

DANIEL M. HERRIGAN

2012 SEP -7 PM 2: 31

IN THE COURT OF COMMON PLEAS SUMMIT COUNTY
CLERK OF COURTS
SUMMIT COUNTY, OHIO

STATE OF OHIO EX REL.)
MARCELLA GAYDOSH)
9250 Liberty Road)
Twinsburg, OH 44087)

Relator,)

vs.)

CITY OF TWINSBURG)
C/O MAYOR KATHERINE PROCOP)
AND CITY COUNCIL MEMBERS)
WILLIAM FUREY)
TED YATES)
SAM SCAFFIDE)
SETH RODIN)
MAUREEN STAUFFER)
GARY SORACE)
BOB MCDERMOTT)
10075 Ravenna Road)
Twinsburg, OH 44087)

Respondents.)

CASE NO:
2012 09 5055

JUDGE:
AMY CORRIGALL JONES

COMPLAINT
FOR DECLARATORY RELIEF,
INJUNCTIVE RELIEF, AND/OR
MANDAMUS

Now comes Relator Marcella Gaydosch, pursuant to R.C. § 733.59 and R.C. § 2721, by and through her undersigned counsel, who submits to this Court her Complaint for Declaratory Judgment, Injunction, and/or Mandamus:

- 1. Relator is a City of Twinsburg resident and taxpayer.

2. Respondent, City of Twinsburg, is a chartered municipal corporation situated in Summit County, Ohio.
3. Pursuant to R.C. § 2721.12, Attorney General Mike DeWine will be served with a copy of this action.
4. On August 28, 2012, the City of Twinsburg passed Ordinance 97-2012 which amended Sections 1148 and 1149 of the Twinsburg Zoning Code.
Ex. 1.
5. In the City of Twinsburg, any **zoning change** violates the City of Twinsburg Charter unless it complies with City of Twinsburg Charter § 7A.01.
6. As City officials well know, from rulings against the City of Twinsburg in case numbers CV-2005-03-1931, CV-2001-10-4962, CV-1996-04-1482, CA-21238, CA-21491, City of Twinsburg Charter § 7A.01 mandates that:

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, . . . it shall not be effective, but it shall be **mandatory** that the same be approved by the 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.
7. Furthermore, Section 1139.02 of the City of Twinsburg Zoning Code provides that:

.... Provisions of this Ordinance shall apply to **all** structures and land of **any** political subdivision, district, taxing unit or bond-issuing authority located within the corporate limits of the City to the extent allowed by law. All public officials of the City, vested with the duty and authority to issue legal documents, shall not issue permits or certificate for any structure that would result in conflict with this Ordinance. However,

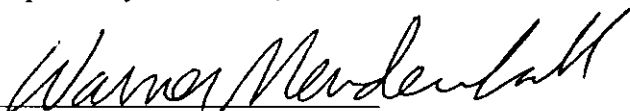
should such a permit or certificates be issued and be in conflict with this Ordinance, it shall be deemed null and void.

8. The voters have reserved to themselves specific legislative authority to zone land and establish regulations for all structures, including height.
9. Relator Gaydosh and all City of Twinsburg electors have a right to vote on this issue pursuant to the City Charter.
10. City of Twinsburg officials have a duty to place this issue on the ballot, which they have failed to do.
11. The City of Twinsburg has abused its corporate powers by refusing to recognize the electorate's Charter mandated right to vote on Ordinance 97-2012.
12. Relator Gaydosh has notified the City of Twinsburg Law Director of these violations. Ex. 2.
13. The Law Director has failed to respond to Relator's taxpayer demand letter.
14. City officials' decades long defiance of the electorate over Charter § 7A.01 has needlessly cost the taxpayer's hundreds of thousands of dollars. Yet, once again, city officials have made the wrong decision to choose expedience over democracy.

WHEREFORE, Relator Gaydosh respectfully requests that this Court stop the City of Twinsburg's abuse of power by declaring Ordinance 97-2012 invalid unless and until there is voter approval of the height regulations. Relator requests this Court to enjoin City of Twinsburg officials from acting in their official capacity to issue building

permits or act in any way to enforce Ordinance 97-2012. Alternatively, Relator requests this Court issue a Writ of Mandamus ordering the City of Twinsburg to place Ordinance 97-2012 on the ballot at the next election. Relator Gaydosh also asks this Court to grant payment of attorney's fees and costs if this Court rules in her favor and such other relief as the Court may deem proper.

Respectfully submitted,



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warnermendenhall@hotmail.com
COUNSEL FOR RELATOR

CITY OF TWINSBURG, OHIO

ORDINANCE 97-2012

AN ORDINANCE AMENDING CHAPTER 1148 AND 1149 OF THE CODIFIED ORDINANCES OF THE CITY OF TWINSBURG REGARDING "HEIGHT REGULATIONS"

WHEREAS, Council and the Administration has established a Planning Commission to study and make recommendations Zoning and Development Regulations in the City; and

WHEREAS, on the 23rd day of January, 2012 the Planning Commission reviewed and made such recommendations as they relate to the regulation of building heights; and

WHEREAS, pursuant to Ordinance 18-2012 this Council approved the recommendations of the Planning Commission by amending Sections 1148 (regulating Commercial height) and Section 1149 (regulating Industrial height); and

WHEREAS, Council recognizes that the amendments are necessary as they relate to the Industrial Districts and Council further wants to retain the language in the Zoning and Development Regulations as it existed prior to Ordinance 18-2012 as it relates to the Commercial Districts.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Twinsburg, County of Summit and State of Ohio:

