STATE OF MINNESOTA	IN DISTRICT COURT
COUNTY OF HOUSTON	THIRD JUDICIAL DISTRICT

LANDOWNERS CONCERNED ABOUT PROPERTY RIGHTS, Plaintiff, vs. COUNTY OF HOUSTON, a political subdivision of the State of Minnesota, Defendant.	Court File No. 28-CV_____ **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

COME NOW, the Plaintiff Landowners Concerned About Property Rights (hereinafter referred to as "Concerned Landowners") on behalf of its members, by and through their undersigned attorneys, pursuant to the Minnesota Uniform Declaratory Judgments Act, M.S.A. § 555.01, *et seq*., and hereby states its Complaint for Declaratory and Injunctive Relief against the County of Houston, Minnesota as follows:

NATURE OF ACTION

1. This action seeks to declare actions of the County of Houston, Minnesota (hereinafter referred to as "Houston County") in implementing the Houston County Comprehensive Land Use Plan unconstitutional, *ultra vires*, and consequently, unenforceable.

2. The actions of Houston County in the implementation of the Houston County Comprehensive Land Use Plan, as described herein, constitute an uncompensated taking of private property, and are therefore, unconstitutional and unenforceable under both the United States and Minnesota Constitutions.

3. The application of the Houston County Comprehensive Land Use Plan, as described herein, fails to substantially advance a legitimate state interest, maintain an "essential nexus" with a legitimate state interest, or bear some roughly proportional relationship to the burden on the landowner. Finally, the applications of that Comprehensive Land Use Plan as described herein are not rationally related to a legitimate state interest.

4. Additionally, in many cases the application of the Houston County Comprehensive Land Use Plan by the County officials as described herein impermissibly treats similarly situated landowners differently.

5. Accordingly, this action seeks a court order enjoining Houston County from applying its Comprehensive Land Use Plan in an unconstitutional manner, and seeks to have this court declare that such unconstitutional application is invalid.

JURISDICTION AND VENUE

6. This action seeks to declare that the application of the Houston County Comprehensive Land Use Plan by Houston County as described herein unconstitutional, *ultra vires*, and consequently, unenforceable.

7. This action is lawfully brought against the Defendant, Houston County, in

accordance with M.S.A. § 373.01(1). The Defendant is a political subdivision of the State of Minnesota capable of being sued.

8. To the extent deemed necessary pursuant to M.S.A. § 373.06, notice of intent to sue was delivered to Houston County on April 7, 2010.

9. Service of this lawsuit will be executed in accordance with M.S.A. § 373.07, in addition to any applicable rules contained within the Minnesota Rules of Civil Procedure.

10. An actual, justiciable controversy now exists between Plaintiff and the Defendant, therefore, jurisdiction is proper in this Court, and this Court may declare the rights, status, and other legal relations of the parties in this action under M.S.A. § 555.01.

11. Venue is proper in this Court pursuant to M.S.A.. § 542.01, because a substantial part of the events giving rise to the claims herein occurred within Houston County, Minnesota.

12. This Court is vested with the power to hear and determine the causes of action and claims for relief as set forth herein. This Court maintains lawful subject matter jurisdiction over this action pursuant to the Constitution of the State of Minnesota, M.S.A. Const. Art. VI, § 3.

13. This case is ripe for judicial review because the Defendant's employees, officers, and agents have unlawfully interfered with, and will continue to interfere with and deny Plaintiff's members the economically viable use of their private property and treat similarly situated landowners unequally.

PARTIES

14. Plaintiff Landowners Concerned About Property Rights (hereinafter "Concerned Landowners") is a group of individual landowners who own property generally within Houston County, Minnesota. As described below, many of the members of the Concerned Landowners have suffered a violation of their constitutional rights by the application of the Houston County Comprehensive Land Use Plan to their property.

15. The named members of the Concerned Landowners whose issues are described below have authorized the Concerned Landowners to bring this action on their behalf.

16. Defendant County of Houston, by virtue of the authority set forth in M.S.A.. § 394.21, is vested with the authority to carry on county planning and zoning activities for the purpose of promoting the health, safety, morals, and general welfare of the community.

17. The County is also authorized in accordance with M.S.A.. § 394.231 to consider the adoption of goals and objectives for the preservation of agricultural, forest, wildlife, and open space land.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

18. The members of Plaintiff Concerned Landowners generally own property in Houston County, Minnesota. Each of these landowners have attempted to use their property, and those attempts at legitimate use have been thwarted by Houston County, as Houston County illegally applies its Comprehensive Land

Use Plan in contravention of the landowners' constitutional rights.

