

Case No. A04-0206

State of Minnesota
In Supreme Court

Mendota Golf, LLP,

Respondent,

v.

City of Mendota Heights,

Appellant.

BRIEF OF APPELLANT CITY OF MENDOTA HEIGHTS

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STATEMENT OF THE ISSUES

- I. Did the court of appeals err in holding that the City of Mendota Heights did not have a rational and reasonable basis for denying Respondent's petition to amend the City's comprehensive plan?

Disposition by the court of appeals: Reviewing only the resolution enacted by the City rather than the entire municipal record and proceedings, the court of appeals held that the City failed to adequately articulate a rational basis for its decision to deny Respondent's petition to amend the comprehensive plan.

Apposite Statutes and Case Law:

Municipal Planning Act, Minn. Stat. §§ 462.351-.364 (2002).
Metropolitan Land Use Planning Act, Minn. Stat. §§ 473.85-.871 (2002).
Honn v. City of Coon Rapids, 313 N.W.2d 409 (1981).

- II. Did the court of appeals err in directing the City to amend the comprehensive plan to bring it into conformity with the zoning ordinance when (a) there is no conflict between the plan and the ordinance and (b) such an order would be directly contrary to the Municipal Land Planning Act, Minn. Stat. § 473.858?

Disposition by the court of appeals: The court of appeals determined that the City's comprehensive plan and its zoning ordinance, as they relate to the subject property, are in conflict and ordered the City to bring the plan into conformity with the ordinance. Minn. Stat. § 473.858, subd. 1, however, very clearly provides that if the comprehensive plan and the zoning ordinance are in conflict, the zoning ordinance shall be brought into conformity with the plan.

Apposite Statutes and Case Law:

Municipal Planning Act, Minn. Stat. §§ 462.351-.364 (2002).
Metropolitan Land Use Planning Act, Minn. Stat. §§ 473.85-.871 (2002).

- III. Whether the court of appeals erred in issuing a writ of mandamus directing the City to exercise its discretionary legislative authority to (a) bring its comprehensive plan into conformity with the zoning ordinance even though there were other means by which the City could reconcile the ordinance and the plan with respect to the subject property and (b) "cooperatively and diligently" submit the comprehensive plan amendment for review and adoption by the Metropolitan Council?

Disposition by the court of appeals: The court of appeals affirmed the issuance of a writ of mandamus ordering the City of Mendota Heights to reconcile the inconsistency

between its comprehensive plan and zoning ordinance by amending the comprehensive plan leaving no discretion to the legislative body regarding how the inconsistency should be resolved.

Apposite Statutes and Case Law:

State ex rel City of South St. Paul v. Hetherington, 240 Minn. 298, 61 N.W.2d 737 (1953).

Honn v. City of Coon Rapids, 313 N.W.2d 409 (1981).

STATEMENT OF THE CASE

Respondent Mendota Golf, LLP (“Respondent”) has obtained a mandamus order directing the City of Mendota Heights (“the City”) to amend its comprehensive plan so that residential housing can be built on an existing golf course. The city’s comprehensive plan was reenacted in 2002 following a lengthy process of study and citizen participation. The very parcel at issue in this litigation was examined as part of the 2002 comprehensive planning study and the propriety of preserving this open space as a golf course was reaffirmed through this deliberative and democratic process.

When Respondent petitioned the City to amend the golf course designation in 2003 to allow housing development, the evaluation by the planning commission and the City Council centered on concerns about the integrity of the recently enacted comprehensive plan. By focusing exclusively on the language of the resolution of the City’s denial of the petition, Respondent persuaded the lower courts that the City Council’s decision lacked a rational basis. By contending that a court has the authority to order elected officials to enact a comprehensive planning designation preferred by a single land owner, Respondent obtained a most unusual mandamus order (drafted and

submitted by Respondent's counsel). That order directs the City to exercise its legislative discretion in a prescribed manner, disrupting a land use matrix endorsed by municipal planners, elected officials, and the Metropolitan Council ("Met Council") in order to reach the outcome desired by Respondent. This order, if not dissolved, represents an unconstitutional intrusion on the political prerogatives of elected officials. It is one thing to order the City to reconcile conflicting land use provisions or to more precisely articulate or document the reasons for municipal action; it is quite another to deprive citizens and elected officials of their right to legislate land uses within their jurisdiction.

Respondent owns and operates a golf course within the City of Mendota Heights and has entered a contingent agreement to sell this property to a developer who intends to convert the golf course into a residential development. *A.23, 31, 51*. However, the City's comprehensive plan, initially enacted in 1960 and re-adopted by the City Council in 2002, and approved by the Met Council following a three-year public planning process, does not permit the residential development of this parcel. *A.39*.

Because the City's zoning classification does not allow residential development, Respondent petitioned the City Council to amend the comprehensive plan to permit such development. *A.27*. Respondent urged approval of the petition by the City, asserting that the proposed development of the property would be consistent with the underlying zoning. *A.30-31*. After the planning commission heard and considered the proposal, it recommended denial of the petition. The City Council considered the Petition at two separate hearings and ultimately denied the Petition, finding that the amendment "would have an adverse impact on the health, safety and general welfare of the citizens of the

community and the surrounding land, and would be adverse to the general purpose and intent of the zoning ordinance.” *A.122.*

Following the denial, Respondent initiated suit against the City in Dakota County District Court seeking a writ of mandamus compelling the City to amend the comprehensive plan so as to permit residential development. *A.22-34.* On cross-motions for summary judgment, the district court found in favor of Respondent and issued an Order and Peremptory Writ of Mandamus compelling the City (1) “to immediately approve the requested Comprehensive Plan amendment proposed by the Petitioner...” and (2) “thereafter to cooperatively and diligently submit the said Comprehensive Plan amendment for review and adoption by the Metropolitan Council....” *A.11-12.*

Thereafter, the City appealed the matter to the court of appeals. *A.141-142.* The court affirmed the decision of the district court based upon three primary findings:

- 1) There is an inconsistency between the City’s comprehensive plan and its underlying zoning ordinance and the City failed in its statutory duty, under Minn. Stat. § 473.858, to reconcile the designations for the golf course contained in the city’s comprehensive plan and its zoning ordinance;
- 2) The City’s basis for denial (preservation of open and recreational spaces and reaffirmation of its existing comprehensive plan) could not be considered because, even if part of the record, neither reason was enumerated as being the basis for the denial in the City’s resolution; and,
- 3) As a result, it is appropriate to order the City to correct the inconsistency between its comprehensive plan and zoning ordinances by ordering the City to

amend its comprehensive plan, as opposed to amending its zoning ordinance, because the City's comprehensive plan states that zoning and subdivision ordinances are the primary authority for making development decisions.

Mendota Golf, L.L.P. v. City of Mendota Heights, 2004 WL 2161422 *2-3 (Minn. App. Sept. 28, 2004) (not reported).

