperscale data center in the Adolph area of Hermantown.
9. Finding the City of Hermantown in violation of Article 1, Section 7 of the Minnesota Constitution by failing to provide substantive procedural due process related to development of a hyperscale data center in the Adolph area of Hermantown.
10. Entering Judgment in favor of Plaintiff and as against Defendant for attorney's fees, and costs.
11. For such other and further relief as the Court deems just and equitable.

Dated: April 28, 2026

/s/ Cynthia L. Kosiak  
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