The Houston County Comprehensive Land Use Plan

19. Houston County's Comprehensive Land Use Plan ("the Plan") was enacted on December 8, 1998 by the Board of County Commissioners for Houston County.

20. In pursuit of certain goals, Houston County formulated a land development regulatory system which purports to protect the health, safety, and general welfare of the citizens of Houston County.

21. Specifically, the Plan states that Houston County officials "have adopted a position of encouraging the protection of the agricultural land by strictly limiting urban development in the prime agricultural areas of the County." Further, the Plan states that growth would not be encouraged in areas that would "result in the loss of prime agricultural land or [in] environmentally sensitive areas."

22. As a part of the Plan, Houston County adopted land use regulations and ordinances which limited the density of development in the unincorporated areas of the County. Specifically, the County limited the density of non-farm residential development to one (1) residential unit per quarter-quarter section (approximately 40 acres). See Houston County Comprehensive Land Use Plan §§ 0100.0201 and 0100.0301.

23. In formulating such a system, Houston County's rationale included the following:

a. Agriculture is a vital part of the local economy;

b. Prohibition of scattered urban development would limit adverse effects on agriculture, rising service costs, etc.;

c. Prohibition of scattered urban development would minimize conflicts between urban land uses and agricultural production;

d. Regulation of the density of urban development would minimize public service costs;

e. Regulation of density would protect woodlands;

f. Regulation of development would minimize storm water runoff, soil erosion, and loss of wildlife habitat;

g. Density control would minimize pollution problems from private sewer systems; and

h. The system instituted was the "best approach available" for protecting agricultural land.

24. Furthermore, Houston County included the following "policies" in the enactment of the Plan:

a. Preserve historically tilled agricultural land;

b. Allow residential development only on marginal agricultural soils and adjacent to communities from which public utilities can be easily extended;

c. Preserve "historically significant areas";

d. Adopt state standards for the protection of natural resources;

e. Enact programs to protect the natural resources;

f. Protect sensitive natural resources from urban development;

g. Prohibit development in "unsuitable areas," such as floodplains, steep bluffs, and major forest and parks and wildlife areas;

h. Adopt utility standards and programs that will minimize pollution;

i. Allow residential development only on buildable lots;

j. Locate transportation facilities to minimize environmental damage; and

k. Coordinate county and cities development policies.

25. Additionally, Houston County included the following "agricultural policies" in the Plan:

a. Preserve "prime agricultural land";

b. Promote agriculture as significant economic activity and land use;

c. Avoid locating major public facilities on agricultural land;

d. Promote soil erosion control practices;

e. Require site specific feedlot management; and

f. Require buildable lots.

26. However, Houston County has applied the Plan differently to landowners who are similarly situated.

27. Further, Houston County has applied this Plan in a manner which results in the unconstitutional taking of private property, the violation of landowners' substantive due process rights, and in a manner which amounts to *ultra vires* action by the County.

28. Houston County's Comprehensive Land Use Plan does not provide compensation of any kind to owners of private property when land is determined "unsuitable" for use.

29. There is no rational relationship between the implementation of the Land Use Plan and the preservation of land for agricultural purposes in Houston

County, Minnesota.

Unconstitutional Application of Land Use Plan

30. In at least 27 instances since 2000, landowners have not been allowed to build second homes on their private property, even if these homes are for other family members such as children who want to help with the farming of the family land, or to care for elderly parents or grandparents.

31. In addition to prohibiting a valid and lawful property use, these prohibitions are actually destroying property values and uses.

32. This directly opposes a goal of the Plan, which is to protect and preserve the agricultural uses of the land.

33. Further, in some instances, these additional homes are for family members who need the support of an extended family. Without family support, county services will be further taxed, as the County will be forced to help with childcare or care for aging parents. This contravenes another of the goals of the Plan, which is to minimize the costs of providing county services.

34. Additionally, Houston County is losing significant tax revenue by severely restricting the rights of the landowner to use, develop, buy or sell property as the landowner sees fit.

35. For example, farmer and Concerned Landowner John Shimshak has a 200 acre farm and wanted to provide his five sons with a home site on his property. The Defendant has only allowed two of the children to home sites because of the density requirements. The landowner is not able to use his land and the County

is being deprived of additional tax base. The actions of the County are not rationally related to legitimate purpose in violation of the Minnesota and U.S. Constitutions.