STATEMENT OF FACTS

Respondent owns a par-3 golf course in the City. *A.35-69, Verified Answer, Ex. 9.*¹ The golf course has been open to the public at this location since 1961. *A.51, Verified Answer ¶ 39, Ex. 8, 19.*² Respondent acquired the golf course in January 1995. *A.25, Verified Answer, Ex. 9.* In 2000, Respondent successfully petitioned the City

¹ Judicial review of a land use decision is based upon the municipal record. *Swanson v. City of Bloomington*, 421 N.W.2d 307, 311 (Minn. 1998). In this case, the City attached the municipal record to its Verified Answer. However, because of the voluminous nature of the documents, as well as the inclusion of oversized maps, pursuant to Minn. R. Civ. App. R. 130, subd. 1, the complete municipal record has not been recreated in Appellant's Appendix. Rather, those attachments most pertinent to the issues on appeal can be found in the Appendix. To the extent that Appellant cites to exhibits attached to the Verified Answer not otherwise found in the Appellate Appendix, the City refers this Court to the complete Verified Answer, including all of its attachments as transmitted to this Court from the lower courts.

² On a motion to strike before the district court, Appellant and Respondent disputed the contents of the municipal record. *A.70-85.* In support of its petition, Respondent attached municipal documents numbered 1-15. In support of its Verified Answer, Appellant reproduced in a three-ring binder Respondent's exhibits 1-15, as well as other municipal documents, which were numbered 16-31. The district court did not directly rule on the Motion to Strike. *A.1-10.* Rather, the district court's order on the motion for summary judgment stated that the record consisted of exhibits 1-15. *A.5.* Exhibits 1-15 support the City's land use decision. However, all of the public documents maintained by the City and attached to the Verified Answer were properly submitted and underscore the correctness of the City's land use decision in this matter. *See A.77-85.*

Council to allow improvements to the golf course, including a new maintenance facility. *A.36-37, Verified Answer, ¶ 6.*

Originally adopted in 1960, the City's comprehensive plan was updated and re-adopted in 1979; the plan was re-adopted again in 2002 following a three year land use review process and public hearings. *A.51-52, Verified Answer ¶ 40, exs. 5, 16, and 30.* The City's 1979 comprehensive plan placed Respondent's property in the land use category designated "Golf Course." *A.37, Verified Answer ¶ 6, Exs. 16 and 30.* The 1979 comprehensive plan guided the property to the north, south, east, and west of the golf course as Low Density Residential. *A.51-52, Verified Answer ¶ 40, Exs. 16 and 30.* Accordingly, the golf course became surrounded by single-family residential development. *A.3, A.38, Verified Answer, ¶ 9.*

The "Golf Course" land use designation furthered the City's planning goals, as spelled out in the 1979 comprehensive plan. *A.34-68, Verified Answer, Exs. 7-8, 12-14, 16 and 30.* In particular, the 1979 comprehensive plan set forth the following pertinent goals: (1) maintain the community character and identity, (2) resist the deterioration of the environment, (3) maintain the existing residential areas, (4) provide the optimum amount of active and passive open space for the enjoyment of all Mendota Heights' residents, (5) encourage the preservation of open space in the community by private property owners, consistent with the comprehensive plan, (6) encourage planned usage of existing private recreational facilities in order to avoid duplication and promote maximum enjoyment of all citizens in the City, (7) provide each neighborhood of the

City with open space, and (8) preserve and enhance the natural beauty, uniqueness, and attractive appearance of the community. *A.52, Verified Answer ¶ 42, Ex. 16.*

In 2002, the City finished a three-year-long comprehensive plan revision process. *A.34-55 Verified Answer ¶¶ 49-50, Ex. 5, 6, 28.* Special concern was expressed for the preservation of the City's shrinking supply of green spaces, open spaces, and recreational facilities. *Verified Answer, Ex. 5.*

In addition, the 2002 comprehensive plan also anticipated the possibility that owners might seek to develop properties historically serving open space or recreational uses, such as land guided as "Golf Course." *A.54-55, Verified Answer ¶60, Exs. 5, section K-5.* In fact, the 2002 comprehensive plan identified such properties as "infill sites." *Id.*

In reaffirming the 1979 comprehensive plan with regard to Respondent's property, the City specifically addressed the designation of Respondent's golf course when reviewing its 2002 comprehensive plan. *A.54-55, Verified Answer ¶60, Exs. 5, section K-5.* Despite published notice, however, Respondent never appeared before the City to request alternate guiding of its property. *A.38, Verified Answer, ¶ 10.* Thus, the 2002 comprehensive plan maintained the "Golf Course" designation for Respondent's property. *A.39, Verified Answer ¶11, Ex. 5.* Furthermore, explicitly addressing Respondent's property, the 2002 comprehensive plan states:

[t]his designation (Golf course) is proposed to remain. In the event that redevelopment of this site is considered, careful consideration would need to be given to develop the site in a manner consistent and sensitive to the existing low-density residential neighborhood.

Id.

In 2003, Respondent decided to sell the property to a developer who would dismantle the golf course and build single family homes on the golf course property. *A.26-27, Verified Answer, Ex. 9.* The City's comprehensive plan, however, did not permit, nor implicitly intend to permit, residential development of this property as requested by Respondent.

Under the comprehensive plan, single family residential development is permitted in locations designated "LR;" and, the comprehensive plan designated this property as "Golf Course." *A.61, Verified Answer ¶53(g), Ex. 5.* Respondent's proposed development would eliminate the open space and recreational uses provided by the golf course, which would be inconsistent with the land use goals of the City's comprehensive plan. *A.55-57, Verified Answer ¶ 53, Exs. 7-8, 12-14.*

Knowing that residential development of Respondent's property was prohibited under the City's land use regulations, Respondent entered into a purchase agreement whereby sale of the property was made contingent upon "obtaining necessary government approvals for proposed residential development of the property." *A.26, Petition ¶ 13.* Respondent then petitioned the City Council to amend the comprehensive plan and re-designate this property as "LR." *A.27-28, Petition ¶ 16, Verified Answer, Ex. 9.*

Respondent originally paid \$1,289,000 to acquire the golf course property in 1995. *A.131.* If Respondent is successful in amending the comprehensive plan to allow the

development of family homes in place of the golf course, Respondent will receive a purchase price of \$2,350,000. *A.26, Petition ¶ 13.*

In its petition for a comprehensive plan amendment, Respondent asserted that the development of single family residences is classified as a permitted use under the City zoning code provision applicable to its property. *Verified Answer, Ex. 9.* Respondent contended that in light of the inconsistency between the zoning code and the comprehensive plan, the comprehensive plan *must* be amended to be consistent with the zoning code so as to permit residential development on the golf course. *A.130-131, Verified Answer, Ex. 7-9, 12, 14.*

The City's planning commission considered Respondent's petition for amendment to the comprehensive plan on June 24, 2003, and recommended denial of the amendment. *A.4, A.123-127.* The petition then came before the City Council. *A.4, A.129-140.*

The City Council considered both written submissions and oral presentations by Respondent. *A.129.* Nevertheless, the City Council denied Respondent's proposal to amend its comprehensive plan to permit the residential development of the golf course. *A.122, A.140.* The contemporaneous written findings explained that such amendment "would have an adverse impact on the health, safety, and welfare of the citizens of the community and the surrounding land, and would be adverse to the general purpose and intent of the zoning ordinance." *A.122.*

Thereafter, Respondent brought a mandamus action against the City, challenging the denial of the proposed comprehensive plan amendment as arbitrary and capricious. *A.22-33.*

SUMMARY OF LEGAL ARGUMENT

Land use policies, and the land use designations reflecting those policies, impact the present and future welfare of the entire community. Land use policies and regulations also protect the property interests of individual neighbors who may have acquired their property in reliance upon the historical land use designations of adjacent parcels.

