

Case No. A04-206

State of Minnesota  
In Supreme Court

Mendota Golf, LLP,

*Respondent,*

v.

City of Mendota Heights,

*Appellant.*

REPLY BRIEF OF APPELLANT CITY OF MENDOTA HEIGHTS

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## INTRODUCTION

Respondent seeks a mandamus order directing the City to amend its comprehensive plan in a manner that conflicts with its existing comprehensive plan. Both lower courts have issued decisions ordering the City to give a zoning ordinance priority over its comprehensive plan. In doing so, these courts have narrowed the nature and scope of a municipality's core legislative powers. They have also permitted individual landowners to undermine on a piecemeal basis, through an adjudicative request, the product of a deliberative, democratic, supermajoritarian legislative process. Respondent is not entitled to a writ of mandamus that substitutes Respondent's narrow, self-interested preferences for the preferences of the community as a whole. Respondent is not entitled to a writ that requires the City to exercise its core discretionary legislative authority in a manner that violates separation of powers. This Court must reverse the court of appeals, dissolve the Writ, and enter summary judgment for the City.

### **I. A Comprehensive Plan is the "Supreme Law of Land Use"**

Respondent has conceded, as it must, that under the Metropolitan Land Use Planning Act ("MLUPA"), Minn. Stat. §§ 473.85-.871 (2002), a municipality's zoning provisions are subordinate to its comprehensive plan ("Respondent does not take issue with the general proposition that, since 1995, municipal comprehensive plans are

intended to ‘trump’ inconsistent local ordinances, including zoning ordinances”).<sup>1</sup> Res. Br. at 12. In doing so, Respondent has finally acknowledged that a comprehensive plan has priority over zoning ordinances. This means that the City’s decision denying Respondent’s proposed amendment based on the policy choices in the comprehensive plan is inherently rational. It also means that the writ ordering the City to prioritize the ordinance over the plan is necessarily invalid under MLUPA.

In recognizing that MLUPA’s statutory scheme mandates that zoning provisions are subordinate to comprehensive plans, Respondent has acknowledged that a comprehensive plan has priority over zoning ordinances, that it is a form of fundamental law as compared to a zoning ordinance, and that within the seven county metropolitan area, the comprehensive plan is the “supreme law of land use.”<sup>2</sup> This Court, of course,

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<sup>1</sup> Respondent also rejects the court of appeal’s theory justifying affirmance of the writ as nothing more than “observations” regarding the “near complete lack of rationality” of the City’s denial of Respondent’s proposed amendment. Res. Br. at 12-14. The court of appeal’s theory, advanced by neither party, justifies the writ ordering amendment of the City’s comprehensive plan on the basis of a provision in the City’s comprehensive plan. *Mendota Golf, LLP v. City of Mendota Heights*, 2004 WL 2161422 \*2, \*4 (Minn. App. Sept. 28, 2004) (not reported). That provision provides that the City’s zoning ordinance is the primary authority for making development decisions. *Id.*

<sup>2</sup> This view of comprehensive plans is embodied in MLUPA and the Municipal Planning Act of 1965 (“MPA”), Minn. Stat. §§ 462.351-.364, as well as several decisions by this Court. Under MPA, comprehensive plans and amendments to those plans may be enacted with supermajoritarian support unless otherwise provided by charter. Minn. Stat. § 462.355, subd. 3. Several provisions of MPA and MLUPA indicate the supremacy of comprehensive plans over zoning ordinances. MPA, for example, provides that

If the comprehensive municipal plan is in conflict with the zoning ordinance, the zoning ordinance shall be brought into conformance with the plan by local government units in conjunction with the review and, if necessary, amendment of its comprehensive plan required under section 473.864, subdivision 2.

has much experience reconciling fundamental law (the constitution) and ordinary law (statutes). It also has much experience prioritizing the legislative enactments of federal, state, regional, municipal, and administrative bodies. Evaluating Respondent's argument in terms of the basic and well-known principles of judicial review exposes the logical infirmity of Respondent's position.

The practice of judicial review requires that if there is a conflict between a statute and the constitution, the statute must yield to the constitution. *Marbury v. Madison*, 5 U.S. 137, 178-180 (1803). In giving fundamental law priority over ordinary law, the existence of a statute permitting a particular activity does not constitute a rationale for a court to allow the activity in the face of a constitutional prohibition of that same activity.

