

IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

| | | |
|------------------------|---|------------------------------------|
| THE COMMMITEE TO SAVE |) | Case No.: 2014-02-0892 |
| THE OLD SCHOOL, et al. |) | |
| |) | |
| Appellants |) | |
| |) | JUDGE PARKER |
| vs. |) | |
| |) | |
| CITY OF TWINSBURG, |) | |
| |) | On Appeal from the Decision of the |
| Appellee. |) | City of Twinsburg |

**REPLY BRIEF OF APPELLANTS THE COMMITTEE TO SAVE THE OLD SCHOOL
AND PETER HALE.**

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ASSIGNMENTS OF ERROR

Assignment of Error I: With no applicant, Twinsburg's Architectural Review Board lacked jurisdiction to consider a Certificate of Appropriateness for Demolition of The Old School.

Assignment of Error II: Twinsburg did not follow procedures outlined in its Code of Ordinances to grant a Certificate of Appropriateness to demolish The Old School.

LAW AND ARGUMENT

I. Standing and Ohio Revised Code Chapter 2506.

Twinsburg's Brief cites zoning and tax appeal decisions to establish that Appellants lack standing to pursue this appeal. Those cases required unique harm distinguished from the public at-large such as property ownership adjacent to the zoning change. The tax appeal decision involved an attempted appeal under a fictitious business name. None of the cited cases involved disposal of city-owned property.

Furthermore, 'standing does not flow from the common-law "personal stake" doctrine alone.' *City of Middletown v. Ferguson* (1986), 25 Ohio St.3d 71, 75. It may be conferred by a specific statutory grant of authority. *Id.* The Twinsburg Code of Ordinances (TCO) does not limit who may appeal Architectural Review Board (ARB) decisions. It simply states "Decisions of the Architectural Review Board may be appealed to the City Council." 1170.19 (A), p. 20 of 23, Appellee Response Brief. The statutory language does not limit appeals to the "applicant" (there was none because Council did not authorize an application, nor did a developer request demolition). Thus, Appellants' exercised their statutory right to appeal the ARB's decision to Council provided by the TCO and have standing to appeal to this Court.

Even without statutory authority, Appellants are Twinsburg taxpayers with an ownership stake in the disposal of public buildings. Appeals of administrative decisions relating to public buildings are rare. When citizens participate in hearings related to disposal of public property, each citizen's ownership interest gives them standing to administratively appeal based on "Public Rights Doctrine." The Supreme Court recognizes the Doctrine: "This court has long taken the position that when the issues sought to be litigated are of great importance and interest to the public, they may be resolved in a form of action that involves no rights or obligations peculiar to

named parties." *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 471, 1999 Ohio 123, 715 N.E.2d 1062 (1999). Appellants availed themselves of the TCO's administrative rules and participated in the decision making process regarding the Certificate of Appropriateness for the demolition of the Old School. Based on "public rights" they have standing to appeal to this Court.

Assignment of Error I: With no applicant, Twinsburg's Architectural Review Board lacked jurisdiction to consider a Certificate of Appropriateness for Demolition of The Old School.

Appellees did not address this assignment of error.

Assignment of Error II: Twinsburg did not follow procedures outlined in its Code of Ordinances to grant a Certificate of Appropriateness to demolish The Old School.

The City's interpretation of procedures is mistaken. Appellants agree that a Certificate of Appropriateness must be obtained **prior to the granting of the demolition permit**. Appellee Brief, p. 9 of 23. However, prior to the Certificate of Appropriateness the application for a demolition permit must be started. The application materials then provide the ARB information to make a decision based on a demolition site plan and restoration plan—neither was provided in this case. The administration wants to ignore these requirements.

The process to issue a demolition permit is:

1. All applicants "shall complete a Demolition Permit Application."
Twinsburg Code of Ordinances ("TCO") 1349.07(a)¹;
2. The form "shall include the certified signature of the property owner."
TCO 1349.07(a)(1);
3. There must be a "Demolition Site Plan" and "Restoration Plan."
TCO 1349.07(a)(2) & (3);

¹ The relevant code sections are attached as an Appendix Appellants' Initial Brief.

4. Fees and Bonds must be paid. TCO 1349.11;
5. Before demolition, a "Certificate of Appropriateness" must be obtained from the Twinsburg Architectural Review Board ("ARB"). TCO 1349.09(f) and TCO 1170.11.

The last step in the Demolition Permit Application process is to obtain a Certificate of Appropriateness from the ARB. Then a demolition permit may be issued.

The TCO reflects this procedure in other places.

**HISTORIC PRESERVATION REGULATIONS
1170.07 ADMINISTRATIVE PROCEDURES.**

The following procedures are established to govern the processing for building permits and other municipal authorizations in accordance with the regulations of this chapter.

- (a) **Upon receipt of an application for a building permit or other municipal authorization**, the Building Commissioner shall promptly transmit the application to the Architectural Review Board for determination of applicability as set forth in Section 1170.03. Appellants' Initial Brief Appendix; Appellee Brief, p. 17 of 23.

The process begins with an application to the Building Commissioner, not with an application to the ARB. Twinsburg ignores these protections, reverses the order required by the TCO, and makes the Certificate of Appropriateness the first step in the process.

CONCLUSION

For these reasons, the Appellants respectfully ask the Court to REVERSE the ARBs grant of a Certificate of Appropriateness and REMAND this matter to the City of Twinsburg.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing was served by email on 8-25-2014 upon the following:

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