Appellate courts recognize that in establishing land use policies and designations, municipalities are exercising legislative discretion entitled to judicial deference. Because the City's 2002 comprehensive plan (which reaffirmed a 30-year historical land use regulation of this property) does not allow the residential development of this parcel, the City denied Respondent's petition to amend the comprehensive plan. In this appeal, the City seeks reversal of a mandamus order compelling it to amend its comprehensive plan.

The City's comprehensive plan is the recent product of a democratic, community planning process and reflects the participation of citizens and staff spanning several years. As with many metro communities, the City of Mendota Heights confronted the challenges posed by progressive urbanization and intensified development within the city. In adopting the 2002 comprehensive plan, the City Council reaffirmed the objective of preserving the City's diminishing supply of open space and recreational facilities.

But more significantly for this case, the comprehensive planning process re-examined the status of Respondent's parcel in light of these concerns. The 2002 comprehensive plan re-adopted the historic designation of this property as "Golf Course," without participation or protest from Respondent at that time.

In 2003, one year after the completion and enactment of the 2002 comprehensive plan, Respondent informed the City of its desire to discontinue golf course operations and sell the property to develop single family residences. Such development, however, is not allowed under all applicable zoning regulations established by the City and approved by the Metropolitan Council, which oversees regional land use and development. Because Mendota Golf failed to submit sufficient evidence meriting what amounts to spot zoning of Mendota Golf's individual property, and because the request is contrary to well-considered land use policies set by the City and approved the Met Council, the City denied the amendment to the comprehensive plan. A.122, A.129-140.

In this suit, Respondent contends that where inconsistencies exist, the zoning classification set forth in the City's zoning and subdivision ordinance trumps the comprehensive plan designation. The district court agreed, erroneously citing *PTL, LLC v. Chisago Cy Bd. Of Commrs*, 656 N.W.2d 567, 574 (Minn. App. 2003) ("*PTL*").

The court of appeals reached the same outcome as the district court without relying on *PTL*. Instead, the court of appeals reached the same outcome concluded that the provisions of the City's zoning and subdivision ordinance trump those of the its comprehensive plan, because the City's comprehensive plan states that its zoning and subdivision ordinances are the primary authority for making development decisions. The court of appeals' conclusion is a clear violation of statutory law and is inconsistent with this Court's recent pronouncement regarding the importance of regional planning. *See, e.g., City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1 (2004).

As this brief explains, the legislature declared in the Land Use Act of 1995 that, in the case of metropolitan cities, conflicts between comprehensive plan designations and zoning provisions must be resolved in favor of the comprehensive plan. More significantly, the lower courts have utterly failed to appreciate the significance of the comprehensive plan and the comprehensive planning process in Minnesota land use law—especially as that law applies to municipalities within the seven-county metro-area.

Finally, even if Respondent is entitled to any relief, the remedy must be restricted to a remand directing the City Council, consistent with the requirements of the Land Use Act, to reconcile conflicting comprehensive plan and zoning provisions. It is the constitutional responsibility of the City Council to determine land use policies for the entire community—including how to best reconcile any comprehensive plan/zoning ordinance conflicts. This legislative authority should not be usurped by judicial fiat compelling the amendment to the comprehensive plan, judicially imposing property development contrary to the local community's best interests, its prior determinations, and the legitimate expectations of all citizens of the City.

LEGAL ARGUMENT

I. Both lower courts erred in holding that the City of Mendota Heights did not have a rational and reasonable basis for denying Respondent's petition to amend the City's comprehensive plan.

The court of appeals did not address the appropriate standard of review in this matter. In failing to address and apply the appropriate standard of review, the court ultimately rendered a decision that did not properly reflect the amount of deference that

should be given to a municipality when considering a proposed amendment to its comprehensive plan. When boiled down to its simplest form,

[t]he 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"?

Honn v. City of Coon Rapids, 313 N.W.2d 409, 414 (1981). The question, thus, becomes, what is reasonable in the context of an amendment to a comprehensive plan?

A. In order to obtain an amendment to a comprehensive plan in the metro area, a developer must demonstrate error or substantial change.

The Minnesota appellate courts have considered only two cases that address the standard of review in cases of an amendment to a comprehensive plan. They are the unpublished cases of *Fisher v. City of Chanhassen*, 1997 WL 757158 (Minn. App. Dec. 9, 1997) (not reported); and *Reiter v. County of Olmsted*, 2002 WL 31302975 (Minn. App. 2002) (Oct. 15, 2002) (not reported).³

Reiter and Fisher hold that an amendment to a comprehensive plan is merited only when (1) a petitioner demonstrates that a mistake was made in the formation of the comprehensive plan; or (2) that the character of the surrounding neighborhood has so changed that an amendment is merited. See *Reiter*, 2002 WL 31302975 (upholding denial of amendment to comprehensive plan where there was no evidence of mistakes

made in the original data used to derive the current planning map); *Fisher*, 1997 WL 757158 at *2 (upholding denial of amendment to comprehensive plan because it was contrary to existing plan). These unpublished cases reach these holdings without citing any authority, but their ultimate conclusion as to the level of proof necessary for an amendment to a comprehensive plan is both correct and persuasive when viewed against the backdrop of existing statutes and case law.

First, the “change or mistake” doctrine gives proper recognition to statutory mandates, which require the expenditure of significant municipal and regional resources in preparing a comprehensive plan. Mendota Heights’ comprehensive plan is mandated and governed by two Minnesota statutes. The Municipal Planning Act of 1965 (“MPA”), Minn. Stat § 462.351-.364, empowers all Minnesota municipalities to engage in land use planning activities. *Id.* § 462.351. The MPA specifically authorizes municipalities “to carry on the comprehensive planning activities for guiding the future development and improvement of the municipality...” and to enact zoning ordinances “for the purpose of carrying out the policies and goals of the land use plan....” *Id.* § 462.353, subd. 1, 2(a). The MPA mandates the coordination of such comprehensive plans with those of the county and neighboring municipalities. Minn. Stat. § 462.355 subd. 1 (requiring municipalities to prepare comprehensive plans and coordinate them with adjacent and affected jurisdictions).

³ Unpublished opinions by the court of appeals may have persuasive value even if they do not have precedential value. *Andrew L. Youngquist, Inc. v. Cincinnati Ins. Co.*, 625 N.W.2d 178, 184 (Minn. App. 2001).

Because the City of Mendota Heights is located in the seven-county metropolitan area, it is also subject to the *Metropolitan Land Use Planning Act* (“MLUPA”) (originally enacted in 1976 and codified at Minn. Stat. §§ 473.85-.871 (2002)). This statute imposes special comprehensive planning responsibilities and procedures upon municipalities within the Twin Cities metropolitan region. “MLUPA requires each city in the metropolitan area to produce a comprehensive plan that contains ‘objectives, policies, standards and programs to guide public and private land use, development, redevelopment and preservation for all [local] lands and waters....’” *Alliance for Metropolitan Stability, et. al. v. Metropolitan Council*, 671 N.W.2d 905, 910 (Minn. App. 2003)(emphasis added) (*quoting* Minn. Stat. § 473.859, subd. 1.)

