

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

THE COMMITTEE TO SAVE)	CASE NO. 2014 02 0892
THE OLD SCHOOL, et al)	
)	JUDGE TOM PARKER
Appellants)	
v.)	
)	
CITY OF TWINSBURG)	BRIEF OF APPELLEE
)	CITY OF TWINSBURG
Appellee)	
)	

Now comes the Appellee, the City of Twinsburg, Ohio, by and through undersigned counsel, and hereby files the Brief attached hereto and incorporated herein in response to the Brief filed on behalf of the Appellants.

Respectfully submitted,

/s/David M. Maistros
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BRIEF SUBMITTED ON BEHALF OF THE CITY OF TWINSBURG**Statement of Facts and Statement of the Case:**

Appellee, City of Twinsburg, Ohio (hereafter "City") is a municipal corporation located in northern Summit County, Ohio. The Appellant, Committee to Save the Old School is an unincorporated community activist organization presumably organized through a group of individuals with the common interest of preserving a building located in the City of Twinsburg. Peter Hale (hereafter "Hale") is an individual who filed an appeal of the decision of the City of Twinsburg Architectural Review Board to City Council and the instant appeal.

The property that is the subject of this administrative appeal is a former public school building located at 8997 Darrow Rd., Twinsburg, Ohio. (hereafter "Building") The Building and property are owned by the City of Twinsburg and located in the central downtown commercial area of the City. The Building has been vacant since Kent State University vacated the premises upon the completion of their new facility within the City.

The City, as the owners of the Building, approached the duly appointed Architectural Review Board (ARB) at its regularly scheduled meeting of July 18, 2013 to advise the ARB of the City's desire to obtain a Certificate of Appropriateness for the demolition of the Building. (Record L; Minutes of the July 18, 2013 ARB Meeting) A "Certificate of Appropriateness" means a certificate issued by the Architectural Review Board indicating that a proposed environmental change, alteration, or demolition within or to an historic site or structure is in accordance with the provisions of this Code. (§1170.03(c)(1) of the Codified Ordinances of the City of Twinsburg.) (Attached hereto and incorporated herein)

On August 15, 2013 the ARB reconvened with an agenda item to discuss the merits of granting the Certificate of Appropriateness. (Record J; ARB Minutes from August 15, 2013) At

this meeting ten individuals spoke regarding the merits of the Certificate of Appropriateness. One of these ten individuals was Larry Finch, the Director of Community Planning and Development for the City who stated why the Building failed to meet the standards necessary to meet the criteria required of historically significant buildings pursuant to applicable Codified Ordinances of the City of Twinsburg. (Record J; Page 2) Of the remaining nine speakers to address the ARB, five set forth why they believed the Building should be preserved and three stated that they supported demolition. Appellant Hale did speak at this meeting regarding the "purpose and intent of Section 1170" of the Codified Ordinances of the City. (Record J; Page 1) After hearing the concerns for and against issuance of the Certificate the ARB tabled the issue until the following meeting.

On September 5, 2013 the ARB once again convened to determine if a Certificate of Appropriateness should be granted for the Building.(Record I) Again Larry Finch represented the City and individuals in audience were once again provided the opportunity to address the Board. It is unknown if Appellant Hale attended this hearing but the record reflects that Appellant Hale did not speak at this meeting. (Record I) The ARB then made two separate motions on this matter. The ARB determined that the Building is "Historically Significant" pursuant to Section 1170.03 of the C.O.T. Next the ARB denied granting the Certificate of Appropriateness by a majority vote. (Record I; Page 4) [Note: Appellants contend in a footnote at the bottom of page 6 of their Brief that the Minutes of the September ARB Meeting were omitted from the Record. This statement is not accurate, those minutes are fully contained as Exhibit I of the Record as originally submitted on April 1, 2014.]

Upon its denial of the Certificate of Appropriateness, the ARB and the City engaged in a series of meetings as required by §1170.13. Those good faith negotiations occurred on October 7, 2013 (Record F) and November 19, 2013 (Record D) and again at a work session on December 12, 2013. (Record C) As a result of the good faith negotiations in the months since the initial denial of the Certificate of Appropriateness, the ARB convened on December 12, 2013 to reconsider the issue. At this meeting the ARB unanimously approved the granting of the Certificate of Appropriateness to demolish the Building subject to the terms conditions negotiated and memorialized in writing. (Record C; Page 9) Again the Minutes from the December 12, 2013 ARB meeting reveal that Appellant Hale did not speak or participate at the meeting. The Certificate of Appropriateness for demolition of the Building was granted and approved on December 12, 2013. (Record B) An appeal was filed by Appellant Hale requesting City Council overturn the ARB decision to grant the Certificate of Appropriateness. On January 21, 2014 City Council considered the appeal; heard testimony; and ultimately confirmed the decision of the ARB to grant the Certificate of Appropriateness. (Record A).

