

IN THE SUPREME COURT OF OHIO

STATE OF OHIO <i>ex. rel.</i>)	CASE NO.:
LYNN CLARK)	
2485 Old Mill Road)	
Twinsburg, Ohio 44236)	
Relator,)	VERIFIED PETITION FOR A
)	WRIT OF MANDAMUS
vs.)	(Expedited Election Case Pursuant To
)	S.C.R.P. 12.03)
SUMMIT COUNTY)	
BOARD OF ELECTIONS)	
470 Grant Street,)	
Akron, OH 44311)	
Respondent.)	

Relator Lynn Clark (“Relator Clark”) sets forth his Verified Complaint for Writ of

Mandamus against

Respondent Summit County Board of Elections as follows:

1. Relator seeks a writ of mandamus to compel Respondent to comply with the initiative and referendum requirements of R.C. § 731.29. Jurisdiction lies with this Court under R.C. § 2731, which governs mandamus proceedings in the courts, and specifically places jurisdiction in Ohio’s Supreme Court by R.C. § 2731.02.

2. R.C. § 731.29 states:

When a petition, signed by ten per cent of the number of electors who voted for governor at the most recent general election for the office of governor in the municipal corporation, is filed with the city auditor or village clerk within thirty days after any ordinance or other measure is filed with the mayor or passed by the legislative authority of a village, or in case the mayor has vetoed the ordinance or any measure and returned it to council, such petition may be filed within thirty days after the council has passed the ordinance or measure over the veto, ordering that such ordinance or measure be submitted to the electors of such municipal corporation for their approval or rejection, such auditor or clerk shall, after ten days, and not later than four p.m. of the ninetieth day before the day of election, transmit a certified copy of the text of the ordinance or measure to the board of elections. The auditor or clerk shall transmit the petition to the board together with the certified copy of the ordinance or measure. The board shall examine all

signatures on the petition to determine the number of electors of the municipal corporation who signed the petition. The board shall return the petition to the auditor or clerk within ten days after receiving it, together with a statement attesting to the number of such electors who signed the petition. The board shall submit the ordinance or measure to the electors of the municipal corporation, for their approval or rejection, at the next general election occurring subsequent to ninety days after the auditor or clerk certifies the sufficiency and validity of the petition to the board of elections.

3. On June 14, 2022, Twinsburg City Council convened under Twinsburg Codified Ordinance Section 1181.09 to approve or deny the Twinsburg Planning Commission's recommendation to approve the final site plan for Project Gumbo, which contained a building with a height of 45 feet.

4. Twinsburg Council in Twinsburg Codified Ordinance Section 1181.09 has conferred upon itself administrative power:

(a) Following action by the Planning Commission, the application shall be submitted to Council for final action. Council, by majority vote, may confirm the recommendation of the Planning Commission for approval of the site plan, or confirm the recommendation of the Planning Commission for denial of the site plan. Council action which differs from the recommendation of Planning Commission shall not take effect unless approved by five members of Council. Failure of Council to act by the next scheduled meeting following ninety (90) days, exclusive of summer vacations and holidays, of the Planning Commission's action, or an extended period of time as may be agreed upon, shall, at the election of the applicant, be deemed a denial of the final development plan.

5. The second sentence in Twinsburg Codified Ordinance Section 1181.09 gives Twinsburg Council a first option: confirm the Planning Commission's recommendation to approve or deny the site plan by a simple majority vote.

6. The third second sentence in Twinsburg Codified Ordinance Section 1181.09 gives Twinsburg Council a second option: deny the Planning Commission's recommendation to approve or deny the site plan by a supermajority vote.

7. Twinsburg Codified Ordinance Section 1181.09 does not give Twinsburg Council a third option to modify or condition a final site plan presented to them.

8. At the June 14, 2022 meeting, Twinsburg Council passed Resolution No. 57-2022 by a supermajority, which conditioned its approval of the Project Gumbo final site plan:

That the Planning Commission's action of approving the Final Site Plan for Project Gumbo on May 16, 2022, attached hereto and incorporated herein as "Exhibit A", be and the same hereby is confirmed by this Council **with the condition that the project's building height shall not exceed thirty five feet.** Ex. 1.

9. On June 27, 2022 a committee of four Twinsburg residents (Relator Clark, Ms. Marcella Gaydosh, Ms. Laurie Facsina, and Relator Lynn Clark (collectively, the "Petitioners") filed a petition signed by over ten percent of the electors who voted for governor at the most recent general election for the office of governor in Twinsburg with the Twinsburg Council Clerk Shannon Collins requesting Res. No. 57-2022 be placed on the November 8, 2022 ballot.

10. Per advice of Twinsburg's Law Director, Clerk Collins refused to transmit the petition to the Summit County Board of Elections on the grounds Res. No. 57-2022 was an administrative act not subject referendum. Relator Clark filed an expedited elections case mandamus with the Ohio Supreme Court requesting a writ of mandamus ordering Clerk Collins to transmit the petition to the Summit County Board of Elections.

11. On September 2, 2022, the Supreme Court issued the following writ of mandamus:

Upon consideration thereof, it is ordered by the court that a limited writ is granted to compel respondent Clerk of Council Shannon Collins to transmit forthwith the referendum petition and a certified copy of Resolution No. 57-2022 to the Summit County Board of Elections pursuant to R.C. 731.29, consistent with the opinion rendered herein. Ex. 2.

12. Then Clerk Collins transmitted the petition and a certified copy of Resolution No. 57-2022 to the Summit County Board of Elections.

13. On September 14, 2022, the Summit County Board of Elections held a hearing to determine whether Res. No. 57-2022 was an administrative act not subject referendum. After

presentations by Twinsburg’s and Relator’s counsel and a vigorous debate among the board members, the Summit County Board of Elections passed the following motion:

I move to deny certification to the ballot of Twinsburg referendum on council Resolution No. 57-2022 because the resolution is administrative and not properly subject to referendum. Ex. 3. 77: 6-25.

14. The Summit County Board of Elections confirmed the referendum petition contained “enough signatures that were valid to place it on the ballot.” Ex. 3. 74: 15-20.

RELATOR IS ENTITLED TO A WRIT OF MANDAMUS

15. For a writ of mandamus to issue, the party seeking the writ must establish a clear legal right to the relief sought, a corresponding clear legal duty by a government official, and the lack of an adequate remedy in the ordinary course of law. A party seeking a writ of mandamus must prove entitlement to the writ by clear and convincing evidence.

16. In *Donnelly v. Fairview Park*, the Ohio Supreme Court posited this legal test for determining when a municipal resolution is a legislative or administrative action:

the test for determining whether the action of a legislative body is legislative or administrative is whether the action taken is one enacting a law, ordinance or regulation, or executing or administering a law, ordinance or regulation already in existence. *** If, then, the action of a legislative body creates a law, that action is legislative, but if the action of that body consists of executing an existing law, the action is administrative. *Donnelly v. Fairview Park*, 13 Ohio St.2d 1, 42 (1968).

