

DANIEL M. HARRIGAN

2014 SEP 16 PM 1:01

SUMMIT COUNTY  
IN THE COURT OF COMMON PLEAS  
CLERK OF COURTS  
SUMMIT COUNTY, OHIO

**MARCELLA GAYDOSH**

**Plaintiff,**

vs.

**CITY OF TWINSBURG, et al.**

**Defendant**

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**CASE NO. CV 2012-09-5055**

**JUDGE AMY CORRIGALL JONES**

**ORDER**

**FINAL AND APPEALABLE**

This matter came before the Court for a trial on the briefs. The matter has been fully brief and submitted for consideration.

Relator Marcella Gaydosh filed a Complaint for Declaratory and Injunctive relief and/or mandamus asserting that Twinsburg City Ordinance 97-2012 is invalid. Ordinance 97-2012 sought to amend §1149.09 of the Codified Ordinances of the City of Twinsburg, that established height regulations in industrial districts I-2 and I-3 in the City of Twinsburg. In the alternative, Relator seeks for this Court to issue a Writ of Mandamus ordering the City to place Ordinance 97-2012 on the ballot at the next election.

Relator asserts that this case presents the question: is regulation of the height of a building fundamental to zoning classification and therefore a trigger to the Twinsburg Charter provision requiring voter approval. Relator asserts that height restrictions are fundamental to zoning classifications and therefore require voter approval. The City of Twinsburg (“Twinsburg”) asserts in opposition that because the change in height does not change a zoning classification or district or the use permitted in any district, that this legislation does not require voter approval.

Section 7A.01 of the Twinsburg City Charter provides:

Any change in *zoning classifications or districts*, or in *the uses permitted* in any zoning use classifications or districts within the City of Twinsburg must first be submitted to the Planning Commission, for consideration and report. In the event the City Council should approve any of the preceding requested changes, upon the report of the Planning Commission, it shall not be approved or passed by the declaration of an emergency, and it shall not be effective, but it shall be mandatory that the same be approved by a majority vote of all votes cast of the qualified electors of the City of Twinsburg and of each ward in which the property so changed is located at the next scheduled election. *Said issue shall be submitted to the electors of the City only after approval by Council of a change in zoning classification or districts, or in the uses permitted in any zoning use classifications or districts*; however, should Council disapprove any such changes, the issues shall not be submitted to the voters. However, any change in zoning classifications or districts or designation of zoning classifications or districts or in uses permitted in any zoning use classification of land hereinafter annexed to the City shall be subject to the requirements of Section 7A.05 herein.

Ordinance 97-2012, specifically Section II provides:

1149.09 HEIGHT REGULATIONS.

The height of any main or accessory industrial building in an I-1 district shall not exceed 35 feet. Building height in an I-2 and I-3 district may not exceed forty-five feet.

The issue before this Court is whether the change in the height regulation is a change in a *zoning classification, district, or in the use permitted*.

There is no dispute that the Charter of Twinsburg mandates voter approval of zoning changes pursuant to Charter Section 7A.01. Furthermore, Ohio Revised Code 713.06 provides in pertinent part:

The planning commission of any municipal corporation may frame and adopt a plan for dividing the municipal corporation or any portion thereof into zones or districts, representing the recommendations of the commission, in the interest of the public health, safety, convenience, comfort, prosperity, or general welfare, *for the limitations and regulation of the height, bulk, and location*, including percentages of lot occupancy, set back building lines, and area and dimensions of yards, courts and other open spaces, and the uses of buildings and other structures and of premises in such zones and districts.

There is further no dispute that the voters of Twinsburg elected to approve height regulations by the establishment of districts:

#### 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 ...

Plaintiff asserts that the passage of Ordinance of 97-2012 *did* change the height regulations for Industrial Districts impermissibly without voter approval.

The prior version of 1149.09 provided:

The height of any main or accessory building shall not exceed 35 feet. However, building height in an I-2 or 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. (Ordinance 87-1989. Passed 7-11-89).

The current (and challenged) version of 1149.09 provides:

The height of any main or accessory industrial building in an I-1 district shall not exceed 35 feet. Building height in an I-2 and I-3 district may not exceed forty-five (45) feet.

As explained by Planning Director Larry Finch, the effect of the change was that "The prior 1140.09 permitted heights in excess of 35 feet, so they both are now in excess of 35 feet. The difference is that the additional setback requirement that was in the prior regulation was removed to allow 45 feet by right ... without the conditions use for setbacks." Finch Depo. pg. 22.

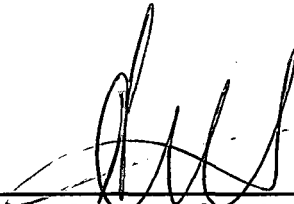
Defendants argue in opposition that the proposed change does not seek to change the zoning classification or zoning district of any property. Defendants further argue that Twinsburg followed the required procedures.

Upon review and consideration of the Twinsburg Charter and Ordinances, this Court finds that height regulations fall within Chapter 1141.01. 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.

This Court finds that Plaintiff is entitled to judgment as a matter of law. Judgment is rendered in favor of Plaintiff. The electorate of Twinsburg must be given the opportunity to vote on changes to height restrictions.

This is a final and appealable order. There is no just cause for delay.

**IT IS SO ORDERED.**



---

**Judge Amy Corrigan Jones**