Law and Argument

Standard of Review of an Administrative Appeal:

Appellee does not disagree with the Appellants reliance upon the Ohio Supreme Court's conclusion in *Wheeling Steel Corp. v. Evatt*, 143 Ohio St. 71 (1944) wherein the Court stated, "The action of an administrative officer or board within the limits of the jurisdiction conferred by law is presumed, in the absence of proof to the contrary, to be valid and to have been done in good faith and in the exercise of sound judgment" In other words, a trial court cannot simply

substitute its judgment for that of the administrative agency in an administrative appeal. *Witschey v. Medina County Bd. of Commissioners*, 169 Ohio App.3d 214, 862 N.E.2d 370 (2007).

Furthermore, a Common Pleas court must affirm the decision of board, agency or legislative body from which administrative appeal is brought, unless court determines that this decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by preponderance of substantial, reliable and probative evidence on record as whole. *Gibraltar Mausoleum Corp. v. Toledo* (Ohio App. 6 Dist., 08-25-1995) 106 Ohio App.3d 80, 665 N.E.2d 273.

The standard of review applied by a trial court in an administrative appeal of a decision by the Board of Zoning Appeals is to weigh the evidence to determine whether the Board's decision is supported by a preponderance of reliable, probative, and substantial evidence. *First N. Corp. v. Olmsted Falls Bd. of Zoning Appeals* (Ohio App. 8 Dist., 02-13-2014) 2014-Ohio-487, 2014 WL 839174.

Neither Appellant has Standing to Bring this Appeal:

In the instant matter the record supports that Appellant Peter Hale is an individual who resides in the City of Twinsburg and has participated in some degree in the process before the ARB and City Council. He purports to represent the interests of Appellant, The Committee to Save the Old School. However, the Record is completely void as to the affect of the ARB decision on either Appellant. Not one factual assertion is contained on the Record that would support any contention that either Appellant is directly affected by the ARB's decision to grant the Certificate of Appropriateness.

In *Schomaeker v. First Nat. Bank of Ottawa*, 66 Ohio St.2d 304, 421 N.E.2d 530 (1981), the Ohio Supreme Court considered the issue of third party standing to bring an administrative appeal and further limited standing under Ohio Revised Code Chapter 2506 to only those parties “directly affected” by an administrative decision. Id. at 311–312, 421 N.E.2d 530. The Court explained that a:

person owning property contiguous to the proposed use who has previously indicated an interest in the matter by a prior court action challenging the use, and who attends a hearing on the variance together with counsel, is within that class of persons directly affected by the administrative decision and is entitled to appeal under R.C. Chapter 2506.

Id. at paragraph two of the syllabus.

Then in *Willoughby Hills v. C.C. Bar's Sahara, Inc.* (1992), 64 Ohio St.3d 24, 27-28, 591 N.E.2d 1203, the Ohio Supreme Court affirmed that standing to appeal an administrative decision to the court of common pleas is not limited only to the party denied the variance and that “[a]djacent or contiguous property owners who oppose and participate in the administrative proceedings concerning the issuance of a variance are equally entitled to seek appellate review under ORC §2506.01.” Willoughby Hills, 64 Ohio St.3d at 26, 591 N.E.2d 1203 (1992). The Court then elaborated on its holding in *Schomaeker* and explained that:

[t]he “directly affected” language in *Schomaeker* merely serves to clarify the basis upon which a private property owner, as distinguished from the public at large, could challenge the board of zoning appeals' approval of the variance. The private litigant has standing to complain of harm which is unique to himself. In contrast, a private property owner across town, who seeks reversal of the granting of a variance because of its effect on the character of the city as a whole, would lack standing because his injury does not differ from that suffered by the community at large. The latter litigant would, therefore, be unable to demonstrate the necessary unique prejudice which resulted from the board's approval of the requested variance.

Id. at 27, 591 N.E.2d 1203.

The Ninth District Court of Appeals addressed the issue of standing by a private party in *City of Macedonia v. Twinsburg Township Board of Zoning Appeals*, Not Reported in N.E.2d, 2006 WL 1479041 (Ohio App. 9 Dist.), 2006 -Ohio- 2688 wherein the Ninth District relied upon *Willoughby Hills* decision a party must be directly affected by an administrative decision, as distinguished from the public at large in order to demonstrate a unique harm.

