

Case No. A040206

State of Minnesota
In Supreme Court

Mendota Golf, LLP, a Minnesota limited liability partnership,
Respondent,

v

City of Mendota Heights, a Minnesota municipal corporation,
Appellant.

BRIEF OF RESPONDENT MENDOTA GOLF, LLP

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STATEMENT OF THE CASE AND OF THE FACTS

A. STATEMENT OF THE CASE.

On December 10, 2003, Respondent Mendota Golf, LLP secured from the trial court a Peremptory Writ of Mandamus compelling Appellant city of Mendota Heights to approve Respondent's application for a Comprehensive Plan amendment of certain property located within the city of Mendota Heights from a "GC Golf Course" Comprehensive Plan use designation to a "LR Low-Density Residential" land use designation consistent with its existing, and historical, zoning designation as "R-1, One-Family Residential" land. *Appellant's Appendix A.12*. Because any such Comprehensive Plan amendment is statutorily required to be reviewed and approved by the Metropolitan Council, Respondent further sought, and contemporaneously obtained, the trial court's order that Appellant in fact submit the Comprehensive Plan amendment to the Metropolitan Council for such required review and approval. *Appellant's Appendix A.12*.

On or about February 9, 2004, Appellant served notice of its appeal of the trial court's decision to the Minnesota court of appeals. *Appellant's Appendix A.141-143*. On September 28, 2004, the court of appeals issued its unpublished decision affirming the trial court, confirming (a) that mandamus may issue to compel performance of a discretionary act if the failure to perform is so arbitrary and capricious as to constitute a clear abuse of discretion; (b) that the trial court did not err in directing the Appellant to satisfy its statutory obligation of reconciling discrepancies between its Comprehensive Plan designation and its zoning ordinance designation of the subject property by

commencing the process to amend the Comprehensive Plan; (c) that the review on appeal should be focused upon the legal sufficiency of and the factual basis for reasons given by Appellant's city council for denying Respondent's requested Comprehensive Plan amendment; and (d) that Appellant's current disparate Comprehensive Plan and zoning ordinance designations for Respondent's real property reflect "logical" inconsistencies, and that Appellant's stated reasons for denying the requested Comprehensive Plan amendment (i.e. adverse effect on health, safety and welfare and contrariness to the intent of the zoning ordinance) did not meet the applicable rational basis test.

On or about October 27, 2004, Appellant petitioned for review of the court of appeals decision to this Court. On December 22, 2004, Appellant's Petition for further review was granted by this Court.

B. STATEMENT OF FACTS.

Respondent owns real property located in the city of Mendota Heights, county of Dakota, legally described as Lot Forty-two (42) of Auditor's Subdivision Number 3, Mendota, and has operated thereon a par-3 golf course since early 1995. *Appellant's Appendix A.2.* The subject property has long been included within Appellant's "R-1 One-Family Residential" zoning district, wherein one family residential uses are expressly designated as permitted uses. *Appellant's Appendix A.3.* The subject property is currently located, however, within an area having a Comprehensive Plan land use classification of "GC Golf Course" a classification which, under Appellant's regulatory

scheme, has no functionally corresponding zoning district classification.¹ Established single family residential development entirely surrounds the subject property. *Appellant's Appendix A.3.*

In early June, 2003, Respondent applied to amend the Comprehensive Plan designation of the property, and on June 11, 2003, Appellant advised Respondent that its application to amend the Comprehensive Plan designation to "LR Low-density Residential", a land use classification consistent with R-1 zoning, was complete. *Petition for Alternative Writ of Mandamus, Exhibit 9.* Shortly thereafter, Appellant's consulting planner prepared a planning report regarding the application. Appellant's planning consultant recommended that an "alternative land use designation for the site is appropriate." *Petition for Alternative Writ of Mandamus, Exhibit 11, pg. 2.*

On June 24, 2003, Appellant's planning commission considered Respondent's requested Comprehensive Plan amendment, and unanimously approved a recommendation to deny the requested amendment based on a finding that "the golf course is the best use of the property consistent with the surrounding use of the neighborhood." *Appellant's Appendix, A.126-127.*

Thereafter, Appellant's city council considered the application at its July 1, 2003 meeting². During and after the public hearing, the primary focus of council-member

¹ Golf course use is not a permitted use in any of Appellant's zoning classifications, although it is a conditional use in several. See, generally, Respondent's Return to Writ by Verified Answer, et. al., Exhibit 26 (containing Mendota Heights City Code, Title 12, "Zoning").

