

5. Relator has consistently and repeatedly misapplied and/or misunderstood the term “zoning change” as set forth in Paragraph 5 of the Complaint and therefore, Respondents are without information and belief sufficient to formulate a response to the allegations contained in Paragraph 5 of the Complaint and therefore deny the allegations contained in Paragraph 5 of the Complaint.

6. Respondents admit that Section 7A.01 of the Charter of the City of Twinsburg states as follows:

Any change in zoning classifications or districts, or in the uses permitted in any zoning use classifications or districts within the City of Twinsburg must first be submitted to the Planning Commission, for consideration and report. In the event the City Council should approve any of the preceding requested changes, upon the report of the Planning Commission, it shall not be approved or passed by the declaration of an emergency, and it shall not be effective, but it shall be mandatory that the same be approved by a majority vote of all votes cast of the qualified electors of the City of Twinsburg and of each ward in which the property so changed is located at the next scheduled election. Said issue shall be submitted to the electors of the City only after approval by Council of a change in zoning classifications or districts, or in the uses permitted in any zoning use classifications or districts; however, should Council disapprove any such changes, the issue shall not be submitted to the voters. However, any change in zoning classifications or districts or designation of zoning classifications or districts or in uses permitted in any zoning use classification of land hereinafter annexed to the City shall be subject to the requirements of Section 7A.05 herein.

Respondents otherwise lack sufficient information to either admit or deny the remaining allegations contained in Paragraph 6 of the Complaint and therefore deny the remaining assertions set forth in Paragraph 6 of the Complaint.

7. Respondents admit that Relator has properly recited a portion of Section 1139.02 of the Codified Ordinances of the City of Twinsburg in Paragraph 7 of the Complaint.

8. Respondents admit that the Charter of the City of Twinsburg provides the mechanism for the electorate to vote on specific land use issues within the City of Twinsburg but otherwise deny the remaining allegations set forth in Paragraph 8 of the Complaint.

9. Respondents deny the allegations set forth in Paragraph 9 of the Complaint.
10. Respondents deny the allegations contained in Paragraph 10 of the Complaint.
11. Respondents deny the allegations contained in Paragraph 11 of the Complaint.
12. Respondents admit the receipt of the letter attached to the Complaint and referenced in Paragraph 12 of the Complaint. Respondents otherwise deny the remaining allegations contained in Paragraph 12 of the Complaint.
13. Respondents deny the allegations contained in Paragraph 13 of the Complaint.
14. Respondents deny the grandstanding statement set forth in Paragraph 14 of the Complaint.

AFFIRMATIVE DEFENSES

15. Relator's Petition fails to state a cause of action upon which relief can be granted.
16. Relator's own pleadings seeking injunctive and declaratory relief establish that Relator has other plain and adequate remedies through the ordinary course of the law and is therefore not entitled to a Writ of Mandamus.
17. Relator's Petition is barred by the doctrines of laches, estoppel, waiver and acquiescence.
18. Section 7A.01 of the Charter of the City of Twinsburg only requires that the City place land use issues on the ballot when they propose to change the permitted or prohibited uses in a zoning district or propose to rezone land.
19. Ordinance 97-2012 simply changes the permitted height of buildings in certain industrial districts within the City of Twinsburg and does not change the permitted or prohibited uses in the district nor does it change any zoning classification of land within the City and therefore such legislation is not required to be placed on the ballot.

20. Respondents reserve the right to assert additional affirmative defenses as may be warranted by facts ascertained during discovery. Respondents reserve the right to withdraw any affirmative defense upon the completion of discovery.

WHEREFORE, having fully answered and/or otherwise responded to all of the allegations and assertions contained in the Complaint for Declaratory Relief, Injunctive Relief, and/or Mandamus, Respondents respectfully request that the Petition be denied and the Complaint be dismissed and judgment issued in favor of Respondents including costs incurred herein including but not limited to attorney fees.

Respectfully submitted,



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Counsel for Respondents

CERTIFICATE OF SERVICE

Undersigned hereby certifies that a copy of the foregoing Answer of Respondents has been delivered by electronic mail and Regular U. S. Mail this 21st day of October, 2012 to Counsel for the Relator at the following address:

Warner Mendenhall
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Respectfully submitted,



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