Finally, standing is jurisdictional in nature and can be raised at anytime during the proceedings. *Buckeye Foods v. Cuyahoga County Bd. of Revision*, 78 Ohio St.3d 459, 460, 678 N.E.2d 917 (1997). Because standing is a jurisdictional issue in administrative appeals and can be raised at anytime, addressing the lack of standing in the Brief is appropriate. *See Alexis Entertainment, L.L.C. v. Toledo*, 6th Dist. Lucas No. L-13-1028, 2013-Ohio-3496, 2013 WL 5210309, ¶ 7, citing *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 77, 701 N.E.2d 1002 (1998), fn. 4.

Neither the Committee to Save the Old School nor Peter Hale has demonstrated a single fact or the slightest indicia of harm of any kind whatsoever that as either an entity or individual that they are exposed to some harm unique to them that would give rise to the instant appeal. For that matter, the Appellants' Brief does not contain any evidence that the granting of the Certificate of Appropriateness would cause harm to the public at large. The failure to even allege that some harm has occurred, or may occur, to either Appellant as a result of the action of the ARB is startling and ultimately fatal to the instant action.

Appellants' Assignments of Error are Without Merit:

Notwithstanding the foregoing law and argument that the Appellants cannot demonstrate standing to even assert this appeal, the Appellants raise two Assignments of Error neither of which has any merit. Essentially both assignments of error can be summarized as follows:

The City of Twinsburg did not follow procedures outlined in its Code of Ordinances because it failed to submit an application for a Demolition Permit and without such application no Certificate of Appropriateness may be issued.

The foregoing assertion is absolutely false and contrary to the clear and unambiguous language of the Codified Ordinances of the City of Twinsburg. Appellants assert that the City failed to comply with the requirements of §1349 of the Codified Ordinances of the City of Twinsburg (COT) (attached in the appendix hereto) by not submitting all of the necessary documentation required for the issuance of a *Demolition Permit*. The City agrees. However, the reason is simple...the City was not requesting a Demolition Permit. The COT requires the City to obtain a Certificate Of Appropriateness **prior** to obtaining a Demolition Permit. Chapter 1349 of the COT govern both the purpose and procedure of demolishing buildings within the City of Twinsburg. Specifically, §1349.03 contains the following requirements:

1349.09 REQUIRED NOTIFICATIONS AND APPROVALS.

- (a) Discontinuation of Utility Services. In addition to the above application materials, all applications for demolition must be accompanied by copies of notices of discontinued service for gas, electric, water, sewer and telephone service.
- (b) Removal of Underground Fuel Storage Tanks. Underground fuel storage tanks which are to be abandoned or removed from service must be removed in compliance with applicable State and local regulations.

(c) Buildings with Septic Tanks. Applicants must notify the Summit County Health Department and schedule an inspection where demolition involves properties with septic tanks that will be abandoned.

(d) Asbestos and Other Hazardous Materials. Applicants must provide an assessment as to the existence of asbestos and other hazardous materials that may be present and affected by demolition activities. Non-residential demolition applicants may be required to provide documentation of Phase 1 and/or Phase 2 Environmental Assessment reports. All applicants must provide asbestos surveys conducted by appropriately certified contractors.

(e) Projects disturbing one acre or more of land surface must provide a Storm Water Pollution Prevention Plan.

(f) **Certificate of Appropriateness.** Applicants must obtain a certificate of appropriateness from the Twinsburg Architectural Review Board prior to the granting of a demolition permit (see Section 1170.11 of the Codified Ordinances).
(emphasis added)

Appellants entire argument hinges on the incorrect assertion that the City was required to obtain a Demolition Permit prior to obtaining the Certificate of Appropriateness. Clearly §1349.09(f) unequivocally states that a Certificate of Appropriateness must be obtained PRIOR to the granting of a demolition permit. This requirement cannot be read or interpreted any other way. Without question, if the City sought to obtain a demolition permit for the Building prior to obtaining a Certificate of Appropriateness, the City would be in violation of the clear and unambiguous language of the Code.

Appellants argue to this Court that the City failed to submit "site plans"; failed to obtain "bonding"; failed to submit a "restoration plan" or pay "fees" as required by Chapter 1349. (Appellant's Brief; Page 8) However, Appellants completely ignore the mandatory requirement of §1349.09(f). No attempt is made to distinguish or explain why §1349.09(f) should be ignored or does not apply in this matter. Appellants simply disregard the provision. Quite simply...the City was mandated by LAW to appear before the ARB and receive a Certificate of

Appropriateness prior to applying for or receiving a demolition permit. It is understood that now that a Certificate of Appropriateness has been granted, the City will need to apply for a Demolition Permit and fully comply with all of the requirements set forth in Chapter 1349 before the Building may actually be demolished.