17. Administrative authority under the *Donnelly* test is the same as executive authority (i.e., executing an existing law). Under separation of powers doctrine, an executive’s power is derived from the powers conferred upon it or delegated to it by a constitution or a legislature. The separation of powers is a zero-sum game; if an executive authority exceeds the powers conferred upon it by a legislature, then that executive is illegally exercising legislative power.

18. Twinsburg’s Council is a legislative body with broad legislative powers. In Twinsburg Codified Ordinance Section 1181.09, the Council conferred upon itself limited executive power

(i.e., administrative authority) to approve by a simple majority or deny by a super majority the Twinsburg Planning Commission's recommendation on a final site plan.

19. For Project Gumbo, Twinsburg Council chose neither option, but instead used its legislative power to create a third option not provided for in Twinsburg Codified Ordinance Section 1181.09: to condition or modify its approval of the final site plan by a supermajority.

20. Res. No. 57-2022 effectively amended Twinsburg Codified Ordinance Section 1181.09 by giving Twinsburg Council administrative authority it did not have. Under the *Donnelly* test, the administrative act must implement a law in existence; Res. No. 57-2022 created a new law that previously did not exist (i.e., the third option). Thus, Res. No. 57-2022 is a legislative act subject to referendum.

21. Alternatively, Section 9.02 of the Twinsburg Charter states, "the electors of this City shall have the power to approve or reject at the polls any ordinance or other measure enacted by Council by referendum petition submitted to the Clerk of Council in accordance with the provisions of the Constitution or laws of Ohio now or hereafter in effect." Thus, Twinsburg's Charter reserves to its electors the power to approve or reject via referendum any Council action whether legislative or administrative.

22. Since Res. No. 57-2022 is subject to referendum, Clerk Collins transmitted the referendum petition and a certified copy of Res. No. 57-2022 to the Summit County Board of Elections, and the referendum petition contained the necessary number of valid signatures, the Summit County Board of Elections has a clear legal duty under R.C. § 731.29 to certify to the November 8 general election ballot of Twinsburg a referendum on Res. No. 57-2022.

23. WHEREFORE, Relator prays the Court issue a peremptory writ of mandamus or an alternate writ, under R.C. Chapter 2731, which requires Respondent to comply with R.C. §

731.29 and certify to the November 8 general election ballot of Twinsburg a referendum on Res. No. 57-2022. Alternatively, given the proximity of the election, Relator requests this matter appear on the November 7, 2023 ballot. Relator further requests he be awarded costs and attorney fees, and such other and further relief at law or in equity as the Court may deem necessary and proper.

Respectfully submitted,

/s/ Warner Mendenhall

Warner Mendenhall, 0070165

Logan Trombley, 0096858

190 North Union Street, Suite 201

Akron, OH 44304

Voice 330.535.9160

Fax 330.762.3423

warner@warnermendenhall.com

logan@warnermendenhall.com

CITY OF TWINSBURG, OHIO

RESOLUTION 57-2022 - REVISED

A RESOLUTION CONFIRMING THE PLANNING COMMISSION'S APPROVAL OF THE FINAL SITE PLAN FOR PROJECT GUMBO DATE STAMPED RECEIVED MAY 10, 2022

WHEREAS, the Planning Commission reviewed and recommended the Final Site Plan for Project Gumbo (Summit County Permanent Parcel Nos. 64-09116, 64-03583, and 64-03584) at its meeting of May 16, 2022; and

WHEREAS, Section 1181.09 of the Twinsburg Planning and Development Regulations provides for Council to review and take final action on Planning Commission's action with respect to applications for Site Plan approval; and

WHEREAS, this Council has reviewed the Planning Commission's decision, the application and associated materials, and the factors, standards, and criteria in the Twinsburg Planning and Development Regulations concerning Site Plan approval; and

WHEREAS, after considering public testimony, the applicant requested to reduce the height of their project so that the project's building height does not exceed thirty five feet; and

WHEREAS, this Council wishes to confirm the Planning Commission's approval of the Final Site Plan for Project Gumbo **with the condition that the project's building height not exceed thirty-five feet without the later receipt of a conditional use permit regarding the same.**

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Twinsburg, County of Summit and State of Ohio:

SECTION I: That the Planning Commission's action of approving the Final Site Plan for Project Gumbo on May 16, 2022, attached hereto and incorporated herein as "Exhibit A", be and the same hereby is confirmed by this Council **with the condition that the project's building height shall not exceed thirty five feet.**

SECTION II: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in open meeting or meetings of this Council, and that all deliberations of this Council were in meetings open to the public and in full compliance with all legal requirements, including without limitations, those set forth in Section 121.22 of the Ohio Revised Code.

SECTION III: That this Resolution is not of a general or permanent nature necessitating the requirement to be read on three different days as contemplated by

§111.09(a) of the Codified ordinances of the City of Twinsburg and shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 6/14/2022

APPROVED: 6/21/2022


EFFECTIVE: 7/21/2022



Sam Scaffide, President of Council

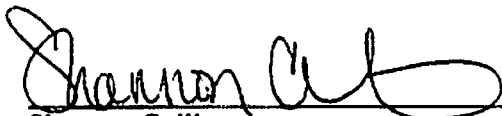
Submitted to the Mayor for approval this
14 day of June, 2022

Approved by the Mayor 6/21, 2022



Ted Yates, Mayor

ATTEST:



Shannon Collins
Clerk of Council

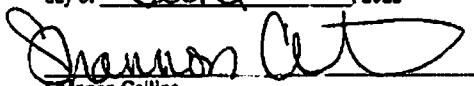
1st Rdg. 6/14/2022
2nd Rdg.
3rd Rdg.

Passed: 6/14/2022

Yes 5 No 2

CERTIFICATE OF POSTING

I, Shannon Collins, Clerk of Council, of the City of Twinsburg, State of Ohio, do hereby certify that publication of the foregoing ordinances, resolutions was duly made by posting true copies thereof at five of the most public places in said City as determined by Section 113.02 of the Codified Ordinances of the City of Twinsburg; each for a period of fifteen days commencing on the 22 day of June, 2022



Shannon Collins
Clerk of Council
City of Twinsburg

The Supreme Court of Ohio

State of Ohio ex rel. Lynn A. Clark

v.

City of Twinsburg, and Shannon Collins, in
Her Official Capacity as Twinsburg Clerk
of Council and Matt Vazzana, in His
Official Capacity as Twinsburg Law
Director

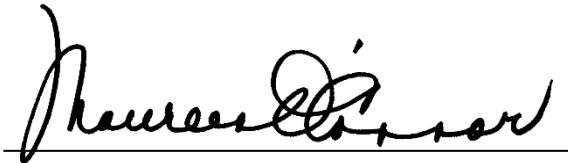
Case No. 2022-0995

IN MANDAMUS

E N T R Y

This cause originated in this court on the filing of a complaint for a writ of mandamus involving an expedited election matter.

