

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
CASE TYPE: CONTRACT

Ramsey County, Minnesota,
Plaintiff.

Case No. 62-cv-19-3490
Judge Kevin S. Burke

Alliance for Metropolitan Stability,
Plaintiff Intervenor

v.

NOTICE OF INTERVENTION

The City of Arden Hills, Minnesota,
Defendant

To: Ramsey County and its Counsel Charles N. Nauen, Lockridge Grindal, Nauen P.L.L.P., 100 Washington Ave. s., Suite 2200, Minneapolis, MN 55401 and the City of Arden Hills and its counsel, John M. Baker, Greene Espel PLLP, 222 S.9th St., Suite 2200, Minneapolis 55402.

PLEASE TAKE NOTICE that the alliance for metropolitan Stability (the Alliance) hereby serves upon you this Notice of Intervention pursuant to Minn. R. Civ. Pr. 24.03 accompanied by a Complaint of Intervenor setting forth the nature of every claim for which intervention is sought and the reasons for the claim of entitlement to intervention. In the absence of objection by an existing party to the action within 30 days after service of this Notice upon the party, such intervention shall be deemed to have been accomplished.

The Alliance seeks intervention as of right pursuant to Minn. R. Civ. P. 24.01. Ramsey County's (the County) Complaint repeatedly characterizes the lack in current TCAAP project plans of sufficient affordable, and more deeply affordable, housing as a core issue in its dispute with the City of Arden Hills (City) resulting in a failure of present plans for the project to share

the County's vision of building an "inclusive community" where "all are valued." The County's Complaint thus raises obvious fair housing issues that the Alliance has been raising for years regarding project plans. Yet the County did not take the step of raising claims under the federal Fair Housing Act. The Alliance therefore seeks to intervene in this lawsuit as of right to assure that the outcome of this litigation steers TCAAP redevelopment in a direction that satisfies the requirements of the federal Fair Housing Act and the obligation under Minn. Stat. § 472.859 to address the Metropolitan Council's allocation of regional need for affordable housing in Arden Hills.

The Alliance seeks intervention as of right as its application is timely, and its interests in fair and affordable housing relate both to the TCAAP site and to the draft Master Development Agreement, the transaction the terms of which are at the center of this lawsuit. The disposition of the action absent intervention may as a practical matter impair the alliance's ability to protect those interests and neither party adequately represents those interests.

Alternatively, the Alliance seeks permissive intervention pursuant to Minn. R. Civ. P. 24.02 as the claims set out in the attached Complaint of Intervenor share common questions of fact, regarding the amount and level of affordability of housing proposed for the TCAAP site and funding for that housing, with those set out in the County's Complaint.

Dated July 8, 2019

HOUSING JUSTICE CENTER

s/John Cann

John Cann (#0174841)

Timothy Thompson (#0109447)

Margaret Kaplan (#0328601)

1774 Portland Ave.

St. Paul, MN 55104

612-807-1139 x1

jcann@hjcmmn.org

tthompson@hjcmmn.org

mkaplan@hjcmmn.org

Attorneys for Plaintiff Intervenor

Alliance for Metropolitan Stability

ACKNOWLEDGEMENT

I hereby acknowledge that the Court may impose sanctions pursuant to pursuant to Minn. Stat. § 549.211 Subd. 3 if, after notice and a reasonable opportunity to respond, the Court determines that the undersigned has violated the provisions of Minn. Stat. § 549.211.

Dated July 8, 2019

HOUSING JUSTICE CENTER

s/John Cann
John Cann (#0174841)

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
CASE TYPE: CONTRACT

Ramsey County, Minnesota,
Plaintiff.

Case No. 62-cv-19-3490
Judge Kevin S. Burke

Alliance for Metropolitan Stability,
Plaintiff Intervenor

v.

COMPLAINT OF INTERVENOR

The City of Arden Hills, Minnesota,
Defendant

INTRODUCTION

1. In 2012, Ramsey County (“the County”) acquired the 427 acre Twin Cities Army Ammunition Plant (TCAAP) site, then a superfund site, with the intent of correcting the environmental issues and redeveloping the site. In the same year, the County entered into a Joint Powers Agreement with the City of Arden Hills (“the City”) in order to develop and implement planning for the redevelopment. The County has so far paid approximately \$40 million for acquisition and environmental clean-up of the site. In 2016, the JDA selected Alatus as master developer of the TCAAP site.

2. The City and County both adopted goals for redevelopment of the site in preparation for solicitation for the master developer. Both set as goals that 10% of the housing units produced should be affordable to households with incomes at 80% of area median income (AMI). These goals were carried forward through the production of a draft Master Development

Agreement (MDA). On September 4, 2018, the JDA approved a summary of the draft MDA with the affordable housing goal set at 10% of the units affordable at 80% of AMI.

