

IN THE SUPREME COURT OF OHIO

State of Ohio ex rel. Lynn A.  
Clark

Relator

v.

City of Twinsburg, et al.

Respondents

Original Action (Expedited  
Election Case S.Ct.Prac.R.  
12.08)

Supreme Court Case No.  
2022-0995

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Answer of Respondents City of Twinsburg, Shannon Collins, and Matt Vazzana

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ANSWER

For their Answer to the *Verified Complaint*, Respondents City of Twinsburg, Shannon Collins, and Matt Vazzana state as follows:

1. The first and third sentences of ¶1 merely describe the nature of this action as an original action for mandamus. Answering further, Respondents admit that the second sentence of ¶1 and that the original action was filed 89 days before the pending election on November 8, 2022 so that this original action is subject to S.Ct.Prac.R. 12.08. Respondents deny the remaining allegations in ¶1.

2. Respondents admit the allegations in ¶2.

3. Respondents admit the allegations in ¶3.

4. Respondents admit that the Twinsburg City Council met for a caucus and in regular session on June 14, 2022 at which one of the pieces of legislation for consideration was Resolution 57-2022 “A Resolution confirming the Planning Commission’s approval of the final site plan for Project Gumbo date stamped received May 10, 2022; and declaring an emergency.” Respondents deny the remaining allegations in ¶4, including that Exhibit 1 is the final site plan for Project Gumbo as proposed by the Planning Commission and presented to Twinsburg City Council.

5. Respondents admit that Twinsburg Codified Ordinances Section 1181.09 provides, in its entirety, as follows:

(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.

(b) In its review of the site plan, Council shall consider the same factors and criteria as established for Planning Commission review.

6. Respondents admit that, on June 14, 2022, Twinsburg City Council passed Resolution 57-2022, that the document attached to the *Verified Complaint* as Exhibit 2 is an accurate copy of Resolution 57-2022 passed by Twinsburg City Council and approved by the Mayor on June 21, 2022, and that Section I of the operative section of Resolution 57-2022 provides as follows:

SECTION I: 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.**

(emphasis in original)

7. Respondents admit that the document attached to the *Verified Complaint* as Exhibit 3 is a Referendum Petition (Municipality or Home Rule Township) Form No. 6-J Prescribed by the Ohio Secretary of state (09-17) directed to the Twinsburg Director of Finance and Clerk of Council relating to Resolution 57-2022 on which the names and addresses of four individuals, including Relator Clark, are designated as a committee and that the Referendum Petition was filed with Respondent Collins on June 27, 2022. Answering further, Respondents admit that the date on which the committee is seeking the referendum to be submitted to the electors is the general election on November 8, 2022. Respondents deny the remaining allegations in ¶7.

8. Respondents admit that the document attached to the *Verified Complaint* as Exhibit 4 is an accurate copy of the 55 petitions submitted by Relator Clark and received by Respondent Collins on July 13, 2022. Further answering, upon information and belief, the total number of signatures on the petitions submitted is over 10% of the electors who voted for governor at the most recent general election for the office of governor in the City of Twinsburg. Respondents deny the remaining allegations in ¶8.

9. Respondents admit that the document attached to the *Verified Complaint* as Exhibit 5 is an accurate copy of the July 21, 2022 memorandum from Respondents Vazzana and Collins to Relator Clark (and her counsel in this matter) and the other individuals designated as the committee on Exhibits 3 and 4. Further answering, the memorandum speaks for itself. Respondents admit that their position was, and is, that Resolution 57-2022 is an administrative act and not legislative action and therefore not subject to referendum under Article II, Section 1f of the Ohio Constitution. Respondents deny the remaining allegations in ¶9.

10. Respondents admit the allegations in ¶10.

11. The first and second sentences in ¶11 merely describe the legal standard and burden of proof in a mandamus proceeding and no response is required.

12. The statements in ¶12 merely describe and quote from this Court's holding in *Donnelly v. Fairview Park*, 13 Ohio St.2d 1, 4 (1968), and no response is required.

13. Respondents admit that Twinsburg Codified Ordinances Section 1181.09 is fully restated above and that it applies to Resolution 57-2022 but deny the remaining allegations in ¶13.

14. Respondents deny the allegations in ¶14.

15. The statements in ¶15 merely describe and quote from this Court's opinion in *Buckeye Community Hope Fdn. v. Cuyahoga Falls*, 82 Ohio St.3d 539, 543 (1998), and no response is required.

16. Respondents deny the allegations in ¶16, specifically that this Court should revisit its earlier holding in *Buckeye Community Hope Fdn. v. Cuyahoga Falls*, 82 Ohio St.3d 539 (1998).

17. Respondents admit that the first sentence of ¶17 accurately quotes from Section 9.02 of Twinsburg's Charter but denies the remaining allegations in ¶17.

#### AFFIRMATIVE DEFENSES

18. Relator has failed to state a claim for relief.
19. Relator's claim is barred by the doctrines of waiver and laches.
20. Relator is judicially estopped from bringing this extraordinary action.
21. Relator has failed to exhaust his administrative remedies.
22. Relator does not have a clear legal right to the relief requested.
23. Respondents do not have a clear legal duty to transmit a certified copy of Resolution 57-2022 and the signed petitions to the Summit County Board of Elections.
24. Relator has an adequate remedy at law.
25. Relator's claim is barred by the jurisdictional priority rule.
26. Relator is not entitled to attorney's fees.

*Wherefore*, Respondents pray that the Court deny the preemptory writ of mandamus or an alternate writ, as requested by Relator, and dismiss the *Verified Complaint* at Relator's cost, and that this Court grant Respondents their reasonable attorney fees and costs associated in defending against this extraordinary action.

Respectfully submitted,

/s/ Matthew G. Vansuch  
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Brouse McDowell LPA

*Counsel for Respondents*

#### CERTIFICATE OF SERVICE

I certify that a copy of this *Notice of Appearance* was sent by email to the counsel identified on the cover page on August 19, 2022.

/s/ Matthew G. Vansuch  
Matthew G. Vansuch (0079328)  
Brouse McDowell LPA

*Counsel for Respondents*

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