² Appellant asserts (Appellant's Brief, page 3) that its city council considered the application "at two separate hearings. . ." This is incorrect, as the matter came for hearing before the City Council only on July 1, 2003, and the resolution denying the requested amendment was approved at this July 1, 2003 meeting.

discussion, and neighborhood comment, involved speculation regarding whether Respondent's golf course operation was profitable or not. *Appellant's Appendix A.129 – A.140*. Ultimately, Appellant's city council formally adopted, by unanimous vote, its Resolution 03-46, which denied the requested Comprehensive Plan amendment because it would "have an adverse effect 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". *Appellant's Appendix, A.122 and A.129-140*.

Thereafter, and on July 28, 2003, Respondent initiated the within action by securing an alternative Writ of Mandamus from the trial court.

LEGAL ARGUMENT

I. THE COURT OF APPEALS DID NOT ERR BY DETERMINING THAT APPELLANT'S DENIAL OF THE COMPREHENSIVE PLAN AMENDMENT WAS IRRATIONAL.

A. Having Made Specific Findings in Support of its Denial, Appellate Review of Appellant's Action Must be Based Upon the Legal Sufficiency of and Factual Basis for the Reasons Stated for Denial.

Swanson v. City of Bloomington, 421 N.W.2d 307 (Minn. 1988) holds that in connection with land use matters, if a municipal proceeding is fair, and the record clear and complete, appellate review should be on the record. *Id.* at 313. Further, if the municipal body has made formal findings contemporaneously with its decision, "The standard of review is whether the municipal body's decision was unreasonable, arbitrary

or capricious, with review focused on the legal sufficiency of and the factual basis for the reasons given.” *Id.* at 313.

Appellant made formal findings in the instant matter. Appellant adopted its formal Resolution 03-46, signed by its mayor and attested by its city clerk, stating that the bases for denying the instant case was an alleged “adverse” impact on health, safety and welfare and “adversity” to the general purpose and intent of the zoning ordinance. *Appellant’s Appendix A.122.*

The trial court determined that these stated justifications for denial were, under the proper legal standard, insufficient to justify denial. *Appellant’s Appendix A.20.* The court of appeals agreed, expressing its view that Appellant’s regulatory scheme contained “logical inconsistencies,” in that Respondent’s land was zoned for residential use but prevented from employing any residential use by virtue of its Comprehensive Plan land use designation. *Mendota Golf, LLP v. City of Mendota Heights, 2004 WL 2161422 (Minn. App. September 28, 2004).* Although the court of appeals refrained from expressly stating that Appellant’s actions were arbitrary and capricious, its observation that Appellant’s defense of its justifications of “adverse impact” and contrary to the “intent of the zoning ordinance” were “neither clear nor explained” (*Id.*) is the diplomatic equivalent of stating “these justifications are without rational basis.”

B. No “Change or Mistake Doctrine” is, or Should be, Recognized.

Citing only two unpublished Minnesota court of appeals cases, *Fisher v. City of Chanhassen, 1977 WL 757158 (Minn. App. December 9, 1997)*; and *Reiter v. County of*

Olmstead, 2002 WL 31302975 (Minn. App. October 15, 2002), Appellant asserts that an amendment to a Comprehensive Plan is merited only when a petitioner demonstrates one of two circumstances exist: either (1) 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 the amendment is merited. *Appellant's Brief*, p.13. Appellant improperly cites the "holdings" of these cases. Appellant neglects to report that these two referenced justifications constitute only two of **six** bases articulated by the Olmstead County Board in denying the County Comprehensive Plan amendment application submitted in the *Reiter* case, and that these two reasons, jointly referenced, were included with **four** other justifications cited by the city of Chanhassen for denial of a PUD application in the *Fisher* case.