36. There is no consistency in the application of the Plan and implementing regulations to similarly situated individuals. In several instances, such as that of Concerned Landowner Gale Oldenburg, Houston County residents have carefully chosen a place where they would someday build a home. To help finance these construction projects, the citizens planned to build a smaller structure, such as a garage or an apartment in which to live while constructing the preferred home.

37. In some instances, Houston County officials have refused to allow the building of these other structures first, claiming that landowners are required to build the permanent home first.

38. However, in other instances, landowners in the County have been allowed to construct a small living space first, so that they could take the time to construct the final home as planned.

39. Pursuant to the Equal Protection Clause of the United States Constitution, it is unlawful to treat similarly situated instances differently.

40. Further, there are instances in which Houston County has alleged that landowners attempting to improve existing homes are in violation of the Plan.

41. In one instance, Concerned Landowner Mel Davy wanted to replace an older mobile home, where water and septic systems were already in place, with a new mobile home. Davy was denied this right, and was allowed only to build

across the road on his existing cropland. In addition to taking valuable cropland out of production, he was also forced to construct and install a new septic system, electric service, water, and a driveway.

42. It is clear that Houston County is not satisfying its goal of protecting cropland in situations such as these.

43. In a separate instance, Concerned Landowner Mark Rask wanted to remove an old farmhouse from his property and replace it with a new one. However, because he also had another dwelling on his property, he was told that he would not be able to build a new farmhouse. He was forced to make extensive repairs to the existing farmhouse rather than being able to build a new one.

44. Further, there are situations where landowners wish to build a new home on their property, with the intention of selling their older home once the new home is completed, but have been prohibited from doing so by Houston County.

45. In one instance, Concerned Landowner Milton Burroughs wished to build a new home some distance away from their older home, but close enough to share a well.

46. The County denied the building request, saying that the couple would have to place their new home even further away – in the middle of useable cropland – if they wanted to avoid tearing down their older home. The Burroughs, a retired couple, were forced to make the difficult choice of tearing down a home that they could have sold, adding to their retirement income. Not only did this couple lose additional income, but the County lost a taxable home.

47. Again, although the County's goal was to "protect cropland," following the County's requirement would have destroyed cropland.

48. Similarly, although the current land use plan and implementing regulations claim to be protecting cropland, in many instances the regulations do not reach that goal.

49. In a separate circumstance, Concerned Landowner Allen Deters had a choice of selling a building site in alternative locations: one site which was rocky and had never been tilled or used for farming, and another which had been used as a cornfield for the past 30 years. Wanting to preserve farm land which the zoning regulations are supposed to do, the landowner chose to sell a building site on the rocky parcel; however, the County zoning staff would not allow him to do so because the rocky parcel was "too flat." Therefore the County determined the rocky parcel to be "cropland" even though the rocky parcel had never been farmed. Because of this, the landowner was forced to sell a building site in the cornfield, prohibiting farming from occurring on that site.

50. Thus, landowners were forced to build on actual cropland rather than the original selected sites. These instances show that the actions of the Defendant are not rationally related to the County's stated goals of preserving crop or agriculture land.

51. In other situations, landowners have been subjected to ambivalent application of County zoning laws, resulting in taking of their private property.

52. In apparent reliance upon the Plan, Houston County is prohibiting

landowners from building homes with the materials of their choice; specifically, forcing landowners to construct temporary dwellings rather than permanent.

53. In one instance, Concerned Landowner Tim Amberg intended to build a cabin on his land out of stone that came from his property. While minimizing costs, the stone would also have provided him with a structure that would withstand the test of time.

54. However, County officials prohibited him from using the stone, saying that it would make the cabin "too permanent," therefore denying Amberg's right to build with the materials of his choice.

55. Under the guise of the Plan, Houston County officials have also forced landowners to construct improvements on their land in ways that are contrary to design and engineering principles.

56. In one instance, Concerned Landowner Brad Osterlie built a home on the farm that he had grown up on, and which his family had farmed for years. Osterlie was familiar with the lay of the terrain, and built a driveway designed to responsibly deal with runoff/erosion issues.

