

Subject: Comprehensive Plan - Resident Lawsuit Risk Mitigation
Attachments: Lawsuits Ann Arbor Can Anticipate Against the Comprehensive Land Use Plan - 04-10-25.docx

From: Brian Chambers
Sent: Thursday, April 10, 2025 11:12 AM
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Subject: Comprehensive Plan - Resident Lawsuit Risk Mitigation

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

When cities like Ann Arbor increase allowable housing densities—particularly in formerly single-family-only residential zones—they can face **legal challenges** from residents, neighborhood associations, or advocacy groups. However, many such lawsuits are unsuccessful if the city follows appropriate public process and stays within its zoning and land-use authority. Here are the **primary categories of legal risk**, along with specific considerations for Ann Arbor:

◆ 1. Procedural Due Process & Public Participation Lawsuits

Nature: Plaintiffs claim the city failed to provide adequate notice, hearing opportunities, or public process as required by state law or the city charter.

Relevant in Ann Arbor?

Not likely—**Ann Arbor has conducted extensive public engagement** in developing the Comprehensive Plan (as required under Michigan’s Planning Enabling Act), including public surveys, open houses, and formal Planning Commission processes.

Mitigation: Ensure **detailed documentation** of the engagement process, responses to public feedback, and compliance with all **Act 33 of 2008 (Michigan Planning Enabling Act)** requirements.

◆ 2. Takings Claims / Regulatory Overreach

Nature: Property owners argue the city’s new zoning diminishes their property value or rights, amounting to a “regulatory taking.”

Relevant in Ann Arbor?

Not likely. Most takings lawsuits relate to **down-zoning** (reducing allowed density). Ann Arbor’s plan **increases** use options (e.g., allowing 2–4 unit buildings), which strengthens a landowner’s flexibility—not weakens it.

Mitigation: Ensure **new allowances don’t impose unreasonable burdens** or conditions on current landowners and that they expand, not restrict, permissible uses.

◆ 3. Equal Protection or Fair Housing Lawsuits

Nature: Lawsuits alleging that land-use changes disproportionately harm protected groups or fail to remedy exclusionary patterns.

Relevant in Ann Arbor?

Possibly. If the City **backs away from density or affordability commitments**, plaintiffs may argue that Ann Arbor failed to address the **discriminatory impact of exclusionary zoning**.

Mitigation: Center the plan’s narrative around **remedying historic segregation** and expanding housing access. The Comprehensive Plan’s goals of equity and affordability already reflect this—but must be followed through in the implementation phase.

◆ 4. Environmental or Infrastructure-Based Challenges

Nature: Plaintiffs claim that increased density will overburden sewers, schools, roads, or other services, or violate environmental protections.

Relevant in Ann Arbor?

Moderate. **Environmental concerns around the Huron River watershed** or perceived lack of infrastructure planning could form the basis for challenge.

Mitigation: Incorporate infrastructure capacity analysis and climate goals (already addressed in the draft Comp Plan), and align zoning changes with these studies.

◆ 5. Ballot Initiative or Charter Amendment Lawsuits

Nature: Opponents attempt to override planning/zoning decisions through local referenda or charter amendments, which can become legal challenges over jurisdiction.

Relevant in Ann Arbor?

Yes. Ann Arbor residents are **politically engaged**, and any perception of overreach could trigger ballot initiatives or challenges like those seen in **Minneapolis (post-2040 Plan litigation)**.

Mitigation: Maintain **clear communication** that zoning reform is a gradual, public, and community-led process. Frame changes as increasing *options*, not mandates.

🔍 What's Unique About Ann Arbor?

- **Highly educated, civically active population:** Expect detailed legal and policy scrutiny.
- **University town with housing pressures:** May invite more regional interest and legal analysis.
- **Adoption of form-based code in a traditionally use-based city:** If not well-explained, this shift could confuse residents and lead to procedural complaints.

✅ Summary Recommendations to Reduce Lawsuit Risk

1. **Document robust public engagement** under Act 33 and local ordinances.
2. Emphasize that **density changes expand rights**, not restrict them.
3. Align land use goals with **state climate, equity, and affordability mandates**.
4. Be transparent and gradual with **form-based code implementation**.
5. Consider **phased zoning overlays** to allow infrastructure catch-up.