Upon consideration thereof, it is ordered by the court that a limited writ is granted to compel respondent Clerk of Council Shannon Collins to transmit forthwith the referendum petition and a certified copy of Resolution No. 57-2022 to the Summit County Board of Elections pursuant to R.C. 731.29, consistent with the opinion rendered herein.



Maureen O'Connor
Chief Justice

BOARD OF ELECTIONS
SUMMIT COUNTY, OHIO

IN RE:)
)
TWINSBURG REFERENDUM) TRANSCRIPT OF PROCEEDINGS
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)

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Transcript of Proceedings held before the Summit
County Board of Elections, taken by the undersigned,
Laurie Maryl Jonas, a Registered Merit Reporter and Notary
Public in and for the State of Ohio, at the Summit County
Board of Elections, 470 Grant Street, Akron, Ohio, on
Wednesday, September 14, 2022, at 1:25 p.m.

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Premier Court Reporting
Canton 330.492.4221 Akron 330.928.1418
www.premierreporters.com

<p style="text-align: right;">2</p> <p>1 APPEARANCES: 2 William D. Rich, Chairman 3 Ray L. Weber, Republican Member 4 Bryan C. Williams, Republican Member 5 Lance E. Reed, Director 6 Pete Zeigler, Deputy Director 7 - - - - - 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">4</p> <p>1 November 8, 2022, ballot. And I realize that that 2 might be an issue, but for purposes of today we're 3 going to talk about it being on this November's 4 ballot. 5 I've set forth a test in the bullet point 6 memoranda that I provided to everyone. The test for 7 determining whether the action of a legislative body 8 is legislative or administrative is whether the 9 action taken is one enacting a law, ordinance, or 10 regulation or executing or administering a law, 11 ordinance, or regulation in existence. 12 Our position is here today, plain and simple, 13 that this was an administrative act. The Resolution 14 57-2022 executed, or administered, a law, ordinance, 15 or regulation already in existence. The ordinance 16 already in existence called for the height of the 17 building for Project Gumbo to be 35 feet. How do we 18 know that? Because Mr. Mendenhall brought that to 19 everyone's attention at the City of Twinsburg, and 20 I'll get into that in a minute. At no time -- at no 21 time did the City of Twinsburg enact any type of 22 legislation when they took action pursuant to 23 Resolution 57-22. 24 A little bit about the history that brings us 25 today. Project Gumbo is an industrial project on</p>
<p style="text-align: right;">3</p> <p>1 MR. RICH: All right. This meeting of the 2 Summit County Board of Elections is called to order. 3 The first item on the agenda is the hearing on the 4 Twinsburg referendum. I think the way I'd like to 5 proceed, if it's okay with you, is that we hear first 6 from the City and then from the petitioners. 7 MR. SUGERMAN: Thank you, Mr. Rich. 8 Mr. Williams, Mr. Weber, gentlemen from the board of 9 elections, Mr. Mendenhall, my name is Irv Sugerman. 10 I'm the attorney for Twinsburg Township with the firm 11 of Brouse & McDowell in downtown Akron. 12 I have provided all of you with a copy of 13 some bullet points that I'd just like to walk you 14 through today to give you a history of what happened 15 in this situation to bring us here today. 16 The issue today is whether or not Resolution 17 57-2022 is a legislative act or an administrative 18 act. If it is an administrative act, as we contend, 19 then it is not subject to referendum. If it is a 20 legislative act, it is. That's the simple issue here 21 today. 22 The board's job today is that you serve in a 23 quasi-judicial capacity. You are the finders of fact 24 and you make conclusions of law and you determine 25 whether or not to place Resolution 57-22 on the</p>	<p style="text-align: right;">5</p> <p>1 property that is zoned an industrial I-2 zoning 2 district within the city of Twinsburg and this 3 dispute enters around the height of the building that 4 was part and parcel of Project Gumbo. 5 Prior to 2012, the ordinances for the City of 6 Twinsburg did not permit the height of a building in 7 an I-2 district to exceed 35 feet. In 2012, ten 8 years ago, the City of Twinsburg tried to change that 9 height to 45 feet. They did so. But Mr. Mendenhall 10 filed a lawsuit in the Summit County Court of Common 11 Pleas challenging that action. And there was a 12 decision that was issued in 2014 -- I'll refer to 13 that as the 2014 decision -- that said Mr. Mendenhall 14 was correct at that time. And the height of any 15 building in an I-2 district reverted back to 35 feet. 16 So since 2014, all the way up through 2022, the 17 maximum height of a building in the city of Twinsburg 18 industrial district is 35 feet. 19 There was a problem. Back in 2014, whoever 20 was in charge back then didn't codify that in the 21 zoning ordinance. So that if you went online in 2021 22 or 2022 and said, hey, how large can a building -- 23 how high can a building be in an I-2 building 24 district, you would have seen it was 45 feet. So 25 when the folks from Project Gumbo began their</p>

