

IN THE COMMON PLEAS COURT
SUMMIT COUNTY, OHIO

- - -

STATE OF OHIO, EX REL.)	
MARCELLA GAYDOSH,)	
)	
Plaintiff,)	
)	
vs.)	No. CV-2012-09-5055
)	
CITY OF TWINSBURG c/o MAYOR)	
PROCOP and CITY COUNCIL)	
MEMBERS,)	
)	
Defendant.)	

- - -

Deposition of MARCELLA GAYDOSH, Plaintiff herein, called by the Defendants for cross-examination, pursuant to the Rules of Civil Procedure, taken before me, the undersigned, Susan M. Petro, a Stenographic Reporter and Notary Public in and for the State of Ohio, at Twinsburg City Hall, James A. Karabec Conference Room, 10075 Ravenna Road, Twinsburg, Ohio, on Friday, the 5th day of April, 2013 at 1:01 o'clock, p.m.

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1 APPEARANCES:

2 On behalf of the Plaintiff:

3 The Law Offices of Warner Mendenhall, Inc.;

4 By: Warner Mendenhall, Attorney at Law,
5 190 North Union Street, Suite 201,
6 Akron, Ohio 44304.
7 330.535.9160

8 On behalf of the Defendants:

9 Twinsburg, Ohio;

10 By: David M. Maistros, Law Director and
11 Prosecutor,
12 10075 Ravenna Road,
13 Twinsburg, Ohio 44087.
14 330.963.6248

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1 MARCELLA GAYDOSH
2 of lawful age, Plaintiff herein, having been first duly
3 sworn, as hereinafter certified, deposed and said as
4 follows:

5 CROSS-EXAMINATION

6 By Mr. Maistros,

7 Q Ms. Gaydosh, state your name and spell your last
8 name.

9 A Marcella Gaydosh, G-a-y-d-o-s-h, 9250 Liberty Road,
10 Twinsburg.

11 Q And how long has that been your residence?

12 A Sixty-three years.

13 Q And who do you live there with?

14 A Fifty-three. Sorry, that's 60 years.

15 Q And who do you reside there with?

16 A My husband.

17 Q And his name?

18 A Andy.

19 Q Ms. Gaydosh, what is your date of birth?

20 A 6-9-29.

21 Q Other than your residence that you just spoke about,
22 do you own any other property in the City of
23 Twinsburg?

24 A Yes.

25 Q And where is that?

1 A 61 -- 3116 Cannon Road.

2 Q And is that residential property?

3 A Yes.

4 Q And who resides at that property?

5 A My daughter.

6 Q And her name?

7 A Holly Gaydosh.

8 Q And is that property in your name or your --

9 A In my name as a Trustee.

10 Q Any other property that you currently own in the
11 City of Twinsburg?

12 A Not in the City of Twinsburg, no.

13 Q Have you owned any other property in the City of
14 Twinsburg?

15 A Never, no.

16 Q Never?

17 A Never.

18 In Twinsburg?

19 Q Yes.

20 A No.

21 Q Have you ever been the Trustee for a trust that
22 owned any other property in the City of Twinsburg?

23 A No.

24 Q Give me a little background on your education.

25 A I have a high school degree and a realtor's license.

1 Q Okay. When did you obtain your realtor's license?

2 A Oh, gosh. I haven't retained it, but it was
3 probably in the Eighties.

4 Q You currently don't hold a realtor's --

5 A No, I don't hold a license.

6 Q Did you have to attend any training or education in
7 order to obtain your realtor's license?

8 A Yes.

9 Q And where was that?

10 A At Cleveland State University, Solon, satellite
11 office in Solon.

12 Q And did you have to test in order to get your
13 realtor's license?

14 A Yes.

15 Q Why do you no longer hold a realtor's license?

16 A I became interested in other issues.

17 Q Did you let your license lapse?

18 A Yes.

19 Q Do you have any formal education or training in
20 planning or development?

21 A Other than being on City Council.

22 Q Did you receive training as a Council Member?

23 A Absolutely, I did.

24 Q Where did you receive your training?

25 A I received a lot of training from the Law Director,

1 Orrville Hoover.

2 Q Did you go to any --

3 A Yes.

4 Q Did you receive any official training?

5 A I haven't a certification of any training, no.

6 Q So when you say "training," you were referring to
7 education as far as crossing issues as they came up
8 and discussing those?

9 A Responsibilities as a -- as a Council Member to pass
10 the legislation to control the land use in our city.

11 Q Okay. When were you on Council?

12 A 1972 I believe. '72, '73, I'm not sure of the exact
13 dates.

14 Q How long were you on Council?

15 A Four years.

16 Q One term?

17 A One term. Served as President.

18 Q Roughly 1972 to '76 or --

19 A Not sure. I was on the School Board prior to that
20 on '72. Between '72 and '80 I was a School Board
21 member and a Council Member.

22 MR. MENDENHALL: I think your plaque in
23 the lobby says 1979.

24 THE WITNESS: Okay. You read the plaque,
25 okay.

1 MR. MENDENHALL: Something like that.

2 By Mr. Maistros:

3 Q When you became a Council Member, were you appointed
4 to that seat or did you run?

5 A I was appointed.

6 Q And did you ever run for Council Member?

7 A Yes, I did.

8 Q And when did you run for Council?

9 THE WITNESS: Did you say it was '79?

10 MR. MENDENHALL: That's what the plaque
11 says out there.

12 By Mr. Maistros:

13 Q Roughly when did you run for Council?

14 A '75.

15 Q And did you run for the seat that you were appointed
16 to?

17 A Yes.

18 Q And did you prevail in that election?

19 A Yes.

20 Q And how long were Council terms at that time?

21 A At that time, the second -- four years.

22 Q Okay. Can you explain to me how you won a four-year
23 election, but you only served on Council for a total
24 of four years?

25 A No, I can't. I'm not familiar with the exact dates

1 of when I was appointed. I know that I served --
2 I'm not sure that my service for two years was for
3 the extension of a two-year term or mid term. I'm
4 not really sure.

5 Q Well, you'd agree with me when you're appointed to
6 an open Council seat you're appointed for the
7 remainder of that term?

8 A Remainder of that term.

9 Q Then you ran for re-election?

10 A Yes.

11 Q And you prevailed in that election, correct?

12 A Yes.

13 Q Did you fulfill that full four-year term after you
14 won your election?

15 A No, no, no. As a matter of fact, I did not.

16 Q Okay. So you left early?

17 A I left early.

18 Q You resigned?

19 A Yes.

20 Q Why did you resign your seat?

21 A Due to Ms. Huberty's recall petitions.

22 Q So recall petitions were filed against you?

23 A Yes.

24 Q And you resigned prior to resolution?

25 A Yes.

1 Q Or the determination of those recalls?

2 A Because two of the recalls had failed, and I didn't
3 particularly want the City to go through another
4 one.

5 Q Okay. Ms. Gaydosh, let me step back. Have you ever
6 had your deposition taken before?

7 A Yes.

8 Q And if I can kind of just set these ground rules,
9 I'll ask you questions. If you understand my
10 question, certainly go ahead and answer.

11 A Uh-huh.

12 Q And try to answer with a verbal answer, "Yes" or
13 "No" or explain.

14 And if you don't understand my question,
15 please ask me to clarify. Okay? Is that fair?

16 A Yes.

17 Q Okay. You resigned your Council seat sometime early
18 Eighties. Did you ever run for Council again after
19 that time?

20 A No.

21 Q You ran for Mayor a number of times?

22 A Yes, four times.

23 Q Four times for Mayor.

24 Were you ever elected Mayor?

25 A No.

1 Q You've been involved in the City, for example, by
2 sitting on the Charter Review Commission I'm aware,
3 correct?

4 A Correct.

5 Q Any other Boards or Commissions that you've sat in
6 on the past?

7 A No.

8 Q Have you ever sat on the Planning Commission?

9 A No.

10 Q Through your period of time that you were on Council
11 or on Charter Review Commission, did you have an
12 occasion to attend any seminars or training?

13 A Oh, I can't recall. Probably training. I'm not
14 sure what they were -- if they were Akron, I'm not
15 sure what they were for.

16 Q What do you mean for Akron?

17 A I'm not sure. There was some meetings in Akron. I
18 went to meetings, but I'm not sure that they were
19 training sessions.

20 Q You're familiar with the City of Twinsburg Charter,
21 correct?

22 A Yes.

23 Q Are you familiar with what's called the Charter
24 Review Commission?

25 A Yes.

1 Q And the Charter Oversight Commission?

2 A Yes.

3 Q And what is your understanding of the Charter
4 Oversight Commission?

5 A That it was to oversee the legislation of the
6 Planning Commission and the City Council and refer
7 any concerns back to the Council liaison, and
8 question the legitimacy of the Ordinance as it's
9 reflected in Charter 7A.01.

10 Q And have you had occasion to attend the meetings of
11 the Charter Review Oversight Commission?

12 A Yes, I have.

13 Q And do you have an opinion as to the merits of that
14 Commission and how they're performing their duties?

15 A I believe that it's a very loose organization that
16 feels that they have no -- no real authority.

17 Q Do you have an opinion as to their performance as an
18 Oversight Committee?

19 A Could I add something here?

20 Q Sure.

21 A Other than my presentation for agenda items, they
22 usually don't come with anything.

23 Q What do you mean they don't come with anything?

24 A Anything that they want to discuss. Usually it's
25 items that I put on the agenda, concerns that I

1 have.

2 Q Ms. Gaydosh, just to be consistent, I'm going to try
3 to use some of the Exhibits that were used in
4 Mr. Finch's deposition a short time ago --

5 A Okay.

6 Q -- and make it easier on everybody involved.

7 I want you to take a look at what's been
8 previously marked as Plaintiff's Exhibit 2.

9 A Okay.

10 Q Which I'll indicate is a -- I think we can stipulate
11 is a copy -- true and accurate copy of Ordinance
12 97-2012. Would you agree with that?

13 A Yes.

14 Q Have you had an opportunity prior to just now to
15 review Exhibit 2? Are you familiar with it?

16 A With 97?

17 Q Yes.

18 A No, it wasn't available until the night of the
19 meeting.

20 Q The night of what meeting?

21 A The night that it was passed.

22 Q Prior to just now, today, have you had an
23 opportunity to review --

24 A Oh, yes.

25 Q -- 97-2012?

1 A Yes.

2 Q Okay. And let me ask you: You would agree this
3 Ordinance was read on three separate days, correct?

4 A Yes.

5 Q And your testimony today is that it was not
6 available until the last reading?

7 A I believe it was being amended, as I recall in the
8 Planning Minutes, that it wasn't prepared for the --
9 I'm not sure of the date. But I recall something in
10 the Minutes that said Planning Commission questioned
11 the legislation, and that your response was that
12 they should hold off on it because Council is still
13 reviewing it, and a week later it was passed.

14 Q Are you guessing?

15 A No, I'm not guessing.

16 Q Was that just a guess?

17 A No, not at all. It's in the Minutes. I believe
18 it's in the August Minutes of the Planning
19 Commission meeting, in response to Mr. Cohen's
20 question of whether or not this should go to the
21 voters.

22 Q And that was not a guess on your part, you're
23 certain of your last statement?

24 A Well, it's a generalization of what was -- as a
25 response to the Planning Commission's concerns that

1 I had brought to their attention about this not
2 being placed on the ballot.

3 Q Okay. Did you place those -- did you bring those
4 concerns to Council?

5 A Oh, yes. And Planning and Council, letters to the
6 editor, emails to Council members for five months.

7 Q Do you see on Plaintiff's Exhibit 2 where it
8 indicates first reading, second reading, third
9 reading? Do you see that?

10 A Yes.

11 Q Do you dispute that it was read on three separate
12 occasions?

13 A Yes.

14 Q You dispute that?

15 A No, no. I don't dispute it, I'm sorry.

16 Q You agree that it was read on three separate
17 occasions, correct?

18 A Uh-huh.

19 Q Yes?

20 A It was on the agenda for three separate items as a
21 title.

22 Q And read --

23 A Uh-huh.

24 Q -- on three separate occasions?

25 A Well, title was read.

1 Q Okay.

2 A Okay.

3 Q And all those meetings were open to the public,
4 correct?

5 A Right.

6 Q Did you attend all those meetings?

7 A I'm not sure if I did or not.

8 Q And were you aware that -- look at Page 1 of
9 Exhibit 2. It states that "on the 23rd day of
10 January, 2012 the Planning Commission reviewed and
11 made such recommendations as they relate to the
12 regulations of building heights." Do you see that?

13 A I do.

14 Q Are you aware that the Planning Commission, on the
15 23rd day of January, discussed and made this
16 recommendation?

17 A Yes.

18 Q And you agree that that, in fact, happened, correct?

19 A Yes.

20 Q Were you present at that January 23 Planning
21 Commission meeting?

22 A No, I was not. I make a notation at this point, the
23 January 23 recommendation was not acted upon until
24 August of 28.

25 Q August of 28th?

1 A Which is the day that the Ordinance is passed. They
2 refer to the 23rd in the second "WHEREAS." And our
3 Charter says that within 60 days it should be acted
4 upon.

5 Q Are you aware that Ordinance 18-2012 originally
6 brought Planning Commission's recommendation to
7 Council?

8 A Yes.

9 Q Okay. And would you agree that Ordinance 18-2012
10 was brought within that time frame?

11 A Yes.

12 Q Okay.

13 A Between January 23 -- I believe it was April when it
14 was brought to Council's attention.

15 Q I guess we should clarify.

16 It gets brought to Council's attention at the
17 first reading correct, not passage?

18 A I'm not even sure there was a discussion. I looked
19 through the Minutes, I couldn't find any discussion
20 about the Ordinance at all.

21 Q It's on their agenda and it's read.

22 A Right, but they appear --

23 Q It's been brought to their attention, correct?

24 A As a title, yes.

25 Q Are you aware that Ordinance 18-2012 -- that your

1 Lawyer sent me a letter regarding the merits of that
2 Ordinance?

3 A Yes.

4 Q And are you aware, paraphrasing now, that generally
5 your Attorney representing you indicated that they
6 felt that that was not a valid Ordinance because --

7 A Correct.

8 Q -- because of some irregularities in that Ordinance?

9 A Correct.

10 Q Are you aware that I, as the Law Director, took some
11 action to terminate Ordinance 18-2012?

12 A Correct.

13 Q Okay. So I essentially did what you requested,
14 correct?

15 A No. You did what the law requested, it was an
16 invalid Ordinance.

17 Q I did what you brought -- or your Attorney brought
18 to my attention, correct? Do you dispute that? I
19 mean, do you have a problem that that was done?

20 A No. I have a problem that it was allowed to be
21 voted on as Council voted on it, that is my problem.

22 Q Okay.

23 A Without any -- go ahead.

24 Q So it can't be satisfied?

25 If you, as a resident, bring an error to the

1 Law Director's attention, it does not matter -- once
2 that error occurred, the Law Director, whether me or
3 anyone else, can't satisfy you because once the
4 error occurred, it occurred, is that --

5 A Correct.

6 I think that at that point my concern was --
7 and I think if you review the Minutes of the Council
8 meeting, I did ask them to be more cautious of the
9 reading, what you had been distributing to them.

10 Q In Exhibit 2, it discusses in Part 1148.15 -- do you
11 see that?

12 A Yes.

13 Q Okay. And that addresses height regulations as they
14 relate to commercial districts. Is that fair to
15 say?

16 A Correct.

17 Q And you sat through the deposition of Mr. Finch and
18 you heard some discussions that -- I think Mr. Finch
19 agreed with your Attorney that 1148.15, as it
20 appears in Exhibit 2, does not change any
21 language -- or I'm sorry, it does change language,
22 but it does not change any of the controlling
23 aspects of height regulations in commercial
24 districts, correct?

25 A I don't know. To be honest with you, I don't

1 understand Ordinance 97's inclusion of Ordinance 18
2 without getting back and forth and back and forth.
3 I can't really say. I don't have Ordinance 18 in
4 front of me, but I know that this is not what
5 Ordinance 18 said, 1148.15.

6 Q I'm showing you what's already been marked as
7 Plaintiff's Exhibit No. 3. Do you see that?

8 A Yes.

9 Q And that was introduced earlier as Section 1148.15
10 as it existed since 2008. Do you see that?

11 A I'm assuming that this is going back to the original
12 intent, that this section in Ordinance 97 reverts
13 back to this intent.

