

Long Island

OP-ED

Out of Bounds

By Joseph A. Grundfest

IT would be funny if it weren't so dangerous.

Like a mouse that roared, the tiny but rich Village of North Hills, threatens to set a precedent that can only terrify people who care about the sanctity of property rights under our Constitution.

North Hills is home to Deepdale, one of the nation's most exclusive and beautiful golf courses. Deepdale's members pay hefty initiations and annual dues and hail from around the United States and abroad. Only one member lives in North Hills, and village residents have no right to golf at Deepdale because it is private property. There are, however, over 50 courses within 15 miles — of which 11 are public.

The mayor of North Hills, however, proposes to condemn Deepdale through eminent domain. But rather than turn it into housing, a hospital, schools or even a highway cloverleaf, as is usually the case, the mayor wants to keep Deepdale as a golf course and require its new members to own property in the village.

In short, he wants to evict Deepdale's members and replace them with his select villagers. The villagers, however, probably won't golf free at the new Deepdale. The mayor has pointed to nearby Sands Point as an example of the type of municipal course he has in mind, and residents there have to pay as much as \$18,000 a year to "belong" to their municipal course.

The condemnation serves the public interest because, the mayor says, owning Deepdale would be a nice "amenity" that will increase local real estate values. Just as people pay more for real estate located in a good school district, they can be counted on to bid up the price of real estate in the world's most prestigious golf district. And, if you live in North Hills,

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what's the matter with that, even if you don't golf? Well, two things: first, it probably violates the Constitution; and second, it makes no economic sense.

The Fifth Amendment to the Constitution provides that private property shall not "be taken for public use, without just compensation." In a controversial 5-4 decision handed down last June, the Supreme Court upheld a plan by New London, Conn., to take private property from one private owner and give it to another as part of the creation of an urban re-

North Hills's proposal to take over a golf club doesn't make sense.

development zone. Officials decided that the redevelopment zone was a reasonable effort to deal with the economic distress that gripped New London after major employers left, in part because it transformed the property's use.

Applying that precedent to Deepdale would require a careful and constitutionally complicated analysis of whether condemning a golf course owned by outsiders to turn it into a golf course owned by friends and neighbors is a legitimate "public use" and whether the government's rationale for such a taking is authentic or merely a pretext for an unconstitutional purpose.

But let's set aside these lofty issues and look at the economics. Suppose the village pays full fair market value for Deepdale as determined in an open auction and simultaneously sells off memberships in another auction open only to village property holders. The second auction would balance the village's books by raising the same amount of money that was used to acquire Deepdale. Putting aside transaction costs, which are quite significant in deals of this sort, the value of village property wouldn't increase one whit be-

cause any resident who wants a Deepdale membership would have to pay full freight for that right.

In order to pump up the local real estate values, the village would have to sell Deepdale memberships at a discount. But selling at a discount would cause the village to operate at a deficit that would have to be covered by increased property taxes. Those taxes would depress local property values by the value of the discount they would have to cover, leaving village home prices precisely where they were in the first instance.

All of which proves that there is no free lunch, even at a golf course as exclusive as Deepdale — unless the mayor figures that he can condemn the club for less than its true fair market value. If that's the case, then the lower the price that he can persuade a court to set for Deepdale, the bigger the bump up that will result in local real estate values.

The Constitution, however, is supposed to guarantee "just compensation." New York law requires that condemned property be valued at its "highest and best use, regardless of actual use" including the "reasonable probability of rezoning." Unfortunately, the danger is still very real that Deepdale could be condemned at a bargain basement price. After all, there aren't any direct comparables to Deepdale, so valuing the property will be far more difficult than pricing a condo when the identical unit upstairs sold just a week ago. The price will, instead, be set by a local court relying on the testimony of appraisers, none of whom would have seen a comparable transaction for a trophy property of 175 acres, just minutes from Manhattan, in the heart of one of America's richest communities.

So, the Deepdale land grab makes sense only if the People's Republic of North Hills can take the golf course for less than 100 cents on the dollar. That alone should be enough to raise the constitutional red flag and put the kibosh on this narishkeit (that's a technical term meaning "nonsense") before this wacky idea gets any farther than it already has. □