

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Judge Joseph R. Klein

State of Minnesota by Smart Growth
Minneapolis, a Minnesota nonprofit
corporation, Audubon Chapter of
Minneapolis and Minnesota Citizens for
the Protection of Migratory Birds,

Plaintiffs,

v.

City of Minneapolis,

Defendant.

ORDER

Court File No. 27-CV-18-19587
Case Type: Civil Other/Misc.

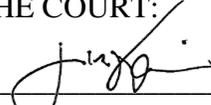
This matter came duly before the Honorable Joseph R. Klein on July 8, 2022 in District Court, Division I, Minneapolis, Minnesota. The parties appeared remotely on Defendant's Motion to Stay the June 15, 2022 Order pending appeal. Attorney Jack Perry appeared on behalf of Plaintiffs. Attorney Ivan Ludmar appeared on behalf of Defendant City of Minneapolis. Based upon the evidence adduced, the arguments of the parties, and all the files, records, and proceedings herein, the court makes the following:

ORDER

1. Defendant's Motion to Stay the June 15, 2022 Order is **GRANTED**.
2. The attached memorandum of law is incorporated herein.

Date: July 26, 2022

BY THE COURT:



Judge Joseph R. Klein
Judge of District Court

FACTUAL BACKGROUND

This case involves the Minneapolis 2040 Comprehensive Plan (“the 2040 Plan”). Under the Metropolitan Land Planning Act, the Metropolitan Council prepares long-range development plans for the Twin Cities region every ten years. Local governments in the region must adopt a comprehensive plan consistent with the development plan. Thus, the City of Minneapolis (“the City”) must review and, if necessary, amend its comprehensive plan at least once every ten years. It must also make amendments and submit them for review to accommodate changes the Metropolitan Council makes to system plans. The Metropolitan Council reviews local government plans for compatibility with each other and conformity with the system plan.

In 2009, the City adopted a comprehensive plan called The Minneapolis Plan for Sustainable Growth. This plan guided development through a Future Land Use Map, primarily through “land use features,” that described in general terms what type of development would be appropriate in a given area. The 2009 plan did not provide specific guidance on the size of new buildings, which was left to the zoning code and varied depending on the zoning district. The 2040 Plan includes substantial amendments to the City’s comprehensive plan, and officially went into effect on January 1, 2020. The Minneapolis City Council voted in favor of submitting the 2040 Plan to the Metropolitan Council on December 7, 2018. On October 25, 2019 the Metropolitan Council gave its final approval to the 2040 Plan.

Plaintiffs allege the 2040 Plan is likely to cause the pollution, impairment, or destruction of the air, water, land, or other natural resources located within the state and sought declaratory judgment and injunctive relief under the Minnesota Environment Rights Act (MERA). On June 15, 2022, this court granted summary judgment in favor of Plaintiffs, finding that they had satisfied their burden under MERA. and that the City had not, in turn, satisfied its burden to rebut Plaintiffs’

showing of environmental harm nor had it asserted an affirmative defense. This court held that the presumption of a full build-out under the 2040 Plan was the appropriate metric by which to measure environmental harm to make a prima facie showing of harm under MERA. The City was immediately enjoined from furthering the implementation and enforcement of the 2040 Plan and ordered to re-implement the 2030 Plan as the governing comprehensive zoning plan for Minneapolis by August 15, 2022.

The City appealed the district court's Order and now brings this motion to stay the June 15, 2022 Order pending the result of the appeal. The City's motion is opposed by Plaintiffs.

ANALYSIS

I. Legal Standard

A motion to stay the enforcement of an order pending appeal must be made in the trial court. Minn. R. Civ. App. P. 108.02 subd. 1. Factors that may be considered when deciding whether to grant a stay include: (1) whether a stay is reasonably necessary to protect appellant from irreparable or serious injury in case of a reversal and whether it appears appellee will sustain irreparable or disproportionate injury in case of affirmance, (2) whether loss or damage occasioned by the stay can be met by a monetary award, (3) whether important questions of law are raised which will require a reversal of the trial court if decided in appellant's favor, (4) whether a stay will avoid a multiplicity of suits, and (5) whether a stay will protect the appellate court's jurisdiction. *See State v. N. Pac. Ry. Co.*, 22 N.W.2d 569, 574-75 (Minn. 1946). These factors do not comprise a checklist and an appellant is not required to meet all or most of them. Instead, a trial court has "broad discretion in deciding which of the various factors are relevant in each case, and . . . need only analyze the relevant factors." *Webster v. Hennepin Cty.*, 891 N.W.2d 290, 293 (Minn. 2017).

