The saga continues: Understand how Plano residents wound up suing the city

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Beth Carruth, a member of the resident group opposed to the Plano Tomorrow comprehensive plan, holds a sign indicating her displeasure with the proposed plan at Monday's Planning and Zoning Commission meeting back in 2015. Commissioners approved the plan 5-2.

More information

To learn more about the Plano Tomorrow Plan, visit planotomorrow.org. To learn more about its opponents, Plano Future, visit planofuture.org.

The battle over Plano's future has been hotly contested for several years. April 2015 marks the Plano City Council's first introduction of its new comprehensive growth plan called Plano Tomorrow.
Plano Tomorrow vote delayed
After months of back and forth between residents and the city regarding the Plano Tomorrow p...

The plan contains guidelines for Plano’s future land use, developments, transportation designs, city services and the overall potential vision for the city. Plano Tomorrow’s long-time opponent, Plano Future, is led by a group of concerned residents who want Plano to remain single-family oriented and suburban.

Some of the main critiques for Plano Tomorrow is its focus on urban development and high-density, multi-family homes with “work, live, play” combinations. Plano Future has mainly opposed apartment development for fear of driving down property rates, overcrowding Plano ISD schools, increasing traffic and impacting what makes Plano the city of excellence.

During Monday night’s city council meeting, Colleen Epstein spoke about the ongoing lawsuit between Plano Future and the city of Plano. Friday afternoon, three judges from the 5th District Court of Dallas ruled City Secretary Lisa Henderson must submit the more than 4,000-signature petition to City Council, and she should do so as soon as possible.

City attorney Paige Mims responded after Epstein’s comments, by saying the ruling is one step on a long journey toward resolution.

Even though the charter said Henderson must immediately present a petition, Mims said what is still unanswered is whether Plano Tomorrow is an item for the ballot.

“If a comprehensive plan is not subject to referendum – which has always been our position – she doesn’t have to present that petition,” she said.

Since issues like zoning, redistricting, annexation and typically comprehensive plans are not seen on the ballot, Council is still waiting for a court to determine if Plano’s plan is subject to public vote or not.

The next step, from the city’s perspective, is to file two rehearing requests at the appellate court within the next two weeks. If needed, Mims said they’ll take this case to the Texas Supreme Court.

Here’s a timeline of how the community got to this point:

April 2, 2015: Plano launches its first draft of Plano Tomorrow, the city’s new comprehensive plan. On April 9, the Plano’s Planning and Zoning Commission hosted a work session to open conversation about the plan.
May 21, 2015: More than 100 residents are invited to give input on Plano Tomorrow at a special workshop. Most of the residents express their concerns about the land use, urban design and high-density apartments initiated by the city's comprehensive plan.

June 20, 2015: City staffers rewrite vague and confusing language in the Plano Tomorrow Plan. Phrases like “strategically promote and incentivize higher integration” were removed along with changing the name of the “Urban Design” portion to “Community Design.”

July 8, 2015: Plano’s P&Z pushes forward to finalize the draft of the Plano Tomorrow plan. The main point of contention was the plan's focus on density and urban mixed-use developments and the potential traffic and population concerns.

September 22, 2015: Plano’s P&Z approves Plano Tomorrow amongst objections exhibited at Monday’s city council meeting. Residents in attendance held signs that read “Schools Safety Suburban, Not Urban” in protest of the plan.

Oct. 13, 2015: Plano City Council approves Plano Tomorrow, the city's comprehensive growth plan, with a 6-2 vote. Councilmen Tom Harrison and Ron Kelley were the only council member to vote against the plan. Opponents of the plan sought a recall of City Council members after the approval.

Nov. 11, 2015: Plano Future submits a more than 4,000-signature petition to Plano’s city secretary Lisa Henderson, calling for a referendum to appeal the Plano Tomorrow plan. City officials maintain the plan is not subject to public election or referendum.

Nov. 25, 2015: Plano city leaders reject the community’s petition to repeal Plano Tomorrow based on recommendations from outside legal counsel Andy Taylor. City secretary Henderson declared the petition “insufficient” to present to the council according to Section 7.03 of the Plano City Charter, which states land ordinances are not subject to a vote. Taylor warned the Council not to hold an election, since it’s prohibited by law.

Plano Future advocates countered that Council argued that Plano Tomorrow was not a zoning ordinance, leaving it open to public vote. They also cited state legislation Section 213.005 which states “A comprehensive plan shall not constitute zoning regulations or establish zoning district boundaries.”
Jan 21, 2016: Residents opposing the Plano Tomorrow plan send a letter to city attorney Paige Mims to take action on the group’s petition, or they would seek legal action regarding the City’s comprehensive plan.

Feb 2, 2016: Five residents name City Secretary Lisa Henderson, Mayor Harry LaRosiliere, Mayor Pro Tem Lissa Smith and the rest of the City Council as co-defendants in a lawsuit against the city. The five plaintiffs: Elizabeth Carruth, Matthew Tietz, Janis Nasser, Judith Kendler and Stephen Palma – ask the Collin County distric court to suspend the Plano Tomorrow plan until a vote can be held. The plaintiffs are represented by attorney Jack Ternan.

May 15-16, 2016: Judge Benjamin Smith, state district judge refused to throw out a lawsuit filed against the city of Plano, filed by opponents of the Plano Tomorrow Plan, allowing the case to continue. Plano’s city attorney immediately appeals the ruling to the 5th Circuit Court of Appeals in Dallas. The trial is on hold until the appeal is resolved.

Feb. 21, 2017: The 5th Court of Appeals of Dallas dismissed two requests that Plano suspend the Plano Tomorrow Plan and submit it for election. The ruling also stated City Secretary Lisa Henderson must submit the more than 4,000-signature petition to City Council, and she should do so as soon as possible.

**EMPHASIS**

The City’s press release claimed they won but now the City says that they will appeal the decision to the Supreme Court, so it’s obvious they lost. They are paying legal fees with the Citizens’ money to keep the Citizens from exercising their right to vote on the Plan.

Why don’t they submit the petitions to the City Council, which the Appeals Court said the City Secretary has an obligation to do and should do so as soon as possible?

**Explaining the Ruling** – The Appeals Court said the City Secretary should submit the petitions to the City Council. The Appeals Court said other parts of the citizens’ lawsuit were not yet “ripe;” that means the actions against the City Council and the City should wait until the City Secretary submits the petitions to the City Council. If the City Council doesn’t act, the suit will then be re-filed to compel the City Council to act.