In the words of Alexander Hamilton,

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Minn. Stat. § 473.858, subd. 1. MLUPA provides that “[a] local government unit shall not adopt any official control or fiscal device which is in conflict with its comprehensive plan or which permits activity in conflict with metropolitan system plans.” Minn. Stat. § 473.865, subd. 2. MLUPA also provides that “[i]f an official control conflicts with a comprehensive plan as the result of an amendment to the plan, the official control shall be amended . . . so as to not conflict with the amended comprehensive plan.” Minn. Stat. § 473.865, subd. 3. Finally, this Court has stated that a comprehensive plan is “the basic instrument of municipal land use planning” and has recognized that comprehensive plans serve as a “hedge against special interest, irrational *ad hocery*.” *Amcon Corp. v. City of Eagan*, 348 N.W.2d 66, 74 (Minn. 1984). *See also O’Loane v. O’Rourke*, 231 Cal. App. 2d 774, 784-85 (2d Dist. 1965) (“The adoption of the general plan is . . . the adoption of a policy, and in many respects, entirely new policy. The plan . . . is a declaration of public purpose and, as such, supposedly sets forth what kind of city the community wants and, supposedly, represents the judgment of the electors of the city, with reference to the physical form and character the city is to assume”); Alfred Bettman, *The Constitutionality of Zoning*, 37 Harv. L. Rev. 834, 844-45 (1924) (comprehensive plans become a “whole community’s plan, motivated by the desire for the promotion of the best practicable districting of the whole territory for the benefit of all”).

No legislative act, therefore, contrary to the Constitution, can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves.

Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, ed. Clinton Rossiter (1961), No. 78, at 267. *See also Marbury*, 5 U.S. at 178-180.

The core reasoning of Respondent and the lower courts in justifying the writ is that the City's denial of the proposed use of Respondent's property for a residential development is irrational because such use of the property is permitted by the ordinance even though it is prohibited by the comprehensive plan. Indeed, Respondent and the lower courts contend that the existence of an ordinance permitting the proposed use means that the proposed use is *inherently reasonable* despite the prohibition of such use in the comprehensive plan. Res. Br. at 10-12; *Mendota Golf*, 2004 WL 2161422 \*4 ("but for the comprehensive plan, the city would, under the zoning ordinance, *have to* allow the development sought here") (emphasis in original). This "logic" is directly contrary to MLUPA's mandate that the comprehensive plan take precedence over zoning ordinances and is contrary to how courts prioritize fundamental and ordinary law. The mere existence of a conflict does not preclude application of the supreme law and defeat the comprehensive plan.

Viewed against the backdrop of the metaphor of judicial review, the City's denial of Respondent's request and failure to amend the City's comprehensive plan are *inherently rational*. The City denied Respondent's request because it conflicted with the comprehensive plan and because, as noted in the next section, Respondent failed to

establish a mistake or change in character of the surrounding neighborhood warranting an amendment. In this context, the City did not need to articulate its interest in protecting its overall zoning and land use scheme because the very fact that Respondent's request was inconsistent with the comprehensive plan was an adequate basis for denial. *See Sun Oil Co. v. Village of New Hope*, 300 Minn. 326, 337, 220 N.W.2d 256, 263 (1974); *Hubbard Broadcasting, Inc. v. City of Afton*, 323 N.W.2d 757, 763 (Minn. 1982). In short, in denying Respondent's request, the City elevated its comprehensive plan over the preferences of a single landowner. The priority of comprehensive plans over zoning ordinances demanded such a result. The writ is based on giving an ordinance priority over a comprehensive plan and unlawfully directs the City to use a zoning ordinance to trump the comprehensive plan. The writ must be dissolved.