14 Q Okay. Would you agree with me that Ordinance 97, as
15 it relates to commercial districts, does not change
16 any of the height regulations?

17 A No, I agree to that.

18 Q Okay. So the only change that Ordinance 97-2012 is
19 making relates to industrial districts?

20 A Correct.

21 Q And in fact, the only change in industrial districts
22 applies to I-2 and I-3 districts, correct?

23 A Correct.

24 Q Are you aware of what the height limitation in I-2
25 and I-3 districts was prior to Ordinance 97-2000 --

1 A It was 35 feet.

2 Q And are you aware that buildings could be built in
3 excess of 35 feet?

4 A Only for structures that relate to the operation of
5 the building, which would be the air conditioning,
6 that sort of thing, an additional amount of space
7 there.

8 Q And that's your understanding of how it read prior?

9 A My understanding of increasing the height beyond
10 what is limited in the regulations.

11 Q I want to hand you what's been marked as Plaintiff's
12 Exhibit No. 4 in the Finch deposition. If you could
13 take a look at that.

14 A Okay.

15 Q Specifically 1149.09.

16 And would you agree with me that Plaintiff's
17 Exhibit 4 reflects the height regulations in
18 industrial districts prior to Ordinance 97?

19 A Yes.

20 Q Would you agree with me that that section states,
21 "However, building height in an I-2 and I-3 district
22 may exceed 35 feet provided the front and rear yard
23 depth is increased two (2) feet for each additional
24 foot of height over 35 feet"?

25 A Correct.

1 Q So it does not have anything to do with the
2 structures or the smoke stacks or the antenna,
3 correct?

4 A It limits the excessive height. There's a section
5 in the code that does limit that.

6 Q I'm saying 1149.09 permits a building to be built in
7 excess of 35 feet provided they follow that
8 criteria, correct?

9 A Limited to 15 additional feet.

10 Q And where do you see that?

11 A It's in another section of the Code.

12 Q Where do you see that in 1149.09?

13 A No, but I see an exception to height regulations not
14 to exceed the regulations established, except for
15 additional heights for structures that relate to the
16 operation of the building such as fans, antennas,
17 air conditioners. There's a limit of 15 feet there.

18 Q But that's not what 1149.09 says, correct?

19 A But that's the section that limits it to the
20 15 feet.

21 It's just not an overall because I don't
22 understand it, but just because you have additional
23 land area that you can go beyond the 35 feet you can
24 build up so many feet, but not 100 feet.

25 Q Where does it say that?

1 A It's -- it's in the Zoning Code somewhere. I'm not
2 sure where it is, but it does talk about the
3 restriction.

4 Q Do you want to look --

5 A I'm not familiar with it right now, but I can -- I
6 certainly can see it somewhere. Maximum height of
7 buildings maybe.

8 Q 1149.09 are the height regulations of buildings in
9 industrial districts, aren't they?

10 A Uh-huh.

11 Q Okay. And prior to Ordinance 97, buildings in
12 industrial districts were restricted to 35 feet,
13 correct?

14 A Correct.

15 Q Except on a conditional use an amount could increase
16 one foot for every two feet of setback, correct?

17 A To a maximum of --

18 Q What I'm asking you is where in 1149.09 does it
19 say --

20 A It doesn't say it in there. There's another
21 restriction, though, that says it, it can't go over
22 15 feet.

23 Q And what would be 15 feet?

24 A Well, it would be the additional use for the rooftop
25 structures.

1 Q Fifty feet?

2 A Fifteen feet.

3 Q A total of 50 feet high --

4 A Uh-huh.

5 Q -- is that correct?

6 A If it's a 35-foot height, yes.

7 Q So your understanding is the Code, as it existed
8 prior to 97-2012, would allow an industrial building
9 in I-2 and I-3 district to be 50 feet tall -- up to
10 50 feet tall?

11 A Well, it would have to say that in whatever permit
12 or anything you're getting. It wouldn't just be
13 automatically without having a permit that issued it
14 and for the reason. It would have to be restricted
15 by the Building Department, by the Building
16 Commissioner.

17 Q But the City's Code would permit an industrial
18 building to be up to 50 feet tall, correct?

19 A No, it's -- I think it says 35 feet plus the
20 additional 15 feet, because it may be a height in
21 another regulation that wouldn't be 35 feet.

22 Q Do you know that?

23 A I don't know of any, no.

24 Q I'm asking you what's before you, okay, Plaintiff's
25 Exhibit 4, which is the document that is before you,

1 allows the building to be in excess of 35 feet,
2 correct?

3 A Correct.

4 Q Okay. Your opinion is that it's allowed to be over
5 35 feet, but no more than 50 feet total?

6 A No more than 15 feet more we established.

7 Q Right.

8 Would you agree with me that 35 plus 15 is 50?

9 A I would.

10 Q Okay. So logic dictates that a building could be as
11 high as 50 feet tall.

12 A Correct.

13 Q Would you also agree with me that Ordinance 97-2012,
14 Exhibit 2, okay, would limit a building height in an
15 I-2 and I-3 district to no more than 45 feet?

16 A Plus 15 for the additional, which would be 60.

17 Q Okay. Where do you see that? Where do you see
18 that?

19 A I'm saying the same instance where I talk about 35
20 and maximum height of 15, I would say 45 and maximum
21 height of 15 more would be 60. So it's not really
22 45 versus 45, it's 45 versus 60.

23 Q Okay. But there's nothing in 1149.09 that limits
24 the building height?

25 A I think there's another section of the Code that

1 does give a maximum height.

2 Q I'd like you to be specific about that.

3 A Okay. Let me have the Code and see if I can find it
4 without spending too much time.

5 MR. MENDENHALL: What Codes are we using
6 here?

7 MR. MAISTROS: You can use your Code. I
8 don't care what Code.

9 MR. MENDENHALL: What Code do you have?

10 MR. MAISTROS: It just has different page
11 numbers.

12 MR. MENDENHALL: What's the date on yours?
13 Mine is June 1, 2011.

14 MR. MAISTROS: June 1, 2011.

15 MR. MENDENHALL: What's the date on the
16 one you're looking at?

17 MR. MAISTROS: September 17, 2010.

18 MR. MENDENHALL: What's the most recent
19 Code?

20 MR. MAISTROS: Doesn't matter to me.
21 We'll use that Code.

22 MR. MENDENHALL: Are you stipulating
23 that's the same as this one?

24 MR. MAISTROS: Yes. Well, I don't know
25 what you brought, but I'm stipulating --

1 THE WITNESS: This was certified from the
2 Clerk.

3 MR. MAISTROS: There you go, then let's
4 use yours. Doesn't matter to me.

5 By Mr. Maistros:

6 Q You show me a section that says this.

7 A Geez. Let's see where I'm talking about.

8 I believe it's titled maximum -- maximum
9 height, wherever -- I can't find it. Maximum
10 height. That's what refers to air conditioners,
11 antennas, elevator. So that's -- if I can't find
12 it, I know it's in here.

13 Q Are you talking about things that sit atop a
14 building?

15 A I'm interested in the additional 15 feet and why it
16 is permitted above the regulations established for a
17 district, that's what I'm referring to. In other
18 words, any building, be it commercial, industrial or
19 whatever.

20 Let's see. I don't have -- I can't -- it's
21 not under this area here I can see.

22 1148.15.

23 Q 1148.15?

24 A Uh-huh.

25 Q Okay.

1 A The height of any main building shall not exceed
2 35 feet in the C-1, 2 and 3.

3 Q Okay. So that's the commercial district.

4 A Okay. But then there's another one that relates to
5 the mechanical space for building equipment placed
6 on flat roofs. It's not this regulation, it's a
7 maximum height regulation. And I would imagine if
8 we have this height regulation for commercial, it's
9 got to be somewhere for industrial, too.

10 Q Well, you have it before you.

11 A I'm not going to spend all day here looking at this.

12 Q Well, you have it before you, 1149.09. You were
13 reading it before.

14 A No, that was the regulation -- yeah, it's the
15 maximum height regulation that I'm talking about.
16 It's an odd number in the Code here because -- I'll
17 find it. And when I find it, I'll bring it down to
18 you.

19 MR. MENDENHALL: Do you want me to try to
20 find it -- we just went over it with Finch --
21 or do you want her to find it?

22 MR. MAISTROS: I'd like you to help her
23 because you know that she's wrong on this, and
24 I would like you to --

25 THE WITNESS: No, I'm not. And I don't

1 care which one of you -- I know I read it in
2 the Code.

3 By Mr. Maistros:

4 Q Ms. Gaydosh, I'm not going to have you waste your
5 time or our time going through page by page.

6 A I know there's a maximum height allowed, there must
7 be.

8 Q I agree with you.

9 MR. MENDENHALL: Let me take a look. If I
10 can put my finger on it.

11 By Mr. Maistros:

12 Q And --

13 THE WITNESS: I'm sorry.

14 MR. MENDENHALL: That's okay. Keep that
15 in front of you.

16 By Mr. Maistros:

17 Q Ms. Gaydosh, wouldn't you agree that the maximum
18 height regulation of buildings in industrial
19 districts is covered in 1149.09?

20 A Yeah, I would -- I don't agree with that. I think
21 there's a restriction, and I can't find it. Just as
22 there's a restriction -- okay. Then if there's air
23 conditioners and restrictions are not included in
24 here, are you saying that they're not allowed on the
25 industrial building? If there's no provision here

1 that says they can go 15 feet additional?

2 Q Let's look at 1149.09.

3 A Right, okay.

4 Q Please, look at it.

5 A I'm looking at it.

6 Q Building height in an I-2 and I-3 district may
7 exceed 35 feet provided the setbacks, one foot for
8 every two feet of setback. Do you agree with that?

9 A Uh-huh.

10 Q Can you look at the last sentence of that?

11 A Yes, I can.

12 Q Okay. "Maximum building height in an I-2 and I-3
13 Industrial District shall be recommended by the
14 Mayor and Planning Commission and confirmed by City
15 Council."

16 A Correct.

17 Q Okay.

18 A And I think that there's a stipulation in the Code
19 that limits even then. That can't go 100 feet.

20 Q Okay. But your opinion is they can't go the maximum
21 35 plus 15, they can't go beyond 50?

22 A That's what I would assume, that that's the
23 restriction, yes.

24 Q But you're just assuming that, right?

25 A No, I'm assuming that you wouldn't have 100-foot

1 building because the Mayor and Planning Commission
2 decided they wanted it. I'm assuming no, that they
3 can't. There must be a restriction for these
4 people, too.

5 Q What people? What people?

6 A The Mayor and the Planning Commission and confirmed
7 by City Council.

8 Q Does that say that in 1149.09?

9 A Well, if it doesn't, it should.

10 Q When was that passed?

11 A When was this passed?

12 Q Yes.

13 A 87-1989 Ordinance.

14 Q Would you agree with me that that --

15 A We never had a problem, never had a problem.

16 Q Since then?

17 A Since then.

18 Q And that's been in affect since 1989?

19 A Exactly.

20 Q So since 1989 you could build a building in the
21 industrial district in the City of Twinsburg in
22 excess of 35 feet, correct?

23 A Yes.

24 Q And in fact, you could build one 45 feet if you
25 wanted, correct?

1 A Only with the 15-foot restriction. That's my
2 opinion, that's it.

3 Q That's not what it says.

4 A Well -- well, I would challenge it if it went any
5 further, if I were a citizen.

6 Q What would you challenge?

7 A I would challenge the fact that it can't be
8 excessive of height without being in the Code.

9 Q Is a 45-foot building height in District 2 in
10 violation of Code?

11 A Forty-five feet?

12 Q Yes.

13 A It's in violation of what we adopted.

14 Q If they have the side yard setback requirements met?

15 A Well, side yard setbacks might make a difference,
16 but you would have to be able to have that
17 additional land.

18 Q But if you did, you could build a 45-foot high
19 building?

20 A If the Building Inspector found there was enough
21 land, you could, but it wouldn't be an automatically
22 everyone come in and do it.

23 Q You can build a 48-foot high building if you wanted
24 to, correct, if you had the setback requirements?

25 A I think that conflicts with the maximum height.

1 Q How?

2 A I just think it does.

3 Q How?

4 A By saying 15 feet over the established here, 35 feet
5 is established here.

6 Q Okay.

7 A Okay. So when you get into the maximum height,
8 it's -- I believe that you can only go 15 feet
9 higher for specific reasons. It can't be occupied,
10 and not only that --

11 Q Where does it say that?

12 A Not only that, but 25 percent of that additional
13 15 feet is only allowed to be used for operation,
14 that's all.

15 Q Where does it say that?

16 A 25 percent. In that part that I'm saying --

17 MR. MENDENHALL: This is 1139.06. Let me
18 just cut to the chase --

19 A Well, maybe that's it here. I know it's exception,
20 not -- okay. Expect as specifically stated in other
21 parts of the Ordinance, to exceed more than 15 feet
22 in height limits of the district in which it is
23 located, nor shall such structure have a total
24 greater area 25 percent of roof area of building and
25 then the residential use. That's what I'm looking

1 for.

2 THE WITNESS: Thanks, Warner.

3 By Mr. Maistros:

4 Q So what that says is that you can have a structure
5 on top of your building?

6 A Uh-huh.

7 Q Okay. An elevator shaft, a chimney, a flag pole, a
8 loft, right?

9 A Correct.

10 Q And that structure can only be -- cannot be more
11 than 25 percent of the roof area of the building?

12 A Usable, yes.

13 So my concern is that perhaps if you're adding
14 additional space or height to these buildings and we
15 don't specifically say it's for that purpose, then
16 we can use it for -- the full 100 percent of that
17 additional 15 feet can be used for office space,
18 whatever else space you use in an industrial.

19 So if you're not limiting that, then you're
20 saying -- if you're not limiting it to 25 percent
21 usable space, then you can say we can use additional
22 height and then you can go 15 feet more for all this
23 other stuff, that's my concern.

24 Q 1149.09 --

25 A Yes.

1 Q -- controls the building height in industrial
2 districts.

3 A With these exceptions that we just read.

4 Q 1149.09 --

5 A Uh-huh.

6 Q -- establishes the building height of buildings in
7 industrial districts, correct?

8 A Correct.

9 Q Okay. It allows buildings to be erected over
10 35 feet based upon setback requirements, correct?

11 A You can use your setbacks, I'm using the Code.

12 Q I understand --

13 A I agree that if you have the space you can go, but
14 you can't go as high as you want, that's what I'm
15 saying. You can't go as high as you want.

16 Q You can go up to 50 feet in your opinion?

17 A If you use the last 15 feet for -- you can't use
18 that as 25 -- you can't use 100 percent of that
19 space for usable space, it has to be only limited to
20 25 percent of usable space. That's important.

21 Q That's wrong.

22 Okay. That's the wrong interpretation of the
23 Code, that's not an opinion, that's just you're
24 mixing up two different subjects.

25 A No, I'm saying that any additional space over the

1 35 feet is limited to 25 percent of usable space,
2 and not for office spaces or not for whatever else,
3 just for the structures.

4 Q So it's your understanding that if a building went
5 to 37 feet and had the side yard setback
6 requirements, that they could not go two feet higher
7 on an entire building, is that your opinion?

8 A My concern is why bother having --

9 Q No, please answer my question.

10 A No, I --

11 MR. MENDENHALL: If you can answer the
12 question, just answer it. If you can't, just
13 say you don't know.

14 THE WITNESS: I think I've answered the
15 question.

16 MR. MAISTROS: I don't think you have.

17 THE WITNESS: I think I have.

18 MR. MENDENHALL: If you can't answer the
19 question, just tell him you can't answer the
20 question.

21 THE WITNESS: I can't answer the question.

22 By Mr. Maistros:

23 Q Ms. Gaydosh, you filed a lawsuit against the City of
24 Twinsburg.

25 A Yes.

1 Q You're fully aware of that, okay?

2 A Yes.

3 Q You're not going to sit here and say you don't
4 understand what the lawsuit is about?

5 A That's why I hired this guy. (Indicating)

6 Q So you don't understand what your lawsuit is about?

7 A I do understand. We have not had an opportunity to
8 vote on Ordinance 97-2012. We have not had an
9 opportunity for a Public Hearing to question this
10 Ordinance. We have not had an opportunity as our
11 Charter and as the law requires, that's my concern.
12 I've made that point very clear at Council meeting,
13 at Planning meeting, at Charter Oversight Committee
14 time and time and time again. My concern is we have
15 not had a right to vote. That's it.