MLUPA also establishes the Met Council, a regional planning agency “charged by the legislature with responsibility for the orderly development of the Minneapolis-St. Paul region.” *City of New Brighton v. Metropolitan Council*, 237 N.W.2d 620, 623 (Minn. 1975). The Met Council exercises statutory authority to oversee and coordinate comprehensive planning activities of all municipalities within the metro-area. By enacting MLUPA, “the Legislature reallocated land planning authority from local government to the Met Council to create an integrated regional planning model.” B. Ohm, “Growth Management in Minnesota: the Metropolitan Land Planning Act,” 16 *Hamline L. Rev.* 359, 372 (1993).

Comprehensive plans of the seven-county metropolitan municipalities form the core elements of the regional planning scheme codified in MLUPA. Original comprehensive plans and any proposed revisions to comprehensive plans must be

submitted to the Met Council for review and approval or rejection. *Alliance for Metropolitan Stability*, 671 N.W.2d. at 911 (citing Minn. Stat. § 473.175, subd 1); *see generally, Nordmarken v. City of Richfield*, 641 N.W.2d 343, 347-348 (Minn. App. 2002.).

Because the comprehensive plan is reflective of significant municipal and state expenditures of time and resources, it is only appropriate that a developer would have to meet an extremely high burden of proof—a demonstration of a mistake or a change—in order to obtain a reclassification. To permit amendments to a comprehensive plan for any other reason would invalidate the very legislative decisions that resulted in a land use plan that is appropriate for the individual city and the metro region as a whole.

Second, the adoption of the “change or mistake” doctrine in the context of amendments to comprehensive plans is consistent with existing case law developed in other land use contexts. In *Honn*, this Court held that the original zoning classification of land pursuant to a zoning ordinance is presumed to be well planned and intended to be more or less permanent. 313 N.W.2d at 419. Thus, in order to obtain rezoning, “the burden is on [proponents] to show either some mistake in the original zoning or that the character of the neighborhood has changed to such an extent no reasonable use can be made of the property in its current zoning classification.” *Id*; *accord Sun Oil Company v. Village of New Hope*, 220 N.W.2d 256, 263 (Minn. 1974); *see generally Rathkopf, The Law of Zoning and Planning* §§ 14:7, 42:3 (2004). The adoption of this doctrine is intended to strike a balance between giving the appropriate deference to the legislative decision-

making of the municipality, while preventing piecemeal zoning and spot zoning. *Honn*, 313 N.W.2d at 419; *see generally* Rathkopf, *The Law of Zoning and Planning* at § 42:3.

The underlying reasons for the application of the “change or mistake” doctrine in the context of rezoning are equally applicable in the context of comprehensive plan amendments. The same concerns that exist in rezoning cases exist in the context of comprehensive plan amendments; and the issues in this case are even more complex than those in rezoning cases because the City’s comprehensive plan is part of a regional plan for land use and zoning. In fact, all of the concerns regarding piecemeal zoning, spot zoning, and legislative planning exist in this case.

Mendota Heights classified several properties within the City as Golf Course use through its comprehensive plan. It did so in conjunction with the municipal plan for preservation of open and recreational areas and because such areas were dwindling within the metro suburban region. By seeking an amendment to the comprehensive plan to allow for a different use, Respondent is essentially seeking spot zoning—a change in the zoning classification of a singular piece of property. Thus, to strike the proper balance between these competing concerns, the “change or mistake” doctrine should be applied.

Here, both lower courts erred in failing to require Respondent to demonstrate that either (1) there was an error in its 2002 comprehensive plan, or (2) the neighborhood so changed that a reclassification of the comprehensive plan was needed. Furthermore, Respondent, has not, and cannot, demonstrate the foregoing.

Respondent never submitted any evidence that there was in error in the original 1979 guiding of various properties with the City, including Respondent’s property, as Golf Course

use. Furthermore, Respondent has never demonstrated a change in the character of the surrounding neighborhood. It has been, and continues to be, residential—which this Court has already recognized as being a compatible use with Golf Course use. *See In re Denial of Eller Media Cos. Applications*, 664 N.W.2d 1, 10 n. 8 (2003). Because there is no evidence of mistake or change meriting the requested spot zoning reclassification of the subject property from Golf Course use to Residential use, the decisions of the lower courts should be reversed.

B. Even if mistake or change is not required, a City may deny a request to amend its comprehensive plan for rational reasons identified by it at the time of consideration.

Even if this Court holds that a higher burden of proof is not necessary in cases where a developer seeks an amendment to a comprehensive plan, the decisions of the lower courts are still erroneous under the traditional rational basis test applied in zoning matters. As a legislative act, a zoning or rezoning classification 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.” *Honn*, 313 N.W.2d at 414-15 (quoting *St. by Rochester Ass’n of Neighborhoods*, 268 N.W.2d 885,888 (1978)).

Respondent claims that the legislative decision of the City was arbitrary and capricious only for two reasons: (1) the City failed to make specific findings and conclusions in its resolution denying the comprehensive plan amendment; and (2) the present zoning designation, as distinguished from the comprehensive plan designation, allows for the residential use Respondent is proposing. The court of appeals erroneously agreed.

- 1. This Court may look beyond a resolution and review the municipal record developed before the City Council of Mendota Heights when evaluating whether a land use decision reflects a rational basis.**

Respondent argued to the court of appeals that in order for a legislative decision, such as the denial of a comprehensive plan amendment, to be upheld as rational and reasonable, a city must enumerate specific findings and conclusions supporting the denial and codify those findings and conclusions in a resolution. This, however, is not the law in Minnesota. *See e.g. Honn*, 313 N.W.2d at 415-416 ("[t]he municipal body need not necessarily prepare formal findings of fact"); *Uniprop Manufactured Housing, Inc. v. City of Lakeville*, 474 N.W.2d 375, 377 (Minn. App. 1991) (looking to minutes of city council to determine whether a municipal decision was arbitrary and capricious where the city council made no written findings of fact to support its decision). Although detailed resolutions may be helpful to a reviewing court, they are not required to sustain municipal actions. *Id.*

The official record of a planning commission meeting or a city council meeting is the minutes of those meetings. Minn. Stat. §§ 412.151, 600.13, 600.17 (2000); *City of Fergus Falls v. Whitlock*, 247 Minn. 347, 352, 77 N.W.2d 194, 198 (1956). In its official record, the City of Mendota Heights discussed eight separate and independent reasons leading to its denial of the amendment to the comprehensive plan. The most important bases for denial were (1) the desire to retain open and recreational space, and (2) reaffirmation of its recently re-enacted Comprehensive Plan.