3. This level of “affordable” housing is wholly inadequate. Persons with median incomes of all but one of the top most in-demand jobs in the state cannot afford rents at 80% of AMI and most cannot even come close. The proposed housing excludes levels of affordability that are most desperately needed in the metropolitan area and would disproportionately exclude minority households from occupancy. The Metropolitan Council has indicated that, for the City to address its share of the local and regional need for affordable housing, 14.3% of all new housing built in the decade 2021-2030 should be affordable to households with incomes at or below 30% of AMI and 11.1% below 50% of AMI.

4. The City and County have disagreed over many aspects of the proposed redevelopment and those disagreements came to a head with discussion of the proposed Master Development. Since the September 4 JDA meeting, the County has argued for, among other things, greater density and more affordable housing, and over details of financial arrangements among the County, City, and developer. The City has not responded to County arguments that more affordable housing with deeper affordability is needed. When disputes over these core issues left the parties unable to agree to the terms of the MDA, the County sought mediation of the disputes. When the City declined, the City sought an agreement to terminate the JPA and dissolve the JDA. When the City again declined, the County brought this lawsuit, seeking a declaratory judgment that the City had breached the JPA and that the JPA and JDA are null and void.

5. Concurrent with development of the draft MDA, the City has prepared an update to its Comprehensive Plan, required every ten years by state law. Minn. Stat. § 473.859 requires

that the comprehensive plan include plans and specific actions to assure production of each city's share of the regional need for affordable housing. While the comprehensive plan, in response, purports to set aside sufficient land on the TCAAP site to meet the Metropolitan Council's allocation of the City's share of the regional need for affordable housing, the City's policy of 10% of the new housing affordable only to households with incomes well above 50% of AMI guarantees that the City cannot meet the statutory requirements.

6. The Alliance for Metropolitan Stability ("the Alliance") has intervened in this lawsuit in order to assert claims against the City under the federal Fair Housing Act and the Metropolitan Land Use Planning Act and to assure that resolution of the disagreements among the City, County, and developer through this litigation permits sufficient affordable housing on the TCAAP site to produce the Metropolitan Council's allocation of regional affordable housing need to the City. The Alliance for many years has worked to promote fair and affordable housing opportunities throughout the region, including at the TCAAP site. The existing policies regarding affordable housing on the TCAAP site constitute disparate impact and perpetuation of segregation violations of the federal Fair Housing Act as well as of the parties' obligation to develop plans and programs for development of the City's share of the local and regional need for affordable housing. The Alliance seeks declaratory and injunctive relief.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the claims brought by the Alliance pursuant to 42 U.S.C. § 3613(a)(1)(A) and Minn. Stat. § 462.361. Venue is proper under Minn. Stat. § 542.09 because the events giving rise to the action occurred in Ramsey County and Arden Hills is located in Ramsey County.

PARTIES

8. The Alliance is a coalition of community-based organizations and advocacy groups working together to advance strategic campaigns around the intersections of racial justice, economic justice, environmental justice, and health equity. The Alliance's Regional Equity Agenda calls for leadership by people of color, indigenous, immigrant and low income communities to advance metro-wide policies for equitable land use practices that support a broad set of choices where people may live and work. This agenda also advocates for the production of new affordable housing to meet the needs of all residents in our region. The Alliance operates under the belief that regional equity requires a commitment to equitable social and economic opportunity, that the application of a racial justice lens is critical to land use decisions, and that these issues are interdependent - it is difficult to separate them from one another. Decisions and investments that affect housing, transportation, land use, economic development, and other regional issues affect all of these critical areas. The Alliance has been a major actor in efforts to assure a robust supply of deeply affordable housing on the TCAAP site, organizing community input into TCAAP plans and communicating multiple times with the City and County the message that TCAAP plans did not meet legal requirements. The initial project goals of both the County and City, proposing only 10% of the units to be affordable and only at 80% AMI and the failure of the parties to significantly improve that goal has frustrated the Alliance's mission as expressed in its Equity Agenda and the Alliance has required diversion of staff resources costing approximately \$48,000 to address the wholly inadequate TCAAP affordable housing goals.

9. For the reasons set out below, the Alliance is so situated that disposition of the action without its intervention may, as a practical matter, impede its interest in fair housing and

assuring development of affordable housing on the site. Those interests are not adequately represented by the County or the City.