57. However, after the driveway was constructed, a Houston County official forced the landowner to reconstruct the driveway based on the official's own ideas. The landowner followed the official's orders, although he did not believe that it would work. Following the re-construction of the driveway pursuant to the official's orders, the driveway washed out because runoff/erosion issues had not been considered by the official. Contractors have had to return to the property

several times to fix the damage, and the landowner, Osterlie, has spent more than $3,000 that he would not have otherwise spent.

58. In another instance, Concerned Landowners Matthew and Beth Solum bought a house and a few acres of land. Houston County offices processed and recorded the deed, and the sale was completed.

59. Some time later, County zoning officials began demanding that the Solums tear down their house, move it, or buy several more acres of land -- none of which they could afford to do. The County officials sued the Solums, claiming the land on which their home was built was cropland. However, there was evidence that the site was worthless farmland, and further, there are numerous examples where County officers permitted houses to be built on much better farmland. This is an additional instance where similarly situated cases are being treated differently.

60. To eliminate the issues surrounding the construction of this home, the Solums prepared and presented to Houston County a petition for a variance in compliance with In re the Matter of Appeal of Harold Kennedy Jr., 374 N.W.2d 271 (Minn. 1985). Although statutes require that such petitions be presented to the Houston County Board of Adjustment, a Houston County official refused to forward the petition for variance to the Board of Adjustment. The Houston County official had no authority to reject the petition for variance. That should have been a decision left to the Board of Adjustment. The failure to comply with the statutes and regulations is arbitrary and capricious.

61. In the related case, Concerned Landowner Gary Thomas purchased 40

acres of property. Because of issues in the past related to the use of this property, Houston County officials presented Mr. Thomas with a "written certificate" prohibiting any sale of any of his property without the "prior approval" of Houston County. There is no authority in law, rule or regulation that requires "permission" from Houston County prior to the sale of property.

62. In other instances, County officials are considering view scapes and scenic areas as reasons to deny private property use rights.

63. In one instance, Concerned Landowner David Holten intended to build a house on an existing farm site. The landowner chose a site on a hill overlooking his property including an area where a stream ran. The Houston County officials stopped the construction claiming the construction was too close to the bluff edge. Professional contractors in different fields of the construction trade clearly disagreed with the County's arbitrary decision. Additionally, the County was concerned with the view of fishermen fishing in the stream, even though the landowner owned the land surrounding the stream.

64. In a similar situation, Concerned Landowner Gale Oldenburg purchased a 40-acre parcel with the intent of building a home. His plans were to install a holding tank and temporary cabin while the home was being built.

65. However, Houston County officials told Oldenburg that his plan was not possible, and that in order to build, he would need a full septic system, a site plan for the house and the driveway, and electric service.

66. Since the County's denial of the Oldenburg's building plans, a landowner

on neighboring property has built a home. Now, according to the County, Oldenburg cannot build where he wanted, because the neighbor's building permit includes 20 acres on his property and 20 acres of Oldenburg's property. In other words, the neighbor's house is in the same ¼-¼ section as Oldenburg's preferred site, thus Oldenburg cannot use his property. Additionally, Oldenburg could not build on the remainder of his property because according to the County, the remainder of the property was too close to a feedlot.

67. Other Houston County landowners have similar stories, wherein they are unable to use their property to build a home because a neighboring landowner has built in a part of that 1/4 1/4 section. This has resulted in an illegal taking of property by Houston County.

68. In other situations, Houston County farmer and Concerned Landowner Steve Oian wished to construct an additional residence for his son near his existing home, so that they could share a well and a driveway. The new building site contained almost no cropland. However, he was denied a building permit for that location because the County insisted that the construction of the new home would violate the land use plan. He was told that he would need to build further away from the other home, on a portion of the farm that was actually being used for farmland and necessitating the construction of an additional well and driveway taking up more farmland.

69. Houston County farmer Concerned Landowner Thomas Langen has a similar situation when he wanted to construct a home for his son, sharing a

driveway, well and/or septic system with his existing home. This location would also be near the other existing farm buildings. This request was denied because even though the farm is 160 acres, all ¼-¼ sections of the farm have neighboring homes on them. The only place the County would approve as a building site is the only tillable part of the five acre field. The County's decision actually reduces the amount of land available for crops and agriculture by forcing the separate construction of homes, driveways and septic systems.

Notice of Intent to Sue

70. On or about April 7, 2010, the Plaintiff provided Houston County with a Notice of Intent to Sue, alleging that Houston County had taken *ultra vires* and unconstitutional actions pursuant to the Houston County Land Use Plan.