Before the lower courts, Respondent did not refute the City's demonstration that a City may deny an amendment to a comprehensive plan in order to (1) retain open and recreational space, and/or (2) reaffirm its comprehensive plan. See *City of St. Paul v. Chicago, St. P., M.&O. Ry. Co.*, 413 F.2d 762, 770 (8th Cir. 1969) (holding that open space is a legitimate governmental interest for the furtherance of public health, safety and welfare); *SuperAmerica Group, Inc. v. City of Little Canada*, 539 N.W.2d 264, 267 (Minn. App. 1995) (holding that a city may deny a land use request in order to protect the health, safety and welfare of its citizens, as well as to reaffirm the existing Comprehensive Plan), review denied (Minn. Jan. 5, 1996) (citing *Hubbard Broadcasting, Inc. v. City of Afton*, 323 N.W.2d 757, 763 (Minn. 1982)).

Rather, Respondent asserted, and the court of appeals erroneously agreed, that because the identified reasons for denial (open space and reaffirmation of the comprehensive plan) were not specifically set forth in the language of the ultimate resolution denying the comprehensive plan amendment, the resolution denying the comprehensive plan amendment is without a rational basis. Resolution Number 03-46 enacted by the City of Mendota Heights, denied Respondent's request to amend the comprehensive plan and states in pertinent part that:

the Comprehensive Plan Amendment from GC "Golf Course" to LR "Low-Density Residential" at 1695 Dodd Road as proposed in Planning Case #03-30 would have an adverse impact on the health, safety, and general welfare of the citizens of the community and the surrounding land, and would be adverse to the general purpose and intent of the Zoning Ordinance.

Ex. 17, Resolution No. 03-46.

Admittedly, this resolution does not set forth that the specific bases for the denial—(1) the desire to retain open and recreational space and (2) reaffirmation of its recently re-enacted comprehensive plan. A review of the record, however, indicates that the planning commission and the City Council focused on the integrity of the recently enacted Comprehensive Plan when considering Respondent’s proposal. Further, city councils are not expected to make formal findings of fact and conclusions, especially with respect to legislative decisions. *Honn*, 313 N.W.2d at 415-416. (“ . . . city councils and zoning boards do not ordinarily make records of their proceedings as complete and as formal as those of a state administrative agency or commission. Nor should we expect this to be so”). Rather, Minnesota law establishes that in cases where a municipality renders a legislative decision the Court may look beyond the resolution adopted by the City Council and review the minutes of the meeting and documents considered therein to determine whether the City had a rational basis for its decision. See *Crystal Beach Bay Association Island View Route, International Falls v. County of Koochiching*, 309 Minn. 52, 243 N.W.2d 40 (1976) (holding that a prima facie case of arbitrariness is rebutted by “evidence in the recorded hearing testimony from which the reviewing court can ascertain a reasonable basis for the County Board’s action”); see also *Graham v. Itasca County Planning Commission*, 601 N.W.2d 461, 467 (Minn. App. 1999). In fact, courts go so far as to permit supplementation of otherwise inadequate municipal records through after-the-fact testimony and documentation. See *Swanson v. City of Bloomington*, 421 N.W.2d 307 (Minn. 1988). Therefore, this Court in reviewing this matter is certainly permitted to, and even obligated to, look beyond the resolution enacted by the City and

review the record developed before the City in determining whether the decision to deny the comprehensive plan amendment was rationally based.

Reviewing the official record in this case, which included consideration of reports prepared by the City Planner and City Staff, it is clear that the primary basis for the City's ultimate conclusion that the comprehensive plan amendment proposed by Respondent was contrary to the health, safety, and welfare of the citizens, as well as the existing zoning⁴, was the desire to promote the public welfare by maintaining open and recreational space and reaffirm the recently re-enacted comprehensive plan.

Statements by the City Attorney and Council members establish that reaffirmation of the recently re-enacted comprehensive plan was the focus of City Council deliberations on Respondent's petition to amend the comprehensive plan. Mayor Huber noted that, "the council updated the city's comprehensive plan a few years ago and held many public hearings." *A.135*. Councilmember Kresenbach supported Mayor Huber's notation, stating, "the plan updating process was very extensive." *Id.* Mayor Huber later concluded, "the city has not changed the comprehensive plan designation on this for

⁴Resolution No. 03-46 states that the proposed amendment would be "adverse to the general purpose and intent of the Zoning Ordinance." *A. 122*. The term zoning is a broad term in the land use setting and includes all land use regulations promulgated by the state, federal and local political subdivisions. *See e.g. VanSchloot v. City of Mendota Heights*, 336 N.W.2d 503 (Minn. 1988) (using the term zoning broadly to refer to, and include, the City's Comprehensive Plan, zoning, subdivision and wetland ordinances). Thus, the term "Zoning Ordinance" as used in the resolution should be viewed in its broader context to include all zoning regulations in the City of Mendota Heights, including its comprehensive plan, subdivision regulations, and all other land use regulations that apply to this property. Further, that Amendment of the comprehensive plan would be contrary to all zoning regulations in effect within the City.

twenty-five years or more...” and that is had gone as such without request for a different designation. *A.140.*

City Attorney Daniel Schleck affirmed that the comprehensive plan is paramount to all other zoning regulations and that it should be followed, stating, “a local government shall not adopt any fiscal device or official control which is in conflict with its comprehensive plan. That is pretty clear that the comprehensive plan control, and that has been the position that the courts in the State of Minnesota have taken ever since the law was passed in 1995.” Clearly, the ultimate decision made by the City Council furthered its concerns of reaffirmation of the recently re-enacted comprehensive plan which is paramount to all other zoning regulations.

The preservation of the open and recreational space achieved through a Golf Course designation also was indisputably a paramount theme throughout City Council discussions of Respondent’s proposal. *A.129 and Verified Answer, ex. 13.* Specifically, City Councilmember and Parks and Recreation Commissioner, Dugan stated, “the response from the people is that they want the property open and the golf course to continue.” *A.134. A.140.* Finally, six citizens appeared before Council and testified to the need for open and recreational space. *A.135-138.* Again, the ultimate decision reached by the City clearly reflected the City Council’s concerns that amendment of the recently re-enacted comprehensive plan would result in the loss of open space and recreational uses, contrary to the public welfare.

As set forth above, the municipal record developed in response to Respondent’s petition for an amendment to the comprehensive plan clearly establishes that the City

denied the amendment because the proposed amendment was contrary to the health, safety, and welfare of the citizens because the proposed amendment marginalized open and recreational space.

In addition, the proposed amendment was contrary to the health and welfare of the citizens, and contrary to the zoning regulations, because the proposed amendment was contrary to the provisions of the recently re-enacted comprehensive plan, which called for use as a golf course. Respondent has never rebutted the case law which establishes that the City has a legitimate governmental interest in (1) protecting open and recreational space, (2) protecting the health, safety and welfare of its citizens, and (3) reaffirming its historical zoning regulations. *St. Paul City*, 413 F.2d at 770; *SuperAmerica Group, Inc.*, 539 N.W.2d at 267. Accordingly, the decision to deny the comprehensive plan amendment submitted by Respondent was not arbitrary and capricious and the lower courts erred in concluding otherwise.

2. **It is contrary to the health, safety, and welfare of the City's citizens to permit residential use of the property because such use is contrary to the historical zoning classification and the goals sought to be obtained by that zoning classification.**

Respondent argued, and the court of appeals erroneously agreed, that it is logically inconsistent to refuse to amend the comprehensive plan to allow for residential use when the underlying zoning permits residential use. Specifically, the Court of Appeals stated:

[h]ow amending the comprehensive plan to allow development that would *have to be allowed* under the zoning ordinance could adversely impact health, safety and general welfare, or could be contrary to the intent of the zoning ordinance, is neither clear nor explained.