**II. The Limited Nature of the City's Resolution is Not a Dispositive Fact: The City's Action Was Rational, the Court May Examine the Entire Record, and Respondent Never Demonstrated a Mistake in the Formation of the Comprehensive Plan**

Respondent's case hinges on the fact that the City's resolution does not set forth the specific bases for the denial of Respondent's proposed amendment to the City's comprehensive plan. This is precisely why Respondent urges this Court to close its eyes to the entire record of the City Council's action in evaluating the rationality of the City's action. Res. Br. at 4-5. The limited nature of the City's resolution, however, is not a dispositive fact. The limited findings in the City's resolution do not render the City's decision inherently irrational. In fact, as explained above, the conflict between Respondent's proposed amendment and the comprehensive plan constitutes a rational

basis for denying Respondent's request. *See Hubbard Broadcasting*, 323 N.W.2d at 763. In any event, the Court may look at the entire record of the proceedings before the City Council in evaluating the rational basis of the City's decision. *Honn v. City of Coon Rapids*, 313 N.W.2d 409, 415-16 (1981); *City of Fergus Falls v. Whitlock*, 247 Minn. 347, 352, 77 N.W.2d 194, 198 (1956). As explained in the City's principal brief, the entire record provides ample justification for the City's action on Respondent's request.<sup>3</sup> App. Br. at 18-26.

Respondent appears to acknowledge that a zoning amendment application may be denied on the ground that a municipality seeks to maintain its existing zoning structure unless the applicant demonstrates mistake or changed circumstances. Res. Br. at 7. This heightened standard is consistent with the priority of comprehensive plans over zoning ordinances. Respondent, however, does not claim that an amendment is necessary because the character of the surrounding neighborhood has changed. Instead, Respondent contends that there was a mistake warranting an amendment to the comprehensive plan.

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<sup>3</sup> For the first time, Respondent argues that discussions of the profitability of Respondent's golf course dominated the City Council's deliberations. Res. Br. at 3-4. It was Respondent who raised this argument with the City Council. A. 129-130. In fact, the importance of the recently enacted comprehensive plan was the premise of the City Council's deliberations regarding Respondent's proposed amendment. A. 129-140.

Respondent's position on the issue of mistake, and the grounds for its mandamus request, is predicated on the incorrect assumption that there is a conflict between the comprehensive plan and the zoning ordinance. To the contrary, the designation of Respondent's property as a golf course under the comprehensive plan and as "R-1" under the zoning ordinance is not inherently contradictory because the only area of the City where golf courses are permitted is in an R-1 zone with a conditional use permit. The *land use* proposed by Respondent (i.e., residential development) may "conflict" with the comprehensive plan because such use is not permitted under the plan. *But the plan itself and the underlying ordinance do not conflict.* Indeed, at no time in their review of the City's 2002 comprehensive plan and the ordinance did the Metropolitan Council or Respondent identify any conflict that required corrective action. Respondent's land has historically operated as a golf course under a conditional use permit. The City's current and prior comprehensive plans have limited the use of Respondent's property to Golf Course use. Accordingly, there is no reason why the City should have taken steps to reconcile a nonexistent conflict, there is no justification for a writ directing the City to reconcile any conflict, and there was no mistake in the formation of the comprehensive plan. If the plan and the ordinance did conflict, MLUPA dictates that the plan take precedence over the ordinance; and any writ should direct the City to bring the ordinance into conformance with the plan or otherwise reconcile any perceived inconsistency.

### **III. The Writ Violates MLUPA and Is Unconstitutional**

Even if the City had no rational basis for its decision to deny Respondent's proposed amendment to the comprehensive plan, Respondent cannot ask the Court to

issue an unlawful and unconstitutional mandamus order. The writ sought by Respondent and approved by the lower courts directs the City to act in a manner which conflicts with MLUPA and the Minnesota Constitution. Nothing in Respondent's brief casts doubt on this inevitable conclusion. Accordingly, even if the City's denial of Respondent's proposed amendment to its comprehensive plan lacked a rational basis, and even if the City's comprehensive plan conflicted with the underlying zoning of Respondent's golf course, Respondent would not be entitled to the writ of mandamus. At most, Respondent would be entitled to a writ directing the City to reconcile its comprehensive plan with the underlying zoning ordinance or adopt more specific findings regarding its denial of Respondent's proposed amendment to the comprehensive plan.

**A. The Writ Violates MLUPA**

Despite Respondent's concession that a comprehensive plan has priority over a zoning ordinance, Res. Br. at 12, Respondent refuses to accept the obvious implications of this concession—i.e., that the writ, by directing the City to make the comprehensive plan yield to the ordinance, improperly orders the City to take an action that directly conflicts with MLUPA. Instead, Respondent contends that when there is a conflict between a comprehensive plan and a zoning ordinance, the conflict may be resolved by either changing the ordinance or changing the plan. Res. Br. at 12. Because there are two ways to resolve the conflict, and because the writ directs the City to amend its comprehensive plan to conform to the ordinance, the writ does not conflict with MLUPA. *Id.* at 12-13.

