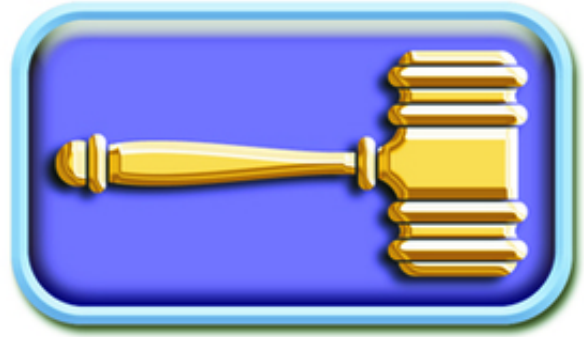


Court rules against city of Twinsburg in building height complaint



by Andrew Schunk | Editor Published: September 24, 2014 3:57AM

Twinsburg -- The city cannot change industrial building heights that are regulated in its zoning code without the approval of voters, according to a Sept. 16 ruling by a Summit County Court of Common Pleas judge.

Judge Amy Corrigan Jones ruled in favor of Liberty Road resident and plaintiff Sally Gaydosh in the 2-year-old civil complaint, filed in September 2012 against the city of Twinsburg, Mayor Katherine Procop and the seven members of City Council.

"A change in the height regulations without requiring a vote by the electorate is a violation of Charter Section 7A.01 which reserves to the voters of Twinsburg the final say in legislative zoning power ... the electorate of Twinsburg must be given the opportunity to vote on changes to height restrictions," Corrigan Jones states in her Sept. 16 ruling.

"It took the judge a year to decide this, which is a pretty good indication that she struggled with the decision either way," Twinsburg Law Director David Maistros said. "With the ruling saying that is essentially void — we will revert back to the prior code."

"We're obviously very pleased with this decision," said Warner Mendenhall, Gaydosh's attorney. "This provides good protection for the citizens of Twinsburg in terms of what type of development they want -- and it demands that the citizens are allowed to give their input in the zoning process."

The complaint was spurred by legislation passed by City Council in August 2012 that attempted to raise building heights in certain industrial districts from 35 feet to 45 feet, ostensibly to market Cornerstone Business Park (site of the former Chrysler Stamping Plant) to businesses that require tall industrial cranes. Gaydosh argued that building height restrictions are fundamental to zoning classifications and therefore require voter approval.

The city countered that because a change in building height does not change the permitted use in an industrial district, voter approval is not required.

"My position on building heights is simple," Maistros said in August. "If we set forth an industrial district, you can have warehouse or manufacturing use and whether the building is 35 or 42 feet high doesn't change what the use is. The use is the same. The fact that they can perform the exact same function using a building that's 7 feet taller does not, in my opinion, trigger the charter provision [for a vote of the electorate]."

City officials also argued that placing every "minor amendment" on the ballot would be tedious for both

the city and voters.

Gaydosh argued that the public's voting rights were being usurped with the August 2012 ordinance, and that building height restrictions should be viewed as fundamental to, and not as a "minor" amendment to, the zoning code.

"This [ruling] means everything," Gaydosh said Sept. 22. "The heights issue should have never gone to court, but the zoning laws in our city have been totally bypassed. This brings a serious concern as to what our government has become."

The Sept. 16 ruling comes as a charter amendment faces voters this fall that city officials believe, if approved, would clarify charter language to define exactly what zoning code changes require voter approval and what do not.

Maistros has said that changing a classification from "commercial" to "industrial," or even from a "Residential-1" sub-classification to a "Residential-2" sub-classification, must go to the ballot. If land uses are ever added or subtracted from the zoning code, they must also go to voters.

These distinctions would be added to the charter, with approval of the amendment.

"The charter needs to be cleaned up a little bit," Maistros said. "This [Sept. 16 ruling] is all more evidence to support [Issue 41] on the ballot this November."

If approved, the amendment would also eliminate the term "district" from the zoning code and replace it with either "classification" or "sub-classification," a change that city officials have called "semantics" and which Gaydosh says also usurps voter rights, as "districts" can include big box stores or strip malls.

Her concern, she says, is for the future downtown redevelopment being proposed in the city and guided by the Community Improvement Corporation. If passed, she says, the amendment could lead to illegal spot zoning, further litigation for the city and ultimately the CIC unilaterally determining zoning uses in the downtown area.

"I believe the Sept. 16 ruling shows that it's not just, as the city calls it, 'semantics,'" Mendenhall said.

The city has several options following the Sept. 16 ruling, including appealing the decision; sending the challenged August 2012 ordinance to the ballot, which at this point would be the May 2015 or subsequent ballot; or not taking any action and reverting back to the original ordinance, which allowed industrial building heights in excess of 35 feet with setback conditions.

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