IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO *ex rel.* MARCELLA GAYDOSH,	)	CASE NO: CV 2025 06 2505
	)	JUDGE JOY MALEK OLDFIELD
Relator,	)	MAGISTRATE MICHAEL ALTVATER
v.	)	
CITY OF TWINSBURG,	)	
Respondent.	)	

RESPONDENT CITY OF TWINSBURG'S REPLY BRIEF IN SUPPORT OF THE CITY'S MOTION FOR SUMMARY JUDGMENT

I. Relator's Insistence that the Court Ignore the Operative Provisions of the Ohio Constitution and the City Charter Must Be Rejected.[1]

It is hard to comprehend how the portions of the Ohio Constitution and the Charter of the City of Twinsburg ("Charter") authorizing the creation of a community improvement corporation ("CIC") are "irrelevant" to Relator's claim for relief under R.C. 733.59. *See* Relator's Opposition Brief, p. 2. Nevertheless, that is Relator's principal argument in its Brief in Opposition to the City of Twinsburg's ("City") Motion for Summary Judgment.

The City's Motion for Summary Judgment demonstrated that: (a) the City's power to create and designate a CIC is authorized by Ohio Const. Art. VIII, § 13, R.C. Chapter 1724, and the Charter; and (b) the City's authority to exercise that right is unrestricted by—and does not conflict with—any other provisions of the Charter. *See* Motion for Summary Judgment, pp. 11-14.

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[1] For ease of reading, this Reply Brief addresses the arguments made by Relator in the order they appear in Relator's Opposition to the City of Twinsburg's Motion for Summary Judgment.

Relator asks this Court to ignore the controlling law and conclude that the Charter does not "make room" for a CIC because there are Charter provisions granting certain powers to the Planning Commission and the Department of Community Planning and Economic Development which Relator insists must be interpreted as creating "handcuffs" that restrict the City from creating a community improvement corporation.[2] *See* Relator's Opposition Brief, p. 3. This argument is unconvincing, as it requires the Court ignore a straightforward interpretation of the pertinent Charter provisions and compels an interpretation of the Charter that prohibits the City from exercising a right granted by Article VIII, § 13 of the Ohio Constitution.

To be clear, the Charter provisions granting certain powers to the City's Planning Commission and Department of Community Planning and Economic Development <u>do not</u> impose any limits upon the authority which the Charter grants the City to incorporate and designate a CIC as the City's agency for the purposes of economic development. *See* Motion for Summary Judgment, pp. 11-14. Because the Charter authorizes the City to create a CIC, and because no provisions expressly limit the City's exercise of that right, Relator cannot demonstrate that the City violated its Charter and abused its corporate powers by creating the Twinsburg Community Improvement Corporation ("TCIC") and by contributing funds to TCIC's operations. Accordingly, Count One of Relator's Complaint must be rejected and summary judgment must be granted in the City's favor.

II. The Establishment of the City's Planning Commission and Department of Community Planning and Economic Development does not Conflict with State Law Authorizing the City to Incorporate and Designate a CIC.

Relator asserts that the City abused its corporate powers because its Charter assigned all power to create a CIC to the City's Planning Commission and its Department of Community

[2] To the extent this argument had any merit, which it does not, Relator should have raised it years ago, when the pertinent legislation was passed. *See infra* pp. 10-11 (discussing the statute of limitations).

Planning and Economic Development. This assignment of powers to the City's internal commission and department, Relator urges, conflicts with the general laws of the State of Ohio, which would otherwise grant the City the power to establish and designate a CIC to act on its behalf. Without this conflicting assignment of powers under the City's Charter, Relator states that it has no basis for its dispute over the exercise of the City's corporate powers. Relator's Opposition Brief, p. 2.

Relator's home rule argument fails because neither the Planning Commission (the "Commission") nor the Department of Community Planning and Economic Development (the "Department") is granted the exclusive power to establish a CIC. Charter Section 7.08 grants the Commission "all powers" to hear matters concerning the designated subjects, but does not grant exclusive power to consider those matters in hearings before the Commission. That Section also provides that any action by the Commission may be nullified by vote of Council, which itself demonstrates that the Commission's power is not exclusive and that the City Council retains its power to act in this area. The Commission's power does not conflict with state law granting the City the power to create a CIC.