The Decision of the ARB to Grant the Certificate of Appropriateness is supported by a preponderance of substantial, reliable and probative evidence and therefore must affirmed.

The Record reflects that the ARB convened and discussed the merits of granting the Certificate of Appropriateness on multiple occasions prior to initially denying the Certificate.

Exhibit L July 18, 2013 ARB Minutes reflect that the Board held a 1 1/2 hour meeting wherein the "Old School" property and the City's desire to obtain a Certificate of Appropriateness were the sole topic of discussion.

Exhibit K August 1, 2013. ARB again discusses the "Old School" and confirms the process for ultimately deciding how the issue will be determined.

Exhibit J August 15, 2013. ARB engages in lengthy discussion regarding the Certificate of Appropriateness and is presented with evidence from the City's Director of Community Planning regarding the historical significance of the Building and the application of Chapter 1170 of the COT. ARB also entertains discussion from numerous audience members both in favor and opposed to the granting of the Certificate.

Exhibit I September 5, 2013. Three hour ARB meeting where the Board again allows opponents and proponents of the issue to be heard. Ultimately the ARB does not grant the Certificate of Appropriateness.

By denying the Certificate of Appropriateness, the ARB triggered §1170.13 of the COT which states:

1170.13 DENIALS OF APPROVAL.

(a) Upon denying a Certificate of Appropriateness, the Board shall impose a waiting period of at least thirty days, but not to exceed six (6) months from the date of disapproval, during which time the Board shall negotiate with the applicant to develop a

compromise proposal. The first meeting between Board and applicant shall be held within thirty (30) days from the date of disapproval and at least every forty-five (45) days thereafter. If a compromise is accepted by both parties, the Board may issue a Certificate of Appropriateness.

(b) If the applicant fails to meet with the Board in good faith, at the time(s) specified, then the Board's denial of the application will stand.

(c) In the case of applications for demolition or moving, if, after holding such good faith meetings in the waiting period specified by the Board, the Board determines that failure to issue a Certificate of Appropriateness will create a substantial hardship to the applicant and that such Certificate may be issued without substantial detriment to the public welfare and without substantial derogation from the purposes of this Code, then and in such an event, the Board shall issue the Certificate of Appropriateness.

In compliance with §1170.13 the ARB engaged in good faith meetings with the Administration of the City in an effort to negotiate a compromise proposal. The Record reflects that those meetings took place as follows:

- Exhibit H** October 3, 2013. The ARB meets with the Administration to schedule the good faith meetings required by Code.
- Exhibit F** October 7, 2013. The ARB and the City meet to negotiate a compromise proposal as mandated by §1170.13 of the COT
- Exhibit E** A memorandum from the Director of Community Planning and memorializing the negotiations
- Exhibit D** November 19, 2013. Second meeting between the ARB and the City Administration to negotiate a compromise proposal as mandated by §1170.13 of the COT.
- Exhibit C** December 12, 2013. Regularly scheduled meeting of the ARB wherein a "Work Session" is held to conduct further negotiations with the City. Upon the conclusion of lengthy discussions a Motion to approve the Certificate of Appropriateness for the Demolition of the Old School with the conditions negotiated by the Board was unanimously approved by the ARB.

On December 12, 2013 the ARB granted the issuance of a Certificate of Appropriateness permitting the City to submit an application for a permit to demolish the Building. Prior to such issuance, the Record clearly reveals that the ARB held eight meetings over five months discussing the merits of the action. The ARB and City followed the requirements of the Codified Ordinances of the City of Twinsburg exactly as they are set forth by first requesting a Certificate of Appropriateness *prior* to seeking a demolition permit. The ARB only voted on the matter after first hearing evidence presented by representatives of the City and allowing full and unfettered participation by any individual who expressed a desire to be heard. Once the ARB denied the issuance of the Certificate, the ARB and the City engaged in multiple and lengthy good faith negotiations designed to arrive at a compromise. Upon reaching a compromised resolution the ARB *unanimously* granted the issuance of the Certificate of Appropriateness. Despite all of the foregoing facts...the Appellants represent to this Court that the ARB "lacked the evidence necessary to make an informed non-arbitrary or capricious decision." (Appellants' Brief; Page 8) Without question the ARB's decision to grant the Certificate of Appropriateness is "supported by a preponderance of reliable, probative, and substantial evidence" as required by the controlling Ohio case law. The signed Certificate of Appropriateness (Record B) contains the terms as negotiated by the ARB. (Exhibit A to Record B) Pursuant to those negotiated terms the ARB secured fixtures from the Building; obtained the City's agreement to sell seating and brickwork from the Building; obtained a commitment to preserve and re-incorporating the sandstone entry of the Building; and expanded the role of the ARB by providing its members a seat at the table during the redevelopment efforts of the property where the Building is located. All of these terms address many of the concerns raised by residents who, although they would not suffer harm, held

an very real emotional attachment to the Building and did not want to see some of its history preserved.