10. Ramsey County brought this action out of frustration with the City's alleged refusal to negotiate in good faith on a variety of issues. While its complaint emphasized that a core issue was the City's resistance to affordable housing, the complaint did not mention the fair housing implications of the City's position. The County staff negotiated a draft MDA that excluded any housing affordable to households at or below 50% of AMI and County representatives on the JPA voted in favor of that draft. Though the County has recently called for increased affordable housing on site it has never committed to specific numbers of affordable units or levels of affordability or committed to affordable housing at the levels required for the City and County to fulfill their obligations under the Minn. Stat. § 473.859. Thus the Alliance's fair housing interests are not adequately represented by the existing parties and the disposition of the action without intervention may impair the Alliance's fair housing interest in assuring development of the required amount of housing affordable to very low income households. The County, as recipient of a variety of types of federal funds, has a statutory duty to affirmatively further fair housing and must annually certify to the federal government that it has done so. 24 C.F.R. § 24.225(a)(1).

11. The City of Arden Hills has not altered its goals for the site which provide no housing affordable to households making 50% of Area Median Income (AMI) or less and has not responded to County efforts to include any such housing. The City's policies with respect to affordable housing on the site effectively function to exclude minority households from the City and the new neighborhoods being developed and thus constitute what the U.S. Supreme Court has characterized as "the heartland of disparate-impact liability" under the Fair Housing Act.

Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., 135 S.Ct. 2507, 2522 (2015). The City’s policies regarding redevelopment of the site also violate the state law requirements for preparation of comprehensive plans which include plans and programs, fiscal devices, and specific actions to be taken to address each city’s share of the local and regional need for affordable housing.

FACTS

Affordable Housing Needs in the Metropolitan Area and Fair Housing Implications

12. As described below, the parties developed a policy with respect to redevelopment of the TCAAP site calling for only 10% of the housing units to be produced to be “affordable” and these are to be affordable to households with incomes at 80% of AMI. Moreover, the affordable housing commitments in the draft MDA are largely back-loaded, with only 2 home ownership units scheduled for the first phase and all of the other “affordable” units scheduled to be built in later phases on an indeterminate schedule sometime after December 2024.

13. Federal and state affordable housing programs typically rely on four income limits and rent limits derived from them: 30%, 50%, 60%, and 80% of AMI. Standard parlance is that a reference to production of housing at 80% of AMI, for instance, means housing affordable to households with incomes greater than 50% or 60% of AMI but less than 80% and similarly with the other income limits. It is also standard practice for a developer committing to a specific income limit will, in order to maximize income, set rents at or close to the upper limit. As described below, the City’s current Comprehensive plan draft clearly differentiates between housing affordable at 80% of AMI and that affordable at or below 50% of AMI. The City’s goal statement incorporated into the master developer solicitation actually used the term “80% or less” of AMI, but subsequent development of a draft MDA has used the simple “80% of AMI.”

14. Maximum income and maximum affordable rent levels at the various percentages of Area Median Income used in HUD programs and by the Metropolitan Council in allocating affordable housing need are as follows:

% of AMI	1 Person Maximums		3 Person Maximums	
	Income	Rent	Income	Rent
80%	\$52,850	\$1,321	\$67,950	\$1,699
50%	\$35,000	\$ 875	\$45,000	\$1,125
30%	\$21,000	\$ 525	\$27,000	\$ 675

Only one (registered nurses) of the top ten most in-demand jobs in the state can afford even a 1-bedroom apartment at 80% of AMI. The state median income for retail sales clerks and supervisors, nursing assistants, truck drivers, personal care aides, food preparers and servers, cashiers, home health aides, housekeepers and maids are all too low, and in most cases far too low, to afford housing at 80% AMI. Most have median incomes below \$30,000. See, <https://www.mhponline.org/images/stories/docs/research/reports/OOR2018-final.pdf>, page 3.

15. HUD data indicates that the vast majority of severely cost burdened households in the seven county metro area, those paying more than half their income for housing, have much lower incomes than 80% AMI. HUD’s most recent Comprehensive Housing Affordability Strategy (“CHAS”) data for this metro area shows 125,305 severely cost burdened households with incomes at or below 50% of AMI (64% of all such households) and only 11,940 (8% of such households) with incomes above 50% but at or below 80% of AMI. See <https://www.huduser.gov/portal/datasets/cp.html#2006-2015>

16. The Metropolitan Council has calculated the percentage of new units to be produced during the 2021-2030 decade which should be affordable to various income groups. For Arden Hills, 14.3% of all new units to be produced in that decade should be affordable to households with incomes at or below 30% of AMI, 11.1% at or below 50% of AMI, and 16%

should be affordable for households with incomes at or below 80% of AMI. The City's draft Comprehensive Plan indicates that most of the city's growth will occur on the TCAAP site, yet City policy is that only 10% of the TCAAP units are to be affordable to households with incomes at 80% of AMI.