16 Q Is it your opinion that you, as a resident, should
17 have a right to vote on anything contained in this
18 document?

19 A Absolutely. We already did once in 1989.

20 Q So any word that gets changed in this should go on
21 the ballot?

22 A I'm saying that anything you change in the Code
23 and -- what am I trying to say -- any amendment to
24 the Code specifically in regulations, specifically
25 in regulations.

1 Q Okay.

2 A Standards of procedures, regulations, you know.

3 There's so much that I think that we have the right
4 to vote on. Standards of regulations, standards of
5 procedures, those are the things, yes.

6 Q Okay. Let me get your opinion clear.

7 A Okay.

8 Q You're familiar with this document I'm holding in my
9 hand, the Twinsburg Building and Zoning Regulations
10 dated June 1, 2001?

11 A This was originally called Twinsburg Zoning Code
12 that we voted.

13 Q Ms. Gaydosh, please just answer my question.

14 A I'm answering your question. We didn't vote to
15 change the title.

16 Q This document that is titled -- I don't know why
17 you're smiling in such --

18 A Because it's such a simple request. You know, the
19 intent in the name -- the first paragraph said this
20 Ordinance shall be titled Twinsburg Zoning Code, so
21 now --

22 Q What do you want me to call this document I'm
23 holding in my hand?

24 A Well, I want it to be whatever we voted for.

25 Q What do you want me to call it today?

1 A I call it the Twinsburg Zoning Code.

2 Q Okay. This document that you call the Twinsburg
3 Zoning Code that is a few hundred pages long --
4 okay?

5 A Uh-huh.

6 Q Please listen.

7 This document here, the Twinsburg Zoning Code,
8 I believe you said you received a copy of this from
9 the Clerk's office.

10 A Yes.

11 Q Do you believe that any change to any section of
12 this Code should go before the voters?

13 A Yes. And I believe that if I challenge it and go to
14 Court, that's my authority as a tax payer, to
15 challenge it. That's all.

16 MR. MENDENHALL: You answered the
17 question.

18 THE WITNESS: That's all.

19 By Mr. Maistros:

20 Q So in this Code, it contains statements that
21 engineers must submit site plans on 11 by 17 paper.

22 A Is that a subdivision regulation?

23 Q Yes.

24 If the City changes it to read 8 by 11 paper,
25 your opinion is that that change from paper size

1 should go on the ballot?

2 A I don't believe that's a change in -- I think that's
3 a -- what would you call that -- it's like a
4 typographical change.

5 Q It's changing the paper size, it's changes the
6 regulations and requirements.

7 A I think there's something that allows for that type
8 of change without the vote of the people, there must
9 be something.

10 Q And what's that?

11 A I'm not sure what the wording be.

12 THE WITNESS: What would the word be
13 whenever you're allowed to change --

14 MR. MENDENHALL: I'm not allowed to answer
15 your question.

16 Just do the best you can.

17 THE WITNESS: I don't know.

18 By Mr. Maistros:

19 Q Well, I'm trying to figure out, is that -- it's your
20 opinion that any change has to go on the ballot, but
21 you say, "Well, not that change."

22 A Where is the Exhibit of the ballot that we voted on?

23 Q That was No. 7 -- one second -- No. 7.

24 A Yes. "SHALL Ordinance 87-1989 ADOPTING AN AMENDED
25 ZONING Ordinance AND MAP OF THE CODIFIED ORDINANCES

1 OF THE CITY OF TWINSBURG AND REPEALING ANY
2 ORDINANCES IN CONFLICT THEREWITH BE APPROVED." So
3 any amended zoning Ordinance and map.

4 Q Okay.

5 A We voted on that.

6 Q So it's your opinion that any amendment to that
7 document has to go on the ballot?

8 A Well, that's what I assumed that meant.

9 Q I'm asking you your opinion.

10 A Yes, my opinion, that this is what we voted for.

11 Q Is that what the Charter says?

12 A I assume that the Charter isn't in conflict with
13 this. This was adopted and voted on according to
14 Charter. This was in accordance with the Charter
15 provision that we vote.

16 Q So --

17 A Okay?

18 Q Okay. So you originally stated that any change in
19 the Zoning Code has to go on the ballot, but then
20 you said not every change.

21 A Let me say every amendment.

22 Q And what would an amendment be?

23 A Whatever.

24 Q Would change --

25 A This would be an amendment. (Indicating)

1 Q Would changing the size of paper required by
2 engineers --

3 A I wouldn't challenge the size of paper.

4 Q I'm not asking you that.

5 A Ask somebody who would file a lawsuit for that. I
6 wouldn't, if that's what you're concerned about.

7 Q I'm asking you: Is it your opinion that that is
8 something that the voters should have the right to
9 vote on?

10 A I haven't had any indication that I would do it, so
11 I haven't researched it. If I researched it, I
12 might find a reason.

13 Q How about in this document, you would agree that
14 there's regulations concerning the width of parking
15 stalls, correct?

16 A Uh-huh. That goes with -- according to the height
17 of the building.

18 Q Okay.

19 A The width and the size.

20 Q If a proposal was made to change the width of a
21 parking stall from nine feet to ten feet, do you
22 think that that has to go on the ballot for voter
23 approval?

24 A I don't think it would have to be, no.

25 Q And how do you make that distinction?

1 A Because I am concerned about this. I'm not
2 concerned about those 100-some pages. The few
3 items -- the few areas where I'm concerned I brought
4 to my Attorney's attention, and those are the ones
5 I'm challenging. I'm not challenging the whole
6 book. I am questioning amendments to this Code that
7 have not been voted by the people. And it will be
8 another time and another lawsuit, and I'll argue
9 that point then, but not now.

10 Q Can you answer the question as to what, in your
11 opinion, needs to go on the ballot in this Zoning
12 Code and what does not?

13 A Well, I think that anything that's titled
14 Ordinance 173-2000 should be looked at as whether or
15 not we should have voted for it because that was a
16 UDC amendment and had nothing to do with this Code.
17 I think that's beyond, and that's why I don't even
18 want to talk about it, that's why I'm not here to
19 discuss that. I know when we voted on this we did
20 not adopt the UDC which was Ordinance 86, we
21 failed -- the Court said it failed, it's out of
22 here. This does not reflect what we voted on here.
23 This reflects UDC Ordinance 86-2000, that's in here.
24 173-2000 was an amendment to Ordinance 86 that was
25 failed. And you constantly -- so I do challenge

1 this whole book, and I can't confirm that I approved
2 anything in that book. What I've pulled out of
3 here -- I'm challenging that whole book, that's
4 another lawsuit.

5 Q Are you on any medication or anything that would
6 affect your ability to --

7 A No, Mr. Maistros. If I was on medication, I
8 wouldn't be able to sit here and talk to you like
9 this.

10 Q Okay. So my question to you again, okay -- and
11 we're going to stay here until you answer it.

12 A Well, I've answered it every different form.

13 Q Please just answer.

14 You and I agree that some things in this
15 document have to go on the ballot if they're
16 proposed to be changed and some things do not have
17 to go on the ballot? Is that fair to say?

18 A I can't answer this question any more -- any more
19 thoroughly than I already have.

20 MR. MENDENHALL: I think it has been asked
21 and answered. She's agreed with you.

22 MR. MAISTROS: What's her answer?

23 MR. MENDENHALL: She's agreed with you
24 that, for example, if the paper size changed,
25 it could be changed.

1 By Mr. Maistros:

2 Q Would you agree with your Attorney, that if we
3 change -- if we proposed to change the size of
4 paper, okay, or, for example, if we proposed to
5 allow site planning to be submitted electronically,
6 okay, that that would be something that Council
7 could approve?

8 A I agree that if I challenged it, I would have a
9 right to question it.

10 Q I'm not asking about that.

11 A Well, I'm not saying -- you're asking if I'm going
12 to say this is established law and I can't challenge
13 anything. I know, try it and see if I challenge it.
14 You know, this --

15 MR. MENDENHALL: I think she's answered
16 it.

17 A I can --

18 MR. MENDENHALL: I hate to put words in
19 her mouth.

20 A Not going to happen.

21 MR. MENDENHALL: I think she's answered if
22 it's an administerial function like you're
23 suggesting, that's not challengeable. She's
24 only going after the zoning classifications
25 and districts.

1 By Mr. Maistros:

2 Q Is that true?

3 A All I'm asking -- my lawsuit is based on this right
4 here, that's all I want an answer on today. That's
5 all my deposition should be about. (Indicating)

6 Q Well, it's not what it's about. That's not what
7 it's about.

8 MR. MENDENHALL: He can go beyond.

9 Just --

10 A Go beyond it, but I don't have to answer the
11 question.

12 MR. MENDENHALL: Just do the best you can.

13 By Mr. Maistros:

14 Q What I'm trying to find out is what triggers, in
15 your mind, when something has to go on the ballot
16 and when it's something that Council could pass.

17 A Right here, that's it. (Indicating)

18 Q What is the triggering event?

19 A The triggering event is the legislation.

20 Q And what about the legislation?

21 A The legislation, if it violates what I believe is
22 our Charter, what goes right back to our Charter.
23 If I believe that, then I'll challenge it.

24 And remember, David, I have won four lawsuits
25 where 7A.01 was thrown out.

1 MR. MENDENHALL: I think that's -- Dave, I
2 think that's actually a good answer. The
3 legislation is a trigger.

4 MR. MAISTROS: Her answer is it's her
5 whim, that's her answer.

6 THE WITNESS: Legislation is not a whim.

7 MR. MENDENHALL: Let's just hear the
8 question, please.

9 By Mr. Maistros:

10 Q Let me ask you this, please: If it is something
11 that does not affect zoning, okay, does it have to
12 go to the ballot -- strike that.

13 Do you have the Charter in front of you?

14 A No.

15 MR. MENDENHALL: We don't have the Charter
16 with us today.

17 MR. MAISTROS: One of these was the
18 Exhibit for this.

19 By Mr. Maistros:

20 Q Okay. Now, you're familiar with 7A.01, correct?

21 A Yes, I am.

22 Q Would you agree with me that 7A.01 of the Charter
23 gives us the road map of what has to go to the
24 ballot?

25 A Any change in zoning classification, districts or in

1 the uses permitted in any zoning use classifications
2 or districts must be on the ballot.

3 Q Okay. So that is the road map, if you will, of --
4 if a piece of legislation gets placed before you,
5 that's what you would refer to to determine this one
6 does have to go to the ballot, this one is
7 administrative or inconsequential and does not have
8 to go to the ballot, right? You would agree that
9 Charter controls?

10 A Yes.

11 MR. MENDENHALL: Okay. I'm going to
12 object to the generalization.

13 MR. MAISTROS: That's fine.

14 MR. MENDENHALL: All right.

15 By Mr. Maistros:

16 Q But whatever you have to use to make your mind up,
17 you would use 7A.01 as the instruction, so to speak,
18 of whether or not you felt it should go on the
19 ballot?

20 A Uh-huh.

21 Q Okay. And you sat on the most recent Charter Review
22 Commission and proposed the changes to 7A.01,
23 correct?

24 A Correct.

25 Q So any change in zoning classification or district,

1 see that, what is your understanding of what that
2 means?

3 A Or uses permitted in those districts.

4 Q We're just going to start with the first part.

5 Any change in zoning classification or
6 district, and what's your opinion of a zoning
7 classification or district?

8 A Any change.

9 Q No.

10 Tell me what you believe a zoning
11 classification or district is.

12 A It's use of property.

13 Q Any use of property?

14 A Any use of property.

15 Q Okay. So if you were going to change the width of
16 parking stalls again from nine feet to ten feet, you
17 believe that should go on the ballot?

18 A It says any change in zoning classifications or in
19 uses of that land. I'm not going to try to answer
20 those kind of questions.

21 Q What's a zoning classification in your opinion?

22 A What is zoning classification?

23 Q Yes.

24 A I-1 District is -- I-1 classification is industrial,
25 district is I-1.

1 Q Okay.

2 A Use are --

3 Q Industrial, commercial, residential, right, those
4 are zoning classifications? You and I can agree on
5 that?

6 A Right.

7 Q You have all kinds of sub classifications in those,
8 correct?

9 A Districts.

10 Q I-2, I-3, R-1, R-2, R-3?

11 A Right.

12 Q So those are the zoning classifications and
13 districts, you'd agree with that?

14 A Yes.

15 Q In each zoning classification and district you also
16 have permitted uses, correct?

17 A Well, you have regulations for permitted uses.

18 Q Well, you have, in the Code, permitted uses --

19 A Okay.

20 Q -- right?

21 I'm not tricking you here.

22 A Well, regulations is listed as a restriction in
23 the --

24 Q We'll get to that.

25 A Okay. I thought we'd just jump ahead because we're

1 spending so much time.

2 Q Well, what I want to do is cover what's in the Code
3 in 7A.01, okay?

4 So read that again, any change in zoning
5 classification or district.

6 A Uh-huh.

7 Q We agree what those are?

8 A Yes.

9 Q "Or in the uses permitted in any zoning use
10 classifications or districts."

11 A Yes.

12 Q Okay. So the City of Twinsburg Code does set forth
13 permitted uses in each and every zoning district,
14 correct?

15 A Correct.

16 Q Okay. And I'm assuming you will agree with me that
17 any change in the permitted uses that's listed in
18 here would have to go to the ballot.

19 A No, I think that the regulations and the
20 restrictions would have to. When the regulations
21 change the uses, then it would have to go to the
22 ballot.

23 Q When they change the uses?

24 A When the regulation changes the intent of the
25 original uses adopted by us.

1 (Defendants' Exhibit A was
2 marked for identification.)

3 By Mr. Maistros:

4 Q Ms. Gaydosh, what is before you has been marked as
5 Defendants' Exhibit A. Do you see that?

6 A Yes.

7 Q Okay. "CHAPTER 1141" "DISTRICTS GENERALLY."

8 A Right.

9 Q Do you know what that document is?

10 A Yes.

11 Q Okay. Is it fair to say that's a copy of 1141.02?

12 A Right.

13 Q Okay. And would you agree that those are the
14 districts currently permitted in the City of
15 Twinsburg?

16 A Yes, I do.

17 Q And when Charter 7A.01 refers to zoning
18 classifications or districts, would you agree that
19 that list in 1141.02 is what it's referring to?

20 A I would agree that 7A.01 would refer to regulate
21 the -- limit the height and bulk and number of
22 stories of buildings.

23 Q I'm sorry?

24 You would agree that 7A.01 would limit the
25 height and the bulk and number of stories of

1 buildings?

2 A Yes.

3 Q I'd like to look --

4 A I think it almost limits the setback limit lines,
5 size of yard, courts, open spaces.

6 Q That's great, we'll cover that.

7 1141.02, types of districts, those are the
8 types of districts that are referred to in 7A.01,
9 correct?

10 A Correct.

11 (Defendants' Exhibit B was
12 marked for identification.)

13 By Mr. Maistros:

14 Q See what's been handed to you which has been marked
15 Defendants' Exhibit B.

16 A Okay.

17 Q Do you have any reason to dispute that that's a true
18 and accurate copy of the industrial district
19 regulations?

20 A No, I have none.

21 Q Okay. And --

22 A But I would also like to point out that the lot area
23 is brought to point here, and that would apply to
24 the question of --

25 Q What section are you referring to?

1 A I'm referring to 1149.07.

2 Q Okay. And what relevance does that have?

3 A Pardon me?

4 Q And what relevance does that have?

5 A It has that you just can't put any size building on
6 any size lot just because you have two feet that you
7 can set back, or whatever the footage is. Doesn't
8 mean you can have 100-foot building just because you
9 have the additional space around it. That does not
10 mean that, that's not -- I would challenge that,
11 that you can't put 100-foot building just because
12 you have -- say Cleveland Clinic has all this land,
13 can't put 100-foot building there.

14 Q Even if it complied with the Code?

15 A No, I don't think it should. It could, and I would
16 certainly challenge it.

17 Q Did you challenge The Cleveland Clinic?

18 A Yes. I would challenge the City, not Cleveland
19 Clinic. Cleveland Clinic -- Cleveland Clinic will
20 do what they're told to do and what we ask them to
21 do. I think that's my big problem, we have our
22 Codes and -- for the safety, health and welfare of
23 our people, that's what our Code is for, not for the
24 bottom line of developers.