71. Specifically, the Plaintiff on behalf of its members, argued that application of the Houston County Land Use Plan denied the Plaintiff's members economically beneficial use of their property, and/or result in a physical taking of their property, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 13 of the Minnesota Constitution. The Plaintiff also claimed that the Houston County Land Use Plan was being unconstitutionally applied, resulting in differing treatment of similarly situated individuals under both the United States and Minnesota Constitutions.

72. The Notice of Intent offered a resolution for Houston County's violation which was to adopt a framework for its land use plan that was consistent with the Minnesota and United State's Constitutions. Over 700 landowners signed the

resolution.

73. The Houston County Commission did not respond to the Notice of Intent to Sue or even discuss the issue with the Concerned Landowners.

CAUSES OF ACTION AND CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION:

ULTRA VIRES ACTION BY HOUSTON COUNTY IN IMPLEMENTATION OF LAND USE PLAN

74. All allegations set forth in all preceding paragraphs are incorporated by reference as if set forth fully below.

75. Houston County has acted outside the scope of its authority by implementing the Houston County Land Use Plan in a manner that violates Minnesota statutes. This *ultra vires* action is illegal, and must cease immediately.

76. In Minnesota, land use planning is allowed, and even mandated. MINN. STAT. § 394.23. However, land use plans need only consider adopting goals and objectives that protect open space and the environment. See id.

77. Further, even if a county determines that it should adopt goals and policies protecting open space and the environment, nowhere do the Minnesota statutes allow a land use plan to destroy legitimate private property uses and "take" private property rights by dedicating private property to a public use without due process and just compensation.

78. County governments in Minnesota can exercise only such powers as are

expressly granted them by the legislature, and such as may be fairly implied as necessary to the exercise of their express powers. See Cleveland v. County of Rice, 56 N.W.2d 641, 642 (1952); see also Altenburg v. Board of Supervisors of Pleasant Mount Twp., 615 N.W.2d 874, 880 (Minn. App. 2000) ("counties . . . are entities of state creation and have only the powers conferred to them by the state,") review denied (Minn. Nov. 21, 2000).

79. A zoning ordinance is an exercise of "police power exerted in the public interest." State ex rel Berndt v. Iten, 106 N.W.2d 366, 368 (Minn. 1960). Counties are authorized to enact zoning ordinances "for the purpose of promoting the heath, safety, morals, and general welfare of the community." MINN. STAT. § 394.21.

80. An ordinance or other action taken by a county is *ultra vires* and, thus, without legal force or effect if it is "beyond the limits of the power granted" to the enacting political subdivision. See Lilly v. City of Minneapolis, 527 N.W.2d 107, 113 (Minn. App. 1995), review denied (Minn. Mar. 29, 1995).

81. A comprehensive plan is defined as "the policies, statements, goals, and interrelated plans for private and public land and water use, transportation, and community facilities including recommendations for plan execution, documented in texts, ordinances and maps which constitute the guide for the future development of the county or any portion of the county." MINN. STAT. § 394.229.

82. Land use plans are not mandated to contain goals or requirements which result in private property use restrictions, elevation of open space over private

use rights, limitations on private property, or "smart growth" restrictions.

83. Minnesota statutes have few requirements for community-based comprehensive plans, defined as comprehensive plans that are consistent with the goals of community-based planning. MINN. STAT. § 394.232. In developing a community-based comprehensive plan, a county must coordinate as well as incorporate the plan with its neighbors and constituent municipalities and towns. MINN. STAT. § 394.232-3.

84. A county shall review and update its community-based comprehensive plan at least every ten years. MINN. STAT. § 394.232.6. Again, however, while the preparation of a plan and the consideration of goals and objectives are required, there is no mandate that the county adopt private property use restrictions as part of its land use plan. Rather, the adoption of such restrictions could subject the county to litigation based upon a regulatory taking of private property for a public purpose, without due process and just compensation.

85. In this case, the Plaintiff seeks a declaratory judgment from the County stating that Houston County has acted outside the scope of its authority in adopting and/or implementing its land use plan. This *ultra vires* action is illegal.

SECOND CAUSE OF ACTION:

HOUSTON COUNTY'S ACTIONS PURSUANT TO ITS LAND USE PLAN ARE IN VIOLATION OF THE TAKINGS PROVISIONS OF THE UNITED STATES AND MINNESOTA CONSTITUTIONS

86. All allegations set forth in all preceding paragraphs above are incorporated by reference as if set forth fully below.

