

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE OF OHIO ex rel. MARCELLA GAYDOSH)	CASE NO. CV-2012-09-5055
)	
Relator)	JUDGE AMY CORRIGALL JONES
)	
v.)	
)	<u>CITY OF TWINSBURG'S</u>
CITY OF TWINSBURG, et al.,)	<u>REPLY BRIEF</u>
)	
Respondents)	

Now comes the City of Twinsburg, Ohio, Mayor Katherine A. Procop and Council members William Furey, Ted Yates, Gary Sorace, Sam Scaffide, Seth Rodin, Maureen Stauffer and Bob McDermott (hereafter collectively referred to as “Defendants” or “City”) by and through undersigned counsel and pursuant to this Court’s Order rendered at the Status Conference of July 3, 2013 submits the following Reply Brief to Relator’s Trial Brief.

On the first page of Relator’s Trial Brief alone Relator’s counsel makes reference to the term “fundamental” three times. This appears to be a classic case of if you repeat something over and over again then maybe people will believe it to be true. Unfortunately, no matter how much Relator asserts to the contrary, the term fundamental does not appear anywhere in §7A.01 of the City Charter; nor does it appear anywhere in the Twinsburg Zoning and Development Regulations; nor does it appear in either the Complaint or Answer as alleged on Page 1 of the Relator’s Trial Brief.

So why does Relator want to convince the Court that building height regulations are Fundamental? The answer is Simple...§7A.01 is clear and unambiguous. The only issues that are mandated to be placed on the ballot are those that propose changes in “**zoning classifications or**

districts, or in the uses permitted in any zoning use classifications or districts within the City of Twinsburg”. No more and no less. Fundamentality is not relevant.

Relator asserts, and undersigned does not disagree, that typical land use classifications are “single family residential, multi-family residential, commercial, institutional, industrial and recreational” (Relator’s Trial Brief Page 1-2) Examples of changes to a zoning classification would be a proposal to change property from commercial to industrial or residential to commercial. Absolutely nothing in Ordinance 97-2012 proposes such a change. To be clear, adoption of Ordinance 97-2012 did not change the zoning classification on a single parcel of land in the City of Twinsburg.

Relator recognizes that it would be illogical to ask this Court believe that a change to *any regulation* in a zoning classification must be placed on the ballot. Relator knows that such a position would be contrary to the clear language of the Charter. So Relator appears to assert that what the Charter really means to say is that changes to fundamental zoning regulations must be placed on the ballot. Such an assertion is without merit and Relator cannot point to any authority in support of such a position.

It should be noted that Relator makes the footnote assertion that “When the wording of a paragraph in the Zoning Code is followed by the notation “Passed” and a date, it indicates that the wording in the paragraph was approved by the voters and the date of the election.” (Relator’s Trial Brief Page 3) The factual assertion in this footnote is simply wrong. The reference “Ord. 87-1989. Passed 7-11-89” means that Ordinance 87-1989 was passed by **City Council** on July 11, 1989. It is NOT the date of an election. I would assume that this Court can take Judicial Notice that general elections are not held in July.

Again on Page 4 of her Trial Brief Relator makes the blanket statement that “The legislative power for zoning or amendments to the zoning code resides with the people of Twinsburg not the Council.” This is simply not true. In addition to the Charter which clearly distinguishes what must be placed on the ballot, Chapter 1201 of the Codified Ordinances of the City of Twinsburg sets forth the statutory procedure for making amendments to the Zoning and Development Regulations. (A copy of §1201 is attached to the Respondents Trial Brief as Exhibit E).

1201.01 AUTHORITY AND PROCEDURE.

A. The Council may from time to time on its own motion or on petition, after public notice and hearing, amend or change the regulations, districts or, building lines herein established, **but no such amendment or change shall be effective unless the ordinance or petition proposing such amendment or change shall first be submitted to the Municipal Planning Commission for approval, disapproval or suggestions, and the Planning Commission shall have been allowed a reasonable time, not more than sixty days, for consideration and report.** (Emphasis added)

Section 1201(D) further recognizes the distinction of the Charter requirements of placing a matter on the ballot by stating:

***** Said issue shall be submitted to the electors of the City only after approval of a change in zoning classifications or districts, or in the uses permitted in any zoning use classifications or districts by the Council for an applicant.** (Emphasis added)

Clearly not ALL changes to the zoning text are required to be placed on the ballot.

Section 1201 clearly provides that Council may amend or change the regulations but any proposed amendment to classifications or the permitted uses must be submitted to the electorate.

Building heights is a regulation that both Charter and §1201 contemplated and reserved for Council.

CONCLUSION:

Ordinance 97-2012 only establishes a maximum height of buildings in the Industrial I-2 and I-3 districts and does not seek to change any zoning district or change any permitted use in

any zoning district. The City of Twinsburg followed the requirements of both City Charter and the Twinsburg Zoning and Development Regulations in passing Ordinance 97-2012. Therefore, the City of Twinsburg respectfully requests that this Court deny the relief sought by the Relator and render judgment in favor of the Respondents including costs and reasonable attorney fees.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Undersigned hereby certifies that a copy of the foregoing Trial Brief of the City of Twinsburg has been delivered by Regular U. S. Mail this 20th day of September, 2013 to Counsel for the Relator at the following address:

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Respectfully submitted,



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