Mendota Golf, L.L.P. v. City of Mendota Heights, 2004 WL 2161422 at *4.

The fundamental flaw in the court of appeal's conclusion and Respondent's arguments, however, is that the proposed use is not, and historically has not been, compatible with the basic use authorized by all zoning regulations applicable to this property. This not a case such as plat or permit denial, where the proposed use identified in the application has already been determined to be generally permissible and consistent with the public welfare. See e.g. *Chanhassen Estates Residents Ass'n v. City of Chanhassen*, 342 N.W.2d 355, 338 (Minn. 1998) (considering building permit application submitted by McDonald's where restaurants were permitted used and drive-ins a conditional use); *Swanson v. City of Bloomington*, 421 N.W.2d 307 (Minn. 1998) (considering application for subdivision into two residential lots, where residential use was permitted).

Rather, Respondent is seeking is a comprehensive plan amendment because the proposed use is not permissible. In fact, the proposed use is contrary to what has historically been determined to be in the best interest of the public welfare—preservation of dwindling open and recreational spaces in the metro suburban region. The City's zoning ordinance does not provide all limits and regulations related to the use of the subject property. In determining what uses are permissible, a property owner must look to all land use regulations that apply to the property—federal, state, county, municipal, and, in this case, regional planning authority as well.

The City's comprehensive plan has historically limited use of the subject property to Golf Course use. Consistent with the comprehensive plan and pursuant to the zoning

ordinance, the property has historically operated as a golf course under a conditional use permit. Thus, Respondent's proposed use is not compatible with all of the applicable zoning regulations. Respondent knew that the property was so limited; and, thus, did not seek a building permit or approval of a subdivision plat. Rather, knowing that its proposed use was not permitted by all applicable zoning regulations, Respondent sought the amendment of regulations that prevented use of this property as residential (the comprehensive plan).

Because the use proposed by Respondent is not compatible with the basic authorized use of the property, and because the amendment of the comprehensive plan to allow for the proposed use would be contrary to the public welfare, it was proper for the City to deny Respondent's petition to amend the comprehensive plan.

II. The decision of the court of appeals must be reversed because it directs the City to do something directly contrary to the Municipal Land Use Planning Act, Minn. Stat. §473.858.

In direct violation of statutory requirements and public policy established in case law, the court of appeals erroneously concluded that it is appropriate to order the City to correct the inconsistency between its comprehensive plan and zoning ordinances by ordering the city to amend its comprehensive plan. The Court based its decision on the fact that the City's comprehensive plan states that zoning and subdivision ordinances are the primary authority for making development decisions.

Like the MPA, MLUPA requires that local zoning ordinances be guided by the comprehensive plans approved by the Met Council, and prohibits city councils from enacting zoning provisions that conflict with comprehensive plans. "[A] local

government unit shall not adopt any...official control which is in conflict with its comprehensive plan.” Minn. Stat. § 473.858, subd 1 (as amended by Laws 1995 Chapter 176). MLUPA requires individual cities to prepare comprehensive plans and then have those plans reviewed by a regional body. Under MLUPA, once these plans are approved, they trump any existing zoning ordinances or subsequently enacted zoning ordinances that conflict with the adopted plan. The purpose of this entire statutory scheme is to ensure uniform regional planning.

The court of appeals and the district court reached the same conclusion in this matter and found that the City must amend the comprehensive plan. They did so, however, for different reasons. In reviewing this matter, it is important for this Court to review the legal analysis of each lower court because each of them failed to recognize the importance of comprehensive plans in the metropolitan area and the need to follow the provisions set forth in them. This Court needs to clarify the importance of comprehensive plans in the metropolitan area and their significance in regional planning.

A. Comprehensive plans adopted by metropolitan cities constitute the primary zoning regulation and supercede all other regulations adopted by that city to the extent they are inconsistent.

Initially, Respondent argued, and the district court erroneously agreed, that the City’s comprehensive plan was insubordinate to its zoning ordinances, citing *PTL, LLC v. Chisago Cy Bd. Of Commrs.*, 656 N.W.2d 567, 574 (Minn. App. 2003) and *Chanhassen Estates Residents Ass’n v. City of Chanhassen*, 342 N.W.2d 335 (Minn. 1984).

Neither *PTL*, nor *Chanhassen Estates* is applicable in this case. *PTL* construed Minn. Stat. § 394.21, et. seq., the statute authorizing counties to conduct planning

activities. “Under Minnesota law, each county ‘has the power and authority to prepare and adopt’ a comprehensive plan.” Minn. Stat. § 394.23 (2002).

The Chisago County Comprehensive Plan discussed in *PTL* served as a “policy guide” intended to be ‘general in nature’ and to serve as a growth management tool for the County.” 656 N.W.2d at 574. It did not address specific uses that were, or were not, permissible for particular parcels of land. Rather, the provisions of the Chisago County Comprehensive plan “are merely general statements of purpose; they do not set forth clear and objective standards a developer must meet to obtain subdivision approval.” *Id.* at 575. It must be noted, however, that unlike metropolitan cities, there is no statutory scheme requiring individual counties to prepare comprehensive plans, have those plans reviewed by a regional body, and then, once approved, have those plans trump any zoning ordinances existing or subsequently enacted that conflict with the adopted plan.

By contrast, the case at bar is governed by Minn. Stat. § 473.851 et. seq., a complex and more detailed statutory scheme applicable to municipalities within the seven-county metro, including Mendota Heights. Unlike the county land use statute construed in *PTL*, MLUPA sets forth a distinctive definition of “comprehensive plan,” Minn. Stat. § 473.852, subd. 5, specific directions regarding the content of comprehensive plans, Minn. Stat. § 473.859, and a unique requirement that such plans be submitted to the Met Council for approval. Minn. Stat. § 473.859, subd. 3.

Most importantly, MLUPA contains provisions governing the conflicts between comprehensive plans and other official land use controls. Minn. Stat. §§ 473.858,

473.865. In 1995, the legislature declared that the provisions of properly enacted comprehensive plans for metropolitan cities have the force of law and are neither advisory, nor subordinate to inconsistent zoning provisions. *A.144-176, Laws 1995 Chapter 176*. In fact, the 1995 Amendment to the MLUPA makes clear that a Comprehensive plan designation trumps an inconsistent zoning provision. *Id.*

The legislature anticipated the possibility of inconsistencies between a metropolitan municipality's comprehensive plan designations and zoning provisions. Before 1995, the statutory scheme gave priority to zoning where conflicts existed. *See* 1985 Minn. Laws ch 62, sec. 4 (favoring zoning over the comprehensive plan). The 1995 amendment to MLUPA reversed that priority, declaring:

“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....”

Minn. Stat. § 473.858, subd. 1.

MLUPA now mandates that zoning provisions must be amended to correspond to comprehensive plan designations. This interpretation is fully supported by an explicit legislative history and intent as articulated by the sponsor of the Amendment, Senator Ted Mondale:

“[T]here was an amendment put on [to the MLUPA] called the Merriam amendment a number of years ago that made local ordinances override their comprehensive plan . . . But when you think about planning, the comprehensive plan has to be more important than the zoning documents. So what this document does is repeals the Merriam Amendment.”