SECTION I: That Chapter 1148.15 is hereby amended to read as follows:

1148.15 HEIGHT REGULATIONS.

The height of any main building shall not exceed thirty-five (35) feet in any C-1, C-2 and C-5 zoning district. Mechanical space for building equipment placed on a flat building roof may be allowed above the maximum height specified, provided that such mechanical space is set back a minimum of fifteen (15) feet from any exterior wall, does not exceed six (6) feet in height and is adequately screened from view, and provided, further, that such mechanical space and screening are approved by the Planning Commission. The height of any main building in a C-3 and C-4 zoning district may exceed 35 feet provided that the front and rear yard depth is increased by two (2) feet for each additional foot of height over 35 feet and the side yard width is increased by one (1) foot for each additional foot of height over 35 feet and a conditional use permit is approved. In a C-5 zoning district building height may exceed thirty-five (35) feet, if a conditional use permit is acquired through the process described at Chapter 1151.

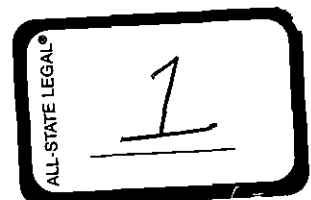
SECTION II: That Chapter 1149.09 is hereby amended to read as follows:

1149.09 HEIGHT REGULATIONS.

The height of any main or accessory industrial building in an I-1 district shall not exceed 35 feet. Building height in an I-2 and I-3 district may not exceed forty-five (45) feet.

SECTION III. Any prior ordinances in conflict herewith, specifically Ordinance 18-2012 is hereby repealed upon passage.

SECTION IV: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in open meeting or meetings of this Council, and that all deliberations of this Council were in meetings open



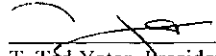
to the public and in full compliance with all legal requirements, including without limitations, those set forth in Section 121.22 of the Ohio Revised Code.

SECTION V: That this Ordinance shall take effect and be in force at the earliest period allowed by law upon its passage.

PASSED: 8/28/12

APPROVED: 8/28/12

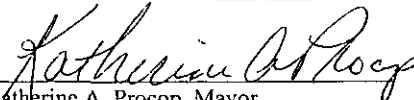
EFFECTIVE: 8/28/12



T. Ted Yates, President of Council

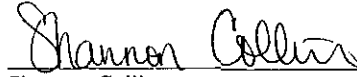
Submitted to the Mayor for approval this
28th day of August, 2012

Approved by the Mayor 8/28, 2012



Katherine A. Procop, Mayor

ATTEST:



Shannon Collins
Clerk of Council

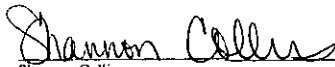
1st Rdg. 6-26-12
2nd Rdg. 7-10-12
3rd Rdg. 8-28-12

Passed: 8-28-12

Yes 7 No 0

CERTIFICATE OF POSTING

I, Shannon Collins, Clerk of Council, of the City of Twinsburg, State of Ohio, do hereby certify that publication of the forgoing ordinance, resolution was duly made by posting true copies affive of the most public places in said City as determined by Section 113.02 of the Codified Ordinances of the City of Twinsburg; each for a period of fifteen days commencing on the 31 day of August, 2012.



Shannon Collins
Clerk of Council
City of Twinsburg

***Warner Mendenhall, Attorney at Law
190 North Union Street, Suite 201
Akron, Ohio 44304
Office 330.535.9160***

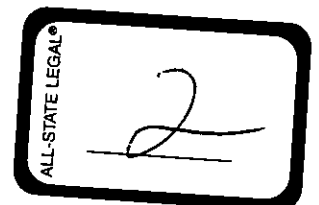
8-30-2012

David Maistros, Esq.
Director of Law, City of Twinsburg
10075 Ravenna Rd
Twinsburg, OH 44087

Dear Attorney Maistros,

Please be advised that the undersigned represents Marcella Gaydosh, a property owner and taxpayer in the City of Twinsburg. This taxpayer demand letter is submitted pursuant to Ohio Revised Code section 733.59, which requires a written request to be sent to your attention prior to filing suit to correct violations committed by the City of Twinsburg. I have been instructed by Ms. Gaydosh to request that, as the City of Twinsburg Law Director, you halt, or file a lawsuit to halt the implementation of Ordinance 97-2012, an unvoted and improper zoning amendment.

The Ordinance specifically amends Sections 1148.15 and 1149.09 of the Twinsburg Zoning Code and fails to provide for a vote by the electorate. This directly violates Charter Section 7A.01 which states that "Any change in zoning classifications or districts ... 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 property so changed is located at the next general election." Additionally, council's action violates the Twinsburg's local laws. For example Twinsburg's Zoning and Development Regulations require any amendment of zoning



regulations to be voted on by the "qualified electors of the City of Twinsburg." See Chapter 1201.01(A) through (D). Finally, Council may not act on any zoning amendment until "after a public hearing and after approval by a majority of the electorate, consistent with 7A.01 of the Charter of the City of Twinsburg. See Chapter 1103.03(D).

I trust that you will immediately inform council and the mayor that enforcement of Ordinance 97-2012 is illegal, unconstitutional, and opens the City to civil liability. Although I hope that you will correct this situation, if you fail to act, my client has instructed me to take the appropriate legal steps to protect the City of Twinsburg and its citizens. Please contact me immediately your plan to stop this illegal action or my client will commence a lawsuit on September 7, 2012.

Sincerely,

A handwritten signature in black ink, appearing to read "Warner Mendenhall". The signature is written in a cursive style with a large, sweeping initial 'W'.

Warner Mendenhall