25 Q Do you think The Cleveland Clinic building is in

1 violation of the City's Code?

2 A I think it's questionable, but I would have -- had
3 you given me the opportunity to vote to make it
4 71 feet, which I think it is rather, I would have
5 said yes because I want it in my town.

6 Q Do you think it's in violation of the Code?

7 A No, I'm not even questioning that. I think that
8 it's within reason. But I think if it was
9 71 feet -- the question is -- it's so simple: A
10 ballot, we'll say yes, ask us.

11 Q So if Cleveland Clinic is -- you believe 71 feet
12 high --

13 A Well, he said it was 63, so it's 63.

14 Q For the sake of argument, we'll call it 70.

15 A And you're using two-foot front setback, side, you
16 have enough space that you can do that. And I say
17 that you may have it, but you've got to limit the
18 height of that building, and it can't be 100 feet.

19 Q Okay. But the Code provides that it can be up to
20 70 feet if it has the setbacks.

21 A Right.

22 Q And you don't disagree that's what the Code says?

23 A No, I agree there are limitations.

24 Q And if it did violate it, I'm assuming you would
25 challenge it if you so desired?

1 A I would.

2 Q And you chose not to?

3 A If I chose to.

4 Q Okay. Now, Chapter 1149 has height regulations for
5 industrial districts, correct?

6 A Yeah. We've been through that, David. I think I've
7 expressed myself, I don't have any more answers. I
8 have no more answers. I've exhausted everything I
9 have.

10 MR. MENDENHALL: Just let him ask.

11 By Mr. Maistros:

12 Q We're not even close, Ms. Gaydosh. We're not even
13 close to exhausting.

14 A Good, I'm hungry, but other than that.

15 Q Look at Section 1149.04, please.

16 A And why am I being challenged?

17 All I'm doing, as a tax payer, is asking for
18 my right to vote. Challenge me in front of the
19 Judge if you want to.

20 MR. MENDENHALL: He has the right to ask
21 you questions.

22 THE WITNESS: I know he has.

23 MR. MENDENHALL: And your job right now is
24 just to answer those questions.

25 THE WITNESS: Okay.

1 By Mr. Maistros:

2 Q 1149.04.

3 THE WITNESS: This will go to a Judge,
4 will it not, the depositions?

5 All righty. Thanks.

6 By Mr. Maistros:

7 Q 1149.04, do you see that?

8 A Uh-huh.

9 Q That sets forth the permitted uses --

10 A Correct.

11 Q -- in an I-2 district, correct?

12 A Right.

13 Q And if you could look at Plaintiff's Exhibit 2. Do
14 you see that?

15 A Uh-huh.

16 Q Does anything in Plaintiff's Exhibit 2 increase or
17 add to the permitted uses set forth in the 1149.04?

18 A You haven't specified in this Ordinance any of these
19 listed, so how would I know?

20 Q If they're not specified, it wouldn't increase or
21 add additional permitted use, would it?

22 A Well, you're talking permitted use and you're using
23 the enumerated permitted uses, that's what you're
24 referring to.

25 Q That's correct.

1 A They're not referring to that here. (Indicating)

2 Q That's correct.

3 So my question is: Because it does not add to
4 it, there's no additional permitted use?

5 A I don't know that. We don't know that until we
6 start to build. We don't know whether this will
7 coincide with this until they decide to build.

8 (Indicating)

9 Q Does Exhibit 2, Ordinance 97-2012, change 1149.04?

10 A Enumerated -- there's nothing enumerated here, that
11 enumerates. (Indicating)

12 Q So nothing --

13 MR. MENDENHALL: It's a "Yes" or "No."

14 By Mr. Maistros:

15 Q Does it change anything in 1149.04?

16 A No.

17 Q So it does not add any permitted use?

18 A No.

19 Q Okay. So the point is, that this Ordinance 97-2012,
20 the passage of that Ordinance does not allow new
21 uses to be permitted in industrial districts,
22 correct?

23 A No.

24 Q Okay.

25 A But what happens if our Building Inspector decides

1 that maybe this building is close enough to use this
2 law? Who's -- do I challenge it then? Do I have to
3 watch it then because we have not been specific?

4 Q I'm sorry, close enough to what?

5 A Close enough to the permitted uses. You know,
6 it's -- well, I guess I should just strike that.
7 All I'm saying --

8 Q It's either a permitted use or it's not, right?

9 A Right.

10 Q I mean --

11 A And if there's something that comes outside of
12 permitted uses, then you have to challenge it and
13 say this does not apply because it does not permit,
14 it's not permitted.

15 Q Well, if it's not a permitted use, it's not allowed
16 in the industrial district?

17 A Right.

18 Q Okay.

19 A That's it. That's true.

20 Q I mean, for example, you can't build a commercial
21 use or residential use in a zoned industrial
22 district?

23 A No. That's true.

24 Q Okay. So my point is that increasing the height
25 does not increase the permitted use.

1 A No, but it increases the -- it increases the threat
2 to the community.

3 Q What is the increased threat?

4 A The threat is higher buildings in the City, and we
5 didn't get to vote on that.

6 Q But we already agree that you could have a building
7 up to 50 feet high.

8 A Correct.

9 Q Okay.

10 A But this does not limit -- this does not limit.

11 What I'm being told, and what I'm hearing from you,
12 is that unless it specifically says so it can be
13 done. And I know that in the Minutes -- can I just
14 paraphrase something that was in the Minutes of
15 Planning Commission?

16 Q Sure.

17 A There was a comment made that the Planning
18 Commission Chairman said, "Are you telling me with
19 these restrictions we can go as high as 100 feet
20 because we have fire equipment that has a ladder
21 that goes that high?"

22 And do you know what Mr. Finch said, "Yes."

23 Q How long ago was that?

24 A When they were talking about all this.

25 Does this mean -- and the Mayor said, "No, I

1 want to limit it to 65 or 60 feet."

2 I see nothing in this that says 60-foot limit,
3 and yet the Mayor agreed she wanted it limited to
4 60 feet, and that's what I thought the Planning
5 Commission recommended, that it be limited to
6 60 feet. I see no 60 feet here. So if we are going
7 to talk about what was recommended from Planning,
8 that 60 feet should be somewhere with a conditional
9 use.

10 Q Before you you have two Exhibits, one is Exhibit 2,
11 the other is Plaintiff's Exhibit 4, okay, we've
12 already discussed that Exhibit 4 is the old height
13 regulation for industrial districts, and Exhibit 2
14 is the new regulation.

15 A Yes.

16 Q In your opinion, looking at those, which one is more
17 limiting to the height of a building in an
18 industrial district?

19 A I don't know.

20 Q Read them.

21 A I know that there's an awful lot taken out of here
22 that we voted for. And we did not vote for this, we
23 voted for this. Somebody took it out, the text.
24 (Indicating)

25 Q Okay. Read the two texts, which one would have more

1 limiting effect on the height of a building?

2 A I don't know.

3 Q Okay. Exhibit 4, the old Code, would allow you to
4 go one foot for every two feet of setback, correct,
5 so you could go up to --

6 A You're talking about 10, I thought you were talking
7 about 9.

8 Q I am talking about 9.

9 A You're talking about 9, two lines, two lines versus
10 six lines. This text has all been taken out of
11 here. We didn't vote on it. (Indicating)

12 Q Please, please, please listen.

13 A I just wish you would limit your concerns to the
14 lawsuit. You know, I'm not here to challenge the
15 whole Code.

16 MR. MENDENHALL: He can ask you beyond the
17 lawsuit, okay?

18 By Mr. Maistros:

19 Q Not only that, this is your lawsuit. You have sued
20 over this.

21 You sued over Ordinance 97, right?

22 A That we didn't get the right to vote and we didn't
23 have a Public Hearing.

24 Q And that's the basis of your lawsuit?

25 A Absolutely.

1 Q My question is on that Ordinance, okay?

2 A Doesn't matter, we didn't get to vote on it, we
3 didn't have a Public Hearing. This Ordinance does
4 not provide for a Public Hearing. Every Ordinance
5 amending regulations -- any amendment provides for a
6 Public Hearing to be advertised 30 days prior to the
7 enactment. We didn't get a Public Hearing, we did
8 not get a right to vote, we did not have an
9 opportunity to question it.

10 Q You would agree those are two separate things,
11 Public Hearing and right to vote?

12 A No, but it's all I ever asked for.

13 Look at everything I've ever said, letters to
14 the editor, Council meetings, Planning meetings,
15 please, all I want is the right to vote in a Public
16 Hearing. What is all the rest of this? We'll vote
17 for it, the chances are we'd say yes.

18 Do you realize that we would probably say yes?

19 Q Ms. Gaydosh, Exhibit 2, 1149.09 as it's typed up in
20 Exhibit 2, and look at the old 1149.

21 A Right.

22 Okay. I am.

23 Q Okay. Which one of those sections limits the height
24 a building -- strike that.

25 Which one of those sections is more

1 restrictive to the building height?

2 A This one is effective. This one is an illegal Code.
3 (Indicating)

4 Q You won't answer the question?

5 A I will, but I'm just trying to tell you --

6 MR. MENDENHALL: Just give him your
7 opinion, which one is more restrictive, what
8 is your opinion?

9 THE WITNESS: Well, I think that 45 is
10 less restrictive than 35. This --

11 By Mr. Maistros:

12 Q Okay. So your opinion is that the old Code language
13 is more restrictive?

14 A Yes, it restricts it to 35.

15 Q Okay. Except you could go one foot for every two
16 foot of side yard setback up to 50 feet?

17 A If you used a conditional use.

18 Q Right.

19 So you could go as high as you wanted under
20 this, under the old Code? (Indicating)

21 A Fine, we said that was okay.

22 MR. MENDENHALL: Object, asked and
23 answered. We've gone over that.

24 By Mr. Maistros:

25 Q But this one, the new Code, you can only go to 45?

1 (Indicating)

2 A True.

3 Q Okay. So you agree right now we've limited the
4 height of buildings in -- industrial building to
5 45 feet whereas the old Code allowed them to you
6 never knew, it could go as high as 50, 65 feet?

7 A Conditional use, Planning, Charter, Council, Mayor.
8 This does not --

9 Q That's just a stream of words.

10 MR. MENDENHALL: You've answered the
11 question, Sally.

12 By Mr. Maistros:

13 Q So your objection isn't the buildings can be higher,
14 your objection is "I didn't get a chance to vote on
15 it"?

16 A Exactly. I made that clear the first day, every day
17 since then.

18 Q So again, this all comes back to what you should and
19 should not have the ability to vote on?

20 A Exactly. And the right to a Public Hearing to
21 question why it's being increased.

22 Q Did you attend any of the meetings of Planning
23 Commission when they discussed this back in January?

24 A No.

25 Q So you have no idea if they held a Public Hearing or

1 not?

2 A Oh, no, I do have, I do have knowledge. They did
3 not hold a Public Hearing.

4 Q Okay.

5 A I do have knowledge that they did not hold a Public
6 Hearing. They held a Public Hearing on the ARCO
7 Building.

8 Q Was it in executive session that they had this
9 discussion?

10 A Maybe.

11 Q So you don't know when?

12 A How would I know, I'm not in executive session. I
13 don't go to executive sessions.

14 Q Did they hold discussion at Planning on increasing
15 the building height?

16 A Absolutely they did, yes, they did.

17 Q Numerous times, right?

18 A Numerous times.

19 Q And those meetings were all open to the public?

20 A Exactly.

21 Q It went to City Council, correct?

22 A Correct.

23 Q And City Council had three readings of this?

24 A Exactly.

25 Q So we have four, five different Public Hearings,

1 public meetings --

2 A No, no.

3 Q -- where this was discussed?

4 A Public meeting advertised in the newspaper 30 days
5 in advance and all the rest of the requirements, we
6 didn't have that.

7 Q So your lawsuit -- are you familiar with your
8 lawsuit?

9 A Yes, I am.

10 Q I don't have a copy of it. Hold on one second.

11 MR. MENDENHALL: I have a copy of it.

12 MR. MAISTROS: Thank you.

13 MR. MENDENHALL: Here we go.

14 By Mr. Maistros:

15 Q Ms. Gaydosh, your lawsuit that you filed on behalf
16 of -- that your Attorney filed on behalf of you
17 states in Paragraph 5 -- if you could look at that.

18 A Uh-huh.

19 Q In the City of Twinsburg, any zoning change violates
20 the City of Twinsburg Charter unless it complies
21 with City of Twinsburg Charter 7A.01.

22 A Uh-huh.

23 Q Is it your opinion that Ordinance 97-2012 is a
24 zoning change?

25 A I think it's a change in zoning use. And I think

1 that zoning is regulations, zonings are
2 regulations -- let me change that, regulations are
3 zoning.

4 MR. MENDENHALL: It's a "Yes" or "No"
5 question again.

6 A All right.

7 By Mr. Maistros:

8 Q So it is a zoning change, that's your opinion?

9 A Yes.

10 Q And what part of zoning is it changing?

11 A It changes the use of the -- of the parcel of
12 land --

13 Q Okay. It --

14 A -- for I-1 buildings.

15 Q Well, for I-2 and I-3?

16 A I'm sorry. I-2 and I-3, I'm sorry.

17 Q It does not change the permitted uses in those
18 buildings?

19 A No.

20 Q And it does not change them from industrial to
21 commercial, right?

22 A No.

23 Q So when you say "zoning change," what I'm trying to
24 find out is what do you mean by "zoning change."

25 A I mean that regulations are zoning or regulations is

1 zoning, however, it is consistent. Let me --
2 zoning -- height of the building -- let's just use
3 it that way, the way I understand it. Height of
4 buildings is consistent with zoning, so height of
5 building regulations would be consistent with
6 zoning, zoning change consistent with height
7 regulations.

8 Q Okay. So any change in a regulation is a change in
9 zoning?

10 A In zoning use, yes.

11 Q What do you mean "zoning use"? What's "zoning use"?

12 A Okay. Let me just simplify it: Yes. Exactly. I
13 say yes to your answer.

14 Q So any change in a regulation is a change in zoning
15 in your opinion?

16 A Exactly, yes.

17 Q Does the word "regulation" appear anywhere in 7A.01?

18 A Oh, my.

19 Q 7A.01 is in front of you, I believe it's Exhibit 1
20 with the red sticker. It's one of the ones you have
21 in front of you, ma'am.

22 MR. MENDENHALL: It's down here. I'll
23 find it.

24 What did you do with it?

25 MR. MAISTROS: It's not that, unless

1 that's face down.

2 MR. MENDENHALL: No, that's the Complaint.

3 (Recess taken.)

4 - - -

5 By Mr. Maistros:

6 Q Ms. Gaydosh, we were talking about Charter
7 Section 7A.01.

8 A Correct.

9 Q And I asked you the question of whether or not
10 "regulations" appears anywhere in 7A.01.

11 A No, but it would be the uses permitted --

12 Q Okay.

13 A -- would outline -- regulations would outline uses
14 permitted.

15 Q So it's your opinion that regulations is to be read
16 into uses permitted?

17 A Absolutely.

18 Q And I need you to define for me what you mean by
19 "regulations."

20 A Restrictions. That's what the Chart -- I think if
21 you read here, which we won't get into -- but if you
22 look at regulations, your description of
23 regulations, it's first thing is restrictions. So
24 that's what I'm --

25 Q Okay. So things like the width of sidewalks, those

1 are restrictions, right, the width of parking
2 stalls, the thickness of concrete?

3 A Well, maybe we could limit it to districts,
4 districts and uses permitted.

5 Q Okay. And I don't think we have to stretch to do
6 that because that is, in fact, what it says, right?
7 I mean, you just read exactly what 7A.01 says, and I
8 agree with you 100 percent.

9 A That's it.

10 Q Uses and districts.

11 A With regulations restricting.

12 Q But that's -- that's the point you keep adding to
13 things, you keep adding to things that 7A.01 doesn't
14 make reference to.

15 A Well, it does not say regulations and it does not
16 say restrictions, but it does say uses permitted
17 which is under the umbrella of restrictions and
18 regulations. I mean, you can't have a Charter that
19 big.

20 Q No, but uses permitted are specific things, okay,
21 right?

22 You know, uses permitted and permitted uses
23 are specific.

24 A We didn't intend that. I have the original intent
25 of 7A.01, it was for all land use and uses permitted

1 in land use, uses permitted. That does not mean
2 your classified uses permitted. It's uses, height
3 of buildings, whatever, that's what I consider uses
4 under restrictions of regulations.