A.151-A152, MN Senate, May 5, 1995, House File 833 (emphasis added). Senator Mondale's amendment was signed into law on May 17, 1995, as Minn. Stat. § 473.858, subd. 1. *A.149*.

Commentators recognize the intent and effect of this amendment. "Reversing the historical priority of local zoning decisions over comprehensive plans, the amendment creates a consistency requirement between zoning controls and local comprehensive plans. Because local plans must now conform with metropolitan plans, zoning decisions, in effect, are subordinate to metropolitan plans." Poradek, J. (Comment and Note), "Putting the Use Back in Metropolitan Land-use Planning: Private Enforcement of Urban Sprawl Control Laws", 81 Minn. L. Rev. 1343, 1372 (1997).

Therefore, the statement in *PTL* that "a preliminary plat that conforms with the requirements for zoning and subdivision ordinances conforms, by definition, with the comprehensive guide plan []" cannot be extended beyond the facts of that case, or must be treated as mere dicta without application to the case at bar. *PTL*, 656 N.W.2d at 575 (quoting *Chanhassen Estates*, 342 N.W.2d at 340).

Moreover, *Chanhassen Estates* is not appropriately applied here. *Chanhassen Estates* does not address conflicts between a comprehensive guide plan and municipal zoning restrictions. *Id.* 342 N.W.2d at 339-340. Rather, it merely resolves differing interpretations of provisions within a city's zoning ordinance. Specifically, the decision determines whether a fast food restaurant with a "drive through window" should be treated as a permitted use (i.e. conventional restaurant) or a conditional use (i.e. "drive-in restaurant"). *Id.*

The problem of conflicting zoning ordinances solved by *Chanhassen Estates* is not the issue before this court. *Chanhassen Estates*, thus, provides little guidance regarding the reconciliation of inconsistencies where there is conflict between provisions of comprehensive plans and zoning codes. Further, *Chanhassen Estates* was decided eleven years prior to the [Mondale] Amendment to MLUPA in 1995, and, as a result, that decision carries no persuasive value when evaluating the issues in the present appeal in any event.

B. The court of appeals erred by failing to recognize that a metropolitan municipality cannot circumvent the state legislature's intent to provide for uniform development by providing that other regulations adopted by it are primary to its comprehensive plan.

On appeal, Mendota Golf abandoned its argument that under *PTL* and *Chanhassen* the City's zoning ordinances trumped its comprehensive plan. The court of appeals then independently developed its own unique theory as to why the City's comprehensive plan should be held to trump its zoning ordinances.⁵ The court found that the plain language of the City's own comprehensive plan stated that its zoning and subdivisions ordinances would be the primary authority for making development decision. No one made this argument to the court, nor would it have been appropriate to do so.

⁵ The City's arguments primarily focused on why the district court erroneously applied *PTL, LLC v. Chisago Cty Bd. of Commrs.*, 656 N.W.2d 567, 574 (Minn. App. 2003). The court of appeals sidestepped the district court's erroneous application of *PTL* by suggesting (without any logic or authority) that *PTL* was not significant to the district court's ruling. To the contrary, *PTL* was one of the few cases cited by the district court in support of its decision to justify the proposition that the zoning ordinance trumps the comprehensive plan. This remains an important issue even though the court of appeals attempted to remove it.

State law establishes that in the seven county metro area, the comprehensive plan of a city is preeminent and supercedes its zoning ordinances. The purpose of such a requirement is to obtain uniform and planned development within the metro region.

By subordinating comprehensive plans to zoning ordinances if they contain language providing that their zoning ordinance are primary, the court of appeals has created a rule of law that enables cities to disregard the importance of a comprehensive plan and all studies leading to the comprehensive plan approval by both the City and the Met Council. In effect, cities are now permitted to completely ignore Minn. Stat. § 473.864, subd. 2. Further, cities desiring to circumvent the power of the Met Council can guide all their land development solely by zoning ordinances. This decision reflects a misunderstanding of the importance of the comprehensive plan in metropolitan cities and is contrary to the public policy set forth *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1 (2004) which reaffirms the importance of region-wide landuse and development policies and discourages cities from attempting to usurp those goals. Accordingly, the court of appeals' decision must be reversed.

III. The court of appeals erred in issuing a writ of mandamus directing the City to exercise its legislative authority in a specific manner.⁶

The court of appeals erred in affirming the issuance of the writ directing the City to exercise its discretionary legislative authority to (a) bring its comprehensive plan into conformity with the zoning ordinance and (b) “cooperatively and diligently” submit the comprehensive plan amendment for review and adoption by the Metropolitan Council. Both directives go to the core of the City’s discretionary legislative authority and violate separation of powers.

Mandamus is an extraordinary remedy available only to compel the performance of a legal duty. Minn. Stat. § 586.01 (2002); *Zaluckyj v. Rice Creek Watershed District*, 639 N.W.2d 70, 74 (Minn. App. 2002), *review denied* (Minn. April 16, 2002).

Mandamus is improper where the act at issue involves the exercise of discretion and judgment by a municipality. *State ex rel City of South St. Paul v. Hetherington*, 240 Minn. 298, 61 N.W.2d 737 (1953). Although courts may order a writ of mandamus to compel the performance of a public duty which the law clearly imposes, it merely sets in

⁶ The Petition filed in this matter states that Respondent is seeking an alternative writ of mandamus. Petitioner, for the first time on summary judgment motions to the trial court, asserted that it was seeking a peremptory writ of mandamus. A writ of mandamus, however, is either alternative or peremptory. Minn. Stat. § 586.03. Further, the procedure for a peremptory writ of mandamus differs from that for an alternative writ. *Coyle v. City of Delano*, 526 N.W.2d 205 (Minn. App. 1995). An alternative writ permits a defendant to answer the petition and show cause for not complying with the writ, while a peremptory writ does not. Minn. Stat. § 586.03. Peremptory writs may be allowed in the first instance only when the right to require performance of the act is clear and no valid excuse for nonperformance can be given. Minn. Stat. § 586.04. Because the initial Petition failed to plead a peremptory writ of mandamus, Petitioner is not entitled to such a writ. Nevertheless, an Order entitled Peremptory Writ of Mandamus was issued by the district court.

motion the exercise of discretion rather than “attempt[ing] to control the particular manner in which the duty is to be performed.” *State v. Laurisch*, 214 Minn. 221, 226, 8 N.W.2d 227, 231 (1943) (affirming writ of mandamus to county commissioners to begin to redistrict the county as required by statute but stating that it would not undertake to control the manner in which officials’ acts of discretionary nature are to be performed). *See also State ex rel. Rose v. Town of Greenwood et al.*, 220 Minn. 580, 20 N.W.2d 345 (1945) (affirming writ of mandamus to town board to establish a cartway and permitting the board to exercise reasonable discretion in varying the route proposed according to the public interest). Mandamus does not lie to interfere with the discretion of public officers because to allow otherwise would violate the separation of powers doctrine. *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977).