17. Minn. Stat. 473.859 Subds. 2 and 4 require metro area cities and counties to have Comprehensive Plans which include plans, programs, and specific actions to be taken which will address the city's share of the local and regional need for low and moderate income housing. The Metropolitan Council has assigned the City a need for production of 288 new affordable housing units for the current decade. The City produced only 4. The City's 10% at 80% policy for the TCAAP site for the next decade does the opposite of what is required by the statute, guaranteeing that no progress will be made by the City in meeting its share of that regional need in the coming decade.

18. HUD data for the seven county metropolitan area also demonstrate that policies restricting affordable housing development such as Arden Hills' have a severely disproportionate adverse impact on minority households, which are far more likely than white, non-Hispanic households to have incomes at or below 50% of AMI and serious housing problems and thus be in need of stable affordable housing. Because of the difficulty of producing home ownership units affordable to households whose incomes do not exceed 50% of AMI, most housing meeting that need will be rental. HUD's most recent CHAS data show 43,575 metro area minority renter households with incomes at or below 50% AMI with serious housing problems. Metro minority households are 4.1 times as likely as white, non-Hispanic, households to be renters with incomes at or below 50% of AMI and with serious housing problems. These serious problems include paying more than 50% of income for housing, lacking kitchen or plumbing facilities or

overcrowding. Most households with serious problems pay more than 50% of income for housing. Data at: <https://www.huduser.gov/portal/datasets/cp.html>

19. The 10% at 80% policy will also tend to perpetuate the low occupancy of minority households in Arden Hills, compared to Ramsey County. The most recent HUD CHAS data indicate that only 6.8% of the city's households are minorities, compared to 24.8% of the County's. Projections using the percentages of Ramsey county minority households at various income levels show that even the current MDA plan might increase the city's overall minority population after full development of TCAAP slightly, to about 9.4%. But development using the Metropolitan Council's allocated percentages of need at various income levels would increase the city's minority population to about 12% and would produce a very large new neighborhood with a minority population of about 22.7%, very close to that of the surrounding county. Thus the current MDA affordable housing policy tends to perpetuate segregation in Arden Hills compared to a plan which meets the standards of Minn. Stat. 473.859.

Restrictive Affordable Housing Policies for the TCAAP Site.

20. The TCAAP site is the largest undeveloped site in Ramsey County, and at least one of the largest sites available for residential development in the metropolitan area. It was a superfund site as a result of its former use as an army ammunitions plant. Early in the last decade, the City proposed to buy the site and began work with Ryan Companies to develop a plan for the site. That process led to a 2009 draft plan that included 1,750 housing units on the site. However, Ryan eventually withdrew from the project and the City withdrew from its purchase agreement with the U.S. General Services Administration. In 2012, the County entered into a purchase agreement with the G.S.A. The County then entered into the JPA with the City.

21. The JPA makes the City responsible for development of the Master Plan for the site, but requires that the County agree to the Master Plan. The City's Master Plan called for only 1,431 units on the site, in contrast to the Ryan plan and although a City environmental study used a maximum residential capacity of 2,500 units and although the City and Ryan had earlier developed a plan for 1,750 units. The Master Plan did not allocate a specific number of affordable housing units.

22. The County adopted a statement of goals for the project dated June 9, 2015. It included that 10% of all housing units and 20% of owner-occupied units should "meet Metropolitan Council affordability levels." It went on to state, inaccurately, that "the Metropolitan Council currently uses 80% of the Minneapolis/St. Paul MSA median income as the basis for measuring affordability." The statement was inaccurate both because the Metropolitan Council's affordability standard for housing produced during the current decade is 60% of AMI and for the coming decade, the affordability standard includes percentages of new units at 80%, 50%, and 30% of AMI.

23. The City adopted a similar statement of goals for the project on January 25, 2016. The City's goal statement provided that 10% of new units should be affordable using the 80% of AMI standard. The goal statement limited new units to a maximum of 1,431.

24. Both the City and County goal statements were attached by the JDA to the solicitation for a Master Developer released on February 1, 2016. One of the criteria for evaluation of the Master Developer was "demonstrated understanding of the City and County vision and goals for the area as reflected in the proposed approach to the project."

25. City and County staff met with Alatus, the selected Master Developer during 2018 to produce a draft MDA. On information and belief, there were numerous disagreements

among the parties regarding the draft. But, after discussion with Alatus, the City did increase the number of units planned for the site to 1,460.

26. On information and belief, during this period, the City refused to consider a County proposal that a City-proposed tax increment financing (TIF) district be expanded to allow support for affordable housing. However, the City's October 24, 2018 "Direction" for the project included willingness to "pursue a TIF solution" to financing a proposed civic center.