<p style="text-align: right;">6</p> <p>1 planning and preparation and submission of a site 2 plan, they believed, reading the zoning ordinance, 3 and I think everybody in Twinsburg believed, at that 4 point in time, that the height was 45 feet. The 5 planning commission believed it was 45 feet because 6 the site plan they approved called for 45 feet. 7 The process in the City of Twinsburg is that 8 the planning commission hears and makes a 9 recommendation -- not a decision, but a 10 recommendation to city council as far as whether the 11 site plan should be approved, disapproved, or 12 modified, and I'll get to that issue in a few 13 minutes. The planning commission approved the site 14 plan that called for a 45-foot height for the Project 15 Gumbo building. The matter came before Twinsburg 16 city council. Just prior to that meeting, 17 Mr. Mendenhall came up to Mr. Vazzana, our law 18 director, and said, Hey, Matt. I've got a copy of a 19 2014 opinion here that was issued by Judge Corrigan 20 Jones, and that's Exhibit A. He says, I want you to 21 know -- and I'm paraphrasing, pretty accurate, 22 though -- I want you to know that the height of the 23 buildings can only be 35 feet. So armed with that 24 information, the law director said, Hey, I don't know 25 about that until a few minutes ago, and he went back</p>	<p style="text-align: right;">8</p> <p>1 MR. RICH: Preamble. 2 MR. SUGERMAN: Pardon me? 3 MR. RICH: Preamble. 4 MR. SUGERMAN: Preamble. Thank you. 5 What council did is in Section 1 as is 6 relevant to this hearing. The planning commission's 7 act of approving the final site plan for Project 8 Gumbo attached hereto and incorporated is Exhibit A, 9 be and is hereby confirmed by this council with the 10 condition that the project's building height shall 11 not exceed 35 feet. And that was passed unanimously 12 by -- oh, I'm sorry, it was passed 5 to 2 and you'll 13 see that on the second page. It was passed 5 to 2. 14 Why is that important? Let's move to -- 15 going to skip that -- Section 1181.09 of the zoning 16 resolution. And Mr. Mendenhall, in the supreme 17 court, and today, is going to get up here and say 18 that city council had two options. It could confirm 19 or deny. But I noticed something today. He did 20 attach a copy of the ordinance to what he submitted 21 to this board today, but I'm going to read to you 22 what's actually in the ordinance and what's 23 applicable here because it gives council a third 24 option. 25 And it says council action -- I'm sorry. Let</p>
<p style="text-align: right;">7</p> <p>1 and said let's take time, let me research this and 2 figure it out. Our law director took the time, 3 figured it out, came back to council at the next 4 meeting and said, According to Judge Corrigan 5 Jones's decision in 2014, the Project Gumbo height of 6 their building can only be 35 feet. 7 Armed with that information, council 8 conducted its hearing that night and ended up passing 9 Resolution 57-2022. And that's Exhibit B in your 10 packet. There's a couple of things that I want to 11 talk about briefly in this resolution. First of all, 12 when you read it, there is some bold and underlined 13 language. The bold and underlined language in the 14 fifth whereas says that council wishes to confirm the 15 planning commission's approval for the final site 16 plan for Project Gumbo with the condition that the 17 project's building height not exceed 35 feet without 18 the later receipt of conditional use permit regarding 19 the same. 20 Okay. So what happens is that, between the 21 time of the planning commission and the council 22 meeting, council was advised that the height could 23 only be 35 feet. The first five paragraphs of this 24 resolution are not what council did, they are whereas 25 clauses. They're not actually what council did.</p>	<p style="text-align: right;">9</p> <p>1 me just read the whole thing into the Record. 2 "Following action by the planning commission, the 3 application shall be submitted to council for final 4 action. Council, by a majority vote, may confirm the 5 recommendation of the planning commission for 6 approval of the site plan or confirm the 7 recommendation of the planning commission for denial 8 of the site plan." So by majority vote they can 9 confirm or deny. But let's read the next sentence 10 here. "Council action which differs from the 11 recommendation of the planning commission shall not 12 take effect unless approved by five members of 13 council," and then it goes on to some additional 14 language here. So contrary to what you -- what 15 Mr. Mendenhall argued in the supreme court and the 16 supreme court never reached that issue, but contrary 17 what he's going to argue today, council was permitted 18 to modify the planning commission recommendation. 19 I've been doing township/municipal/village 20 work for a really long time. And every single zoning 21 resolution I've ever seen authorizes council or the 22 board of trustees to approve or deny or modify. And 23 that's exactly what they had here. So when you hear 24 Mr. Mendenhall talk that somehow or the other 25 imposing the 35-foot requirement constitutes a</p>

<p style="text-align: right;">10</p> <p>1 legislative act, he is wrong. He is simply 2 unconditionally wrong about that. 3 MR. RICH: I have a question about that. 4 Suppose for a second that he were right about that. 5 Just hypothetically. In other words, the council had 6 violated the ordinance when they acted. Would that 7 actually make this a legislative act or would it just 8 be a wrongful administrative act? 9 MR. SUGERMAN: Well, I appreciate your asking 10 because that's what I was going to talk about next. 11 The fact is, no. It still would be an 12 administrative act. It's -- they didn't legislate. 13 Legislation is creating a law. There is a process in 14 the ordinance by which you can do a text amendment. 15 They didn't do that. They simply modified a site 16 plan. And that's -- that's all they did. 17 MR. RICH: I'm sorry. You could do a what 18 amendment? 19 MR. SUGERMAN: A text amendment. An 20 amendment to the text of the zoning ordinance. And 21 that's what happens when you change the text of the 22 zoning ordinance. That's what happened back in 2012. 23 MR. RICH: Right. 24 MR. SUGERMAN: Council did a text amendment. 25 They changed it from 35 to 45 feet. And I don't know</p>	<p style="text-align: right;">12</p> <p>1 Twinsburg? The number of the ordinance. 2 MR. SUGERMAN: It is 1181.09. 3 MR. GALONSKI: Thank you. 4 MR. SUGERMAN: You're welcome. 5 MR. RICH: And the ordinance that has the 6 height restriction in it which went from 35 to 45 and 7 then back to 35, what section is that that? 8 MR. SUGERMAN: Would be 1149.09. And you can 9 find that in Judge Corrigan Jones's decision, the 10 September 16, 2014, decision. And she refers to that 11 on page 2 of her decision. 12 MR. RICH: Thank you. 13 MR. SUGERMAN: So the case has been 14 litigated, and I think it's important to understand a 15 couple other things. Immediately after council's 16 action, Mr. Mendenhall, on behalf of Mr. Clark, filed 17 an administrative appeal with the Summit County Court 18 of Common Pleas. Note that I used the word 19 "administrative" appeal because he believed at that 20 time that it was an administrative act. And under 21 2506 he has a right to file an administrative appeal 22 and follow that process. That matter remains pending 23 in the Summit County Court of Common Pleas. 24 He also, after a couple weeks, filed a 25 mandamus action in the supreme court where he argued,</p>
<p style="text-align: right;">11</p> <p>1 all the gory details about what happened in there, 2 but that was a text amendment. That was a 3 legislative act that was subject to referendum. 4 MR. RICH: An amendment to an ordinance. 5 MR. SUGERMAN: Correct. 6 MR. RICH: That sets forth the law. 7 MR. SUGERMAN: Right. And it was 8 incorporated into the ordinance. And then when the 9 2014 decision came, it reverted it back to 35 feet. 10 So there's no conceptual way that what council did at 11 its meeting, modifying the site plan, can be 12 construed as a legislative act. 13 We've all been around legislatures and 14 councils and things like that. That's what a 15 legislative act is, enacting a law. And if you get 16 back to the test -- let's get back to the test 17 here -- the test for determining whether the action 18 of a legislative body is legislative or 19 administrative is whether the action taken is one 20 enacting a law, ordinance, or regulation or executing 21 or administering -- administering a law, ordinance, 22 or regulation already in existence. 23 A couple more things just by way of -- 24 MR. GALONSKI: Can I ask a quick question? 25 You -- what is the ordinance you cited from for</p>	<p style="text-align: right;">13</p> <p>1 among other things, that this was a legislative and 2 not an administrative act. Unfortunately, the 3 supreme court never reached that decision, because if 4 they had, and I respectfully suggest they should 5 have, we wouldn't be here today but we are. And you, 6 as the quasi-judicial body, need to make that 7 determination. 8 MR. RICH: I think we all think we wish they 9 had reached that decision but they didn't. 10 MR. SUGERMAN: We can so stipulate to that. 11 So I think that's what our position is here 12 today. I don't think it's -- it's any more or any 13 less. This is an administrative act. What 14 Mr. Mendenhall is going to try to talk about is the 15 whereas clause, which is not what council did, and 16 he's trying to say that by going back and applying 17 the zoning resolution or the zoning ordinance that 18 somehow it magically transmits that into a 19 legislative act. The problem with that is, A, he's 20 wrong, and No. 2, he has no case law, no authority to 21 back up what his claim is today. 22 So I'm available for any questions that you 23 might have. Mr. Williams. 24 MR. WILLIAMS: May I? 25 MR. RICH: Yes.</p>

