

Uncertainty Looms: Minneapolis' 2040 Plan Hits (Another) Judicial Roadblock

by Jay R. Lindgren, Eric A.O. Ruzicka, Sarah Zach, and Brian Bell

The month of September was a bad month for the City of Minneapolis' 2040 Comprehensive Plan (2040 Comp Plan). On September 5, 2023, Minnesota's Fourth Judicial District (Hennepin County) released a decision temporarily enjoining the City "from any ongoing implementation of the residential development portions of the City's 2040 comprehensive plan." The district court ordered the City to "immediately cease all present action in furtherance of the 2040 Plan" pending completion of environmental review. The Court further ordered that, if the City does not complete an environmental impact statement or an alternative urban areawide review by November 4, 2023, the City must restore the status quo "between the parties [the City and the nonprofits that sued the City over the 2040 Plan] as it existed on December 4, 2018 by reinstating for its prospective enforcement both the residential development portions of the City's Comprehensive 2030 Plan, and the pre-December 4, 2018 land use ordinances" regarding those same residential development areas.

Based on the district court's rationale for its order, the "residential development portions" of the 2040 Comp Plan appear to refer to zoning districts that, prior to the 2040 Plan, were designated to allow only single-family residential use. The 2040 Comp Plan lifted the single-family residential limitation for these zoning districts. That said, the district court's order uses broad language, applying to "the residential development portions of the City's 2040 comprehensive plan." This language could be read more broadly to include all residential zoning districts in Minneapolis.

The City filed a notice of appeal of the court's order on September 15, 2023, and moved the district court to stay the injunction pending the City's appeal. The district court heard arguments for the motion for the stay on September 19, 2023. The district court has not yet ruled on the motion. Notably, in the September 5 order, the district court, in the City's words, "forecasted its intent to deny the City's motion for a stay, having explicitly ordered that the amended injunction is 'not stayed and shall be effective immediately.'" Therefore, a stay from the district court appears unlikely. Although, the City can appeal any denial of the stay motion to the Court of Appeals.

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In a declaration submitted to the district court in support of the stay motion, the Director of Community Planning and Economic Development stated that the City has “been inundated with questions and concerns from residents and developers of both market-rate and affordable housing regarding the uncertainty caused by the amended injunction ordered by the Court. The Director stated that “[i]mplementation of the amended injunction . . . will require, at a minimum, . . . [r]eviewing plans and ordinances to identify and re-introduce those ordinances implemented during the timeframe of the 2040 Plan and discern which provisions are simultaneously supported by the 2030 Plan from those 2030 Plan provisions that the City is being ordered to resume under the Amended Order.” She further noted, “There are currently 73 units of market rate and 55 units of affordable rental and ownership housing in the development pipeline that will not be approved under the amended injunction” She continued that there are “another 498 units of market rate and 69 units of affordable housing which have received land use approvals but will likely not be able to receive building permits before the November 4, 2023, deadline in the Amended Order.”

Generally speaking, while there is little clarity as to how the City will comply with the district court’s order, there are a few things that can be expected. First, the City most likely will not issue new building permits or land-use approvals (e.g., conditional use permits and variances) for non-single-family, residential structures on land that, under the 2030 Plan, was only to be used for single-family, residential purposes, even if the 2040 Plan would allow that development. Second, the City may be forced to amend the City’s zoning code to undo previous amendments made to formerly single-family, residential districts if the previous amendments had permitted more intense development. There is an open question as to what happens to a developer that has been granted a building permit or land-use approval for non-single-family, residential structures on land that historically could only be used for single-family, residential purposes and may be in the midst of construction or already has already completed construction.

And, of course, the district court or, more likely, the Court of Appeals could stay the order pending the City’s appeal. If the stay is granted, the City would not have to comply with the district court’s order during the pendency of the appeal. The only certainty is that uncertainty regarding the 2040 Comp Plan will continue for many months, if not years.