Conclusion

In reliance upon the foregoing the Appellee, the City of Twinsburg, respectfully request this Court to dismiss the appeal on behalf of the Committee to Save the Old School because they have lack of standing as an organization to bring the appeal; dismiss the appeal on behalf of Peter Hale because he has failed to demonstrate the necessary unique prejudice that would result to him as a result of the ARB's decision; irrespective of the foregoing, the City is able to demonstrate that the decision by the ARB to grant the Certificate of Appropriateness and City Council's decision to confirm the ARB's decision are both supported by a preponderance of reliable, probative and substantial evidence supporting such a decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Undersigned hereby certifies that a copy of the foregoing Brief has been delivered by e-mail this 1st day of August, 2014 to Counsel for the Appellant at the following address:

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Respectfully submitted,

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TITLE SEVEN - Performance Standards

- Chap. 1170. Historic Preservation Regulations.
- Chap. 1171. Tree and Vegetation Protection.
- Chap. 1172. Landscaping.
- Chap. 1173. Signs.
- Chap. 1174. Off-Street Parking and Loading Regulations.
- Chap. 1175. Environmental Performance Standards.
- Chap. 1176. Residential In-Fill Development Standards.
- Chap. 1177. Performance Standards for Industrial Districts.
- Chap. 1178. Recreation and Open Space Land.

CHAPTER 1170
Historic Preservation Regulations

- | | | | |
|----------------|--|----------------|--|
| 1170.01 | Intent. | 1170.13 | Denials of approval. |
| 1170.03 | Applicability of regulations and definitions. | 1170.15 | Emergency remedies and routine maintenance. |
| 1170.05 | Implementation, powers and duties of the Board. | 1170.17 | Enforcement provisions and penalties. |
| 1170.07 | Administrative procedures. | 1170.19 | Appeals procedures. |
| 1170.09 | Guidelines for review. | | |
| 1170.11 | Demolition and moving. | | |

1170.01 INTENT.

It is the purpose and intent of these regulations to maintain and enhance the distinctive historic character of Twinsburg by safeguarding the integrity of all historic structures, sites and areas therein by preventing the intrusion of incompatible development or redevelopment. Furthermore, it is an intent of these regulations to achieve, among others, the following related objectives:

- (a) To safeguard the heritage of Twinsburg and foster a sense of community identification and civic pride by preserving structures and sites which reflect periods and events in the history and prehistory of the community and its region;
- (b) To protect historic and prehistoric structures and sites within the City by preventing environmental changes which diminish the area's unique character;
- (c) To seek alternatives to demolition or incompatible alterations within the City and to listed properties before such acts are performed;
- (d) To encourage development of vacant properties in accordance with the character of the historic buildings and areas of the City of Twinsburg;
- (e) To contribute to the economic, recreational, cultural and educational development of Twinsburg by protecting and enhancing the City's attractions to prospective residents, tourists, and visitors; and
- (f) To establish guidelines and procedures dealing with the preservation of historic buildings, sites and spaces. (Ord. 173-2000. Passed 12-17-00.)

1170.03 APPLICABILITY OF REGULATIONS AND DEFINITIONS.

The provisions of Chapter 1170 shall be applicable to all properties and buildings having "historic significance" and other properties in "proximity" thereto within the City.

- (a) Historic Significance. Historic significance shall be considered with respect to both the intrinsic value of subject property and its value in contributing to the character of an area. Specifically, a building, other structure or site, shall be deemed historically significant if it is at least fifty years in age and either:
 - (1) Embodies the distinguishing characteristics of architectural style associated with the history of the City or region; or
 - (2) Is representative of the work of a notable architect or builder; or
 - (3) Is identified with important persons or events in the history or prehistory of the City or region.
- (b) Proximity. "Proximity" shall be considered in terms of the potential for one property, by virtue of its location, to materially affect other properties. Of particular relevance are effects on property values, business activity, and the general quality of community life. In accessing the likelihood of such effects, the Architectural Review Board shall consider the degree to which the subject property is "perceptually linked" to properties of historic or prehistoric significance. Such linkages shall be considered with respect to one or more of the following factors:
 - (1) The visibility of the subject property from historically significant properties;
 - (2) The visibility of properties from a common point; and/or
 - (3) The location of properties within a relatively compact network of streets, walkways or spaces.