87. The Fifth Amendment to the United States Constitution states that "private property [shall not] be taken for public use, without just compensation." The Takings Clause of the Fifth Amendment of the U.S. Constitution is made applicable to the States through the Fourteenth Amendment.

88. According to the U.S. Supreme Court, if the Fifth Amendment is to have any meaning, "it must include the right to prevent the government from gaining an ownership interest in one's property outside the procedures of the Takings Clause." Dolan v. City of Tigard, 512 U.S. 374, 385 (1994).

89. Specifically, the Fifth Amendment to the U.S. Constitution prohibits the taking of private property for a public purpose, without due process and just compensation. See U.S. CONST. amend. V.

90. One of the principal purposes of the Takings Clause is to bar the government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. See Dolan v. City of Tigard, 512 U.S. 374, 382 (1994).

91. "A land use regulation does not affect a taking if it substantially advances legitimate state interests." See Dolan, 512 U.S. at 382, quoting Agins v. Tiburon, 447 U.S. 255, 260 (1980).

92. According to the United States Supreme Court, when the subdivision or development of land is dependent upon certain pre-defined conditions, an "essential nexus" must exist between a legitimate state interest and the permit condition exacted by the [government]. See Nollan v. California Coastal Comm'n,

483 U.S. 825, 837 (1987). If an "essential nexus" exists, then the development exaction or condition must be "roughly proportional" to the burden on the landowner. See Dolan, 512 U.S. at 389.

93. An "essential nexus" is required in order to compel the government to ensure that the particular development generates a need to which the amount of the exaction bears some roughly proportionate relationship.

94. "The [government] must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." See Dolan, 512 U.S. at 389.

95. If the land use regulation at issue does not substantially advance a legitimate state interest, maintain an "essential nexus" with a legitimate state interest, or bear some roughly proportional relationship to the burden on the landowner, then the land use regulation is an uncompensated taking of private property, which renders the regulation unconstitutional, and consequently, unenforceable.

96. The United States Supreme Court has held that declaratory and injunctive relief is available to invalidate government action that would affect a taking. See, e.g., Eastern Enterprises v. Apfel, 524 U.S. 498, 521, (1998) (striking down federal statute under Takings Clause); see also Hodel v. Irving, 481 U.S. 704, 718 (1987) (same); Nollan v. California Coastal Comm, 483 U.S. 825, 841-42 (1987) (striking down a state permit condition that would have effected a taking); Dolan v. City of Tigard, 512 U.S. 374, 381-83, 396 (1994) (striking down a locally

required permit condition that would have effected a taking of private property).

97. The Minnesota Constitution provides that "[p]rivate property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured." MINN. CONST. art. I, § 13.

98. "While the provisions of the state and federal constitutions are similar, a review of state and federal case law makes it clear that the Minnesota Constitution guarantees significantly broader rights than those secured by the Fifth Amendment to the United States Constitution." In re Rapp, 621 N.W.2d 781, 784-85 (Minn. App. 1993).

99. For example, the Minnesota Constitution grants a landowner the right of judicial review to determine the "public purpose and necessity of a taking prior to the actual taking of property." Id. at 785. This private property protection ensures that there is a legitimate public purpose for the taking of property or stopping the use of private property.

100. The Minnesota Supreme Court has found that even where a government action may not constitute a "taking" under the United States Constitution, it may still constitute a taking under the Minnesota Constitution. See Johnson v. City of Minneapolis, 667 N.W.2d 109, 115 (Minn. 2003) (holding that the lower court had applied the wrong test to determine if a taking had occurred under the United States Constitution, but declining to remand because, even if the government had not taken property under the United States Constitution, it had taken property under the Minnesota Constitution).

101. Under the Minnesota Constitution, "a taking" include[s] every interference, under the right of eminent domain, with the possession, enjoyment, or value of private property." Id. (quoting Minn. Stat. § 117.025, subd. 2 (2002)); see also County of Anoka v. Esmailzadeh, 498 N.W.2d 58 (Minn. App. 1993) (quoting Johnson v. City of Plymouth, 263 N.W.2d 603, 605 (Minn. 1978) for the proposition that "[s]tate interference 'with the ownership, possession, enjoyment, or value of private property' can give rise to a constitutionally compensable taking.").