<p style="text-align: right;">14</p> <p>1 MR. WILLIAMS: A couple questions just for 2 clarification. 3 In the administrative appeal, and I know I'm 4 asking you to characterize Mr. Mendenhall as filing, 5 but if you would, in that administrative appeal 6 what -- what are they seeking? What remedy are they 7 seeking? 8 MR. SUGERMAN: He is seeking -- and he can 9 answer the question better than I can -- he is 10 seeking to overturn the decision of city council 11 which approved the site plan. 12 MR. WILLIAMS: So he's not seeking to make 35 13 become 45 again? 14 MR. SUGERMAN: No. And that's the really 15 ironic part of this. Okay? The ironic part of this 16 whole thing is that the height that the planning 17 commission approved was 45 feet and he came in and 18 said you can't do that, it's only 35 feet, and that 19 inures to the benefit of his clients. Why would you 20 want a higher building? He came in and we did what 21 he wanted to do. We reduced the height of the 22 building. That's the irony of this whole case. 23 MR. WILLIAMS: So let me ask this question. 24 These are all questions you can either tell me if 25 they're right.</p>	<p style="text-align: right;">16</p> <p>1 MR. WILLIAMS: So I'm reading the statute 2 here, this 1181.09 that you cite, and you put 3 attention on the 5 to 2. So there's three options: 4 They can approve. That makes it an administrative 5 action; would all parties agree on that? 6 MR. SUGERMAN: Yes. 7 MR. WILLIAMS: If they approve as submitted? 8 MR. SUGERMAN: I agree with that. 9 MR. WILLIAMS: Okay. Well, I won't ask you 10 to testify for others. 11 MR. SUGERMAN: I think he agrees with it but 12 I don't mean to be presumptuous. 13 MR. WILLIAMS: I'll limit my inquiry to you. 14 So if they disapproved, it would be an administrative 15 action? 16 MR. SUGERMAN: Correct. 17 MR. WILLIAMS: So the question boils down to 18 if there's a modification, is it -- setting aside 19 this type of modification, which was to comport with 20 an uncodified case law, would you agree that -- let's 21 just say they said no, you have to have 17 windows 22 instead of 15, would that have been a legislative 23 action? 24 MR. SUGERMAN: No. Not at all. 25 MR. WILLIAMS: So any modification at</p>
<p style="text-align: right;">15</p> <p>1 So when Mr. Mendenhall raised the objection 2 to the 45-foot height, the city took a look at that. 3 Did the city then determine, yes, there is case law; 4 yes, we do have a zoning limitation to 35, and the 5 developer and the city agreed with the planning 6 commission to voluntarily lower to what they now knew 7 was a lower restriction? 8 MR. SUGERMAN: You're a hundred percent right 9 except for one thing. It happened in council, not 10 the planning commission. 11 MR. WILLIAMS: Okay. Oh, right. It's out of 12 planning commission made their recommendations. 13 MR. SUGERMAN: Correct. Correct. 14 MR. WILLIAMS: The planning commission 15 voted -- when this 45-foot plan was submitted, what 16 was the vote of the planning commission? 17 MR. SUGERMAN: Do we remember? 18 MR. WILLIAMS: Well, that probably doesn't 19 matter. 20 MR. SUGERMAN: We believe it was unanimous, 21 but that doesn't matter. In terms of -- yeah, under 22 the ordinance it didn't matter. 23 MR. WILLIAMS: I was just curious. 24 MR. SUGERMAN: Yeah. Good question. I don't 25 know that, but we believe it was unanimous.</p>	<p style="text-align: right;">17</p> <p>1 council, in your view, is still an administrative 2 action? 3 MR. SUGERMAN: Absolutely. 4 MR. WILLIAMS: Okay. 5 MR. SUGERMAN: It happens all the time. 6 MR. WILLIAMS: Let me -- let me -- let me ask 7 this question to you because -- and I'm only trying 8 to ferret this out. This ordinance, which is 5 to 2, 9 it calls for a 5 to 2, which knows that council is 10 made up of seven members. 5 to 2 is a supermajority. 11 So when you have -- most often, and I don't know 12 Twinsburg's charter as well as you or the law 13 director does, but typically speaking, when things 14 are subject to a supermajority the right to 15 referendum is set aside. It's an emergency clause of 16 sorts and it reaches this emergency, the 17 supermajority status. Is it conceivable that the 5 18 to 2 is in there, that if a change is made and it's 19 approved by 5 to 2 that it's not subject to a 20 referendum but if it's 4 to 3, for instance, or -- 21 well, 4 to 3 would be the only other passage, that 22 this -- so this is not language that's triggering or 23 not triggering the right of referendum by the 24 residents to take issue at vote. 25 MR. SUGERMAN: Not at all. If it was a 4-3</p>