27. According to the Metropolitan Council, TIF is the tool most widely used by metro area cities expand housing choice and affordability. Metropolitan Council 2040 Housing Plan, pg. 115, Table 9.

28. The City's own Comprehensive Plan, submitted to the Metropolitan Council in January 2019, acknowledges that the City "may consider" TIF for housing and that "TIF is a useful tool to support the development of both rental and ownership housing units affordable at 50% of AMI and below." Plan at 7-20 and 7-22.

29. On information and belief, the City opposed Alatus' efforts to secure Costco as an anchor tenant, with a Councilmember explaining that some of Costco's clientele "are people we don't want in our community."

30. A summary of the draft MDA was made public in late August 2018. In accordance with the County and City policies, this draft summary provided that only 10% of the 1,460 residential units planned would be "affordable" and those only at 80% of AMI. Only 2 "affordable" units would be developed in the first phase out of a total of 645 units including 475 rental units. All of the remaining affordable units would be developed at an indeterminate time after completion of the first phase at the end of 2024. The city objected to the draft on financial

grounds but its August 27 letter to the County expressed no disagreement regarding allocation of affordable housing. The JDA approved this draft on September 4, 2018.

31. The MDA summary indicated planned development of 1,460 housing units, 1,435,000 sf of commercial/office space, and a 200 room hotel. This new development will produce an enormous increase in tax revenue for the City, with the County and developer assuming virtually all of the risk and most of the public cost. But in discussions with the County, the City has been unwilling to concede that any of this tax benefit to the City might be used to help address the City's fair share of the regional need for affordable housing. This is in spite of its own Comprehensive Plan claiming that the City "may consider" a TIF district to pay for affordable housing.

32. At the same time that discussions with Alatus were proceeding, the City was drafting its 2040 Comprehensive Plan, as is required of all metro area cities every ten years. As part of this process, the Metropolitan Council assigned each city its share of the regional need for affordable housing production during the period 2021-2030. The Metropolitan Council calculation for Arden Hills was that 41% of the new housing produced during this period would be affordable with 15% of new units affordable at 30% of AMI; 11% affordable at 30%-50% AMI and 16% affordable above 50% but no more than 80% of AMI. The total of new units needed to be affordable at or below 50% of AMI was 229 units.

33. Minn. Stat. § 473.859 sets standards for the content of comprehensive plans. Subd. 2(c) requires a land use plan with a housing element:

containing standards, plans, and programs for providing adequate housing opportunities to meet existing and projected local and regional housing needs, including...the use of official controls and land use planning to promote the availability of land for the development of low and moderate income housing.

Subd. 4 requires an implementation program describing “public programs, fiscal devices and other specific actions to be undertaken in stated sequence to implement the comprehensive plan.” As defined in the statute, “fiscal devices” includes tax increment. The implementation program must contain a housing implementation program “which **will** provide sufficient existing and new housing to meet the local unit’s share of the metropolitan area need for low and moderate income housing.” Emphasis added.

34. These requirements are incorporated into the Metropolitan Council’s 2040 Housing Policy. The Council’s Planning Handbook adds a requirement for “a clear and direct linkage between needs identified and tools to be employed, focusing on different levels of affordability.”

35. Minn. Stat. § 473.864 Subd. 2 requires that comprehensive plan amendments be prepared and submitted to the Council in conformance with Council guidelines. The Comprehensive Plan update prepared and submitted to the Council in January 2019 fails this standard.

36. One focus of the Metropolitan Council’s review of cities’ comprehensive plans is on whether sufficient land is set aside at relatively high densities to accommodate the affordable housing need. The City’s comprehensive plan draft acknowledges that most of the city’s growth will occur on the TCAAP site. Plan 6-9. The Plan provides that:

In order to ensure that the 50% or below housing need can be met, Arden Hills has 15.9 acres guided for Town Center zoning within the TCAAP development. At the minimum density required, this could provide 239 units.

Plan at 7-14. The plan also calls for 144 units at 80% to mostly be produced outside of the TCAAP development. Plan 7-14 and 7-15, Table 7.14.

37. Therefore, the City's actual plans for the TCAAP site conflict irreconcilably with the Comprehensive Plan submitted in early 2019 to the Metropolitan Council. TCAAP plans call for only 146 units at 80% of AMI on the TCAAP site, while at the same time the Comprehensive Plan calls for 229 units affordable at or below 50% of AMI on the TCAAP site and 146 units affordable between 50% and 80% to be produced almost entirely off the site. The Comprehensive Plan acknowledges the utility of TIF for provision of housing affordable at or below 50% of AMI and states that the City "may" consider it, but the City refuses to discuss the use of this tool with the County.