102. "These constitutional and statutory provisions have been construed to mean that 'the clear intent of Minnesota law is to fully compensate its citizens for losses related to property rights incurred because of state actions.'" Johnson, 667 N.W.2d at 115 (quoting State by Humphrey v. Strom, 493 N.W.2d 554, 558 (Minn. 1992)).

103. Even though the Houston County land use plan states a recognition for private property, the application of that plan has effectuated an unlawful taking of the use of private property.

104. The Plan does not substantially advance a legitimate state interest. Houston County must demonstrate the necessity of its role in preserving land for agricultural purposes and how this preservation will enhance or contribute to the inherent values and necessities of the general health and welfare of the Houston County citizens.

105. Furthermore, the Plan does not maintain an "essential nexus" with a

legitimate state interest.

106. Additionally, the Plan does not bear some roughly proportional relationship to the burden on the landowner. The density requirements and agricultural preservation requirements are constitutionally suspect, because they provide acreage requirements that do not take into account the location of the property, the proposed land uses, or the actual need for agricultural preservation in the area where the use is being proposed. Furthermore, the regulations do not account for any burden imposed on the landowner.

107. Finally, the Plan does not provide for any "individualized determination" that the required dedication is related both in nature and extent to the impact of the proposed use.

108. Accordingly, the application of the Houston County Land Use Plan as described herein constitutes an uncompensated taking of private property, and is therefore, unconstitutional and unenforceable under both the U.S. and Minnesota Constitutions.

109. Moreover, validly enacted state regulations which are not rationally related to a legitimate state interest violate an individual's substantive due process rights under the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, § 6 of the Minnesota Constitution. See Lawrence v. Texas, 123 S. Ct. 2472, 2492 (2003); see also Moore v. East Cleveland, 431 U.S. 494, 498 n.6 (1977).

110. Since Houston County's land use regulations provide minimum open

space acreage requirements that do not take into account the location of the property, the proposed land uses, or the actual need for open space in the area where the alternative use is being proposed, they are not rationally related to a legitimate state interest.

THIRD CAUSE OF ACTION:

HOUSTON COUNTY'S APPLICATION OF ITS LAND USE PLAN IS IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION

111. All allegations set forth in all preceding paragraphs above are incorporated by reference as set forth fully below.

112. The Equal Protection Clause contained in the Fourteenth Amendment to the United States Constitution requires public bodies and institutions to treat similarly situated individuals in a similar manner. See Cornerstone Christian Schools v. University Interscholastic League, 563 F.3d 127 (5th Cir. 2009); see also Flowers v. City of Minneapolis, 558 F.3d 794 (8th Cir. 2009).

113. The Equal Protection Clause bars a governing body from applying a law dissimilarly to people who are similarly situated. See U.S. Const. Amend. XIV.

114. The purpose of this Clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through government agents. See Village of Willowbrook v. Olech, 528 U.S. 562 (2000).

115. In other words, the concept of equal justice under the law requires a state, and its counties, to govern impartially, and it may not draw distinctions between

individuals solely on differences that are irrelevant to a legitimate governmental objective. See Lehr v. Robertson, 463 U.S. 248 (1983).

116. The application of the Houston County Land Use plan has, in many instances, clearly violated the Equal Protection Clause. By selectively applying the ¼-¼ section land use restrictions, as well as the restrictions related to building on farmland, Houston County has treated similarly situated individuals in a dissimilar manner.

REQUEST FOR RELIEF

WHEREFORE, on the foregoing basis, the Plaintiff respectfully requests that the Court grant the following relief:

117. A declaratory judgment that the Houston County Land Use Plan, as applied to the Concerned Landowners, is unconstitutional, and therefore, unenforceable;

118. A declaratory judgment that Houston County's application of the Land Use Plan in instances such as those described above is *ultra vires* and beyond powers conferred upon Houston County by law;

119. A declaratory judgment that Houston County has applied its Land Use Plan differently to similarly situated landowners, and that such action is unconstitutional, and therefore, unenforceable;

120. A court order enjoining Houston County from further enforcing the provisions of the Land Use Plan against the Concerned Landowners as described

above;

121. Award Plaintiff its reasonable costs, litigation expenses, and attorneys fees; and

122. Grant such further and other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this 10th day of June, 2010.

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The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to M.S.A. 549. 211, to the party against whom the allegations in this pleading are asserted.

Dwight Lubmann (#0300238)