<p style="text-align: right;">18</p> <p>1 vote, 1181.09 wouldn't -- you couldn't amend it by a 2 4 to 3 vote. A modification can only be done by that 3 supermajority. 4 MR. RICH: The motion would fail. 5 MR. SUGERMAN: The motion would fail. Thank 6 you. 7 And that has nothing at all to do with 8 whether or not it's administrative or legislative, it 9 simply would have failed. Because there were five 10 votes, it gave council the power to modify, and that 11 power to modify was an administrative act. They 12 didn't enact anything. They simply administered the 13 existing portion of the zoning resolution. Does that 14 answer your question? 15 MR. WILLIAMS: Oh, it does, yeah. 16 MR. SUGERMAN: Okay. Good. 17 MR. WILLIAMS: On the -- the 2012 case that I 18 believe was decided in 2014 -- 19 MR. SUGERMAN: Correct. 20 MR. WILLIAMS: -- in your Exhibit A that went 21 uncodified, by your description, until this issue was 22 brought to light or -- so let me ask you this: Has 23 that decision now been codified by ordinance? 24 MR. SUGERMAN: I don't believe that it has. 25 But it applies. I don't think it's been changed;</p>	<p style="text-align: right;">20</p> <p>1 take -- interpret that case law and make ordinance 2 changes. 3 MR. VAZZANA: No. 4 MR. RICH: No. 5 MR. VAZZANA: No. We -- 6 MR. RICH: Let me just ask this question. I 7 think this will clarify it. I haven't had a chance 8 to read Judge Corrigan Jones's opinion, but I gather 9 from what was said the court invalidated the 10 legislation that amended -- 11 MR. WILLIAMS: Oh. 12 MR. RICH: -- the height restriction. 13 MR. SUGERMAN: That's correct. 14 MR. RICH: From 35 to 45, which means it did 15 not go into effect. 16 MR. WILLIAMS: I got you. 17 MR. RICH: And so it doesn't require any 18 further legislation to remove or change it back to 19 35. 20 MR. WILLIAMS: I got you. 21 MR. RICH: It's just a matter of correcting 22 the published version. 23 MR. WILLIAMS: Invalidated the -- 24 MR. RICH: Right. 25 MR. WILLIAMS: Invalidated the ordinance,</p>
<p style="text-align: right;">19</p> <p>1 there's people in the back saying no. The answer is, 2 I personally don't know. 3 MR. WILLIAMS: But the problem of the case 4 law still requires -- it still has force as if it 5 were codified. 6 MR. SUGERMAN: Correct. 7 MR. RICH: I could understand -- 8 MR. VAZZANA: May I approach for a second? 9 MR. RICH: Yes. 10 MR. VAZZANA: I just asked the -- 11 MR. SUGERMAN: Introduce yourself. 12 MR. VAZZANA: Sorry. Matt Vazzana, law 13 director for the city. 14 I just asked the clerk of council, we have 15 instructed the codifications agent to change the 16 online codification, but pursuant to our plan, and 17 correct me if I'm wrong, it won't be done until the 18 next quarterly update. So the minute we found out 19 about that, we took the steps necessary to update the 20 online code so it would have correct height. 21 MR. WILLIAMS: So let me ask -- that triggers 22 another question. So when a court makes a decision, 23 it points out an error, legal error in your 24 ordinances, you -- you have a process by which you 25 can instruct a vendor, essentially, of the city to</p>	<p style="text-align: right;">21</p> <p>1 which meant you went back to what was there before 2 which is what you instructed your agent to do. 3 MR. VAZZANA: That's correct. 4 MR. WILLIAMS: In the order. Okay. 5 MR. SUGERMAN: Right. So the third-party 6 vendor changed it to 45 and somehow or the other they 7 weren't instructed to change it back to 35, and 8 that's what is being done now. 9 MR. VAZZANA: That's correct. 10 MR. GALONSKI: May I ask a question? 11 MR. RICH: Yeah. 12 MR. GALONSKI: So if somebody called your -- 13 somebody called your zoning inspector today, what is 14 the height zoning requirement, what would the zoning 15 inspector answer? 16 MR. VAZZANA: 35 feet. 17 MR. SUGERMAN: Clearly. 18 MR. VAZZANA: Yeah. 19 MR. WILLIAMS: Well, they demonstrated that 20 in this particular case because they made a change to 21 35 on an approved plan, with 5 votes on an approved 22 vote with 45. 23 MR. VAZZANA: And at that moment, the zoning 24 staff was instructed that heights need to be 35 feet 25 and clerk of council then took the steps that I said</p>

<p style="text-align: right;">22</p> <p>1 are necessary to get the codification agent to update 2 the online code. 3 MR. RICH: Any other questions? 4 MR. WILLIAMS: I think I got this one 5 answered, but so codification is no requirement. 6 Codification is not what triggers the applicability 7 of a -- of a case law. 8 MR. RICH: I'm not sure I understand the 9 question but -- 10 MR. GALONSKI: Correct. 11 MR. WILLIAMS: The codification of the 12 ordinance based on a statute -- an ordinance that is 13 struck down so that the previous reality isn't 14 triggered by this -- 15 MR. GALONSKI: It's by operation of law. So 16 the judge strikes down a change -- 17 MR. WILLIAMS: Right. 18 MR. GALONSKI: -- on the grounds, 19 Mr. Mendenhall I assume had great grounds, right, 20 because he filed the suit and the judge strikes that 21 down, it doesn't exist anymore. Whether that's put 22 into a book by a third-party vendor doesn't change 23 the legal effect. 24 MR. WILLIAMS: Right. An erroneous 25 promulgation isn't going to negate the requirements</p>	<p style="text-align: right;">24</p> <p>1 Mr. Mendenhall. 2 MR. MENDENHALL: May it please the board, my 3 name is Warner Mendenhall, and I represent the 4 petitioner's committee, Lynn Clark, and several of 5 the signatories are here on the actual petitions. 6 I think generally the history of things has 7 been accurate, but the legal interpretation obviously 8 I disagree with. 1181.09 is actually very key here, 9 but I think that it is a vast misinterpretation of 10 1181.09 to say that it has any room for modifying 11 ordinances in Twinsburg. Twinsburg has had a very 12 restrictive zoning ordinance for years. We've had 13 multiple lawsuits against the City of Twinsburg for 14 violations by the city. I mean, we're talking more 15 than ten lawsuits. We completely invalidated their 16 code in 2004; the entire zoning code was thrown out 17 and it reverted to the 1989 code. Similar to what 18 happened here with this height restriction issue, we 19 simply invalidated that, that ordinance, and it 20 reverted back then to the prior height restriction. 21 But really what happens with 1181.09 is 22 really simple. Council granted to itself, and this 23 gets confusing from a legal standpoint because 24 council is acting both in its legislative capacity 25 and in its administrative capacity. So what happens</p>
<p style="text-align: right;">23</p> <p>1 of the law as defined by the court. 2 MR. RICH: Let's use the word "publication." 3 MR. WILLIAMS: Publication. 4 MR. VAZZANA: Codification is merely the 5 organization of the passed law, so when the judge 6 strikes down the law, the codification is -- 7 MR. RICH: What makes the law is being 8 enacted by the council. 9 MR. SUGERMAN: So if there was a 10 typographical error, that would not have any effect 11 either. 12 MR. WILLIAMS: I appreciate all these 13 answers, and I only ask the question so that opposing 14 counsel can address them when he has the opportunity, 15 because that's, to me, that's a very relevant hinge 16 on this discussion. 17 MR. RICH: Any other questions? 18 MR. WILLIAMS: I don't think so. Not now. 19 MR. RICH: Okay. Do you have anything final? 20 MR. SUGERMAN: Not at this point. 21 MR. RICH: Not that you won't have a chance 22 later necessarily. 23 MR. SUGERMAN: At this point, I was just here 24 to answer any questions you had, Mr. Chairman. 25 MR. RICH: Thank you.</p>	<p style="text-align: right;">25</p> <p>1 at the legislative capacity, it granted itself the 2 power to approve or disapprove plans that came out of 3 the planning commission. That's it. The only other 4 exception to that, they have an override. So if a 5 supermajority, a 5 to 2 vote, can happen, then they 6 can -- if planning commission turns down a plan and 7 council has a supermajority of 5 to 2, then they can 8 override what the planning commission did and 9 actually have that plan approved. Likewise, if 10 planning commission approved a plan and council did 11 not want to pass it by a 5 to 2 vote, they could 12 override that decision. 13 What should have happened here is what -- 14 what council should have done, because it was sent up 15 to them with a 45-foot height requirement, they 16 should have just sent it back down and had it go 17 through the planning commission process. And the 18 reason that process is important in Twinsburg is so 19 that it can take public input, have debate, have 20 really good analysis of what's going on with the 21 plans, and then when it comes to council then they 22 can again approve or deny it. So that's what should 23 have happened there. 24 I appreciate -- so it's really -- this 25 dispute really centers over not height necessarily,</p>