No building or other structure of historic significance in the City shall be erected, altered in exterior construction or appearance, enlarged, moved or demolished unless such action complies with the provisions of this chapter. However, the repainting of existing buildings and structures shall not be governed by these regulations.

- (c) Definitions. For purposes of this chapter, the following words shall have the following meanings:
 - (1) A "Certificate of Appropriateness" means a certificate issued by the Architectural Review Board indicating that a proposed environmental change, alteration, or demolition within or to an historic site of structure is in accordance with the provisions of this Code.

- (2) "Demolition" means the substantial deterioration or complete or substantial removal or destruction of any historic structure or any structure located within an historic district or site.
(Ord. 173-2000. Passed 12-17-00.)

1170.05 IMPLEMENTATION, POWERS AND DUTIES OF THE BOARD.

(a) Implementation. The provisions of this chapter shall be implemented by the Architectural Review Board.

(b) Powers of the Board. The Architectural Review Board shall be empowered to hear, review, grant, deny and recommend modifications to proposals for Certificates of Appropriateness involving environmental changes within the City.

(c) Duties. The Board shall establish, within the spirit and purposes of this chapter, procedures for evaluating applications for Certificates of Appropriateness. The Board shall maintain files, available to the public, containing all applications granted or denied to serve as basis for prospective applicants to conform their plans with established policy. The Board may make recommendations to the City Council regarding amendments to this chapter and with respect to other legislation affecting historic preservation. The Board shall establish and implement procedures for the identification, review, designation and listing of individual landmarks and historic districts. (Ord. 173-2000. Passed 12-17-00.)

1170.07 ADMINISTRATIVE PROCEDURES.

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

- (a) Applicability. 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.
- (b) Standards for Review. The Architectural Review Board shall evaluate the proposed action with respect to the design guidelines of Section 1170.09, as applicable. The Board shall also consider the intent as expressed in Section 1170.01 and applicability of regulations set forth in Section 1170.03.
- (c) Approval/Disapproval. Within thirty days after referral of an application to the Architectural Review Board, the Board shall either approve, approve with modifications or disapprove the application in open meeting.
- (d) Notification. The Architectural Review Board shall notify the applicant of the time and location of its meeting. Subsequent to that meeting, the Board shall notify the applicant in writing of its determination, stating reasons for a determination of disapproval. In the case of approval or approval with modifications, a Certificate of Appropriateness shall be issued to the applicant by the Board.
- (e) Appeal. The denial of an application by the Architectural Review Board may be appealed to City Council for final disposition in accordance with the provisions of Sections 1170.13 and 1170.19.

1170.09 GUIDELINES FOR REVIEW.

In its review of applications, the Architectural Review Board shall follow the guidelines set forth below.

- (a) Preservation of Features. The distinguishing original qualities or character of an historically significant feature shall not be destroyed. Removal or alteration of historic material or distinctive architectural features shall be avoided.
- (b) Replacement of Features. In the event that replacement of architectural features on an historically significant property is necessary (as determined by the Architectural Review Board), the new material shall closely match the material being replaced in composition, design, color, texture, and other visual qualities.
- (c) Compatibility in Design. Alterations, additions, and new development shall be compatible in size, scale, color, material and character with the design of historically significant properties-both the subject property and those in proximity to the subject to the subject property. However, uniformity, for the sake of uniformity, shall not be required. Prevailing setbacks and orientations of structures to streets and sidewalks shall also be respected.
- (d) Contemporary Design. All buildings, structures, and sites shall be recognized as products of their own time. Alterations, additions and new development which have no historical basis and which seek to create an earlier appearance shall not be encouraged. Conversely, compatible contemporary design shall not be prohibited or discouraged except where such design would clearly detract from the architectural integrity of an ensemble or group of historically significant structures.
- (e) Cleaning. The surface cleaning of historically significant structures shall be undertaken by the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- (f) Accessory Structures. Fences, walkways, benches, streetlights and other accessory structures located in proximity to historically significant properties shall be compatible in design with the character of such properties.
- (g) Signs. In addition to meeting the requirements of Chapter 1173, signs located on or in proximity to historically significant properties shall be compatible in color, material, placement and character with the architectural style of such properties.
 - (1) Illumination. Internally-illuminated signs shall not be permitted on or in proximity to historic properties.
 - (2) Sign types. Although no sign types are specifically prohibited by regulations of this Section, certain sign types may be deemed incompatible in particular instances by the Architectural Review Board. For example, the Board may reject a particular proposal for a prefabricated sign panel in favor of a sign lettered directly on a building facade, window or canopy. (Ord. 173-2000. Passed 12-17-00.)

1170.11 DEMOLITION AND MOVING.

For applications proposing the demolition or moving of a building or structure, the Architectural Review Board is empowered to act in the following manner.