5 Q But where does that end?

6 A Well -- and it's time and time again, it talks about
7 regulations are, regulations are restrictions,
8 regulations limit, and it's just over and over and
9 over again.

10 Q But in your categorization of that, where does that
11 end, where does the use -- the regulations and
12 restrictions end?

13 A At the end of the 1149 and 97, it's all comes
14 together. If you were to have -- if you were to do
15 what you're saying, that limiting this to changes of
16 zoning, over and over it says that regulations is
17 zoning, is zoning.

18 Q Here's my interpretation of 7A.01 -- and you can
19 just tell me I agree or disagree, okay, that's all
20 I'm asking -- 7A.01 says that any time in the City
21 of Twinsburg a change in zoning of land, a change in
22 the boundaries of zoned land or a change in the
23 permitted uses designated in the Code, any time any
24 of those things are proposed to be changed they have
25 to go to the ballot.

1 A Yes.

2 Q And they do not become effective unless they are
3 passed City-wide in each ward where the land is
4 situated, okay, that's my reading of 7A.01, that any
5 time -- if you are going to change something from
6 industrial to commercial, it has to go to the
7 ballot. If you are going to change and add a
8 permitted use and say we're going to allow whatever,
9 this new use or race track or casino in commercial
10 districts, it has to go to the ballot.

11 A Well, there's an awful lot in the Code that talks
12 about restrictions of height, restrictions of
13 height, regulations restrict height, regulations
14 restrict height.

15 Q Right.

16 A And if we bring height into -- into the discussion,
17 then Charter 7A.01 does provide us with the
18 opportunity, when you're changing that restriction
19 on height, we vote.

20 Q Okay. But if you have -- let me just put this to
21 you, professional, scientific or controlled
22 laboratories are a permitted use in I-2 district,
23 okay? Now, if such a building or such a use was
24 proposed in a building that's 35 feet high or
25 proposed in a use in a building that's 45 feet high,

1 it does not make any difference to the use, correct?

2 A No.

3 Q Okay. And that's what I'm -- that's the point, is
4 that we say here's what's allowed in an industrial
5 district --

6 A Do you separate district uses from subdivision
7 regulations?

8 Q Yes.

9 I mean, they are separate.

10 A Right.

11 Q What does that have to do with --

12 A That's my concern. District uses versus whatever
13 those regulations cover that. Those are not covered
14 by height, those are different set of uses, that's a
15 different category.

16 Q It's not a different set of uses, those are the only
17 permitted uses in an industrial district.

18 A Okay.

19 Q Do you disagree with that?

20 A I only agree that when you change the regulations,
21 it affects the district and the uses and the
22 district, the district. When you change that
23 regulation, that affects that district. 100 foot
24 building versus 75 foot building. We vote.

25 Anything more than that, I have nothing more to say.

1 Q But what if you change the building height and limit
2 it from anywhere up to 50 feet, limit it to 45 feet?

3 A Vote, that's all.

4 Q Even if you reduce the height of a building?

5 A Yes, indeed. Because it talks about maximum and
6 minimum, and the restriction that's in there -- how
7 does it say, something about -- the minimum shall be
8 allowed, but the maximum shall not be, which is
9 where we vote. If it was 35 feet and we changed it
10 to -- if it was 35 feet and someone wanted to build
11 a 25-foot building, no, we wouldn't vote because
12 that's a minimum, that's below the maximum. But
13 when you go beyond the maximum that we have voted
14 for, yes, that's when we vote.

15 Q But that's not what the old Code said.

16 A Yes, it is. It said 35, and you say it says 45,
17 period, period, period.

18 Q Correct.

19 But the old Code would allow you to go to 50.

20 A With conditions of Planning, Council, Mayor, review,
21 you know.

22 Q Okay. I agree with that.

23 But the new Code would not allow you to go to
24 50 period no matter what?

25 A Well, you're not really allowed to go to 50 without

1 the conditional use permit and oversight. So why
2 they took it out, I don't know.

3 Q But you could?

4 A I don't know why.

5 Q Okay.

6 A But who knows, if we're not watching, if maybe it
7 will -- say it does not have a limit anymore and a
8 conditional use will apply. I think somewhere that
9 may even be happening.

10 Q That's an enforcement issue?

11 A Pardon me?

12 Q That's an enforcement issue?

13 A What is?

14 Q Of it happening even though the Code says something
15 else.

16 A A lot of these things -- this would be an
17 enforcement issue, if they build it without being
18 voted by the people. I don't know how the Building
19 Inspector could give a permit for this building.
20 It's amendment to the Code, it was not adopted by
21 the people, it could be challenged.

22 Q Well, you challenged it, and that's really the crux
23 of what I'm trying to figure out.

24 A Right.

25 Q Is it all comes back to what in this document should

1 and should not go on the ballot.

2 A I'm not challenging that at this point. But I think
3 there's a good challenge that there's -- 173-2000 in
4 that book, that was an amendment to UDC. And it
5 says right in there that this Ordinance amends
6 86-2000 which failed in the Courts, and it has not
7 been taken out of there, and that's my next lawsuit.
8 We've been told by Judges time after time you cannot
9 amend the Zoning Code without the vote of the
10 people. Go ask the Judges why they say that, David,
11 don't ask me. It's listed in the Court documents.

12 Q What is?

13 MR. MENDENHALL: Wait for a question.

14 By Mr. Maistros:

15 Q Here's a question: What's listed in the Court
16 documents?

17 A That no one can amend the Code without the vote of
18 7A.01.

19 Q Okay.

20 A Judge Carr.

21 Q Okay. So the Code -- what is the Code?

22 A That's what -- it's not this thing. (Indicating)

23 Q And what is the Code?

24 A It's what we voted for. The ballot that said we
25 voted, that's the Code, and we have not voted since

1 that day. And we have hundreds, hundreds of
2 inclusions of something that was adopted which
3 failed in the Courts.

4 Q Are you saying that you, as a resident of the City
5 of Twinsburg, or the residents of the City of
6 Twinsburg has not had an opportunity to vote on Code
7 amendments?

8 A Yes, I am saying that, yes. We failed -- we failed
9 Ordinance UDC. Why is it all in here? 173-2000 was
10 an amendment to the UDC.

11 Q What was on the ballot last November?

12 A Now you're talking about specific little sections of
13 Code.

14 Q That's what we're always talking about.

15 A No, I'm saying you have to specify. That's why you
16 have Public Hearings, that's why you advertise it
17 for 30 days in the paper, so that we know what
18 you're going to do when you're doing that. We're
19 not getting that anymore.

20 Q So you would agree that the electorate has had an
21 opportunity to vote on Code amendments?

22 A Specific. Specific, but not 173-2000.

23 Q When you amend something, you're only --

24 A No, you amend it blindly.

25 MR. MENDENHALL: Wait until there's a

1 question. He was trying to ask you a
2 question.

3 By Mr. Maistros:

4 Q When something gets amended, you're only amending a
5 certain section?

6 A Yes, you are.

7 Q Okay. And when that section gets amended, we have
8 put that on the ballot?

9 A Yes.

10 Q Numerous occasions over the last --

11 A But that does not change the whole Code.

12 Q Please let me ask the question before you answer,
13 please, okay?

14 But when it gets placed on the ballot, that
15 amended section, then that amended section becomes
16 law and becomes part of the Code?

17 A Yes.

18 Q It replaces the part it amended, correct?

19 A Exactly.

20 Q And somebody or somebodies have to make the
21 determination of what is appropriate to put on the
22 ballot that amends the uses and amends zoning
23 districts and what is not, right?

24 A Right.

25 Q Okay. Because you and I have already agreed

1 numerous times that everything in this document,
2 that being the Twinsburg Zoning Code, does not have
3 to go on the ballot, okay?

4 A Anything that changes from Ordinance 87-1989 does.
5 Any section that's listed Ordinance --

6 MR. MENDENHALL: You've already answered
7 these questions.

8 THE WITNESS: Okay.

9 By Mr. Maistros:

10 Q Well, this is -- this is new, okay? Your new caveat
11 is that anything that amends 87-1989 --

12 A Yes.

13 Q Okay. Anything that amends that section has to go
14 on the ballot?

15 A Yes.

16 Q Regardless of what that refers to?

17 A I guess regarding if it's an Ordinance that provided
18 for the Code, if it's an Ordinance that provided for
19 the Zoning Code, and we voted on that Ordinance
20 87-1989, then, yes, we vote.

21 Q So is it your opinion, as you sit here today, that
22 anything once voted on by the public has to always
23 be voted on by the public?

24 A Absolutely.

25 Q Okay.

1 A Otherwise why do we vote in the beginning, it's to
2 make it a valid document, correct? And if it's
3 going to be changed intermittently, then what we
4 voted for initially is gone.

5 Q Well, you would agree with me that 87-1989, okay,
6 that Ordinance proposed to put an entire document on
7 the ballot, correct?

8 A It amended the entire Code.

9 Q The entire Code was put on there?

10 A Established it.

11 Q Right.

12 Entire Code was put out there from beginning
13 to end, okay? Just like this entire Code from
14 beginning to end, it has regulations, it has
15 permitted uses, it has prohibited uses, and it has
16 zoning districts, okay? Right?

17 A Uh-huh, yes.

18 Q And it also has many, many things that don't change
19 any of those?

20 A But zoning heights in industrial districts changes.

21 Q Okay. It changes the height of a building?

22 A And it can only be established in that section of
23 the Code. It can't be what we voted for in 89 and
24 then, "Oh, forget that, we're going over here and we
25 got something else going on now." No, you got to

1 amend that to make that valid. That's not what
2 you're doing here.

3 Q Okay. So you're saying that building heights
4 amended --

5 A 87-1989.

6 Q Okay. And that changed what?

7 It didn't change the zoning and it didn't
8 change the use, we know that, we agreed to that.

9 A It changed the height of the building, which is the
10 regulation for uses. It is changing the use of
11 land, it is changing the use in the district, it's
12 allowing for a higher building.

13 Q Okay.

14 A Can I just refer something --

15 MR. MENDENHALL: Just wait for a question.

16 THE WITNESS: Okay.

17 By Mr. Maistros:

18 Q But it does not change any of the permitted uses,
19 right?

20 MR. MENDENHALL: Objection, asked and
21 answered.

22 But you can answer it again.

23 A Permitted uses itemized in that section, no.

24 By Mr. Maistros:

25 Q In 1149 --

1 A It does not change the permitted uses itemized here,
2 no, it does not.

3 Q But you are of the opinion it changes a use?

4 A The use of the parcel of land.

5 Q So explain to me, if it does not change a permitted
6 use, how does it change a use?

7 A It changes the parcel of land and the aesthetics,
8 the heights, everything.

9 I think the question was asked originally
10 didn't some community have a restriction on height?

11 Twinsburg hometown atmosphere, isn't that what
12 our Comprehensive Plan -- you are telling me a
13 100-foot building next to Crown Hill Cemetery is
14 going to have a hometown atmosphere? It conflicts.

15 Q Is it your opinion that 97-2012 would allow a
16 100-foot building?

17 A Yes.

18 Q Explain that, please.

19 A I can't, David. I just -- I've done it so many
20 times and I'm not going to be tricked into changing
21 my mind.

22 Q Please just explain how Ordinance 97-2012 would
23 allow a 100-foot building.

24 A It doesn't.

25 Q Okay. So it doesn't allow --

1 MR. MENDENHALL: I don't think she heard
2 your first question.

3 By Mr. Maistros:

4 Q So it does not allow -- you're the one that keeps
5 referring to a 100-foot building.

6 A That's because it was referred to if someone came in
7 and had enough land -- this is out of Zoning, out of
8 Minutes -- "If someone came in and had enough land,
9 could they build 100-foot height building?"

10 And the comment was "Yes" from Mr. Finch.

11 And the comment was, "Well, we don't want
12 that, do we?"

13 And then "The Mayor should know I would like
14 to limit that to 60 feet."

15 And the Planning Commission said, "We could
16 agree to that." But I don't see that 60 feet
17 anywhere.

18 Q Okay. Then let's start there.

19 You have an Ordinance that has proposed to
20 limit the height of buildings in industrial
21 districts to 45 feet in I-2 and I-3, okay?

22 A Okay.

23 Q If you look at the other section of the Code
24 concerning items on top of the building -- let's
25 assume that that would allow things to be up to

1 15 feet high, okay?

2 A Uh-huh.

3 Q What would that limit the buildings to in industrial
4 districts, the overall height of a building?

5 A Under the old Code?

6 Q Under the current Code.

7 A Under the current Ordinance?

8 Q Yes.

9 A Be 45 plus 15.

10 Q Which would be 60?

11 A Yes.

12 Q So you could not build any structure in an
13 industrial district in the City of Twinsburg
14 pursuant to 97-2012 in excess of 60 feet, correct?

15 A Correct.

16 Q Just couldn't do it?

17 A So how are we getting them?

18 Q Here's my question: Is what I just said to you --
19 and I agree that it limits it to that 60 foot
20 number --

21 A Right.

22 Q -- as drafted, as proposed.

23 A Okay.

24 Q So what is the objection to it?

25 A How are we getting higher than 60-foot buildings?

1 Q Tell me where we have a building higher than 60
2 other than The Cleveland Clinic?

3 A Cleveland Clinic, that's enough for now.

4 Q But that's a commercial building.

5 A For now. And you know what my fear is, if we don't
6 watch, it will be everywhere because precedence has
7 been set.

8 Q But you agreed with me that The Cleveland Clinic was
9 allowed to go as high as it is because they had the
10 setback requirements and they had the side yard
11 requirements in order to do that legally.

12 A Right.

13 Q So they were permitted to do it because they acted
14 within the Code, correct?

15 A But not within the 60-foot limit as proposed or was
16 discussed at the Planning meeting, not with the
17 60-foot limit under conditional use. And that was
18 the Mayor, she said, "I don't want them any higher
19 than 60."

20 Q Cleveland Clinic was built long before 97-2012.

21 A I realize that.

22 Q So now there is a 60-foot limit if you look at
23 97-2012.

24 A If we watch, yes.

25 Q But then there wasn't.

1 A Right.

2 Q You and I agree that now we have limited the height
3 of a building in districts to 60 feet, and you are
4 objecting to this?

5 A I object because day one, April, May, June, July,
6 August, September, October, we have not had a Public
7 Hearing, we have not had the right to vote.

8 When are you going to have a Public Hearing so
9 that we can come and collectively as a community ask
10 our questions and decide whether or not we want it?

11 Maybe we could argue enough in a Public
12 Hearing that Council would never have voted for it,
13 but we didn't have that opportunity, and that's my
14 bottom line.

15 Q So you're opposed to 97-2012, not that it didn't go
16 on the ballot, you're opposed to what it does?

17 A No, I'm opposed that it didn't go on the ballot.
18 And you read everything I ever said, the newspaper,
19 I'm only concerned that we didn't get the right to
20 vote. It said it's not the height of the building,
21 the fact is we didn't get the right to vote. That's
22 my day one comment, and that was published in the
23 paper.

24 So what else do I have to answer to?

25 Q I am of the opinion, okay, that the electorate in

1 the City of Twinsburg didn't have to vote on
2 increasing 97-2012, okay, because it didn't change
3 any permitted use or zoning district, okay?

4 A Okay.

5 Q Do you disagree with that opinion?

6 A I do disagree with that.

7 Q Even though that Ordinance restricts and limits the
8 height of a building more-so than what we had
9 before, okay? You would rather that we adopt the
10 old language which would allow, for example, on the
11 Chrysler site, a 100-foot building to go up there?

12 A Uh-huh.

13 Q Okay. And publicly that would be your position, you
14 would rather have 100-foot building --

15 A If that's what this community wants and they vote
16 yes, I don't have a choice, I'm one vote. But don't
17 give us the right to vote, don't give us a Public
18 Hearing to tell us that's what's happening, I
19 object.

20 Q If you prevail in your lawsuit, 97-2012 is not
21 effective, correct?

22 A Right.

23 Q So old Code would be effective?

24 A Right.

25 Q And that would allow a 100-foot building?

1 A Yes. And if you felt --

2 MR. MENDENHALL: You've answered the
3 question.

4 By Mr. Maistros:

5 Q You have answered the question. It's an interesting
6 position that you're taking.

7 A I am --

8 Q You would rather -- you're fighting for 100-foot
9 buildings.

10 A No, I'm not. I'm fighting for 35-foot buildings
11 because that's what the old Code said.

12 Q No, it doesn't.

13 A Yes, it does.

14 Q Ask your Attorney when you're out of here, ask
15 Warner when you get out of here. He can tell you
16 now that that old Code would allow a 50-foot
17 building.