<p style="text-align: right;">26</p> <p>1 it centers over power. The city council gave itself 2 these powers to approve, deny, or override. Not 3 approve, deny, or modify. And then, by modifying it, 4 the council exceeded its powers. And these are 5 executive powers, administrative powers, so it 6 exceeded its administrative powers. And then when it 7 modifies it, it engages in legislative power and 8 steps on its own legislative power. 9 MR. RICH: That's the part I'm not following. 10 It seems to me that if, in approving the plan with a 11 modification, if they were violating 1189.09(a), then 12 that makes it wrongful but I don't see how it makes 13 it any more legislative. I don't see how it makes it 14 legislative rather than administrative. So in the 15 nature of an administrative act, if you're correct -- 16 I'm not sure you are, but if you're correct in your 17 interpretation of 1181.09(a), that just means that 18 the administrative act was legally wrongful. 19 MR. MENDENHALL: Well, I would contend that 20 it's both. The administrative act simply is wrong, 21 they simply don't have the power to act, but by 22 acting to modify they're engaging in a legislative 23 power that they -- you know, they're taking their 24 legislative ability to give them themselves power to 25 act administratively. I know this is weird, but, and</p>	<p style="text-align: right;">28</p> <p>1 to point this out. There's a -- there's kind of a 2 chart. Do you see that? 3 MR. RICH: A table. 4 MR. MENDENHALL: A table. 5 And I highlighted that section. So this one 6 happens to be I-2, but regardless of industrial 7 district, this -- these are the conditional uses that 8 are available in the code. And you can see there is 9 no building height exemption or exception for either 10 I-1, I-2, or I-3. So my contention is simply that, 11 you know, in the whereases they're indicating to the 12 developer and to the planning commission and to the 13 community that without later receipt of -- receipt of 14 a conditional use permit they can't exceed 35 feet. 15 There is no provision in the code to do that, and I 16 believe that by this ordinance they're creating a 17 conditional use exception possibility which simply 18 doesn't exist. 19 MR. RICH: Do you -- do you agree that the 20 zoning law in Twinsburg limits the height of 21 buildings in I-2 zone to 35 feet? 22 MR. MENDENHALL: Yeah. 23 MR. RICH: So when they imposed the limit of 24 35 feet in the council action, weren't they just 25 complying with the existing zoning law?</p>
<p style="text-align: right;">27</p> <p>1 then they acted on it. So that's where I think the 2 violation is. 3 MR. RICH: But when they did that, they 4 didn't make any permanent law that allows them to do 5 this. All they did was, by your -- under your 6 interpretation of 1181.09(a), all they did was they 7 acted in the same capacity they would have acted if 8 they approved or disapproved the plan but they did 9 something they weren't allowed to do. 10 MR. MENDENHALL: And I appreciate your 11 argument. I asked the supreme court to resolve this 12 and they didn't. They sent it back. So that is -- 13 that is in the supreme court, that was in the 14 argument. It was not resolved at the supreme court. 15 MR. RICH: Right. 16 MR. MENDENHALL: So I appreciate the argument 17 and I understand that. 18 The other issue is that in the whereases, 19 they did -- they did approve this based on the idea 20 that there could be a conditional use to alter the 21 height of the building, and it's simply not true. If 22 you look at my -- hang on a second. Did I -- if you 23 look at my brief that I submitted, in that brief, at 24 the back of the brief -- let's see. Here we are. 25 It's Exhibit B, and page 4 of Exhibit B. I'm going</p>	<p style="text-align: right;">29</p> <p>1 MR. MENDENHALL: They were. They shouldn't 2 be mentioning conditional use in the same ordinance 3 though. There is no possibility of conditional use 4 here. And yet they seem to indicate to the developer 5 that they can go back and get a conditional use from 6 council. It's just not available. 7 MR. RICH: Okay. So in a sense they misspoke 8 if that's true. 9 MR. MENDENHALL: Well, they misspoke in an 10 ordinance, and my clients would like to vote this 11 ordinance up or down. That's what they are here for. 12 MR. RICH: Well, they misspoke in the 13 preamble, not in the legally operative provisions in 14 the ordinance. Actually it's not an ordinance even. 15 The resolution. 16 MR. GALONSKI: Taking your example there that 17 you cited in the preamble. If that is incorrect, 18 taking your example, couldn't you then file a 19 lawsuit? 20 MR. MENDENHALL: Of course I can file a 21 lawsuit then. Yeah. And probably win. 22 MR. GALONSKI: Nothing further. 23 MR. MENDENHALL: I really think it comes down 24 to this issue of power, not height. Council's 25 exceeding its administrative power and acting as if</p>