Respondent's argument is simply incorrect. When there is a conflict between a comprehensive plan and a zoning ordinance, amending the plan to conform to the ordinance *can* undermine the supremacy of the plan to the ordinance. Here, the City re-enacted its comprehensive plan *after* it adopted the zoning ordinance and did so just one year prior to Respondent's application. The City specifically addressed the plan's prior designation of Respondent's golf course when reviewing and considering its 2002 comprehensive plan, and the City explicitly determined to retain the golf course designation. A. 39, *Verified Answer*, ¶11, Ex. 5; A. 54-55, *Verified Answer*, ¶60, Ex. 5, section K-5. Under these circumstances, a writ directing the City to change its plan to conform to an earlier-enacted ordinance would undermine the supremacy of the comprehensive plan to the zoning ordinance. It would permit individual litigants to undermine on a piecemeal basis the fundamental land planning choices of the City designed to benefit the general public.<sup>4</sup>

Respondent's argument is also based on the erroneous assumption that when there is a conflict between a plan and an ordinance, the option of changing the plan to conform to the ordinance and the option of changing the ordinance to conform to the plan are equally available. MLUPA, however, explicitly sets a higher standard for exercising the option of amending the plan to conform to the ordinance. The statute states that a conflict may be resolved by changing the plan to conform to the ordinance or by

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<sup>4</sup> Under Respondent's "logic," any time a party proposed to change a parcel's designation in the comprehensive plan that was permitted by a zoning ordinance, the proposal itself would create a "conflict" with the plan, requiring a change in the comprehensive plan.

changing the ordinance to conform to the plan. Minn. Stat. § 473.858, subd. 1 (2004).

Changing the plan to conform to the ordinance, however, requires a finding of necessity.

The statute provides:

If the comprehensive plan is in conflict with the zoning ordinance, the zoning ordinance shall be brought into conformance with the plan by local government units in conjunction with the review and, if necessary, amendment of its comprehensive plan under section 473.864, subdivision 2.

Minn. Stat. § 473.858, subd. 1.

Here, of course, Respondent has made no allegation or showing that amending the comprehensive plan was necessary. Amending the plan to conform to the ordinance would undermine the supremacy of the plan. Accordingly, ordering the City to amend the comprehensive plan to conform to the ordinance is inconsistent with MLUPA under the facts of this case.

#### **B. The Writ is Unconstitutional**

Respondent provides no response to the City's argument that the writ violates separation of powers by directing the particular manner in which the City must reconcile the alleged conflict between its comprehensive plan and its zoning ordinance. Instead, Respondent simply asserts that it is entitled to the writ because the City failed to adopt a rational justification for denial of Respondent's proposed amendment to the comprehensive plan. Res. Br. at 15. Respondent then goes on to argue that a remand of this case "would run contrary to public policy" because the City should not be given the opportunity to "employ after-the-fact justifications" for its decision and that there is no rational justification for its decision. Res. Br. at 15-16. Respondent's only response to

the City's position that the writ improperly directs the City to "cooperatively and diligently submit" the proposed amendment for review and adoption by the Metropolitan Council is that the City's argument "is of questionable good faith." Res. Br. at 16-17. By failing to respond to the merits of the City's constitutional arguments, Respondent effectively concedes that the writ unconstitutionally directs the exercise of discretionary authority in violation of separation of powers. Accordingly, the writ ordering the City to (a) bring its comprehensive plan into conformity with the zoning ordinance and (b) "cooperatively and diligently" submit the amendment to the Metropolitan Council for review and adoption, must not issue.

### **CONCLUSION**

For the reasons stated above and in the City's principal brief, the City respectfully requests this Court to reverse the lower courts and remand the case with instructions to dissolve the writ and grant the City's cross motion for summary judgment. In the alternative, if the Court concludes that there is a conflict between the City's comprehensive plan and the zoning ordinance, the Court should remand the case instructing the lower court to amend the writ to direct the City to reconcile the conflict without depriving the City Council of its legislative discretion to determine how any conflict should ultimately be resolved.

Respectfully submitted,

Dated: March 21, 2005

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