- (a) Determination of Significance. The Board shall determine whether the proposed action will significantly detract from an area's historic character. The Board shall consider both the intrinsic significance of the building and its significance to adjoining properties. In its consideration, the Board shall evaluate the probable impact of the proposed action on property values and economic activity in a district.

- (b) Nature of Action. If the Board determines that the proposal will not significantly detract from an area's historic character, the Board shall approve the application. If the Board determines otherwise, the Board shall deny the application for a Certificate of Appropriateness.
- (c) Demolition. No structure on the Historic Register shall be demolished until a permit has been issued by the Chief Building Official.
(Ord. 173-2000. Passed 12-17-00.)

1170.13 DENIALS OF APPROVAL.

(a) Upon denying a Certificate of Appropriateness, the Board shall impose a waiting period of at least thirty days, but not to exceed six (6) months from the date of disapproval, during which time the Board shall negotiate with the applicant to develop a compromise proposal. The first meeting between Board and applicant shall be held within thirty (30) days from the date of disapproval and at least every forty-five (45) days thereafter. If a compromise is accepted by both parties, the Board may issue a Certificate of Appropriateness.

(b) If the applicant fails to meet with the Board in good faith, at the time(s) specified, then the Board's denial of the application will stand.

(c) In the case of applications for demolition or moving, if, after holding such good faith meetings in the waiting period specified by the Board, the Board determines that failure to issue a Certificate of Appropriateness will create a substantial hardship to the applicant and that such Certificate may be issued without substantial detriment to the public welfare and without substantial derogation from the purposes of this Code, then and in such an event, the Board shall issue the Certificate of Appropriateness.
(Ord. 173-2000. Passed 12-17-00.)

1170.15 EMERGENCY REMEDIES AND ROUTINE MAINTENANCE.

Nothing in this chapter shall be construed to prevent or delay the reconstruction, alteration or demolition of a structure or feature which has been ordered by the Building Commissioner upon certification of an unsafe condition constituting an emergency. Similarly, nothing in this chapter shall be construed to govern or restrict routine maintenance activities which do not represent alterations in exterior appearance. (Ord. 173-2000. Passed 12-17-00.)

1170.17 ENFORCEMENT PROVISIONS AND PENALTIES.

- (a) Penalties.
 - (1) Whoever constructs, reconstructs, alters, changes or demolishes any exterior feature of any structure, work of art, object or area in violation of this chapter, shall be deemed guilty of a misdemeanor and shall be fined not less than fifty dollars (\$50.00) nor more than five thousand dollars (\$5,000).
 - (2) Whoever demolishes a substantial part or all of any building in Twinsburg in violation of this chapter shall be deemed guilty of a misdemeanor and shall be fined not less than one thousand dollars (\$1,000) nor more than twenty-five thousand dollars (\$25,000).
 - (3) Whoever causes, by willful action or willful neglect, any alteration of or demolition of any building in Twinsburg in violation of these development regulations shall be required to restore or reconstruct such building in accordance with plans to be approved by the Architectural Review Board. Restoration or reconstruction shall be in addition to any criminal penalty and not in lieu thereof.

(b) Notwithstanding the provision of subsection (a) hereof, in the event any environmental change is made in any property which has been designated a listed property or which is situated in a historic district, in violation of the provisions of this chapter, the City of Twinsburg may institute appropriate proceedings to prevent such unlawful environmental damage. (Ord. 173-2000. Passed 12-17-00.)

1170.19 APPEALS PROCEDURES.

(a) Decisions of the Architectural Review Board may be appealed to the City Council. Notice of appeal shall be made within ten days of the final good-faith meeting between the applicant and the Board, but in no case earlier than 180 days from the Board's initial notification of denial of a Certificate of Appropriateness.

(b) The City Council shall consider an appeal within thirty (30) days of receipt and shall utilize the written findings of the Architectural Review Board as to present historic architectural and aesthetic features of such structure, the nature and character of the surrounding area, the use of such structure and its importance to the community. Consideration of all appeals shall be in open public meeting, and City Council shall solicit the opinions of all interested parties present prior to making a decision on the appeal. A two-thirds majority vote of the City Council shall be required to overturn a decision of the Architectural Review Board.

(c) No building permit or other permit required for the activity applied for shall be issued during the waiting period or while an appeal is pending. (Ord. 173-2000. Passed 12-17-00.)

**CHAPTER 1349
Building Demolition**

1349.01 Purpose.	1349.09 Required notifications and approvals.
1349.03 Applicability.	1349.11 Fees and bonds.
1349.05 Permit required.	1349.13 Expiration of permit.
1349.07 Procedure.	

