

Testimony of Jim Dillavou to the Texas House Committee on Election

Good Morning. I am Jim Dillavou. I represent a citizens group called PlanoFuture. Thank you for the opportunity to speak to you today.

- In 2014, the city of Plano staff proposed a new comprehensive plan. Under Texas law, comprehensive plans limit and guide a municipality's adoption of zoning regulations and provide the framework for the decisions of city staff, the Planning and Zoning Commission, and the City Council regarding land use. When the citizens reviewed the proposed plan, we determined that it included several elements that were a departure from Plano's historical comprehensive plan and that we did not agree with several of the proposed changes. Our concern was focused on the intent to add a great amount of high density housing in over 20 areas of the city. High density residential development was not allowed in most of these areas under the existing comprehensive plan or current zoning.
- Hundreds of citizens attended Planning & Zoning, City Council and other public meetings on multiple occasions to voice their concerns and citizens sent the City over 1,000 letters and emails with specific objections to the Plan.
- The City Council adopted the comprehensive plan by ordinance anyhow, without making any of the substantive changes requested by the citizens.
- Except for tax levy ordinances, Plano's Home Rule City Charter allows citizen petitions to require that any newly adopted ordinance be suspended and put to a vote of the citizens before it can become effective. The petition must be submitted within 30 days of enactment of the ordinance and include a sufficient number signatures of registered voters. Immediately before the city council vote on the new comprehensive plan, the City

Attorney announced that filing a petition to require a citizens vote on this matter “was not allowed under state law.” This statement was intended to intimidate and discourage any citizen attempts to challenge the comprehensive plan. The City Attorney made these statements stating that, in spite of the City Charter, it was an incontrovertible fact that such an election could not be allowed under state law.

- When pressed for specific laws as to why there could not be a petition for a citizens vote on the ordinance, the City Attorney pointed to a state law that says zoning actions cannot be subjected to a vote of the citizens. The Citizens pointed out that the Comprehensive Plan states several times that the Plan “shall not constitute zoning regulations” and such statement is in fact required by Section 213.005 of the Texas Local Government Code. When the citizens challenged the City Attorney’s position, the City Attorney responded that since a comprehensive plan was part of the basis for zoning actions, it too could not be subjected to citizens’ vote. When asked to cite case law that was directly on point, the City Attorney did not do so but instead stated that this was her interpretation of the law.
- The Citizens group, on the advice of Counsel believed that there was no basis for the City attorney’s position. It took over a week for the Citizens’ Group to reach this conclusion and decide to launch a petition. Only 21 days remained to complete the petition under the City Charter. The Citizens gathered over 4,000 valid signatures in the abbreviated time, which is more than the approximately 1,800 signatures the City contends is required. The Citizens submitted the petitions to the City Secretary. Every effort was made to follow the legal requirements and the petitions were vetted by the citizens’ attorneys.
- In spite of the requirement of the City’s charter, the City Secretary refused to count the Citizens’ petitions at the instruction of the City Attorney, claiming that it was

“impossible” to have citizens vote on the comprehensive plan ordinance. Under the City’s Charter, the new comprehensive plan should be suspended automatically upon the submission of the petition; the City has nonetheless been operating as if the new comprehensive plan is in effect. The City has compounded the legal issues by enacting zoning amendments that are invalid because they are based on the suspended comprehensive plan.

- The citizens demanded on multiple occasions that the City Secretary fulfill her duty to count the petitions and present them to city council and suspend the ordinance, but they were rebuffed. When the City did not act, the citizens filed a lawsuit.
- Attorneys advising the citizens group feel that, at best, the City was taking a novel interpretation of the law and that it appears likely the citizens will prevail in court.
- The City has sought to extend and delay all court actions. Shockingly, the City filed a motion with the district court claiming that it is immune to suit and that judicial review does not apply to it. The district court denied the city’s plea. The city then appealed the district court’s ruling. The citizens’ group and their attorney replied to the city’s appeal and again the city waited several weeks before submitting a response to the appeals court. In that response, the city also asked for a hearing before the appeals court, even though the question of jurisdiction is relatively mundane and all arguments were laid out in writing.
- All of these actions by the City are intended to drag out the litigation process, adding to the time and cost incurred and hopefully frustrate its citizens and cause them to give up the fight. The citizens made every attempt to work within the system and follow the law to no avail. After 11 months, the Citizens are still waiting for a ruling on the matter and there is no doubt that the City will continue to appeal and delay court actions.

There are a number of actions that could be taken to give citizen petitions a better opportunity to prevail. In the interest of time I am not presenting in all here but a couple of quick points are:

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1. Allow more time for petitions to be completed. Although PlanoFuture was able to complete the petition process on time, doing so was very difficult, required a Herculean effort and only happened because the citizens were already very well organized through months of effort to get the Plan changed.
 2. As citizen groups are not well organized and funded, some latitude should be required to accept petitions that have only minor deviations. After all, the worst outcome is that the City would have to allow the citizens to vote on the matter.
 3. Clarify that a city does not have immunity from litigation and clarify the proper venue for filing actions.
 4. Require the City secretary to immediately count all petitions presented and release findings as to the validity of the signatures.
 5. Require the ordinance be suspended immediately when a notice of intent to file a petition is filed with the city secretary. If the citizens submit a petition with an adequate number of signatures to require a vote, the ordinance at question should continue to be suspended until the city prevails on any contests of validity in a court of law. This would put the onus on the city to resolve the matter instead of seeking to fight a battle of delay and attrition.
 6. Consider an administrative procedure for a state agency to evaluate the petition so the city cannot be litigant, judge and jury.
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