38. The submitted Comprehensive Plan fails to meet the standards set by Subd. 2 of the statute. While purporting to have set aside sufficient land to ensure the production of units affordable at or below 50% of AMI on the TCAAP site, actual TCAAP plans and the City's goals for the site involve no units affordable at or below 50% on the site. As to the requirements for an implementation program, the Comprehensive Plan nowhere sets out any of the required specific actions to be taken to actually produce such units. While required to include in an implementation program fiscal devices, and other actions, that "will" produce its share of the regional need for affordable housing, the City's TCAAP goals, and all steps taken so far to implement those goals include no effort whatsoever to address its share of the regional need. While acknowledging in the Comprehensive Plan that Tax Increment financing is an important tool to address housing affordable at or below 50% of AMI and indicating that it may use it for that purpose, the City has in actuality refused to even consider use of this fiscal device for production of affordable housing while agreeing to "pursue a TIF solution" to financing a proposed civic center.

39. On information and belief, the County began to reconsider the affordable housing component in the draft MDA only after extensive testimony and communications from housing advocates before and at the September 4 meeting arguing that 10% of the units at 80% of AMI was wholly inadequate and a potential violation of the federal Fair Housing Act and Minn. Stat. § 473.859. The Alliance played a major role, and invested substantial staff time and effort, to communicating with the County, drafting position papers, and organizing turnout of advocates to the meeting.

40. On information and belief, subsequent to the September 4 meeting in response to housing advocates presentations, the County pressed the City for greater density and more affordable housing with deeper affordability and for tax increment financing that would make affordable housing more feasible. On information and belief, the City refused to budge on these issues.

41. Density and affordability are closely related in redevelopment of the TCAAP site. Whatever affordability percentage is agreed on, the more density, the more affordable units. Further, the more units on the site, the greater the increase in city taxes generated – an incremental part of which can be used to write down the cost of affordable housing. In addition, the more units available on the site, the more opportunity for some developer profit and market rent to be devoted to affordable housing. Finally, within limits, relatively dense housing is less expensive per unit to build than lower density housing.

42. On October 24, 2018, the City Administrator, David Perrault, sent an email setting out the City's position on a variety of issues. He indicated that the City would not agree to additional density. The City position did not mention affordable housing.

43. On October 25, the County's negotiator, Louis Jambois, responded to the specific points made by Mr. Perrault with an email, acknowledging progress in some areas but characterizing the City's position on density as "a big stumbling block to consummating a MDA."

44. On information and belief, Perrault and County Administrator Ryan O'Connor met on November 16 to discuss the possibility of moving forward. At that meeting, Perrault indicated the City would not reconsider density and would not contribute to any additional affordable housing on the site.

45. Mr. O'Connor sent a letter to Mr. Perrault the same day, indicating that he would move County staff resources away from TCAAP toward other opportunities "better aligned with the County's vision to build a community in which all are valued and thrive." The email asserted that the City did not share the County's vision "to build an inclusive community in which all types of people are able to live, work and recreate." This was followed by several other references to the City's lack of a vision of inclusivity. He stated that density and affordable housing were core issues which the City appeared unwilling to negotiate further.

46. On information and belief, on January 2, 2019, Mr. O'Connor emailed Mr. Perrault that unless the city changed its position on density and affordable housing, the County would no longer staff JDA meetings. Mr. Perrault responded that the City had not changed its position on these issues.

47. On information and belief, in a January 3, 2019, phone call, Mr. Perrault stated that the City had repeatedly stated that it would not consider any increase in density or affordable housing on the site.

48. There was a discussion of issues at the February 4, 2018 JDA meeting. Mr. Perrault confirmed that density and affordable housing were key issues. City representatives did not address affordable housing.

49. County Board Chair Jim McDonough sent a letter to City Mayor David Grant on February 8, 2019 setting out the three “core” areas of disagreement: density, unit composition of market rate and affordable housing, and the parties’ relative financial contributions. He stated that the City had indicated it would not consider increased density or financial contributions to affordable housing. He stated that the development must create opportunities for those with all socio-economic back grounds; that 10% of the units affordable at 80% of AMI was not a project aligned with County goals and was inconsistent with the City’s own draft 2040 Comprehensive Plan; and that the County could not approve a deal that would restrict access to housing options for decades to come. For those reasons, he suggested that the parties mediate disputes over these issues.

50. The County Attorney repeated this request by letter dated February 11, 2019. The City Attorney responded on February 25, 2019, rejecting the request for mediation. He asserted that the County had not responded to the City’s October statement of its position, summarizing that position. His summary again failed to even mention affordable housing.