Charter Section 7.11 similarly does not grant the Department exclusive or monopolistic authority over all development activities. It assigns the Director the responsibility to "coordinate" planning and development activities across city divisions and departments. Coordination is a facilitative, administrative function, not an exclusive grant of substantive power to acquire property, solicit developers, or execute redevelopment plan. The TCIC operates under a separate statutory framework (R.C. §§ 1724.01-1724.12) with its own distinct powers, including the authority to hold title to property and enter into agreements, which are not functions the Charter assigns exclusively to the Department.

The existence of a complementary entity that assists with economic development does not create an irreconcilable conflict with the Department's coordinating role. Both can coexist, with the Department providing internal City coordination, while the TCIC serves as an external development vehicle. The Relator has identified no Charter provision that prohibits the creation of a CIC or that expressly states the Commission's or the Department's authority is exclusive to the exclusion of all other entities, and <u>without such express conflict</u>, the Home Rule framework does not require the Charter to prevail.

When a charter provision expressly and clearly delegates authority to a particular department or commission, that delegation must be stated with specificity. *See Steele v. Frank*, Ninth Dist. Summit No. 19847, 2000 WL 14287, Sept. 27, 2000, in which the court held that "[i]n the event of a conflict between a charter provision and a state statute, the general rule is that the charter prevails, but only where the conflict is by 'the express terms of the charter and not by mere inference.'" *Steele* at *2, quoting *State ex rel. Bardo v. City of Lyndhurst*, 37 Ohio St.3d 106, 109 (1988). *See also, State ex rel. Shabazz v. Morgan*, 2025-Ohio-2603, ¶ 38 (8th Dist. 2025). (Where a city charter exists, the municipality may exercise its Home Rule power of local self-government and adopt charter provisions that conflict with statutory provisions; however, a charter provision will only prevail over a parallel state statute where the conflict appears by the express terms of the charter and not by mere inference.)

In *Steele*, the Ninth District interpreted the Twinsburg Charter, Section 2.02, to express the City's intent to exercise home rule powers. The court found that Section 7.01 of the Charter provides for the existence of a civil service commission, and that Section 7.05 clearly and expressly delegates the authority to make rules for promotions in the civil service to that civil service commission ("The Civil Service Commission shall make necessary rules and regulations for the appointment, promotion, transfer, layoff, reinstatement, suspension, removal and in general, for the enforcement of the merit system in the classified Service.”). The rules for promotional examinations requiring the commission to certify the top three candidates to the appointing authority contain the express language applicable to promotions, the court found, and thus, the Twinsburg Civil Service Rule supersedes R.C. § 124.44 with respect to promotional examinations. In contrast, this case does not present an express conflict between the Twinsburg Charter and state law. There is no such language in the Charter providing that the Planning Commission shall be the entity empowered to create a CIC.

Nor does the use of the word “coordinate” constitute an express, exclusive grant of substantive development power sufficient to preclude the creation of a complementary entity such as the TCIC. Relator identified no express conflict between the City’s Charter and the provisions of Chapter 1724 pertaining to CICs. “‘In the absence of express language in a charter showing that it conflicts with the statutes, it is the duty of the courts to harmonize the provisions of the charter with the provisions of the statute relating to the same matter.’” *State ex rel. Regetz v. Cleveland Civ. Ser. Comm.*, 72 Ohio St.3d 167, 170-171, 648 N.E.2d 495 (1995), quoting *Bardo, supra*, at 109. Therefore, as a matter of law, the City is entitled to summary judgment upon Count One of Relator’s Complaint.

