

Subject: Comprehensive Plan - Resident Lawsuit Risk Mitigation
Attachments: CLUP legal risk to Ann Arbor - 06-12-25.docx

From: Brian Chambers

Sent: Thursday, June 12, 2025 6:51 PM

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Subject: Re: Comprehensive Plan - Resident Lawsuit Risk Mitigation

City Attorney Kaur, Mayor Taylor, City Administrator Dohoney and Planning Leadership:
(please share this with the Planning Commission)

With the second draft of the Comprehensive Plan (2.0) released today, I ran a quick analysis of it to determine if our legal risk exposure was reduced. While this isn't a definitive analysis, it seems that the 2.0 draft is still at significant legal risk.

In all candor, the second draft of Ann Arbor's Comprehensive Plan addresses the format and tone of criticism more than its substance. I believe it remains vulnerable to legal challenges due to noncompliance with state planning law and lack of methodological rigor.

I've attached a 2-page statement of what might be the most compelling legal issues. Maybe you've done a different analysis, and believe this point of view to be an over-statement.

Hopefully, that is the case.

As a strong proponent of the Comprehensive Land Use Plan proposals for increased housing, I am just trying to be helpful and offer ways to reduce potential legal risk.

Bria Chambers
3rd Ward

On Thu, Apr 10, 2025 at 11:11 AM Brian Chambers wrote:

City Attorney Kaur, Mayor Taylor, City Administrator Dohoney and Planning Leadership:

As you may imagine there is ongoing dissent by some residents over the Comprehensive Plan, even with the released draft. Talk is now coming up about lawsuits being planned.

While I assume you've already done your research and are preparing for such events, I thought I'd share a quick compilation of what has come up for other cities in the Land Use Plan updates that

provide more housing density in their residential neighborhoods. Please refer to the attachment for the breakdown of these, and those most likely to present the most risk to the City.

- ◆ 1. Procedural Due Process & Public Participation Lawsuits
- ◆ 2. Takings Claims / Regulatory Overreach
- ◆ 3. Equal Protection or Fair Housing Lawsuits
- ◆ 4. Environmental or Infrastructure-Based Challenges
- ◆ 5. Ballot Initiative or Charter Amendment Lawsuits

Hope this helps.

Brett, please share this with the Planning Commission.

Thank you for your work and consideration,

Brian Chambers

Third Ward

The legal risk to Ann Arbor's Comprehensive Land Use Plan is not just rooted in the neighborhood opposition—it also arises from potential **violations of Michigan planning and zoning law**, particularly the **Michigan Planning Enabling Act (MPEA)** (Act 33 of 2008), which governs the creation and adoption of municipal master (comprehensive) plans. Based on the Comprehensive Plan Draft_02 and Michigan law, several specific **legal vulnerabilities** are evident:

Legal Risks Under Michigan Planning Law

1. Lack of Regional Coordination

- **Law:** *MPEA §39(2)(d)* requires that municipalities notify and coordinate with the regional planning commission (SEMCOG) before preparing a master plan.
- **Risk:** Draft 2 does **not document coordination with SEMCOG**, nor does it incorporate SEMCOG's population and housing forecasts. This could render the plan legally noncompliant and procedurally flawed.
- **Implication:** A court could invalidate or delay adoption of the plan if challenged.

2. Absence of a Documented Factual Basis

- **Law:** *MPEA §33(1)* requires that the plan be based on documented data about “economic, social, physical, environmental, and fiscal characteristics.”
- **Risk:** The plan includes **ambitious housing and population projections** (30,000–45,000 housing units; 60,000–110,000 new residents) **without a cited methodology**, and without reconciling these assumptions with SEMCOG or U.S. Census data.
- **Implication:** The plan may be viewed as lacking a “rational basis” for zoning or policy changes—opening it up to legal challenge under Michigan case law related to arbitrary or capricious government action.

3. Failure to Analyze Infrastructure or Fiscal Impacts

- **Law:** While not explicitly mandated in MPEA, **infrastructure adequacy and fiscal sustainability** are required under APA and HUD-recognized best practices, and often scrutinized in land use lawsuits.
- **Risk:** The plan omits **cost estimates for infrastructure** (roads, sewers, schools) or **fiscal impact assessments** for the scale of proposed growth.
- **Implication:** May expose the city to litigation or administrative challenge when infrastructure or rezoning decisions are made without demonstrated capacity or cost analysis.

4. Disregard for Procedural Transparency

- **Law:** *MPEA §41* requires a public hearing and publication of plan drafts, with a clear record of engagement.

- **Risk:** While public engagement was documented, the **memo claims nearly 1,900 residents requested a pause** in the plan’s approval pending more robust review. If significant procedural irregularities are proven (e.g., ignoring required comment periods or improperly dismissing concerns), this could be used in legal actions to delay or block plan adoption.
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High-Risk Elements of the Plan

1. **Population and Housing Forecasts:** Far exceed SEMCOG projections without justification; could be challenged as not evidence-based.
 2. **Land Use Framework and Upzoning Recommendations:** Proposals to densify formerly single-family districts without showing infrastructure or service capacity may be vulnerable to challenge.
 3. **Failure to Analyze Costs:** Absence of infrastructure and fiscal analysis undermines rational basis for many proposals.
 4. **Potential Misalignment with Vision Zero and Transportation Plans:** Not incorporating SEMCOG data creates internal inconsistencies with adopted plans, which could trigger legal or administrative review.
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Mitigation Recommendations

To reduce legal risk, the City of Ann Arbor should:

- **Formally integrate SEMCOG data** and show methodology for deviations for all projections.
 - **Document regional coordination** as required under MPEA.
 - **Include infrastructure and fiscal impact assessments** for all major growth scenarios.
 - **Ensure the public hearing and comment record** is complete and legally defensible.
 - **Phase implementation through a legally adopted zoning update**, backed by findings of consistency with the Comprehensive Plan and factual analysis.
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Conclusion

Yes, the legal risks to Ann Arbor’s Comprehensive Land Use Plan are real and grounded in **state law, not just public criticism**. The most significant vulnerabilities stem from a lack of documented data justification, failure to coordinate with regional planning agencies, and omission of fiscal and infrastructure assessments. These risks can and should be mitigated through targeted revisions and improved transparency before adoption.