51. In response to the rejection the County Attorney sent a March 6 letter to the City Attorney requesting dissolution of the JDA and termination of the JPA. The City Attorney declined to consider the request and, even after repeated County explanation that density and affordable housing were core issues, expressed that “we are unclear what issues remain outstanding.”

52. A final April 15 letter from the County's attorneys indicated the Board's decision to terminate the JPA and authorizing legal action to do so and making a final request for City agreement. The letter twice stated the County's position that the "crucial" issues of density and affordable housing needed to be reevaluated. The City Attorney's response declined to agree and asserted that the MDA summary coupled with the October position "on the few remaining issues" was the City's position. The MDA summary included the policy of 10% affordability at 80% of AMI and its October position did not address affordable housing at all.

53. In the exchanges between County and City subsequent to the September 4, 2018, JDA meeting, the County has never expressly adopted a specific position on the amount of affordable housing that should be developed on the TCAAP site or on the affordability levels to be achieved. It has, however, repeatedly asserted that more, and more deeply affordable, housing than 10% of the units at 80% of AMI is crucial to development of an inclusive community. The City, in turn, has repeatedly refused to even acknowledge affordability beyond that set out in the MDA summary as an issue to be discussed. This is in spite of the Alliance other housing advocates, and the County calling attention to the disparity between the City's express development goals incorporated into the draft MDA and the City's 2040 Comprehensive Plan draft calling for development of a substantial amount of housing affordable at and below 50% of AMI on the site.

54. While an agreement on development parameters and costs and on cost sharing is obviously desirable, the City's positions on a variety of issues but especially density and affordable housing, make impossible the development of an inclusive community, desired by the County, which owns the land and has spent at least \$40 million on its purchase and clean-up and by the Alliance and other affordable housing advocates. The City is in effect using the

continuation of the JPA and JDA to block a landowner (the County) from realizing its goal of developing affordable housing, amounting to a classic case of an exclusionary land use policy.

55. If mediation of the remaining issues is not possible or is ineffective, then retaining the JPA and JDA will continue to provide the City with veto power over development of the inclusive community which advocates and the County desire and which the Fair Housing Act mandates. The City does not possess veto power over the level and depth of affordable housing through its ordinary statutory land use powers and, if agreement to proceed with a level of affordable housing meeting the Metropolitan Council's need statement cannot be achieved, then the veto power should be removed through dissolution of the JDA and termination of the JPA.

COUNT 1
Disparate Impact violation of the Federal Fair Housing Act

56. The federal Fair Housing Act, 42 U.S.C. § 3604, prohibits housing discrimination on the basis of protected class status, including race and national origin, including practices or actions which have a discriminatory effect, even if not motivated by a discriminatory intent. In 2013, HUD promulgated regulations on discriminatory impact, codifying case law. 24 C.F.R. §100.500. The regulations set out a three part analysis. The plaintiff must first establish that the defendant's actions actually or predictably result in a disparate impact on persons protected by the Act or perpetuates segregated housing patterns. *Id.*, §§ 100.500(a)(c)(1). The defendant then has the burden of providing the challenged actions are necessary to achieve one or more substantial, legitimate, nondiscriminatory interests. *Id.*, § 100.500(c)(2). The plaintiff may then nevertheless prevail by proving that the defendant's non-discriminatory interests could be served by alternatives with a less discriminatory effect. § 100.500(c)(3).

57. The City has declined to amend its policies of providing for only 10% of the units affordable at 80% of AMI on the TCAAP site and denying use of any of the massive amount of

tax increment to be generated by the project to provide for more, and more affordable, housing. The City's policy positions and actions thereby restrict the availability of affordable housing which is desperately and disproportionately needed by metro area minority households. The policy will have the same disparate adverse effects as the exclusionary zoning policies which the U.S. Supreme Court has characterized as "the heartland of disparate-impact liability" under the Fair Housing Act. *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 135 S.Ct. 2507, 2522 (2015).

58. The JPA and JDA provide major vehicles through which the City is able to assert control over the amount of affordable housing on the site which it would not possess through exercise of its normal municipal land use powers.

59. The City has no legitimate, non-discriminatory rationale for limiting affordable housing on the site to 10% of total units at 80% of AMI. Indeed, such policies are contrary to the City's obligations under Minn. Stat. 473.859.

60. As to the third phase of the disparate impact analysis, whatever rationale the City might come up with in the second phase, an obvious non-discriminatory alternative exists in that the City's Comprehensive Plan update submitted to the Metropolitan Council states that the high density Town Center zoning on the TCAAP site is intended to "ensure that the 50% or below housing need can be met." The alternative is for the City to follow through on its own Comprehensive Plan.