Finally, Relator’s argument that Charter Section 2.02’s blanket adoption of state powers cannot override specific charter provisions because that interpretation would negate the Home Rule provisions of the Ohio Constitution is logically circular. Charter Section 2.02 is itself a charter provision. It is not a state law being imposed on the City, but rather a deliberate, affirmative grant of power that Twinsburg’s own electorate included in the Charter. The Home Rule framework does not prohibit the incorporation of state law powers by reference; it simply ensures that where a charter speaks specifically, it controls over conflicting state law. Here, the Charter speaks specifically in Section 2.02 by affirmatively adopting all state-conferred powers, and no other Charter provision expressly prohibits the creation of a CIC. The specific-versus-general canon of construction invoked by Relator would only apply if there were a direct, irreconcilable conflict between a specific charter provision and the CIC's existence, which Relator has not demonstrated. There is no specific provision in the City's Charter that prevents the City from exercising the powers under Ohio Revised Code Chapter 1724 to create and designate a CIC. Relator's Count One must fail as a matter of law.

III. Count Two of the Complaint Must Fail as a Matter of Law Because the City has not Violated any Mandatory Requirements set forth in R.C. 1724.10 with Respect to the Delegation of City Authority to the TCIC.

The language of R.C. § 1724.10 is permissive throughout, which means that the state authorizes but does not mandate any particular sequence of steps that the City must rigidly follow before a CIC may engage in economic development activities. The statute's permissive structure reflects the legislature's intent to give municipalities flexibility to utilize CICs, not to create a rigid multi-step gauntlet which must be completed before any development activity commences. Ordinance No. 16-2023 designated the TCIC as an agent of municipality, which is the foundational authorization contemplated by R.C. § 1724.10. The CIC's subsequent activities such as issuing a request for qualifications in 2021, working with Heritage Land Development, and managing properties, were undertaken pursuant to the TCIC's own independent statutory authority under R.C. § 1724.02(A) to hold and sell real property and promote economic development, not solely as a delegated agent of the municipal authority.

The City has not delegated its own authority to sell municipal property, which would require the City to set the sale price under R.C. § 1724.10(B)(2), nor has the TCIC prepared a development plan for vacant property owned by the municipality that would require separate approval under R.C. § 1724.10(B)(1). To date, the TCIC has exercised only its underlying powers granted by R.C. § 1724.02, which gives the TCIC independent authority to do all of the acts Relator is attempting to restrain. The process described in R.C. § 1724.10 is mandatory only if the municipality decides to take a discretionary step such as authorizing a CIC to sell municipal property or prepare a development plan for approval by the City. As repeatedly acknowledged by Relator, the TCIC has not done so.

IV. Relator's Complaint is Barred because the City is Immune from Liability in the Exercise of its Legislative and Discretionary Functions.

The City's governmental immunity argument is more nuanced than Relator acknowledges. The decision to create a CIC and designate it as an agent, fund it, and allow it to pursue a downtown redevelopment strategy involves precisely the kind of broad discretionary policy judgments concerning economic development and municipal resource allocation that governmental immunity is designed to protect. The City's legislative and executive decisions regarding how to structure its development apparatus, including whether to use a CIC versus the Department of Community Planning and Economic Development, are quintessentially policy decisions. Even if framed as procedural, the question of whether to enter into a formal agreement with the CIC under R.C. § 1724.10(B) or to proceed under the CIC's independent authority involves discretionary judgments concerning the best approach to economic development. Relator's characterization of these as purely procedural matters oversimplifies the nature of the challenged conduct, which implicates governmental immunity for policy decisions involving a high degree of official judgment or discretion.

The Ohio Supreme Court has confirmed that political subdivisions remain immune under common law from liability for "the exercise of a legislative or judicial function or the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion." *Butler v. Jordan*, 92 Ohio St.3d 354, 375, fn. 10, citing *Enghauser Mfg. Co. v. Eriksson Engineering Ltd.*, 6 Ohio St.3d 31, 451 N.E.2d 228, (1983), paragraph 2 of the syllabus. The City's enactment of Ordinance No. 16-2013 creating the TCIC represents precisely this type of protected legislative function, as it involved City Council's exercise of high-level policy judgment regarding economic development strategy for the municipality, which is an essential act of governmental decision-making. The City is entitled to summary judgment because governmental immunity bars Relator's claims that seek to invalidate the legislative, governmental actions of the City in the establishment and designation of the TCIC.