The apparent origin of Appellant's "doctrinal" argument is *Sun Oil Company v. Village of New Hope*, 220 N.W.2d 256 (Minn. 1974), wherein this Court cited a decision from the state of Maryland, *Hardesty v. Zoning Board*, 211 MD 172, 177, 126 A2D 612, 623 (1956), in support of the view that a village council may act to support its comprehensive zoning ordinance. This Court stated:

Because the village council's refusal to adopt the proposed rezoning was based on a desire to maintain its existing zoning structure, the proper mode of attack for Sun Oil was to prove that the 1960 comprehensive zoning ordinance as amended was arbitrary, capricious, or otherwise invalid, or that the neighborhood had undergone . . . a substantial change . . . 220 N.W.2d at 261³

³ Interestingly, this Court in *Sun Oil Co.* expressly distinguished the facts of *Pearce v. Village of Edina*, 263 Minn. 553, 118, N.W.2d 659 (1962) because, in *Pearce* the petitioner's real property was "virtually surrounded" by the commercial uses for which rezoning was sought. As noted, Respondent's land is entirely surrounded by established single family residential development.

In 1981, this Court cited the *Sun Oil* decision in *Honn v. City of Coon Rapids*, 313 N.W.2d 409 (Minn. 1981) in support of the view that overall municipal zoning classifications are presumed to be well planned, intended to be more or less permanent, and that a burden falls upon one seeking *rezoning* to show either some mistake in the original zoning or a change in the character of the neighborhood. Neither *Sun Oil* nor *Honn*, however, speak of applications for amendment of the Comprehensive Plan, generally, nor of amendment applications seeking to harmonize the Comprehensive Plan with *existing zoning*, as is the case here. And unlike the village council in *Sun Oil*, Appellant did not, and could not, here base its denial of Respondent's proposed Comprehensive Plan amendment on a desire to maintain the sanctity of its existing overall scheme. The existing "structure" of Appellant's current Comprehensive Plan and its zoning ordinance, as they respectively relate to Respondent's land, are manifestly contradictory, and Appellant's failure to resolve the conflicts long prior to Respondent's application, arguably, unlawful.

An analysis of *Sun Oil* indicates that recognition of a "change or mistake doctrine" is not called for. What has existed in Minnesota for over thirty years is well reasoned law that, in instances where a zoning amendment application is denied on the basis that municipality desires to maintain its existing zoning structure, such a denial is ordinarily deemed to have sufficient reasonableness – because such legislative decisions are entitled to judicial deference – *unless* the party seeking amendment counters the presumption with evidence of mistake or changed circumstances.

C. Appellant Did Not Base its Denial on a Desire to Maintain Its Existing Regulatory Scheme.

In *Sun Oil Co. v. Village of New Hope*, supra, the denial of the requested rezoning request was defended, generally, upon a desire to maintain the existing zoning structure, and specifically, because affected property's existing zoning provided ". . . an excellent transitional use between the heavy traffic interchange and the single family use that exists or will develop to the south and east." *Id.*, 220 N.W.2d 260 (citing the village's actual findings and comments). In this case, Appellant made no similar effort to defend its overall scheme. Instead, without factual or rational basis, Appellant asserted, summarily, only that Respondent's requested change would adversely affect health, safety, and welfare, and would be adverse to the "purpose and intent" of the zoning ordinance. *Appellant's Appendix, A.122.* Respondent is not subject to a requirement of showing "mistake" or "changed circumstances" if the municipality does not cite a desire to protect its overall zoning scheme as the basis for denial.

