

IN THE SUPREME COURT OF OHIO

STATE OF OHIO *ex. rel.*)
LYNN A. CLARK)
2485 Old Mill Rd,)
Twinsburg, Ohio 44236)
Relator,)
vs.)
CITY OF TWINSBURG)
10075 Ravenna Rd,)
Twinsburg, OH 44087)
and)
SHANNON COLLINS,)
In Her Official Capacity as)
TWINSBURG CLERK OF COUNCIL)
10075 Ravenna Rd,)
Twinsburg, OH 44087)
and)
MATT VAZZANA,)
In His Official Capacity as)
TWINSBURG LAW DIRECTOR)
10075 Ravenna Rd,)
Twinsburg, OH 44087)
Respondents.)

CASE NO.:

VERIFIED COMPLAINT FOR WRIT
OF MANDAMUS

(Expedited Election Case Pursuant To
S.C.R.P. 12.08)

Relator Lynn A. Clark sets forth his Verified Complaint for Writ of Mandamus against Respondents City of Twinsburg, Shannon Collins in her official capacity as Twinsburg Clerk of Council and Matt Vazzana in his official capacity as Twinsburg Law Director as follows:

1. Relator seeks a writ of mandamus to compel Respondents to comply with the initiative and referendum requirements of Section 9.02 of the Twinsburg Charter and R.C. § 731.29.

Jurisdiction lies with this Court under R.C. § 2731, which governs mandamus proceedings in the courts, and specifically places jurisdiction in Ohio's Supreme Court by R.C. § 2731.02. Since this is an original action relating to a pending election within 90 days, it is subject to Ohio Supreme Court Rule 12.08. Affidavit is attached.

2. Section 9.02 of the Twinsburg Charter states, "the electors of this City shall have the power to approve or reject at the polls any ordinance or other measure enacted by Council by referendum petition submitted to the Clerk of Council in accordance with the provisions of the Constitution or laws of Ohio now or hereafter in effect."

3. R.C. § 731.29 states, "when a petition, signed by ten per cent of the number of electors who voted for governor at the most recent general election for the office of governor in the municipal corporation, is filed with the city auditor or village clerk within thirty days after any ordinance or other measure is filed with the mayor or passed by the legislative authority of a village, ... such auditor or clerk shall, after ten days, and not later than four p.m. of the ninetieth day before the day of election, transmit a certified copy of the text of the ordinance or measure to the board of elections."

4. On June 14, 2022, Twinsburg City Council under Twinsburg Codified Ordinance Section 1181.09 convened to approve or deny the Twinsburg Planning Commission's action of

recommendation approval of the final site plan for Project Gumbo, which contained a plan for a building with a height of 45 feet. Exhibit 1.

5. Twinsburg Codified Ordinance Section 1181.09, states:

(a) Following action by the Planning Commission, the application shall be submitted to Council for final action. Council, by majority vote, may confirm the recommendation of the Planning Commission for approval of the site plan, or confirm the recommendation of the Planning Commission for denial of the site plan. Council action which differs from the recommendation of Planning Commission shall not take effect unless approved by five members of Council. Failure of Council to act by the next scheduled meeting following ninety (90) days, exclusive of summer vacations and holidays, of the Planning Commission's action, or an extended period of time as may be agreed upon, shall, at the election of the applicant, be deemed a denial of the final development plan.

6. Instead of approving or denying the Planning Commission's recommendation under Twinsburg Codified Ordinance Section 1181.09, the Twinsburg Council passed Resolution No. 57-2022, which changed the site plan with a condition:

That the Planning Commission's action of approving the Final Site Plan for Project Gumbo on May 16, 2022, attached hereto and incorporated herein as "Exhibit A", be and the same hereby is confirmed by this Council **with the condition that the project's building height shall not exceed thirty five feet.** Exhibit 2.

7. On June 27, 2022, a committee of four Twinsburg residents (Ms. Suzanne Clark, Ms. Marcella Gaydosh, Ms. Laurie Facsina, and Relator Lynn Clark (collectively, the "Petitioners")) filed notice with the Clerk of Council, Shannon Collins, regarding their intent to circulate a referendum petition to place Resolution No. 57-2022 on the November 8, 2022 ballot. Exhibit 3.

8. On July 13th, 2022, the Petitioners filed a petition with the Council Clerk signed by over ten percent of the electors who voted for governor at the most recent general election for the office of governor in Twinsburg requesting Resolution No. 57-2022 be placed on the November 8, 2022 ballot. Exhibit 4.

9. On July 21, 2022, Respondents Collins and Vazzana sent Petitioners a Memorandum stating that Collins refused to transmit a certified copy of the text of Resolution No. 57-2022 to

the Summit County Board of Elections even if the petition had signatures of over ten per cent of the number of electors who voted for governor at the most recent general election for the office of governor in Twinsburg. Exhibit 5. In the letter, Respondents argued Resolution No. 57-2022 was administrative not a legislative action and therefore not subject to referendum under Article II, Section 1f of the Ohio Constitution.

10. Respondent Collins, following the advice of Law Director Vazzana, has refused to send a certified copy of the text of Resolution No. 57-2022 to the Summit County Board of Elections within 10 days as required.

RELATOR IS ENTITLED TO A WRIT OF MANDAMUS

11. For a writ of mandamus to issue, the party seeking the writ must establish a clear legal right to the relief sought, a corresponding clear legal duty by a government official, and the lack of an adequate remedy in the ordinary course of law. A party seeking a writ of mandamus must prove entitlement to the writ by clear and convincing evidence.