V. To the Extent that Relator's Requests for Injunctive Relief to Restrain the Misapplication of Funds and to Require the Return of Real Property to the City are Moot, the City is Entitled to Summary Judgment upon Count One of Relator's Complaint.

Relator admits that her request for injunctive relief to restrain the misapplication of funds is moot because the City has repealed previously authorized funding of the TCIC with Transient Guest Tax Funds. Relator's Opposition Brief, p. 8. All that remains of that claim, according to Relator, is whether "Relator is due reimbursement of her attorney fees attributable to this success." *Id*. However, attorney's fees cannot form the basis of a live claim where the underlying claim is moot and the relator is not entitled to attorney's fees except by operation of statute.

Ohio adheres to the American Rule, which prohibits recovery of attorney's fees as part of litigation costs in the absence of specific statutory authorization. *State ex rel. v. Gerchak v. Tablack*, 117 Ohio App.3d 222, 226, 690 N.E.2d 93 (7th Dist. 1997) Here, the basis for any award of attorney's fees is governed by R.C. § 733.61, which permits a court, in its discretion, to award attorney's fees in a taxpayer relator suit. R.C. § 733.61 provides with respect to taxpayer suits, as follows:

> If the court hearing a case under section 733.59 of the Revised Code is satisfied that the taxpayer had good cause to believe that his allegations were well founded, or if they are sufficient in law, it shall make such order as the equity of the case demands. In such case the taxpayer shall be allowed his costs, and, *if judgment is finally ordered in his favor*, he may be allowed, as part of the costs, a reasonable compensation for his attorney.

(Emphasis added.)

There is no live issue of attorney's fees in connection with a claim that is moot, under the statutory language of R.C. § 733.61. Relator's claim set forth in Count Two with respect to funding of the TCIC is therefore moot and should be disposed of by summary judgment in favor of the City.

Relator's reference in its Opposition Brief to public records showing that the TCIC owns other real property does not entitle Relator to an order of this Court with respect to the dissolution of the TCIC or disposition of its property. As discussed at length in the City's Brief in Opposition to Relator's Motion for Summary Judgment, filed May 22, 2026, the TCIC is operating under its independent authority to exercise the powers enumerated under R.C. § 1724.02(A), including the power to "purchase, receive, hold, manage, lease, lease-purchase, or otherwise acquire and to sell, convey, transfer, lease, sublease, or otherwise dispose of real and personal property." R.C. § 1724.02(A)(3). Further, these properties, Summit County parcel nos. 6401454 and 6400136, which were acquired from private parties according to County records, are not included in the allegations set forth in Relator's Complaint and do not form a basis for relief requested by Relator's Complaint. Thus, the ownership of these properties does not support Relator's argument that her request for injunctive relief in Count One is not moot.

Relator requests this Court grant injunctive relief restraining Twinsburg from applying further funds to the TCIC. This issue is moot, as acknowledged by Relator. Relator requests that this Court order the TCIC to return its personal and real property to the City. There is no property to return. The Old School Property owned by the City was never conveyed to the TCIC.

VI. Because Relator's Complaint was not filed within the Applicable Six-Year Statute of Limitations Applicable to a Lawsuit Filed under R.C. § 733.59, the City is Entitled to Summary Judgment in its Favor upon all of Relator's Claims.

The gravamen of Relator's Complaint is her contention that the City was not empowered to create a CIC by the passage of Ordinance No. 16-2013 because the City's Charter delegated that authority exclusively to the City's Planning Commission and a City Department Director (Count One) and that the City failed to follow the mandatory "steps" of R.C. § 1724.10 when the City established the TCIC by the passage of Ordinance No. 16-2013 (Count Two). Both of these challenges to the creation of the TCIC arose upon the foundational act of the passage of the legislation in January of 2014, *more than six years before the filing of this lawsuit.*