D. Regardless, a Showing of "Mistake" Has Been Made.

Whether or not Respondent rightfully is burdened with a requirement to show "mistake" in these circumstances, there clearly *is* a major mistake reposed in Appellant's current, supposedly "comprehensive," planning scheme. It is undeniable that Respondent's property is zoned "R-1 One-Family Residential." It is undeniable that under Appellant's zoning ordinance, one family detached dwellings are expressly made a **permitted use** in R-1 districts. City Code §12-1E-3 (A), *Petition for Alternative Writ of*

Mandamus, Exhibit 4. However, Appellant’s “GC Golf Course” guide plan designation for the subject property – which has no direct zoning ordinance coordinate classification – **currently prevents implementation of the existing permitted low-density residential zoning use.** Appellant, whose arguments on appeal occasionally have maintained that its overall objective with respect to the subject property is to retain open space, has never placed the subject property within its designated “OS Open Space” guide plan classification, identifying areas within the City that are intended as “public and/or private open space.” See, 2002 City of Mendota Heights Comprehensive Plan, pg. 52-53; *Respondent’s Return to Writ, Exhibit 5.* Neither has Appellant ever changed the current land use classification to “LR Low Density Residential” to harmonize guiding and zoning of the parcel.

Appellant has never undertaken to effect rezoning of the subject property from its “R-1” classification, either. And, as the court of appeals observed, Appellant, all in all, has thereby failed in its municipal duty under Minn. Stat. §473.858, Subd. 1 to reconcile the patent conflict between its Comprehensive Plan and its zoning ordinance classification of the subject property.

Ironically, as Appellant continues to refuse to recognize its own various errors, and unlawful conduct, it now asserts (for the first time, it would appear) that Respondent seeks *spot zoning* of its property, *Appellant’s Brief, pg. 17,* when in fact all Respondent seeks is to achieve harmony between the subject property’s current zoning classification (which is one of the city’s most restrictive) and the land’s Comprehensive Plan land use

designation. Respondent's only objective is to have the opportunity to proceed with low density residential development on a parcel of land **entirely surrounded** by other established low density residential development. Appellant provides no meaningful explanation of, nor appellate support for, its newest accusation regarding "spot" zoning, and there are no record facts which support it. First and foremost, Respondent *seeks no rezoning* of the subject land; Respondent believes the land is currently properly zoned "R-1." Second, the prospect of merely retaining the current zoning on the subject property, and allowing implementation of a currently permitted use thereon – which is all Respondent seeks to do – is hardly "spot" zoning, particularly where the entirety of all surrounding land is already devoted to established single-family residential use.

It is clear there was in June, 2003, and is today, a disparity between Appellant's comprehensive land use guiding and its zoning ordinance classification of Respondent's land. Because Respondent made proper application for a Comprehensive Plan amendment and because there is a clear disconnect between the land's current guiding and its zoning, if Appellant's denial of the Comprehensive Plan application is to be sustained, a rational basis for the denial must be identified. No such rational basis was cited at the time Appellant formally adopted its resolution of denial, and no rational basis for denial has been articulated.

Respondent, the trial court, and the court of appeals have all been unable to identify a logical basis upon which a Comprehensive Plan amendment intended to harmonize a dissonant land use classification of a particular parcel of land with the same

land's current zoning classification could rationally be deemed to be "adverse" to the general purpose and intent of Appellant's zoning ordinance. Similarly, in an instance where land has always had *residential* use identified as an explicitly *permitted* use under the zoning ordinance, neither can any rational basis be found for a determination that a harmonizing amendment of the Comprehensive Plan would have an "adverse" impact on health, safety, and general welfare. In this regard, if the holdings of this Court in *Chanhassen Estates Residents Association v. City of Chanhassen*, 342 N.W.2d 335 (Minn. 1984), and of the court of appeals in *PTL, LLC v. Chisago County Board of Commissioners*, 656 N.W.2d 567 (Minn. App. 2003), are not dispositive legally, they are certainly informative, and the mere application of logic supplies any missing predicates.

Under *Swanson v. City of Bloomington*, 421 N.W.2d 307 (Minn. 1988), Appellant may not now have appellate review focus on matters other than the legal sufficiency of and the factual basis for the reasons its propounded in its formal resolution of denial. And both reasons it propounded are arbitrary and capricious, utterly, because they make no logical sense.

Respondent is mindful that the scope of review of municipal legislative decision-making is narrow, and a municipality's discretion broad, and that "...so long as there is a rational basis for what [municipalities do], the courts do not interfere." See, *Honn*, supra, 313 N.W.2d at 414 – 415 (citations omitted). This case, however, presents the egregious, and hopefully rare, instance in which a municipality has acted without the necessary

rational basis. The judicial remedy obtained from the trial court, and affirmed by the court of appeals, is thus appropriate.