1349.01 PURPOSE.

To provide a process for the administration of demolition of building designed to protect the public health, safety and general welfare. The process shall be considerate of the necessity for demolition, opportunities for preservation and materials recycling, the proper disposal of debris and potentially harmful materials, and re-use of land.

(Ord. 31-2011. Passed 2-22-11.)

1349.03 APPLICABILITY.

These regulations shall apply to the demolition of individual structures and portions of existing structures which are both larger than 500 square feet in area and/or built on foundations. Demolition shall include partial or complete building removal and the removal of associated below-grade construction including foundation walls, footings and concrete slabs.

(Ord. 31-2011. Passed 2-22-11.)

1349.05 PERMIT REQUIRED.

No structure that meets the minimum requirements of Section 1349.03 shall be torn down, disassembled, razed or demolished except after a permit has been issued for that purpose by the city of Twinsburg. Issuance of a permit for tearing down, disassembly, razing, or demolishing a structure meeting the minimum requirements of Section 1349.03 shall be conditioned upon the demonstration of compliance with these regulations.

(Ord. 31-2011. Passed 2-22-11.)

1349.07 PROCEDURE.

In order to assure the purposes of these regulations have been addressed, the following procedures have been established for the proper administration of the demolition process.

- (a) Permit Application. All applicants meeting the requirements of Section 1349.03 requesting demolition/removal shall complete a Demolition Permit Application. The Demolition Permit Application consists of a general information form, a demolition site plan and a site restoration plan.

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- (1) General information form. This form, provided by the Building Division, must be complete and shall include the certified signature of the property owner.
- (2) Demolition Site Plan. The Demolition Site Plan must show existing lot conditions including lot lines, bearings and distances, ground elevations, set-backs, streets, utility locations and easements, excavations and the location of buildings on the property, including the identification structures to be removed. The Site Plan shall be drawn at a scale appropriate to enable easy interpretation of site elements and convenient measurement.
- (3) Site Restoration Plan. A Site Restoration Plan must illustrate lot changes due to the removal of structures including, excavation, fill, surface water drainage control measures, utility termination and protection measures, general lot clean-up and erosion and sediment control measures. The Site Restoration Plan must be supported with a narrative description of the demolition timeline, measures taken to protect adjacent properties and pedestrians, measures taken to assure positive site drainage, and a description of the anticipated re-use of the property. (Ord. 31-2011. Passed 2-22-11.)

1349.09 REQUIRED NOTIFICATIONS AND APPROVALS.

(a) Discontinuation of Utility Services. In addition to the above application materials, all applications for demolition must be accompanied by copies of notices of discontinued service for gas, electric, water, sewer and telephone service.

(b) Removal of Underground Fuel Storage Tanks. Underground fuel storage tanks which are to be abandoned or removed from service must be removed in compliance with applicable State and local regulations.

(c) Buildings with Septic Tanks. Applicants must notify the Summit County Health Department and schedule an inspection where demolition involves properties with septic tanks that will be abandoned.

(d) Asbestos and Other Hazardous Materials. Applicants must provide an assessment as to the existence of asbestos and other hazardous materials that may be present and affected by demolition activities. Non-residential demolition applicants may be required to provide documentation of Phase 1 and/or Phase 2 Environmental Assessment reports. All applicants must provide asbestos surveys conducted by appropriately certified contractors.

(e) Projects disturbing one acre or more of land surface must provide a Storm Water Pollution Prevention Plan.

(f) Certificate of Appropriateness. Applicants must obtain a certificate of appropriateness from the Twinsburg Architectural Review Board prior to the granting of a demolition permit (see Section 1170.11 of the Codified Ordinances). (Ord. 31-2011. Passed 2-22-11.)

1349.11 FEES AND BONDS.

(a) Demolition Permit Fees. Fees are charged to cover the costs of permit reviews, pre- and post-demolition site inspections. Fee schedules are established by ordinance and may be revised from time to time.

(b) Surety Bond. A surety bond, cashier's check, or cash in the amount of ten thousand dollars (\$10,000) must be deposited with the City of Twinsburg for any building demolition involving structures in excess of 5,000 s.f. area. This bond will be released by the Chief Building Official upon final inspection and documentation of compliance with demolition and restoration plans and applicable waste disposal regulations.

(Ord. 31-2011. Passed 2-22-11.)

1349.13 EXPIRATION OF PERMIT.

A demolition permit will expire if the work is not started within 90 days and is not completed within one year. Extensions may be granted beyond one year in 60 day increments for large or phased demolition projects or upon a showing by the applicant that work has been delayed for reasons beyond the applicant's control.

(Ord. 31-2011. Passed 2-22-11.)