12. In *Donnelly v. Fairview Park*, the Ohio Supreme Court posited this legal test for determining when a municipal council approving the recommendation of a city's planning commission constituted legislative or administrative action:

the test for determining whether the action of a legislative body is legislative or administrative is whether the action taken is one enacting a law, ordinance or regulation, or executing or administering a law, ordinance or regulation already in existence. *** If, then, the action of a legislative body creates a law, that action is legislative, but if the action of that body consists of executing an existing law, the action is administrative. *Donnelly v. Fairview Park*, 13 Ohio St.2d 1, 42 (1968).

13. Under Twinsburg Codified Ordinance Section 1181.09, Twinsburg City Council could approve or reject the Twinsburg Planning Commission's recommendation. It could not condition its approval like it did in Resolution No. 57-2022.

14. By altering instead of rejecting the site plan Twinsburg City Council exceeded its authority and engaged in legislative action subject to referendum.

15. In *Buckeye Community Hope Found. v. Cuyahoga Falls*, upon reconsideration, the Ohio Supreme Court closely reversed its own decision months earlier to hold:

Section 1f, Article II clearly limits referendum and initiative powers to questions that are legislative in nature. Charter municipalities are subject to this limitation, as the powers of local self-government granted pursuant to Sections 3 and 7 of Article XVIII are subject to the limitations of other provisions of the Constitution. *Buckeye Community Hope Found. v. Cuyahoga Falls*, 82 Ohio St. 3d 539, 543 (1998).

16. The Ohio Supreme Court’s ruling in *Buckeye* should be revisited. The 1912 Constitutional Convention introduced a mechanism for municipal electors become self-governing by drafting a charter which provided local sovereignty independent from the state government. Twinsburg’s self-government initiative and referendum powers derive from independent sovereign authority established by adoption of the Twinsburg Charter as provided by Ohio’s Constitution.

17. Section 9.02 of the Twinsburg Charter states, “the electors of this City shall have the power to approve or reject at the polls **any ordinance or other measure enacted by Council** by referendum petition submitted to the Clerk of Council in accordance with the provisions of the Constitution or laws of Ohio now or hereafter in effect.” Thus, Twinsburg’s Charter reserves to its electors the power to approve or reject via referendum any ordinance passed by Twinsburg City Council whether legislative or administrative. Therefore, Resolution No. 57-2022 as a measure enacted by Twinsburg Council is subject to referendum.

WHEREFORE, Relator prays the Court issue a peremptory writ of mandamus or an alternate writ, under R.C. Chapter 2731, which requires Respondents to comply with Section 9.02 of the Twinsburg Charter and R.C. 731.29 to transmit a certified copy of the text of Resolution No. 57-

2022 along with the signed petitions to the Summit County Board of Elections at least nineteen days before the public vote on November 8, 2022. Relator further requests costs, attorney fees, and such other and further relief at law or in equity as the Court may deem necessary and proper.

Respectfully submitted,

/s/Warner Mendenhall
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Logan Trombley, 0096858
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Akron, OH 44304
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VERIFICATION AFFIDAVIT OF LYNN CLARK

STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)

I, Lynn A. Clark, having been duly sworn, swear and affirm:


1. I am over eighteen and have personal acknowledge of the facts in outlined below.
2. I am a qualified elector in the State of Ohio and the City of Twinsburg and I reside at 2485 Old Mill Rd, Twinsburg, Ohio, in Summit County.
3. On June 14, 2022, Twinsburg City Council under Twinsburg Codified Ordinance Section 1181.09 convened to approve or deny the Twinsburg Planning Commission’s action of recommendation approval of the final site plan for Project Gumbo, which contained a plan for a building with a height of 45 feet.
4. Instead of approving or denying the Twinsburg Planning Commission’s recommendation under Twinsburg Codified Ordinance Section 1181.09, the Twinsburg Council passed Resolution No. 57-2022, which changed the site plan with a condition:

That the Planning Commission’s action of approving the Final Site Plan for Project Gumbo on May 16, 2022, attached hereto and incorporated herein as “Exhibit A”, be and the same hereby is confirmed by this Council with the condition that the project’s building height shall not exceed thirty five feet.
5. On June 27, 2022, a committee of four Twinsburg residents (Ms. Suzanne Clark, Ms. Marcella Gaydosh, Ms. Laurie Facsina, and myself (collectively, the “Petitioners”) filed notice with Clerk of Council Shannon Collins of their intent to circulate a referendum petition to place Res. No. 57-2022 on the November 8, 2022 ballot.
6. On July 21, 2022, Respondents Clerk Shannon Collins and Law Director Matt Vazanna sent Petitioners a legal memorandum stating that, based on Law Director Vazzana’s legal advice, Clerk Collins would not transmit a certified copy of the text of Res. No. 57-2022 to the Summit County Board of Elections, even if the Petitioners’ petition was signed by over ten per cent of the number of electors who voted for governor at the most recent general election for the office of governor in Twinsburg.
7. On July 13th, 2022, Petitioners filed a petition signed by over ten percent of the number of electors who voted for governor at the most recent general election for the

office of governor in Twinsburg with Clerk Collins requesting Res. No. 57-2022 be placed on the November 8, 2022 ballot.

8. To date, Respondent Collins has not transmitted a certified copy of the text of Res. No. 57-2022 to the Summit County Board of Elections.
9. I have reviewed the Complaint for Writ of Mandamus and verify that the facts therein are true and correct.

FURTHER AFFIANT SAYETH NAUGHT.



Lynn A. Clark

Before me, a Notary Public in Summit County, Ohio, appeared Lynn Clark who acknowledged he signed the foregoing affidavit and verified that the facts therein are true.

IN TESTIMONY WHEREOF, I have set my hand and affixed my official seal this 10th day of August 2022.



Notary Public



WARNER MENDENHALL
ATTORNEY AT LAW
NOTARY PUBLIC
STATE OF OHIO
Sec 147.03 O.R.C.
My commission has no expiration