II. THE TRIAL COURT'S AND THE COURT OF APPEALS' DECISIONS CREATE NO CONFLICT WITH THE MUNICIPAL LAND USE PLANNING ACT.

Appellant's principal Brief contains a startling, and startlingly misleading, statement that the Minnesota Land Use Planning Act, "now mandates that zoning provisions must be amended to correspond to Comprehensive Plan designations." *Appellant's Brief, pg. 29.*

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. And presumably Appellant does not take issue with the fact it has a duty under Minn. Stat. §473.865 to act to resolve conflicts between its Comprehensive Plans and other official controls. But in the event of a comprehensive plan/zoning ordinance conflict, Minn. Stat. §473.858, Subd. 1 indicates there are two methods to resolve any identified conflict: Either the zoning ordinance may be brought in conformance with the Comprehensive Plan, or the Comprehensive Plan itself may be amended. Indeed the very transcript of Minnesota State Senate proceedings incorporated in Appellant's Appendix includes testimony from a former Metropolitan Council chair: "There's nothing that says that the City can't amend the Comp plan to comply with the

changes in the zoning ordinances.” (See, testimony of Sen. Ted Mondale, *Appellant’s Appendix A.154*)

The circumstances, thus, are that Appellant’s Comprehensive Plan and its zoning ordinance, at the time of Respondent’s Comprehensive Plan amendment application, were not in conformity as they affected Respondent’s land. Respondent’s application for Comprehensive Plan amendment, if finally approved, would provide the lacking conformity. Appellant has denied the application which would have provided the conformity. In so doing, as the lower courts have found, although Appellant stated formal reasons for denial, it failed to state non-arbitrary reasons. Respondent’s amendment application did not, in any way, seek to enlist Appellant’s support in an effort to circumvent the legislature. Instead, Respondent’s application sought to implement that legislative intent by eliminating an unlawful conflict.

The scofflaw in these circumstances is clearly Appellant: It has neither properly discharged its municipal duty to act rationally in response to Respondent’s reasonable Comprehensive Plan amendment application, nor has it acted responsibly to conform its official controls with its Comprehensive Plan as required by law.

The court of appeals’ observations in its September 28 decision, *supra*, to the effect that other portions of the Appellant’s Comprehensive Plan contain provisions stating that Appellant’s zoning and subdivision ordinances are the “primary” regulations governing future land use and development decisions do not constitute an opinion, much less a holding, that Appellant has rendered, or conceivably could thereby render, its

Comprehensive Plan subordinate to its zoning ordinance. Rather, these observations of the court of appeals serve to underscore further the near complete lack of rationality in Appellant's initial denial of Respondent's request and in the arguments Appellant has propounded since the matter entered litigation.

Neither has the court of appeals created a rule which "enables cities to disregard the... comprehensive plan." *Appellant's Brief*, pg. 32. Respondent (and presumably Appellant, too) has at all times been aware that the Metropolitan Council must review and approve the Comprehensive Plan amendment which is sought before it becomes effective. The trial court, *inter alia*, ordered Appellant to submit the amendment to the Metropolitan Council, and the court of appeals affirmed. If, after it has conducted its review, the Metropolitan Council does not want the amendment to be effected, it will have its opportunity to withhold approval. The process Appellant has been ordered to follow, far from "circumventing" the Metropolitan Council, and the legislature's "intent," thus implements the statute and fully respects the statutory grant of authority to the Council.

III. THE WRIT OF MANDAMUS DIRECTING THE CITY TO APPROVE THE COMPREHENSIVE PLAN AMENDMENT AND TO SUBMIT THE AMENDMENT TO THE METROPOLITAN COUNCIL FOR REVIEW AND APPROVAL IS JUSTIFIED.