61. The City's exercise of policies with respect to production of affordable housing on the TCAAP site therefore constitute a disparate impact violation of the federal Fair Housing Act, 42 U.S.C. § 3604, entitling the Alliance to relief pursuant to 42 U.S.C. § 3613.

COUNT II
Perpetuation of segregation violation of the Fair Housing Act

62. The City has declined to amend its policies of only 10% of the units affordable at 80% of AMI on the TCAAP site and denial of any tax increment for affordable housing, which is will limit occupancy of the site by minority households and continue the percentage of minority occupancy of Arden Hills far below that of the surrounding Ramsey County, especially in contrast to a project which met the affordable housing need standards promulgated by the Metropolitan Council, which would produce a very large new neighborhood with a minority population likely to be much like that of the surrounding county.

63. The City has no legitimate, non-discriminatory rationale for these policies. Indeed, such policies are contrary to the City's obligations under Minn. Stat. 473.859.

64. Maintenance of the City's limitation of affordable units in the TCAAP redevelopment to 10% of units at 80% of AMI and refusal to use readily available City resources to assist development of such housing perpetuate racial and ethnic segregation in violation of the federal Fair Housing Act , 42 U.S.C. § 3604, entitling the Alliance to relief pursuant to 42 U.S.C. § 3613.

COUNT III
Violation of Minnesota's Comprehensive Planning statutes

65. Minn. Stat. § 473.864 Subd. 2 requires that comprehensive plan amendments be prepared and submitted to the Metropolitan Council in conformance with Council guidelines. The Council's guidelines generally incorporate the requirements of Minn. Stat. § 473.859, for plans, programs, fiscal devices, and specific actions to be taken which will address each city's share of the regional need for affordable housing.

66. For Arden Hills, those needs include 14.3% of the new units produced in the City to be affordable to households with incomes not exceeding 30% of AMI and 11.1% affordable at or below 50% of AMI. The current Comprehensive Plan prepared by the City and submitted to the Metropolitan Council acknowledges that TCAAP is the only site in the city available for development of this very low income housing. But the City policy of only 10% affordable units on the site and only affordable at 80% of AMI assures that the City actually has no plans for programs or specific actions which produce even one home affordable at 50% of AMI. Nor does the City propose use of tax increment financing, which the Comprehensive Plan acknowledges as an important tool for production of housing affordable to households at or below 5% of AMI even though very substantial amounts of tax increment will generated by the development. The Comprehensive Plan is wholly lacking in the required plan, programs, fiscal devices, and other specific actions to be undertaken which will produce the City's share of the regional need for affordable housing.

67. The City has thus failed to prepare a comprehensive plan amendment as required by Minn. Stat. §§ 473.864 and 473.859. Minn. Stat. § 462.361 provides for judicial review of this failure.

RELIEF REQUESTED

Plaintiff seeks the following relief:

1. Pursuant to Rule 114, Minnesota General Rules of Practice, an order for mediation prior to any discovery.
2. A declaratory judgment that failure to include housing affordable to households at or below 30% AMI for 14.3% of the new units and at or below 50% for 11.1% of the

new units in the plans for redevelopment of the TCAAP site constitutes a disparate impact violation of the Fair Housing Act, 42 U.S.C. § 3604

3. A declaratory judgment that the City is exercising its powers under the JPA and its position on the JDA in a manner constituting a disparate impact violation of the Fair Housing Act, 42 U.S.C. § 3604.
4. A declaratory judgment that the City's preparation of its 2040 Comprehensive Plan was in violation of the requirements of Minn. Stats. §§ 473.864 and 473.859 and that the plan must include fiscal devices and specific steps to be taken to produce affordable housing on the site matching the Metropolitan Council's allocation of need for affordable housing.
5. Injunctive relief requiring development of plans and agreement with developers for production of 14.3% of the new housing units on the TCAAP site to be affordable to households with incomes at or below 30% of AMI, 11.1% affordable at or below 50% of AMI, and 16% at or below 80% of AMI and produced proportionately with other housing throughout development staging.
6. An award of attorney fees and costs pursuant to 42 U.S.C. § 3613(c).
7. Such other legal and equitable relief as the Court may deem just and proper.

Dated July 8, 2019

HOUSING JUSTICE CENTER

s/John Cann

John Cann (#0174841)

Timothy Thompson (#0109447)

Margaret Kaplan (#0328601)

1774 Portland Ave.

St. Paul, MN 55104

612-807-1139 x1

jcann@hjcmmn.org

tthompson@hjcmmn.org

mkaplan@hjcmmn.org

Attorneys for Plaintiff Intervenor

Alliance for Metropolitan Stability