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Minnesota Supreme Court recognizes that the costs of providing open space to benefit the public should not be borne by a single landowner

In a ruling issued on July 12, 2007 in *Wensmann Realty, Inc. v. City of Eagan*, the Minnesota Supreme Court held that a City's refusal to change a comprehensive plan designation to permit residential development of a former golf course may give rise to a valid claim that private property has been taken for public use without just compensation.

The Wensmann case involved the 120-acre Carriage Hills Golf Course in Eagan. Eagan's comprehensive plan designated the golf course as P (Parks, Open Space and Recreation). The current owner, Rahn Family LP, bought the property in 1996 intending to continue operating it as a golf course. Despite several upgrades and investments, Carriage Hills began losing several hundred thousand dollars each season. Because of its age and small size, Carriage Hills was unable to compete with the multitude of newer, longer golf courses throughout the metropolitan area. Rahn granted Wensmann Realty, a residential developer, an option to buy Carriage Hills. Wensmann asked the City to re-guide the property to allow residential development, based on studies that the golf course could not be operated at a profit. Under intense pressure from neighbors that favored the continued use of the property as a golf course, the City refused to re-guide the property. Rahn eventually shut down the golf course in



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2005, and the property is currently vacant.

Wensmann and Rahn brought suit against the City of Eagan requesting a writ of mandamus to compel the City to amend its Comprehensive Plan to allow residential development on the golf course. Wensmann and Rahn also requested that the Court determine that the failure to amend the Comprehensive Plan constituted a regulatory taking of private property in violation of the Fifth Amendment to the United States and Minnesota State Constitutions.

The Minnesota Supreme Court, relying upon its decision a year earlier in *Mendota Golf, LLP v. The City of Mendota Heights*, first held that the City upholding the existing land use designation, and protecting open space constituted valid reasons to refuse to amend the Comprehensive Plan to allow residential development on the property.

The Wensmann decision, however, answered the question left open in the *Mendota Golf* case: namely, whether the failure to amend the Comprehensive Plan can result in a valid regulatory takings claim.

The Wensmann Court first noted that "the purpose of the Takings Clause is to ensure that the government does not require some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." The Court also noted that the government need not physically take private property to effectuate a constitutional taking and that regulation alone may constitute a taking. The Court then answered the question of when a regulation goes so far as to constitute a taking under Minnesota law: A taking occurs when the City's regulation leaves no other reasonable, economically viable use of the property.

The Minnesota Supreme Court remanded the case to the trial court for further hearings to determine the factual question of "whether the city's decision leaves any reasonable, economically viable use of the property." If the City's refusal to change the land use designation does not leave any reasonable, economically viable use of the property, a taking has occurred, and the City would need to pay Rahn the value of the land.

The Minnesota Supreme Court also recognized binding U.S. Supreme Court precedent that an owner like Rahn, who purchases land with knowledge of zoning restrictions, is not prohibited thereafter from making a regulatory takings claim. The Court expressly overruled previous Minnesota case law to the contrary.

After the Minnesota Supreme Court's decision, The Eagan City Council on March 18, 2008 approved a contingent settlement that will allow Eagan voters to decide whether to purchase the Carriage Hills Golf Course or to allow the land to be developed for residential homes. If Eagan residents vote this November to maintain the land as open space, the City will pay \$10 million for the 120-acre site, plus other expenses. Even before the November election, Eagan will start the review process for homes that could be built if voters decide not to purchase the property. The City reserved the right to approve or deny the development proposal, but doing so would likely result in continuing litigation.

Cities are now on notice that their land use decisions must allow landowners to make reasonable use of their property. Cities cannot require individual landowners to bear the full, uncompensated burden of providing unprofitable open space for the benefit of other city residents.

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