II. The City's Motion to Stay enforcement of the June 15, 2022 Order is granted.

Of the factors enumerated by the Minnesota Supreme Court, factors 1 and 3 are relevant to this case. The court will address these two factors in reverse order. As to the third factor, there is little doubt that this case presents an important legal question. The questions of law decided by this court in its June 15, 2022 Order – whether in the case of a comprehensive zoning plan, a court may presume a full build-out in the context of a MERA challenge and whether such a challenge can be brought at the comprehensive plan stage - will have lasting future impact throughout the state, whether the order is affirmed or reversed. This case, and these questions of law, are ones of first impression in Minnesota. No Minnesota court has ever before considered a MERA challenge to a comprehensive, city-wide zoning plan. The full build-out presumption and whether a comprehensive zoning plan is an appropriate stage at which to bring a challenge under MERA are important questions of law, and their ultimate resolution will have lasting implications for a large metropolitan community. In a case of first impression that is of such potential import, as is the present case, this court acknowledges the prudence of a stay pending an appeal. Satisfying this factor, alone, however, is not of itself sufficient to warrant a stay.

The City also argues that it will likely face serious harm, absent a stay, should the City ultimately prevail on appeal. The City has already been enjoined from enforcing the 2040 Plan and has been further ordered to revert back to the 2030 Plan by August 15, 2022. If this court does not stay enforcement of the June 15, 2022 Order, the City argues that it will have to invest considerable time and effort into re-implementing the 2030 Plan, including updating ordinances to comply with changes in the law, only to then invest considerable time and effort into undoing that reversion and re-implementing the 2040 Plan, should the Order be reversed. The court accepts this as a plausible

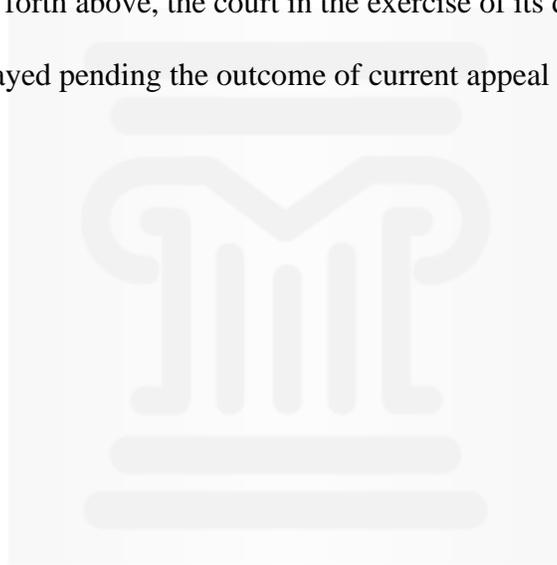
risk of serious harm and finds that a stay will alleviate the risk of such harm, while the appeal is pending. Plaintiffs similarly argue that if the Order is stayed, and ultimately upheld on appeal, then any permits that are granted, any work that has been done under the 2040 Plan, might ultimately need to be undone, requiring duplicate expenditures by the City and no small cost to developers. Quite plainly, there is risk to the City under both scenarios. The court's June 15, 2022 Order has already noted the potential chaos that enjoining the Plan might foment. Regardless of whether the Order is implemented, or stayed pending appeal, the uncertainty will likely continue. In the judgment of this court, a stay of its Order, pending the outcome on appeal, is warranted.

Plaintiffs also argue that having been found to have satisfied a prima facie case under MERA, MERA requires that the City be enjoined—that a stay would be inappropriate, as it would permit further implementation of a plan that has already been deemed likely to cause pollution and impairment to the environment. While it is true that under the record presented, Plaintiffs satisfied their prima facie showing under MERA, it is also recognized that plaintiff's unrebutted expert opinion was that such harm was to occur upon the full build-out that has been authorized under the plan. There was no evidence offered that the plan in its current stage was actively harming the environment. It should be noted that an appeal is not theoretical in this matter. The City has appealed the court's decision. Thus, if unstayed, the court's order would require the City to revert to the 2030 Plan starting August 15, 2022—during the pendency of the appeal. The court must balance the potential for serious harm to the City in this interim term with the potential harm that that would arise from implementing a stay. Under the circumstances presented, the court is not convinced that granting a stay of the Order pending appeal will result in damage to the environment during the pendency of the appeal. The City has argued throughout this case that it believes environmental reviews of individual projects is appropriate. Because the City has pledged to

conduct environmental reviews on a project-by-project basis and because the appeal period is short compared to the duration of the comprehensive plan, the court finds any potential environmental harm is not irreparable or disproportionate.

For the reasons set forth above, the court in the exercise of its discretion, orders that its June 15, 2022 Order be stayed pending the outcome of current appeal process.

JRK



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