18 A I'll challenge it, I may not win.

19 MR. MENDENHALL: The old Code has
20 conditional use. As long as they meet the
21 setback requirements, they can go as high as
22 they want, as long as they have the two feet
23 setbacks.

24 THE WITNESS: What about restrictions?

25 MR. MENDENHALL: The old Code had a

1 conditional use as high as you want.

2 THE WITNESS: Well, then, we might as well
3 just say that this is all okay and we don't
4 get the right to vote and we don't have a
5 Public Hearing and --

6 MR. MENDENHALL: And that's the point of
7 the lawsuit.

8 THE WITNESS: Everything is over.

9 By Mr. Maistros:

10 Q That's not the point of the lawsuit because -- let's
11 talk about the lawsuit, because that's not what
12 you're asking for in the lawsuit.

13 What you want in the lawsuit are Attorney's
14 fees, correct?

15 A Absolutely.

16 Q So that's the point of the lawsuit. Because if you
17 wanted the right to vote, you never came in and
18 talked to me or talked to the Mayor.

19 A I went to my public officials five times.

20 Q So you did have an opportunity --

21 A I did, and I spoke, and they had to listen to
22 Maistros, "We have to listen to the Law Director."

23 Q And when did you go to your public officials? Which
24 public official did you go to?

25 A God, I have a list of them.

1 THE WITNESS: And I don't know, Warner, if
2 you have a list.

3 Do you have a list?

4 MR. MENDENHALL: Just tell him.

5 THE WITNESS: I went April, June.

6 By Mr. Maistros:

7 Q Who? Who did you talk to in April?

8 A Council meeting, Planning Commission meeting,
9 letters to the editor.

10 Q Let's start April, 2012.

11 A David, I can't -- I have them all listed, I can get
12 them for you.

13 Q I'd ask for a copy.

14 Do you have that written out somewhere?

15 A I have it at home, yes.

16 MR. MENDENHALL: I don't mind if she
17 responds to it in Interrogatories.

18 By Mr. Maistros:

19 Q Let's start April, who did you talk to?

20 A Okay. My first concern was I came to Council -- no,
21 I went to Planning Commission -- where am I here
22 now?

23 I went to the Charter Oversight Committee
24 first --

25 Q Okay.

1 A -- and I said that Ordinance 97 appears to be
2 violating Charter 7A.01.

3 Q Okay.

4 A That was June. I'm not going to give you the dates
5 because I don't know them.

6 The following day -- or the following week I
7 went to Council in June, it's all in the Minutes,
8 and I shared with them.

9 Q Okay.

10 A Then I went to the Planning Commission meeting and I
11 shared it with them.

12 Q In June?

13 A And Mr. Cohen requested that you --

14 MR. MENDENHALL: What month did you go to
15 the Planning Commission?

16 THE WITNESS: June.

17 By Mr. Maistros:

18 Q Okay.

19 A I'll give you the exact dates, I have them at home.

20 Then I went to Planning Commission, then I
21 following night I went to Council.

22 Q So you went to Council a second time in June?

23 A I think I went to Council three times. You were
24 there.

25 Q I was there?

1 A You heard me talk.

2 Q I did?

3 A My big concern, you didn't give us the right to
4 vote, you didn't give us a Public Hearing. That was
5 it. I said it in the paper.

6 Q What were you speaking at?

7 A Ordinance 97, Ordinance 18.

8 Q You were speaking at the Council meeting, correct?

9 A Yes, about those Ordinances. I brought to their
10 attention Ordinance 18 was empty, it was invalid,
11 had to be repealed.

12 Q And we did that.

13 A And you did that.

14 Q Okay.

15 A Why, because I brought it to Council's attention,
16 okay?

17 Q But it was done.

18 A It was done.

19 Q Can you understand anybody's frustration that when
20 you bring something to somebody's attention and they
21 do exactly what you want that you still blame them
22 for it?

23 A What frustrates me, David -- and I made this public
24 comment -- we spend one million dollars a year for
25 salaries for people to do this for us, and I have to

1 come here and ask the Council to correct something.
2 That frustrates me. That's what I want on the
3 record. That frustrates me, it causes me concern.
4 It causes me doubt. You know, my doubt is not
5 something I've created in a dream or because I'm
6 taking medication, it's because of the reality of
7 what's happened. And you know how many times I've
8 come to Council and corrected issues.

9 Q Any other times you talked to public officials than
10 the ones you've discussed?

11 A Public officials?

12 Q Regarding this specific issue.

13 A I emailed all the Council members.

14 Q When did you send emails to Council members?

15 A Sent them in August the night before they voted, and
16 I quoted the ruling of the Judge.

17 Q What ruling of what Judge did you quote?

18 A It was Judge Carr, and it referred to the Charter --
19 or to the Zoning Code amendments.

20 Q Okay. Any other contacts with any other public
21 officials than the ones you've discussed?

22 A Other than public meetings, none.

23 Q And the emails?

24 A The email.

25 Q And you only sent one email to Council the night

1 before they voted?

2 A I sent several to Maureen Stauffer. She wanted to
3 know what my opinion was and what we could do to
4 correct all this, and I told her this is the way
5 we've always done it in the past.

6 Q And what was that?

7 A Ordinance 97 and changing the regulations without
8 our vote.

9 Q No, I'm sorry, what was the way you have always done
10 it in the past?

11 A In 2008 when we voted on commercial -- increasing
12 the heights in commercial districts, 2008, we had a
13 Public Hearing, we had the right to vote, changed to
14 C-5, C-3, we voted for that. It's published in the
15 paper.

16 Q You're familiar with 1201 -- that was used as an
17 Exhibit earlier today -- aren't you?

18 Let's see if I can find one.

19 MR. MENDENHALL: There it is.

20 (Indicating)

21 By Mr. Maistros:

22 Q Exhibit 5, 1201. Do you see that?

23 A Yes.

24 Q You want to pull that out so you can take a look at
25 that?

1 You're familiar with that Code section,
2 correct?

3 A Yes.

4 Q And 1201.A talks about that "Council may from time
5 to time on its own motion or on petition"
6 "change" --

7 A "After."

8 Wait a minute, continue.

9 Q -- "after public notice and hearing, amend or change
10 the regulations, districts or, building lines herein
11 established."

12 A Right, after public notice.

13 Q Okay. They can change the regulations, districts or
14 building lines. You see that, right?

15 A Right.

16 Q And then do you see the last section there that
17 talks about when it has to go to the ballot?

18 A Right.

19 Q And it only talks about changing zoning
20 classifications or districts, it does not talk about
21 changes in regulations, changes in regulations,
22 correct, it leaves that out?

23 A Pardon me?

24 Well, can I go on to where I find my concern,
25 is we have another Section 1303.1, I believe it is.

1 MR. MENDENHALL: Just stick with the
2 answer to that. You have to answer the
3 question.

4 By Mr. Maistros:

5 Q So there's a difference between Section A and
6 Section D?

7 A No, none at all, it coincides, it flows right into
8 it.

9 Q Well, Section A talks about regulations and
10 Section D does not talk about regulations, it talks
11 about when it's going to the ballot.

12 A Changes the district.

13 Q Section A specifically uses the word "regulations,"
14 correct?

15 A Yes.

16 Q Section D specifically does not use the word
17 "regulations," correct?

18 A But it says "any of the preceding changes," which
19 goes back up to "amend or change the regulations,
20 districts or, building lines."

21 Q Can you read the last --

22 A "Preceding changes," where is -- preceding what?
23 Preceding what?

24 Q And you read the last sentence in Paragraph D of
25 1201, "Said issue shall," beginning with that.

1 A I think it's -- changing classifications or
2 districts is what I'm referring to.

3 Q I know what you're referring to.

4 What I'm saying is there's -- the word
5 "regulations" does not appear in Section D when it
6 talks about going to the --

7 A No, but it talks about preceding changes, and
8 preceding is up there. I mean, you just don't
9 duplicate the same paragraph over and over again.
10 You say preceding paragraph, which is motion, public
11 notice, amend, preceding change, change the
12 regulation, preceding change, change regulation.

13 Q Can you read the last sentence of Paragraph D for me
14 aloud?

15 A "Change in zoning use classifications or districts."

16 Q I'll read it. Section D, the last sentence says,
17 "Said issue shall be submitted to the electors of
18 the City only after approval of a change in zoning
19 classifications or districts, or in the uses
20 permitted in any zoning use classifications or
21 districts by the Council for an applicant."

22 Okay. Do you agree that's what that says?

23 A I agree that it does not repeat up here, it says
24 "Council may." This is what I'm concerned about,
25 "Council may" "on its own motion," which is what

1 they've done here after public notice and Hearing.

2 Maybe we should just set it, just establish it,
3 after Public Hearing and notice, we didn't get it.

4 Q Okay. Let me --

5 A So that's --

6 Q Let's assume Council has a Public Hearing, a notice
7 and Public Hearing and discusses the 97-2012, height
8 regulations, okay, does that satisfy your concern?

9 A Yes.

10 Q Even if they don't put it on the ballot?

11 A Well, then no, it has to go to the ballot because it
12 says right there -- it says, Council, shall we adopt
13 Ordinance 97 based upon this Hearing, yes or no?
14 And if they say yes, then we establish the date of
15 the election.

16 Q Okay. So your issue isn't just the Public Hearing,
17 your issue is that you claim they didn't have a
18 Public Hearing and they didn't put it on the ballot?

19 A Exactly, my day one concern.

20 Q So it's not the Public Hearing aspect of it.

21 So let me ask you --

22 A You say it's not the Public Hearing?

23 Q It's not just the Public Hearing.

24 A It is the Public Hearing and the right to vote.

25 Whatever else you want to make out of it you can,

1 but that's my concern.

2 Q Is there any change to a regulation that Council can
3 pass on its own? Yes or no?

4 A No.

5 Q Okay.

6 A Not if we voted for it originally. Because if they
7 change it, then they changed our vote. Why would we
8 vote in the beginning if they can come through and
9 make all these changes.

10 Q The 87-1989, okay, that was placed on the ballot
11 contained in Section 1161, okay -- and I will put to
12 you that 1161 established Planned Unit Development
13 District, PUD, okay? Within that document, it talks
14 about review, and the review process is that Chief
15 Building Inspectors, Zoning Inspector, Fire Chief,
16 Police Chief, City Planner shall all review.

17 If Council decides -- let's say, example,
18 Assistant Fire Chief, we're going to have the
19 Assistant Fire Chief review that. So we're changing
20 it from the Fire Chief to the Assistant Fire Chief
21 or Fire Inspector, does that mean that that has to
22 go to the ballot because that was passed in 1989?

23 A PUD was passed as its own, it's -- it's a completely
24 different -- or the regulations and everything was
25 established in there. Planned Unit Development is

1 different --

2 MR. MENDENHALL: He asked a question.

3 By Mr. Maistros:

4 Q It was passed in 1989.

5 MR. MENDENHALL: You voted on the PUD?

6 THE WITNESS: We voted on the PUD.

7 MR. MENDENHALL: Do you vote now if it
8 changes? Yes or no?

9 THE WITNESS: To be honest, I don't know
10 exactly what's in the PUD at this point.

11 By Mr. Maistros:

12 Q I'm saying if the PUD requires the Fire Chief to
13 review something and we change it to the Fire
14 Inspector -- if we change the language to read "Fire
15 Inspector" instead of "Fire Chief," since it was
16 voted on, does that mean it has to go back to the
17 electorate on that issue?

18 A I can't answer that, I don't know.

19 Q Well, you said before that anything voted on once
20 always has to go back. And that was voted on once,
21 so is it your position that that would have to go
22 back?

23 A That's restrictions within a development. The PUD
24 was outlined completely different, it's its own
25 district.

1 MR. MENDENHALL: It's a "Yes" or "No"
2 question.

3 By Mr. Maistros:

4 Q We can pick any district.

5 A You don't see --

6 Q What would be a district that would be more
7 comfortable for you to answer the question,
8 commercial district? Do you want to pick a
9 commercial district?

10 A We've already voted on the height of commercial
11 district, we had a Public Hearing and we voted, that
12 was 2008.

13 MR. MENDENHALL: You can answer the
14 question.

15 Could you re-read his questions for her,
16 please?

17 (Question read by Reporter.)

18 By Mr. Maistros:

19 Q Do you understand that question?

20 A Yes, I do. And without understanding everything in
21 the PUD, I can't answer that question.

22 MR. MENDENHALL: I'll put an objection in
23 that I do think it calls for a legal
24 conclusion.

25 But it is a "Yes" or "No" question, Sally.

1 Do you know?

2 THE WITNESS: Pardon me?

3 MR. MENDENHALL: Do you know? Can you
4 answer the question? Do you know?

5 THE WITNESS: I can't. I can't. I can't
6 answer the question.

7 By Mr. Maistros:

8 Q Are you aware of whether or not Defendants'
9 Exhibit B, which is Chapter 1149 in its entirety --
10 can you tell from this document whether or not that
11 was part of 87 -- or I'm sorry, the 89 Code?

12 A Yeah. Here. (Indicating)

13 Q So you would agree with me that 1149 was part of the
14 89 adoption that was on the ballot, correct?

15 A Yes.

16 Q So is it your position that anything in 1149,
17 Defendants' Exhibit B, any change to anything in
18 there regardless of how minor has to go back to the
19 ballot?

20 A Yes, I would say that any of these enumerated would
21 have to come back to the ballot.

22 Q So anything changed in there has to go to the
23 ballot?

24 A Yes, because wouldn't want them to insert something
25 in that we didn't want.

1 Q Part of that Code Section 1149.10F -- do you see
2 that, dealing with noise?

3 A Uh-huh, right.

4 Q For example, talks about specific noises. "The
5 operation of speakers, bells and motor vehicles,
6 shall not exceed the average intensity of the street
7 traffic noise," et cetera, et cetera.

8 If the City added another sound-making device,
9 horns, for example, air horns to that restricting
10 the noise level, would that addition have to go on
11 the ballot? Would we have to put that to the
12 electorate, "Should we consider air horns as part of
13 noise violation or restriction?"

14 I mean, it's a trivial matter. And my point
15 is, at some point in time, there seems to be
16 something is so trivial it does not have to create a
17 ballot issue.

18 A Well, then, let's put it in the Code.

19 Q How would we categorize that, because I know you're
20 a smart enough person to agree with me that not
21 every word that gets change --

22 A Not every word. But if it changes the uses or
23 affects the public or any of that -- and I think we
24 can boil it down to one thing, David, we didn't get
25 the right to vote, we didn't get the right to Public

1 Hearing. Let's argue that in Court and see how we
2 go.

3 Q But a person could argue by changing and adding air
4 horns we didn't get the right --

5 A Well, then, they can come in and fight with you
6 about that.

7 Q Where do we draw the line?

8 A I'm not going to sit here and argue every little
9 thing that you think I -- you say I say. Just
10 please limit it to what my lawsuit is all about.

11 Q I'm trying to find that out.

12 A We didn't get the right to vote. And if you can
13 defend that successfully in the Courts, if you can
14 defend that successfully in the Courts, then go for
15 it.

16 Q Part of the way of doing that is to find out exactly
17 what you're saying.

18 A I'm saying 7A.01 has prevailed in our Courts four
19 times about this, four times. Not once, four. And
20 that's what I'm going by.

21 Q Let's assume that somebody says there's a conflict,
22 7A.01 is different than 1201.

23 A Right.

24 Q What controls, the Charter or Code section?

25 A 1201 repeats the Charter, it repeats the Charter

1 verbatim.

2 Q Let's say somebody says there's a conflict, what
3 controls, 7A.01 or Charter?

4 A I would say, "What in 1201 is conflict? Tell us
5 what." But they can't say take "D" out and say it
6 conflicts with the Charter because it quotes the
7 Charter.

8 Q Forget about 1201. Let's say Section 5,000,732,
9 let's say there's a conflict between the Charter and
10 Code, you would agree Charter controls, wouldn't
11 you?

