

# State appeals court dismisses Plano officials from lawsuit

Yesterday Dallas Morning News

by: Julie Fancher

PLANO — A [state appeals court](#) Thursday dismissed claims against the city, mayor and City Council from a lawsuit that had alleged they failed to follow the city's charter in approving the city's updated comprehensive plan, known as the Plano Tomorrow Plan.

**But the appellate court refused to dismiss the claims against City Secretary Lisa Henderson from the lawsuit, which was [filed last February](#) by residents opposed to Plano Tomorrow.**

[Mayor Harry LaRosiliere](#) and council members [filed a motion in May](#) to dismiss the case "based on procedural errors," the city said in a written statement. That same month, state District Judge Benjamin Smith refused to dismiss the city's plea of jurisdiction and the city appealed that decision.

That led to Thursday's ruling by the 5th Court of Appeals in Dallas.

The Plano Tomorrow Plan, the city's first comprehensive development plan since 1986, was initially presented in 2013. It was billed as a "long-range guide to the city's future over the next 20 years" that would help guide the city through future growth, development and redevelopment.

The council passed the plan in [October 2015 on a 6-2 vote](#). The following month, residents submitted a petition with over 4,000 signatures opposing the plan. But in November, during a City Council meeting, Henderson declared the petition "insufficient" to present to the council, and the city moved forward with the plan.

Jack Ternan, who represents the residents, previously said Henderson's refusal to present the petition to the council violated the city's charter. Ternan said his clients

sued to force Henderson to present the petition to the council, and for the council to reconsider the ordinance. In the event the council doesn't repeal it, the residents want a referendum.

The appeals court dismissed the claim against the city, the mayor and council members, saying that "the City Council has no duty to act on a referendum petition until the petition is actually presented by the city secretary."

"What the City Council will do when presented with a referendum petition is unknown and appellants merely speculate the council will refuse to act," the decision said.

**The court went on to say in its ruling that "the city secretary's duty under section 7.03 is clear: the secretary must present the petition to the City Council immediately upon the filing of the petition ... the allegations support the conclusion that the city secretary failed to perform that duty."**

**Ternan said Friday that the court ruling meant that Henderson "had no discretion to refuse to submit the voter petition," to the City Council and that a trial court "has jurisdiction to order compliance."**

Henderson referred all questions to the city's legal department. But City Attorney Paige Mims said that the ruling means the trial court will be able to decide "whether or not the city secretary has the duty to present that petition to council."

The appellate court's ruling does not order Henderson to present the petition, and the court did not rule on whether the petition was valid.

Ternan said he plans to meet with his clients Saturday to discuss their options.

City spokesman Steve Stoler said in a statement that the council will be briefed by city staffers Monday to "consider the next step in this ongoing process."

Also in the lawsuit, residents asked the court to declare that the Plano Tomorrow Plan is suspended and invalid unless, or until, it is approved by the public in a vote.

The court declined to do so, saying the time to consider that is after the council decides whether to hold a referendum on the plan.

"Suspension of an ordinance does not occur until the secretary presents the petition and the council reconsiders the ordinance, decides not to 'entirely repeal' it, and submits the ordinance to a vote," the decision said. "These events have not occurred and may never occur."

Ternan said he disagreed with the court's decision to allow the Plano Tomorrow Plan to continue while the council decided how to proceed on the referendum.

"We disagree with the court's third conclusion because it grants an unelected, law-defying official the right to interfere with the people's legislative powers," he said.

If the plan were suspended, that would effectively stop the council from changing city zoning based on Plano Tomorrow guidelines. Instead, the city would have to follow guidelines from the original 1986 ordinance.

The plan calls for urban neighborhoods that combine working, shopping, eating and living — often in multifamily housing — in one place, similar to Deep Ellum, Uptown, and Mockingbird Station in Dallas.

Opponents of the plan said they were concerned that it calls for more [apartments](#) and big developments that could lead to significant increases in traffic, potential rezoning of school boundaries and negative effects on home values.