The continuing violation doctrine does not apply here because the alleged exercise of unauthorized power or failure to follow procedural process under R.C. § 1724.10 was a discrete legislative act consisting of the passage of Ord. No. 16-2013 and not a continuing course of conduct. Relator does not allege that the CIC's subsequent activities in 2021 (issuing a request for qualifications to find a mixed-use developer) were made with any participation by the City. The Relator's assertion that the City has "illegally allowed the Twinsburg CIC to engage in the Downtown Redevelopment Plan" is belied by the Relator's own admission that "[a]fter passing Ordinance 153-2013 (the legislation authorizing operational funding for the TCIC), the Twinsburg Council never passed another ordinance designating the Twinsburg CIC as its agent, nor delegating it any additional authority." Complaint, ¶ 13.

The City did not pass legislation in connection with these continuing activities because the TCIC did not enter into any agreements to proceed with any development plans based on its pursuits. Complaint, ¶ 18. The City did not engage in continuing acts of any kind related to the TCIC. The continuing violations doctrine therefore provides no basis for allowing this lawsuit to be filed outside the six-year statute of limitations.

Relator argues that her allegations of abuse of corporate powers fall within the six-year statute of limitations merely because of the TCIC's "continued existence." Relator's Opposition Brief, p. 9. The continuing violation doctrine applies to ongoing unlawful conduct, not the ongoing existence of an entity whose creation itself was the allegedly unauthorized act. Under Relator's theory, any entity allegedly created without legal authority could be challenged indefinitely so long as it continues to exist, a result that would render statutes of limitations meaningless in the context of corporate or municipal entity challenges. Ohio courts have consistently held that the limitations period begins when the cause of action accrues. *See, e.g*., *Flagstar Bank, F.S.B. v. Airline Union's Mtge. Co*., 2011-Ohio-1961 ¶ 13. The TCIC's subsequent development pursuits do not restart the limitations clock on the foundational claim that its very existence violates the Charter and the statutory authorization, particularly where the TCIC's conduct did not require any action whatsoever on the part of the City.

VII. Relator Lacks Standing to Assert a Claim for Declaratory Judgment under R.C. §733.59.

A person may not seek declaratory judgment pursuant to R.C. § 733.59 alone. That statute's remedies are strictly limited to injunction, specific performance, and mandamus. To assert a claim for declaratory judgment, a person must invoke the cause of action provided by R.C. Chapter 2721, Ohio Declaratory Judgment Act. Relator has not invoked the remedy provided under Chapter 2721.

Ohio courts have confirmed this limitation with uniformity across multiple districts. In *Ohioans for Concealed Carry v. City of Columbus,* 2019-Ohio-3105, ¶ 17 (10th Dist.), the Tenth

District Court of Appeals reasoned squarely that "R.C. 733.56, 733.57, and 733.58 provide for a village solicitor or city director of law to commence an action for an injunction, specific performance, or mandamus," and that "none of the statutes in question provide for the commencement of an action for declaratory judgment." The court therefore held that plaintiffs "cannot establish standing for declaratory relief under R.C. 733.59." Similarly, in *McBee v. Toledo*, 2014-Ohio-1555, ¶ 9 (6th Dist.), the Sixth District Court of Appeals explicitly held that "neither the statutes nor the charter provisions authorize the solicitor, law director, city attorney, or taxpayer to seek declaratory relief," concluding that "declaratory relief must be sought under R.C. Chapter 2721." The Ninth District reached the same conclusion in *State ex rel. Longville v. Akron*, 2013-Ohio-1161, ¶ 10 (9th Dist.), holding that a properly filed statutory taxpayer action under R.C. 733.59 gives the taxpayer the option of filing for "(1) an injunction, (2) for specific performance, or (3) a writ of mandamus"—and nothing more.