The propriety of the trial court's issuance of the Peremptory Writ of Mandamus, and of the court of appeals' affirming that decision, are clear. The record facts are the

record facts, and show that Appellant, through its city council, arbitrarily and capriciously denied a proper application for a Comprehensive Plan amendment on formally stated grounds which were neither factually, legally, nor logically sufficient. It should come as no surprise to Appellant, in light of *Honn v. City of Coon Rapids*, 313 N.W.2d 409 (Minn. 1981), and its progeny, that by failing to adopt a rational justification for denial in this case it faced “the risk of not having its decision sustained.” *Honn v. City of Coon Rapids*, id at 416.

If, at the time Respondent’s application was considered by Appellant’s city council, Appellant had acted responsibly, conscientiously, rationally, and lawfully, alternative results might have been obtained. But Appellant did not act responsibly. It squandered its privilege to enjoy judicial deference. It violated Respondent’s rights.

Remand of this case would run contrary to public policy. The court of appeals in *Earthburners, Inc. v. County of Carleton*, 504 N.W.2d 66 (Minn. App. 1993, *rev. granted*, September 21, 1993; *reversed*, 513 N.W.2d 460 (Minn. 1994)) articulated powerful reasons why, in instances where a municipality fails to articulate a rational basis for a decision, a land owner’s reasonable land use request must be permitted as a matter of law. Even as it reversed the court of appeals’ decision, this Court observed a proper reluctance to allow local units of government, such as Appellant here, an opportunity to employ after-the-fact justifications to substantiate or justify earlier decisions. *Id*, 513 N.W.2d at 463, (citing *Metro 500, Inc. v. City of Brooklyn Park*, 211 N.W.2d 358, 362 (Minn. 1973)). The reversal ordered by this Court in *Earthburners* did not dilute the

reasoning of the court of appeals reposed in the earlier decision, but was instead predicated upon the incompleteness of the record in that case, and upon a determination that because the municipal record was inadequate, the decision of the local unit of government there was “premature” rather than arbitrary, capricious or irrational. *Id.*, 513 N.W.2d at 462-463.

In the instant case, Appellant cannot and does not raise any argument that its own proceedings were incomplete, and has not been heard to dispute the trial court’s findings that the proceedings before Appellant’s city council were fair and that there was a clear record of the proceedings. See, Conclusion No. 3, *Appellant’s Appendix A.5*. And even today, Appellant can’t articulate rationally what it would do differently if it were given a second change to find rational grounds today, as there is no coordinate zoning classification matches the “GC” guiding designation.

There is no possible rational ambiguity with regard to what Appellant City will be required to do were this Court to affirm the court of appeals. The Peremptory Writ issued by the trial court December 10, 2003 specified that Appellant must “submit the said Comprehensive Plan amendment to the Metropolitan Council for review and approval,…” Requirements for such a submittal may be found in Minn. Stat. §473.851 – .871, or pursuant to guidelines and procedures propounded by the Metropolitan Council pursuant to Minn. Stat. §473.854. The assertion by Appellant that a requirement that it “cooperatively and diligently submit the said Comprehensive Plan amendment for review and adoption by the Metropolitan Council” is “vague and ambiguous” (*Appellant’s Brief*,

pg. 36) is of questionable good faith. And no issue is raised in this case concerning the Metropolitan Council's responsibilities with regard to the proposed amendment as the amendment has not yet been submitted for its review.

CONCLUSION

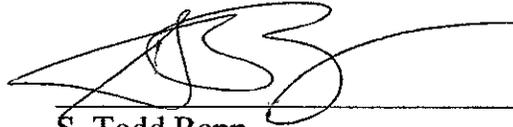
Appellant's denial of Respondent's proposed Comprehensive Plan amendment cannot stand in the absence of a rational basis articulated to support the denial. Where, as here, the municipal record is clear, and the justifications cited for denial arbitrary and capricious, the necessary remedy is issuance and enforcement of a Peremptory Writ of Mandamus compelling Appellant to approve the requested Comprehensive Plan amendment and properly submit the same for review in the ordinary course by the Metropolitan Council. Such a Writ was issued by the trial court, and its decision to do so was affirmed by the court of appeals.

Respondent respectfully requests, therefore, that this Court affirm the court of appeals, and issue such other and further orders as are appropriate to enforcement of the Writ.

Respectfully submitted,

Dated: March 10, 2005

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