As previously noted, the establishment of land use policies and regulations are legislative matters reserved to municipalities who are in the best position to respond to the needs of their citizens. *Honn*, 313 N.W.2d at 414. Thus, the amendment of a comprehensive plan is quintessentially a discretionary act, reflecting the legislative judgment of elected officials. *See Reiter*, 2002 WL 31302975 (Minn. App. Oct. 15, 2002) (the adoption of a comprehensive plan and the amendment thereof is a legislative act and the Court is not authorized to direct city councils how they are to legislate when adopting or amending a comprehensive plan) (citing *Honn*, 313 N.W.2d at 416-17).

In this case, the district court’s Order for Judgment and Writ of Mandamus, affirmed by the court of appeals, improperly dictates how the City of Mendota Height’s must exercise its legislative judgment regarding local land use control. First, it mandates

that the City of Mendota Heights reconcile its land use regulation in a specific manner to allow residential development. If there is a conflict between the ordinance and the comprehensive plan, however, there are several ways the Council could reconcile the discrepancy. The City could bring the zoning ordinance into conformity with the plan, it could bring the plan into conformity with the ordinance, or the City could choose to redesignate the property in a manner different from the property's current designation in either the plan or the ordinance. This list of alternatives is not necessarily exhaustive. The court's order, however, dictates which alternative the City must choose. The court's order therefore impermissibly infringes on the City's autonomy to make land use decisions and leaves the City with no discretion to choose between these alternatives.

In affirming the order, the court of appeals justifies its decision based on a provision in the City's comprehensive plan that provides that the City's zoning ordinance is the primary authority for making development decisions. 1004 WL 2161422 at *2. The court states that it could not order the City to reconcile the discrepancy by amending the ordinance because that would have been inconsistent with the City's comprehensive plan. *Id.* One of the court's underlying but unstated premises is that the presence of this provision in the comprehensive plan effectively rules out one option the City could take to reconcile the ordinance and the plan—amend the ordinance to conform with the plan. The court's logic, however, is contrary to MLUPA, which provides that when there is a conflict between a provision in the comprehensive plan and a zoning ordinance, the zoning ordinance must be brought into conformity with the plan. The court erred in concluding that the option of amending the ordinance to conform with the plan was

unavailable based on a provision in the City's comprehensive plan when state law clearly contemplates this course of action. A second underlying but unstated premise of the court's decision is that there are only two ways to reconcile the discrepancy—amend the plan or amend the ordinance. Yet the City could resolve the discrepancy by redesignating the property in a manner provided by neither the plan nor the ordinance. The court's order effectively takes away from the City any discretion on how to resolve the discrepancy and undermines the democratic process. For all these reasons, the court of appeals erred in upholding the order directing the City to amend its comprehensive plan.

The district court's order not only requires the City to amend its comprehensive plan, it also requires the City to "cooperatively and diligently submit the said Comprehensive Plan amendment for review and adoption by the Metropolitan Council." This provision of the order was also upheld by the court of appeals. The phrase "cooperatively and diligent submit" is vague and ambiguous. It is unclear how such an order could be enforced. It is equally unclear how the City objectively fulfills the order forcing it to exercise discretion inconsistent with its legislative preferences. The order mandates certain interactions between the City and the Met Council on policy issues and requires the City to support the amendment's adoption by the Met Council. As such, goes to the core of the City's legislative prerogative and discretionary authority. The source of the City's clear legal duty to perform this act is unknown and is not identified by the

courts below. This action is hardly the fixed and certain legal duties of a municipality warranting a writ of mandamus.⁷

By mandating that the City reconcile the inconsistency between its comprehensive plan and zoning regulations so as to give up precious open space for further residential development, the lower courts exceeded their judicial authority and improperly precluded the City Council from exercising its legislative responsibilities. The only appropriate remedy Respondent might arguably pursue is an order that the City must rationally reconcile conflicting zoning and comprehensive plan provisions in a manner that would not dictate the outcome of the City Council's legislative reconciliation process. *See Hetherington*, 240 Minn. 298, 61 N.W.2d 737 at 739 (a writ of mandamus should issue only to require a city to exercise its legislative authority in a rational manner, not to control the ultimate legislative decision reached by the city); *see also Hoskin v. City of Eagan*, 632 N.W.2d 256 (Minn. App. 2001) (same).

Likewise, if Respondent alleges that there is insufficient support in the record establishing the legitimate basis of the City's denial of its Petition, the appropriate remedy available to Respondent is to seek a remand to the City Council for a more

⁷ The fact that the Met Council has ultimate authority to approve the City's comprehensive plan amendment means that the court may lack subject matter jurisdiction over this case due to Respondent's lack of standing. One element of standing is that the proposed remedy redress the alleged injury. Even if the City enacts the amendment, however, and even if the City supports the amendment before the Met Council, there is no guarantee that the Met Council will approve the amendment. This simply demonstrates that mandamus is an inappropriate remedy under the circumstances of this case. A court's lack of subject matter jurisdiction over a matter may be raised at any time, including for the first time on appeal. *Mangos v. Mangos*, 264 Minn. 198, 202, 117 N.W.2d 916, 918 (1962).

explicit presentation of the bases for its decision. *See Earthburners, Inc. v. Carlton County*, 513 N.W.2d 460, 463 (Minn. 1994)(“In the proceedings on remand, the board must articulate the reasons for its ultimate decision, with specific reference to relevant provisions of its zoning ordinance.”).

CONCLUSION

The City Council decision to deny Respondent’s petition to amend the comprehensive plan was based upon legitimate grounds: the preservation of open space land uses for the golf course, as expressly set forth in the recently re-adopted comprehensive plan designation for this parcel. The lower courts’ misunderstanding of the law applicable to metro-area cities frustrates the explicit legislative directive to give predominate legal priority to comprehensive plans.

The writ of mandamus issued by the district court and affirmed by the court of appeals explicitly and improperly divests the City Council of its constitutionally-based legislative authority to determine local land uses. Moreover, the challenged writ threatens to impose a development on this community which will directly conflict with the City’s legitimate land use goals.

For all these reasons, Appellant respectfully requests this Court to reverse the court of appeals, dissolve the Writ, and order the entry of summary judgment on behalf of the City.

Respectfully submitted,

Dated: February 11, 2005

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Heights

RE: *Mendota Golf, L.L.P. v. City of Mendota Heights*
Case No.: A040206

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

AFFIDAVIT OF SERVICE
BY U.S. MAIL

Sandra A. Poitras, being duly sworn says that on the 11th day of February, 2005, she served the following:

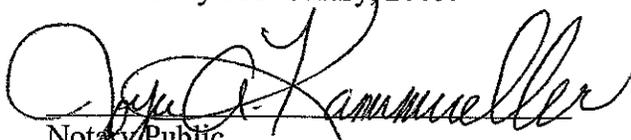
Brief and Appendix of Appellant City of Mendota Heights

by enclosing two bound copies of each in an envelope, postage prepaid, directed to the following via United States mail at his last known address:

S. Todd Rapp
S. Todd Rapp P.A.
4686 Slater Road
Eagan, MN 55122-2362

Sandra A. Poitras
Sandra A. Poitras

Subscribed and sworn to before me
this 11th day of February, 2005.


Notary Public