To invoke R.C. Chapter 2721 successfully, a plaintiff must demonstrate that: (1) a real controversy exists between the parties; (2) the controversy is justiciable in character; and (3) speedy relief is necessary to preserve the rights of the parties. *McBee v. Toledo*, at ¶ 11. Mere taxpayer status alone does not automatically satisfy these requirements. In *McBee*, the court held that a plaintiff's taxpayer status, without any individual impact on the plaintiff's own legal rights, was insufficient to confer standing under R.C. § 2721.03, which specifically requires that the plaintiff have an affected legal interest. *Id*. at 12. Likewise, in *Donovan v. Lebanon*, 2024-Ohio-6059, ¶ 31 (12th Dist.), the Twelfth District held that a declaratory judgment claim brought under R.C. Chapter 2721 failed because the taxpayers "have not asserted any claims regarding their own rights or any present controversies or disputes regarding the carrying of concealed weapons in the City Building when permitted by the ordinance. Instead, Taxpayers [sic] allegations as to the impact of the ordinance on them relate solely to their personal feelings and/or beliefs and political motives concerning gun rights," meaning the action did not present a real controversy or justiciable issue.

Relator asserts that the holding of *Cincinnati ex rel. Smitherman v. Cincinnati*, 2010-Ohio-2768, ¶ 26, that a "prohibitory injunction and a declaratory judgment are not mutually exclusive remedies," permits Relator to request declaratory judgment from this Court pursuant to R.C. § 733.59. This decision has been read by some as permitting a taxpayer declaratory judgment action alongside a R.C. 733.59 injunction claim, but this case has been treated as a limited outlier. The Tenth District in *Ohioans for Concealed Carry v. City of Columbus*, 2019-Ohio-3105, ¶ 17, acknowledged *Smitherman* with a "but see" citation, signaling that it represents a minority position that has not gained broader acceptance. The prevailing view—confirmed across the Sixth District in *McBee v. Toledo*, the Ninth District in *State ex rel. Longville v. Akron*, and the Tenth District in *Ohioans for Concealed Carry*—is that R.C. 733.59 does not authorize declaratory relief, and that such relief must be independently grounded in R.C. Chapter 2721.

A close reading of the *Smitherman* case reveals that the City did not challenge the taxpayer's standing to seek declaratory judgment, and the court did not hold that R.C. § 733.59 provides the declaratory judgment remedy, but only held that the remedies for a taxpayer action under R.C. § 733.59 and an action for declaratory judgment are not mutually exclusive such that a declaratory judgment would provide an adequate remedy at law which would preclude injunctive relief. *Smitherman*, at ¶ 26. Because Relator lacks standing to assert a claim for declaratory judgment under R.C. §733.59, this Court should grant summary judgment to the City upon the requests for declaratory judgment in Count One and Count Two of the Complaint.

VIII. The Relator Lacks Standing under R.C. §733.59 where She has Failed to Demonstrate that her Lawsuit Seeks to Enforce a Public Right Rather than Pursue Private Interests.

The public benefit analysis for taxpayer standing requires more than speculative future benefits; it requires a concrete, present public interest that the court's intervention would serve. The current posture of the case, wherein the City has repealed the authority for transfer of tax revenues to the TCIC for operating costs and the Holley Property has been conveyed to the City, has already established the relief for past actions sought by Relator. Relator has not established ongoing harm to taxpayers, particularly if the CIC is no longer being funded by the City. The claim that dissolution would restore democratic accountability such that Twinsburg voters will gain more control over development decisions in their city (*see* Relator's Opposition Brief, p. 10) is a policy preference, not a concrete public benefit cognizable under the taxpayer standing framework. Moreover, Relator cannot establish public harm because the TCIC never actually exercised municipal powers or implemented a development plan. The City is entitled to summary judgment upon both Count One and Count Two of Relator's Complaint because the Relator lacks the requisite standing to bring a taxpayer's action under R.C. § 733.59.

VIX. CONCLUSION

For all of the foregoing reasons, Respondent, the City of Twinsburg, respectfully requests this Court grant the City's Motion for Summary Judgment in favor of the City upon all claims set forth in Relator's Complaint for Declaratory Judgment and Injunctive Relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing Respondent City of Twinsburg's Reply Brief in Support of the City's Motion for Summary Judgment was electronically filed with the Court this 26th day of June, 2026, and served through the Court's electronic system.

/s/ R. Todd Hunt
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One of the attorneys for Respondent