12 A Absolutely.

13 Q Right.

14 The Charter controls?

15 A It does, and that's what I'm here about.

16 Q So if we can agree that the Charter controls, then
17 we're going to have a Judge decide whether or not
18 this falls under the umbrella of the Charter,
19 correct?

20 A If it doesn't fall under the right to Public Hearing
21 and the right to vote, throw the Charter out.

22 MR. MENDENHALL: Just --

23 A That's the bottom line.

24 By Mr. Maistros:

25 Q Then we're back to everything should go before the

1 electorate, we should have a pure democracy?

2 A Anything that anyone wants to take before the ballot
3 they can come to you and argue and file a lawsuit.
4 Anyone who wants to challenge it has the right. I'm
5 not challenging it.

6 Q Of course you are.

7 A I'm challenging the Public Hearing. Finally, my
8 last word, the first word I said and the last word,
9 we did not get a right to vote, and we did not get a
10 right to a Public Hearing to discuss this, to
11 express our concerns, and that's what our government
12 is all about. That's why we have 7A.01.

13 Q Paragraph 14 of your lawsuit states that the City
14 officials have needlessly caused the taxpayers
15 hundreds of thousands of dollars.

16 A Correct.

17 Q Please give me some breakdown of that hundreds of
18 thousands of dollars.

19 A Every time -- well, they paid me \$60,000 alone.

20 Q When did they pay you \$60,000?

21 A Well, all the lawsuits I won, 15, 12, 30, whatever.

22 What does that come out to?

23 Average is 60,000.

24 Q Which lawsuit did you receive \$15,000?

25 THE WITNESS: You got them listed, Warner?

1 MR. MENDENHALL: No, we don't.

2 Just answer to the extent you remember.

3 A The four lawsuits that I had before Judge Carr,
4 Whittemore, Spicer, Williams and Slaby, those are
5 the Judges that ruled.

6 By Mr. Maistros:

7 Q Well, you're referring to some of the same lawsuits
8 and appeals --

9 A Right, all because of 7A.01.

10 Q So your position is that you or your Attorney was
11 awarded \$60,000 -- approximately \$60,000 dollars in
12 legal fees?

13 A Uh-huh.

14 Q So that's \$60,000, where does the other hundreds of
15 thousands dollars come from?

16 A Clair Dickinson, public official from Summit County,
17 coming into my city and charging \$300 an hour to
18 fight against my right to vote and lose, that's what
19 I'm referring to.

20 Q Public official?

21 A Yes. Mr. Dickinson was President of County Council
22 when he was over here as an Attorney fighting --
23 getting paid \$300 an hour, and his law firm, 125 for
24 one, 175 for another.

25 Q Which one's this?

1 A The last lawsuit that Judge Spicer ruled on Lux and
2 Leffler and Dickinson without a contract.

3 Q I think you're mixing it up because they represented
4 the City in the MSRK lawsuit.

5 So which lawsuit are you referring to?

6 A The one about the Ordinance and our right to vote on
7 zoning, was that the --

8 MR. MENDENHALL: Just answer the best you
9 can.

10 A Ordinance on right to vote on the Army Reserve
11 property.

12 By Mr. Maistros:

13 Q Okay. You're saying there was a lawsuit over the
14 Army Reserve property?

15 A Yes, we didn't get a right to vote on that land.

16 Q Was that one of your lawsuits?

17 A Yes. Those are all my lawsuits.

18 Q Okay. And how much did the city pay Mr. Dickinson
19 or his law firm?

20 A \$300 an hour.

21 Q You don't know the total?

22 A No, I don't.

23 Q You have no idea if it was 5,000 or 50,000?

24 A No. It was very hard to get the information out of
25 the City on that information, there was supposedly

1 some form of confidentiality.

2 Q So you have no idea how much?

3 A And I know that Lux and Leffler, between the two of
4 them, got 125 and 175.

5 Q Thousand?

6 A Dollars per hour, and I don't know the number of
7 hours.

8 Q And that was all on the Army Reserve property
9 lawsuit?

10 A I believe that was all the Army Reserve, yes. Judge
11 Spicer's ruling, that's the case.

12 Q Any other?

13 A Yes, the first lawsuit was about the UDC, that was
14 Judge Slaby.

15 Q And your position is the City paid out hundred -- or
16 paid out money in addition to your Attorney's fees
17 to whom?

18 A I didn't have access to all the finances.

19 Q So you don't know how much the City paid?

20 A But I know it was a lot of money.

21 Q You have no idea if it was hundreds of thousands of
22 dollars?

23 A Hundreds of thousands. I wouldn't hesitate saying
24 hundreds of thousands when you total up last
25 10 years lawsuits.

1 Q Your lawsuits only, is that what we're talking
2 about?

3 A All lawsuits since 2010, 2000 --

4 THE WITNESS: 2000, right?

5 Yeah, 2000. The consent agreement, a lot
6 of --

7 By Mr. Maistros:

8 Q Which consent agreement are you referring to?

9 A Well, seven parcels of land were rezoned without a
10 right to vote because Council signed off on the
11 Mayor.

12 Q What was the result of that lawsuit?

13 A Went to the Supreme Court, and they didn't hear it
14 because --

15 Q What was the result in the lower Court?

16 A Because Mr. Webster told them that our Charter was
17 invalid.

18 Q What was the result of the lower Court?

19 A It was invalid because he did not recognize Eastlake
20 versus City Supreme Court ruling, and that was what
21 it came down to, our Charter.

22 Q So you did not prevail in that lawsuit, is that what
23 you are saying?

24 A No, we did not because the Supreme Court didn't hear
25 it.

1 Q But the lower Court ruled against you?

2 A No, the lower Court ruled in our favor.

3 Q So you did prevail?

4 A The lower Court did --

5 Q How about the Appeals Court, what did the Appeals
6 Court say?

7 A The Appeals Court was the one we took it to. I
8 can't remember. All I know is that the City has
9 spent hundreds of thousands of dollars to fight
10 against our right to vote, and they're doing it
11 again.

12 Q Do you plan on having an Expert Witness testify on
13 your behalf in this lawsuit? Do you know?

14 A No, not that I know of. We can handle it ourselves.

15 Q You haven't engaged an Expert to testify?

16 A I'm knowledgeable about my Zoning Code and my
17 Charter.

18 Q Do you consider yourself an Expert?

19 A I consider myself a knowledgeable taxpayer. I can
20 tell you my husband is a millionaire, you can't tell
21 me he has to be a financial wizard. He can do it if
22 he wants.

23 All you do is present yourself, right?

24 Isn't there such a thing as pro se?

25 Q Qualifications, credentials.

1 Just to be clear, you are not disputing
2 1148.15, 1148.15 --

3 MR. MENDENHALL: Objection.

4 A I'm disputing 1303 --

5 MR. MENDENHALL: I'm objecting because the
6 lawsuit speaks for itself.

7 MR. MAISTROS: Lawsuit does not speak for
8 itself.

9 Your client --

10 By Mr. Maistros:

11 Q I mean, I think we agree 1148.15 does not change
12 height regulations from when it existed prior to the
13 lawsuit.

14 A I'm not going to agree to that. I wouldn't be in
15 Court if I thought it was the same, or I don't --
16 listen, I'm going to bottom line just what I started
17 out, my concern, do whatever you want to, mutilate
18 it however you want.

19 Q Are the height regulations in commercial districts
20 being challenged by you?

21 A If we didn't get to vote for it, yes.

22 Q Okay. So if it does not change what you voted on in
23 1989 --

24 A It does change --

25 Q Changes the wording, but --

1 A Changes text, and the text cannot be changed without
2 proper procedures.

3 Q Okay. Well, that's a new item here now.

4 A It is.

5 Q Your position --

6 A T-e-x-t.

7 Q That even changing the text, even though it does not
8 change any of the regulations --

9 A Well, it does.

10 Q -- has to be put on the ballot?

11 A It changes the regulations in this case.

12 Q The commercial district you're saying?

13 A No, for this industrial.

14 Q I'm talking about commercial district.

15 A I'm challenging the commercial district.

16 Q That was my question.

17 A No, I'm not challenging.

18 Q You're not challenging the commercial district?

19 A No, I'm not.

20 Q But if the text alone was changed and didn't change
21 any of the regulations, it would still be
22 challengeable in your opinion?

23 A Yes, because we didn't get to have a Public Hearing
24 or vote.

25 Q Is it your opinion that a proposed amendment in

1 97-2012 would allow big box stores in the City of
2 Twinsburg?

3 A I'm not worried about big-box stores, I have made
4 that adamantly clear. I know how to take care of
5 big-box stores if I don't like them, and this is not
6 the way I would do it. We stopped big-box stores in
7 our town three times.

8 Q But have you stated --

9 A Never.

10 Q -- publicly --

11 A Never.

12 Q Never?

13 A Never.

14 Q So anybody stating that you stated that would be a
15 liar?

16 A Absolutely. And I made that clear to you at the
17 Charter Oversight Committee meeting. Those were not
18 my words. Mr. Finch has it in his report, big-box
19 stores. Not me, Mr. Finch.

20 Q Are you aware that the Charter Review Oversight
21 Committee issued an opinion to Council that
22 Ordinance 97-2012 did not trigger 7A.01 --

23 A Absolutely, based upon your advice.

24 Q Try this again. Please let me finish my question.

25 A Okay.

1 Q Are you aware that the Charter Review Oversight
2 Committee recommended to Council that 97-2012 does
3 not have to go to the ballot because it did not
4 trigger any of the elements of 7A.01?

5 A Based upon your advice. And as Mr. Johnson, an
6 Attorney, said, "We don't have any power, Sally. It
7 doesn't matter what we say, we don't have any
8 power."

9 Q Were you at the Planning Commission meeting when the
10 representative from the Charter Review Oversight
11 Committee made his public statement regarding
12 97-2012?

13 A Who was the Charter Oversight Committee member?

14 Q Were you there? Do you recall being there?

15 A Pardon me?

16 Q Do you recall being there when the representative
17 from the Charter Review Oversight met --

18 A I was not at the meeting where a Charter Oversight
19 made that comment. I was in attendance when
20 Mr. Finch referred to people in the community
21 concerned about big-box stores, and I immediately
22 stood up and said, "Just a minute, that's not my
23 concern." I corrected it before the Planning
24 Commission immediately. That is not my concern, and
25 I made that clear. My concern is right to vote.

1 Q One moment, and we can probably wrap up here.

2 Okay. Ms. Gaydosh, we covered a number of
3 different topics today. As you sit here right now,
4 is there anything that you recall that you might
5 have given me an answer to that you want to change?

6 A I don't recall anything.

7 Q So you stand by all your answers?

8 A I stand by the answers to the best of my ability
9 based upon your questions and relevant to my case,
10 yes.

11 Q Okay. So that last caveat, if you determined it's
12 not relevant to your case, you might have been
13 mistaken about your answer?

14 A No, I believe that I've been very clear about the
15 intent of my case, very clear, from day one, my
16 concern.

17 MR. MAISTROS: I have no further
18 questions.

19 (Discussion had off record.)

20 MR. MENDENHALL: We can agree that the
21 sections that we referred to that we can admit
22 those sections, because we referred to a lot
23 of different sections in this deposition as
24 Exhibits, without objection and for the
25 purposes of, you know, briefing. I mean, this

1 is what I'm relying on dated June 1, 2001. I
2 saw yours was a little different date, but I
3 think the wording is the same from everything
4 I saw. (Indicating)

5 MR. MAISTROS: The ordering is the same.
6 The only thing to stay away from is reference
7 to page number as compared to section numbers.
8 If we stick with section numbers, we'll be
9 good.

10 MR. MENDENHALL: Okay. Well, we can do
11 that.

12 We can agree that if I have any objection
13 or you have an objection that we'll work that
14 out.

15 MR. MAISTROS: That's fine.

16 MR. MENDENHALL: I don't think there will
17 be.

18 MR. MAISTROS: I don't think there's an
19 issue.

20 MR. MENDENHALL: Okay.

21 - - -

22 (Deposition concluded at 3:18 o'clock, p.m.)

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I, MARCELLA GAYDOSH, certify that I have read this transcript consisting of one hundred and nineteen (119) pages in its entirety, and that it is a true and correct transcription of the testimony given by me.

MARCELLA GAYDOSH

Subscribed and sworn to before me this _____ day of _____, 2013.

Notary Public

My commission expires: _____

C E R T I F I C A T E

1 STATE OF OHIO,)
2)SS:
3 SUMMIT COUNTY.)

4 I, Susan M. Petro, a Notary Public within and for
5 the State of Ohio, duly commissioned and qualified, do
6 hereby certify that the within named Witness, MARCELLA
7 GAYDOSH, was by me first duly sworn to testify the truth,
8 the whole truth and nothing but the truth in the cause
9 aforesaid; that the testimony then given by the Witness
10 was by me reduced to Stenotypy in the presence of the
11 Witness; afterwards transcribed by computer-aided
12 transcription, and that the foregoing is a true and
13 correct transcription of the testimony so given by the
14 Witness as aforesaid.

15 I do further certify that this deposition was taken
16 at the time and place in the foregoing caption specified,
17 and was completed without adjournment.

18 I do further certify that I am not a relative,
19 Council or Attorney of either party, or otherwise
20 interested in the event of this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand and
22 affixed my seal of office at Akron, Ohio, on this 22nd day
23 of April, 2013.

24 _____
25 Susan M. Petro, Notary Public
in and for the State of Ohio.

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C E R T I F I C A T E


STATE OF OHIO,)
)SS:
SUMMIT COUNTY.)

I, Susan M. Petro, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named Witness, **MARCELLA GAYDOSH**, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the Witness was by me reduced to Stenotypy in the presence of the Witness; afterwards transcribed by computer-aided transcription, and that the foregoing is a true and correct transcription of the testimony so given by the Witness as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, Council or Attorney of either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Akron, Ohio, on this 22nd day of April, 2013.



Susan M. Petro, Notary Public
in and for the State of Ohio.

My commission expires May 7, 2017.

**CHAPTER 1141
DISTRICTS GENERALLY**

- 1141.01 ESTABLISHMENT OF DISTRICTS.**
- 1141.02 TYPE OF DISTRICT.**
- 1141.03 ZONING DISTRICTS MAP.**
- 1141.04 INTERPRETATION OF DISTRICT BOUNDARIES.**
- 1141.05 ESTABLISHMENT OF ZONING DISTRICT REGULATIONS.**

1141.01 ESTABLISHMENT OF DISTRICTS.

For the purpose of promoting the public health, safety, morals, convenience and the general welfare of the community, and in order to classify, regulate and restrict the location of trades, residences, recreation and other uses and the buildings designed for special uses, to regulate and limit the height, bulk, number of stories and size of buildings and other structures hereafter erected or altered, to regulate and limit the percentage of lot area which may be occupied, setback building lines, size of yards, courts and open spaces within and surrounding such buildings, the density of population, the territory within the City of Twinsburg, Summit County, Ohio, is hereby divided into eighteen(18) classes of Districts and Classifications. These districts, as enumerated in Section 1141.02 are of such number, shape, kind and area and of such common unity of purpose, and adaptability of use that are deemed most suitable to carry out the purposes of this Ordinance. (Ord. 87-1989. Passed 7-11-89)

1141.02 TYPES OF DISTRICTS.

In order to carry out the intent and purpose of this Zoning Ordinance, the city is hereby divided into the following use or zoning districts, all of which are designated on the Zoning Map by boundaries and symbols.

- R-2 Residential District
 - R-3 Residential District
 - R-4 Residential District
 - R-5 Single Family Cluster District
 - R-6 Apartment District
 - R-7 Senior Residence District
 - R-8 Two Family District
 - PF Public Facilities District
 - C-1 Local Commercial District
 - C-2 Community Commercial District
 - C-3 Interchange Business District
 - C-4 Commercial Office District
 - C-5 Historic Office District
 - I-1 Intensive Commercial and Light Industrial District
 - I-2 Limited Industrial District
 - I-3 Heavy Industrial District
 - FW Flood Way Overlay District
 - PUD Planned Unit Development
- (Ord. 87-1989. Passed 7-11-89)

**DEFENDANT'S
EXHIBIT**
A 4-5-13
Gardosh

**CHAPTER 1149
INDUSTRIAL DISTRICTS**

- | | |
|---|--|
| 1149.01 I-1 INTENSIVE
COMMERCIAL AND LIGHT
INDUSTRIAL DISTRICT-
PURPOSE. | 1149.08 YARD AND BUILDING
SETBACK REQUIREMENTS-
INDUSTRIAL DISTRICTS. |
| 1149.02 I-1 PERMITTED USES. | 1149.09 HEIGHT REGULATIONS. |
| 1149.03 I-2 LIMITED DISTRICT -
PURPOSE. | 1149.10 INDUSTRIAL PERFORMANCE
STANDARDS. |
| 1149.04 I-2 PERMITTED USES. | 1149.11 MULTIPLE OCCUPANCY-
INDUSTRIAL DISTRICTS. |
| 1149.05 I-3 HEAVY INDUSTRIAL
DISTRICT. | 1149.12 DWELLINGS IN INDUSTRIAL
DISTRICTS. |
| 1149.06 I-3 PERMITTED USES. | 1149.13 ENTERTAINMENT
ESTABLISHMENTS |
| 1149.07 LOT AREA, WIDTH AND
COVERAGE REGULATIONS. | |

**1149.01 I-1 INTENSIVE COMMERCIAL AND LIGHT INDUSTRIAL DISTRICT-
PURPOSE.**

This district is established to provide for uses which provide sales and service in support of the primary business activities in the community. The district also provides for activities which, because of their nature generate increased traffic volumes, have substantial parking and storage demands, and other special characteristics which distinguish them from other commercial and industrial activities. (Ord. 87-1989. Passed 7-11-89)

1149.02 I-1 PERMITTED USES.

- A. Administrative and business offices.
- B. Automobile, truck, trailer, and farm implement sales and rental, service, and storage of new and used equipment.
- C. Fuel, food and goods distribution station but excluding coal and coke and bulk storage.
- D. Monument sale and display.
- E. Motor freight garage and offices but excluding warehousing.
- F. The following use when conducted not closer than fifty feet (50') of any residential district. Where the I-1 district abuts upon but is separated from the residential districts by a street, the width of the street may be considered as part of the required separation.
 - 1. Carpenter, cabinet, upholstering, sheet metal, plumbing, heating, roofing, air conditioning, sign painting, painting and other similar establishments.
 - 2. Laundry, cleaning and dyeing plant.
 - 3. Repair services for machinery and equipment, including repair garages and specialty establishments, such as motor, body and fender, radiator, motor tune-ups, muffler shops, tire repairing sales and service, including vulcanizing.
 - 4. Special trade contractors, building materials, and wholesalers.
- G. Plant greenhouse.

- H. Uses not listed herein and which are comparable in character to those types listed may be permitted by the Planning Commission.
- I. Signs: As regulated by Chapter 1173 of this Ordinance.
- J. Accessory uses clearly incidental to and customarily related to the primary permitted use. (Ord. 87-1989. Passed 7-11-89)

1149.03 I-2 LIMITED INDUSTRIAL DISTRICT - PURPOSE.

This district is established to provide for industrial uses that are compatible with one another. The district is regulated to be exclusively used for industrial purposes free from the encroachment of residential and commercial development. (Ord. 87-1989. Passed 7-11-89)

1149.04 I-2 PERMITTED USES.

- A. Uses enumerated in an I-1 Intensive Commercial and Light Industrial District (Sec. 1149.02) are permitted uses in an I-2 Limited Industrial District.
- B. Administrative and business offices.
- C. Warehousing, refrigerated and general storage.
- D. The manufacture, compounding, processing and assembling of products such as:
 1. Bakery goods, candy, cosmetics, pharmaceuticals, toiletries and food products, except fish or meat products, sauerkraut, yeast, rendering or refining of fats or oils.
 2. Electrical and electric appliances, instruments and devices, television, radio, phonograph, and household appliances.
 3. Laboratories and processing - experimental, film or testing provided no operations shall be conducted or equipment used which would create hazards, noxious or offensive conditions.
- E. Veterinarian hospital or clinic.
- F. Printing, publishing and allied industries.
- G. Professional, scientific, or control instruments and research laboratories.
- H. Banking facilities, restaurants, medical facilities, auditoriums, display rooms and classrooms, and the like, which are designed for the use of operators, employees and business visitors of a business, industry or use otherwise permitted in the district and which are used primarily for such purposes.
- I. Pottery and figurines, using previously pulverized clay, and kilns fired only-with gas or electricity.
- J. Musical instruments, toys, novelties, rubber or metal stamps, and other small rubber products.
- K. Electric and neon signs, billboards and other commercial advertising structures.
- L. Blacksmith, welding or other metal working shop.
- M. Carpenter, cabinet, upholstering, sheet metal, plumbing, heating, roofing, air conditioning, sign painting, painting and other similar establishments.
- N. Food and goods distribution station, warehouse and storage.
- O. Governmental storage garage and yards.
- P. Ice manufacturing and cold storage plant; creamery and bottling plant.
- Q. Laundry and cleaning plant.
- R. Plant greenhouse.
- S. Repair services for machinery and equipment including tire repairing, sales and service

- including vulcanizing.
- T. Wholesale establishments.
- U. Entertainment establishments, subject to the criteria in Section 1149.13(C).
- V. Signs: As required by Chapter 1173 of this Ordinance.
- W. Accessory uses clearly incidental to and customarily related to the primary permitted use.
(Ord. 109-2006, Passed 11-7-2006)

1149.05 I-3 HEAVY INDUSTRIAL DISTRICT PURPOSE.

This district is established to accommodate light and heavy industrial uses in the fields of repair, storage, manufacturing, processing, wholesaling, and distribution. The district is regulated to be exclusively used for industrial purposes, free from the encroachment of residential development, and free from the encroachment of commercial development except as permitted in Section 1149.06. The uses listed herein are intended to complete the full range of activities necessary in the functioning of the community.

(Ord. 87-1989. Passed 7-11-89)

1149.06 I-3 PERMITTED USES.

- A. Uses enumerated in an I-2 Limited Industrial District (Section 1149.04) are permitted uses in an I-3 Heavy Industrial District.
- B. Administrative and business offices.
- C. The manufacturing, compounding, processing and assembling of products such as: Products from the following previously prepared materials: bone, canvas, cellophane, cloth, cork, feathers, fiber, fur, glass, hair, horn, leather, plastics, precious or semiprecious metals or stones, sheet metal, shell, textiles, tobacco, wax, wood (where saw and planing mills are employed within a completely enclosed building), yarns.
- D. Automobile assembly.
- E. Bag, carpet and rug cleaning, provided necessary equipment is installed and operated for the effective precipitation or recovery of dust or vapors.
- F. Boiler shops, machine shops, structural steel fabricating shops, railway car or locomotive shops, metal working shops employing reciprocating hammers and presses.
- G. Brewing or distilling of liquors.
- H. Cooperage works.
- I. Enameling, lacquering or japanning.
- J. Forge or foundry works.
- K. Foundry, casting light weight nonferrous metals, or electric foundry not causing noxious fumes or odors.
- L. Meat packing but not slaughtering of animals or stockyards.
- M. Sandblasting or cutting.
- N. Sewage disposal plant.
- O. Steam plant.
- P. Stone and monument works employing power driven tools.
- Q. Wire or rod drawing, nut screw or bolt manufacturing.
- R. Entertainment establishments, subject to the criteria in Section 1149.13(C).
- S. Signs: As regulated by Chapter 1173 of this Ordinance.
- T. Accessory uses clearly incidental to and customarily related to the primary permitted use.
(Ord. 87-1989. Passed 7-11-89)

1149.07 LOT AREA, WIDTH AND COVERAGE REGULATIONS.

In all Industrial Districts, all buildings and land shall abut a dedicated street for the required lot width. The minimum lot area and width and maximum lot coverage shall be in accordance with the following schedule.

Schedule of Lot Area, Width and Coverage Regulations

District	Minimum Lot Area (Acres)	Minimum Lot Width (ft.)	Maximum Percent Lot Covered By Building
I-1	1	100	40
I-2	1.5	150	40
I-3	2	200	40

(Ord. 135-1991. Passed 7-11-89)

Each industrial lot shall abut upon a dedicated street for the required lot width, except that on a curved street or cul-de-sac, the width at the front lot line may be less, provided the lot width at the building setback line meets the required lot width of the particular district.

(Ord. 135-1991. Passed 11-2-91.)

1149.08 YARD AND BUILDING SETBACK REQUIREMENTS - INDUSTRIAL DISTRICTS.

In all Industrial Districts, buildings and parking shall be designed, erected, altered, moved and maintained, in whole or in part, only in accordance with the following schedule:

Zoning District	Main and Accessory Building and Use	Front Yard Street (From ROW) (ft.)	Side Yard Abutting Residential District(ft.)*	Side Yard Abutting Nonresidential Use (ft.)	Rear Yard Abutting Residential District(ft.)*	Rear Yard Abutting Nonresidential Use (ft.)
I-1 Intensive Industrial and Light Commercial	Industrial-Commercial Building	50	100	15	50	25
	Parking and Drives	50	25	5	25	5
I-2 Limited Industrial District	Industrial Building	100 Major thoroughfare 50	100	25	100	50
	Parking and Drives	Industrial street 50**	25	10	25	10
I-3 Heavy Industrial District	Industrial Building	100 Major thoroughfare 50	100	25	100	50

Parking and Drives	Industrial street 50**	25	10	25	10
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* The required side and rear yard setback areas abutting any residential districts shall be improved with landscape planting and/or walls and fences to screen the view from adjacent residential uses.

** The required parking setback area shall be improved with landscape planting and/or low (2½ - 3') masonry walls to partially screen parked vehicles as viewed from the frontage street.

SIDE YARDS ON CORNER LOTS. Whenever an industrial building is located on a corner lot, the width of the building side yard on the side street shall be not less than 100 feet for major arterial streets and 35 feet for all other streets. On a corner lot, parking shall be set back a minimum of 20 feet from the side street right-of-way. (Ord. 87-1989. Passed 7-11-89)

1149.09 HEIGHT REGULATIONS.

The height of any main or accessory industrial building shall not exceed 35 feet. However, building height in an I-2 and I-3 district may exceed 35 feet provided the front and rear yard depth is increased two (2) feet for each additional foot of height over 35 feet and the side yard width is increased one (1) foot for each additional foot of height over 35 feet and a conditional use permit is approved. Maximum building height in an I-2 and I-3 Industrial District shall be recommended by the Mayor and Planning Commission and confirmed by City Council. (Ord. 87-1989. Passed 7-11-89)

1149.10 INDUSTRIAL PERFORMANCE STANDARDS.

All industrial uses shall comply with the performance standards set forth hereinafter for the district in which such use is located as a condition precedent to occupancy and use. Any use already established in such district shall not be altered, added to or otherwise modified so as to conflict with, or to further conflict with, the performance standards set forth hereinafter for the district in which such use is located as a condition precedent to further use. Statements that such uses comply or will comply may be required, in writing, by the Planning Commission from the owner. In cases of doubt, the City shall select and arrange for an independent survey by a professional engineer qualified in the particular field and the costs for the services shall be paid by the owner.

- A. Enclosure. All permitted main and accessory uses and operations, except off-street parking, shall be performed wholly within an enclosed building or buildings. All raw materials, finished products and mobile and other equipment shall be stored within enclosed buildings.
- B. Fire and Explosive Hazards. The storage, handling and use of flammable or explosive materials shall be permitted only in structures having incombustible exterior walls, and all operations in connection therewith shall be provided with adequate safety and protective devices against hazards of fire and explosion as well as with adequate firefighting and suppression equipment and devices standard to the operation involved.
- C. Dust; Smoke. The emission of smoke, soot, fly ash, fumes, dust and other types of air pollution borne by the wind shall be controlled so that the rate of emission and the quantity deposited at any adjacent lot shall not be detrimental to or endanger the public health, safety, comfort or welfare or adversely affect property values.
- D. Odorous Matter. The emission of odorous matter in such quantities as to produce a public

- nuisance or hazard beyond the lot occupied by the use shall not be permitted.
- E. Toxic or Noxious Matter. The emission of toxic, noxious or corrosive fumes or gases which would be demonstrably injurious to property, vegetation, animals or human health at or beyond the boundaries of the lot occupied by the use shall not be permitted.
 - F. Noise. The sound pressure level of any operation on a lot, other than the operation of speakers, bells and motor vehicles, shall not exceed the average intensity of the street traffic noise of the district, and no sound shall be objectionable due to intermittence, beat frequency or shrillness.
 - G. Vibration. Vibrations shall not be permitted beyond the lot line occupied by the use which would be perceptible without the aid of instruments.
 - H. Radioactive or Electrical Disturbances. Radioactive or electrical disturbances shall not be created which would adversely affect any form of life or equipment at or beyond the boundaries of the lot occupied by the use.
 - I. Incineration Facilities. Incineration facilities emitting neither smoke nor odor shall be provided, located within the main building. No garbage, rubbish, waste matter or empty containers shall be permitted outside of buildings.
 - J. Waste Materials: Liquid wastes shall not be discharged in to an open reservoir, stream or other open body of water, or into a sewer, unless treated or controlled so that the amount of solid substances, oils, grease, acids, alkalines and other chemicals shall not exceed the amount permitted by other codes of the State, County or City. Solid wastes shall not be buried unless such method is approved by the Ohio EPA and a Permit to Install (PTI) has been issued. (Ord. 87-1989. Passed 7-11-89)

1149.11 MULTIPLE OCCUPANCY - INDUSTRIAL DISTRICTS.

In any Industrial District, the Planning Commission may allow multiple occupancy on an industrial zoning lot as a conditional use provided that the Commission finds and determines that:

- A. Each multiple occupancy is an industrial use permitted in the respective industrial district;
- B. The multiple occupancy occurs upon a single industrial zoning lot;
- C. The structures and improvements, and lot containing the multiple occupancy meet all the area, yard and height requirements of the respective industrial district;
- D. Each use upon the multiple occupancy zoning lot and all uses in combination thereon meet the performance standards set forth in Section 1149.10 of the Zoning Ordinance and the applicable standards for conditional uses set forth in Chapter 1151 of this Zoning Ordinance; and
- E. Any change in occupancy is consistent with and in compliance with an approved development plan for the zoning lot. (Ord. 87-1989. Passed 7-11-89)

1149.12 DWELLINGS IN INDUSTRIAL DISTRICTS.

No dwelling unit shall be erected in any I-1, I-2 or I-3 zoning district.
(Ord. 87-1989. Passed 7-11-89)

1149.13 ENTERTAINMENT ESTABLISHMENTS

A. Purpose. It is the purpose of this Section to regulate Entertainment Establishments in order to promote the health, safety, moral, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of Entertainment Establishments within the City. The provisions of this Section have neither the purpose nor effect

1. Entertainment Establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
2. Entertainment Establishments should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.
3. Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the City's rationale for this ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented establishments. Additionally, the City's interest in regulating Entertainment Establishments extends to preventing future secondary effects of either current or future Entertainment Establishments that may locate in the City. The City finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects.

C. Criteria. Entertainment Establishments shall be a Permitted Use in the Limited I Industrial District (1-2) and Heavy Industrial District (1-3), subject to the following:

1. No Entertainment Establishment shall be established within 500 feet of:
 - (a) any "R" District" including an R-2 Residential District, an R-3 Residential District, an R-4 Residential District, a R-5 Single Family Cluster District, an R-6 Apartment District, an R- 7 Senior Residence District, or an R-8 Two Family District, as shown on the Official Zoning Map of the City.
 - (b) a PUD Planned Unit Development District as shown on the Official Zoning Map of the City; or,
 - (c) any non-conforming residential dwelling.
2. No Entertainment Establishment shall be established within 500 feet of any school or pre-school, library, daycare facility or teaching facility, whether public or private.
3. No Entertainment Establishment shall be established within 500 feet of any residential care facility.
4. No Entertainment Establishment shall be established within 500 feet of any Public Facilities District (PF).

5. No Entertainment Establishment shall be established within 500 feet of any church, synagogue, or worship facility.
6. No Entertainment Establishment shall be established within 500 feet of any other Entertainment Establishment.
7. Lighting on the exterior of the building shall be arranged so as to illuminate the entire off-street parking area with sufficient intensity to provide illumination of not less than two (2.0) foot candles as measured at the floor level.
8. The distances as cited in this Section above shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the property line of the property on which the proposed Entertainment Establishment is to be established, to the nearest point of the property or zoning district line from which the proposed Entertainment Establishment is to be separated. (Ord. 109-2006, Passed 11-7-2006)