<p style="text-align: right;">30</p> <p>1 it's gotten from its legislative power the ability to 2 modify an ordinance, which it does not have. And 3 modification is not in the ordinance. That's not 4 what they can do. It's a binary decision. They can 5 vote a planning commission recommendation up or down 6 and they can override a planning commission 7 recommendation by a supermajority of 5 to 2. 8 MR. RICH: So I take it you agree that when 9 the council takes an action that is governed by an 10 ordinance enacted previously by council, a permanent 11 law, and they comply with all the requirements of the 12 ordinance, that that would be an administrative 13 action. 14 MR. MENDENHALL: Absolutely. That's the 15 proper way to have an administrative act. 16 MR. RICH: So your argument really is that if 17 council violates that ordinance when they act, that 18 converts what would otherwise be an administrative 19 act to a legislative act. 20 MR. MENDENHALL: That's correct. And we 21 asked the supreme court to resolve that issue. 22 MR. RICH: H'm. 23 MR. WILLIAMS: And they said send the 24 petition to Fairview. 25 MR. MENDENHALL: The supreme court limited</p>	<p style="text-align: right;">32</p> <p>1 exact issue has come up before in my time on the 2 board as director and board member and we've always 3 declined to -- to make that decision and just let the 4 parties litigate it after the fact. And we've put -- 5 we've always put things on the ballot. And but I 6 understand in the ensuing time there's a recent Ohio 7 Supreme Court case -- 8 MR. RICH: Well -- 9 MR. WILLIAMS: -- no, court of appeals. 10 MR. GALONSKI: It's an Ohio Supreme Court 11 case. 12 MR. RICH: It's since your time as director 13 but before your time on the board that decision was 14 made. 15 MR. WILLIAMS: And so that tells us we need 16 to make this decision administratively. So in order 17 to make the decision, I need to know what the 18 difference between legislative -- and I apologize if 19 that's supposed to be -- should be apparent, because 20 it's not. 21 MR. RICH: Well, it's exactly as presented in 22 this third bullet point, as I previously mentioned. 23 MR. MENDENHALL: If I may. You know, 24 Donnelly versus the City of Fairview Park is cited 25 for the difference, and let me read this. And you</p>
<p style="text-align: right;">31</p> <p>1 itself to just the issue of the ministerial act, 2 whether those petitions had to be submitted to the 3 board of elections. It limited itself to that issue. 4 It didn't go into -- 5 MR. WILLIAMS: Did you raise that issue in 6 your -- in your lawsuit? 7 MR. MENDENHALL: Yeah, of course. I mean, we 8 want them transmitted. We also raised this issue of 9 power and whether it's legislative or administrative, 10 which was not addressed. 11 MR. WILLIAMS: And they didn't even speak -- 12 they not only didn't speak to it, they didn't even 13 say it wasn't ripe for any consideration. 14 MR. MENDENHALL: They didn't speak to it. 15 MR. WILLIAMS: I saw it. I read it. 16 MR. RICH: They handed it to us. 17 MR. WILLIAMS: A couple questions, if I may. 18 So, Mr. Chairman, this is probably a question 19 for the -- for the prosecutor. We're being asked to 20 decide whether or not this is an administrative or a 21 legislative action. To do that, I probably -- I -- I 22 would need a definition of what each is in order to 23 sit in judgment of that distinction. Those aren't 24 naturally apparent to me, and if there's -- I know 25 we've had this -- I can tell you this -- this same</p>	<p style="text-align: right;">33</p> <p>1 have to -- this -- I interpret this a little 2 differently. So -- 3 MR. RICH: But you agree that that -- that 4 that's the -- 5 MR. GALONSKI: Test. 6 MR. RICH: -- that's the supreme court's 7 test. 8 MR. MENDENHALL: I'm going to extend that 9 right now. If the action of the legislative creates 10 a law, the action is legislative; right? If the 11 action of a body consists of executing an existing 12 law, the action is administrative. Here's the 13 problem. They did neither here. This is not an 14 existing law. They can't -- they can't -- 15 MR. RICH: What's not -- what's not an 16 existing law? 17 MR. MENDENHALL: They don't have the power -- 18 there's no existing law that gives them the power to 19 modify. That's what's not existing. I mean, their 20 claim is -- 21 MR. RICH: What they were executing was the 22 35-foot zoning limitation. 23 MR. MENDENHALL: I know. But there's a claim 24 here -- I'm going to point you back to 1181.09. 25 There's a claim being made here that 1181.09 gives</p>

<p style="text-align: right;">34</p> <p>1 them the power to modify. My position is it does not 2 give them the power to modify. That's -- that's the 3 key to this. It's not in here for them to execute 4 any existing law to modify because I don't believe 5 this law gives them the power to modify. When they 6 do that then, my contention, which I asked the 7 supreme court to resolve, is that they have acted in 8 a legislative role and it creates a third branch of 9 the Donnelly test because they're not enacting a law 10 and they're not enforcing a law, they're doing 11 something further than that. They're going beyond 12 their power. 13 MR. WILLIAMS: They're -- they're -- they're 14 correcting, they're acknowledging a municipal 15 oversight, a clerical oversight. Or not. I guess 16 that was the question. Do you think it's something 17 greater than an acknowledgment of a clerical 18 oversight. 19 MR. RICH: His argument is that all they 20 could do is to send it back to the planning 21 commission. 22 MR. WILLIAMS: Okay. 23 MR. GALONSKI: If I could ask a question, 24 kind of follow up on your question, Mr. Williams, 25 that you asked to me.</p>	<p style="text-align: right;">36</p> <p>1 that. Exactly. 2 MR. RICH: Just curious. Why were you trying 3 to avoid it? 4 MR. MENDENHALL: Because he's using it to 5 characterize this. The framing is modifying, and 6 that's wrong. It's not modifying. They don't have 7 the power to modify. 8 MR. RICH: Well, but to make sense, I think 9 the argument would have to be the effect of the 10 action that they took is -- 11 MR. MENDENHALL: Is to modify 1181.09. 12 MR. RICH: -- to amend 1181.09(a) to give 13 them the option of modifying the plan. 14 MR. MENDENHALL: Right. 15 MR. RICH: Modifying different things here. 16 More questions? 17 MR. WILLIAMS: Well, you answered my second 18 question, which was what is the applicability of 19 Donnelly versus Fairview. And that's where the test 20 comes from. And so what we have to decide is pretty 21 much what you just said, which is does their actions 22 modify anything. Does city council, a 5 to 2 vote -- 23 MR. RICH: Well, it's modifying -- it's 24 modifying the site plan, but -- 25 MR. WILLIAMS: That's not the modification</p>
<p style="text-align: right;">35</p> <p>1 So if I understand your position, 2 Mr. Mendenhall, you always correct me when you don't 3 so I appreciate that. So what you're saying is if 4 somebody administers a law, ordinance, or regulation 5 incorrectly, right, because that's your argument is 6 they incorrectly administered the code section that 7 Attorney Sugerman, that makes it a legislative 8 action. 9 MR. MENDENHALL: Yeah. 10 MR. GALONSKI: Okay. That's your position. 11 If you incorrectly administer a statute -- I'm sure 12 Mr. Sugerman is not going to concede it was 13 incorrectly administered, but just taking for sake of 14 argument, you said that makes it a legislative 15 action; correct? 16 MR. MENDENHALL: Because they have to take on 17 power -- 18 MR. GALONSKI: That's his argument. 19 MR. MENDENHALL: -- that they were -- that 20 should have been granted if they had the power, that 21 should have been granted by legislation. 22 MR. RICH: You're saying, in effect, they are 23 modifying 1181.09(a). 24 MR. MENDENHALL: I was trying to avoid the 25 word "modify" at all points here, but I'll agree with</p>	<p style="text-align: right;">37</p> <p>1 I'm talking about. 2 MR. RICH: Right. Modifying 1181.09(a). 3 MR. WILLIAMS: Right. 4 MR. RICH: Yeah. Yeah, I think the argument 5 hinges on that. 6 MR. MENDENHALL: That is the argument. And 7 just to be clear, I like your word "amend." That 8 gives us a way to sort of split these out. 9 MR. RICH: Yeah. 10 MR. MENDENHALL: There's a way of modifying 11 the site plan, which council handled, but they did 12 that by essentially amending 1181.09 to take on a 13 power that they did not have to modify that site 14 plan. 15 MR. RICH: So I -- either 1189 -- 1181.09(a) 16 allows them to modify the site plan or it doesn't. 17 MR. MENDENHALL: Right. 18 MR. RICH: If it does, then the argument that 19 Mr. Mendenhall is making doesn't apply. 20 MR. MENDENHALL: Right. 21 MR. RICH: If it doesn't, then the question 22 is, when -- when the council acts in a way that 23 violates an ordinance, an applicable ordinance, does 24 that make the act legislative rather than 25 administrative or is it just a wrongful</p>

<p style="text-align: right;">38</p> <p>1 administrative act. Those, I think, are the two 2 questions. 3 MR. WILLIAMS: So in the -- in -- so it's 4 your view, Mr. Mendenhall, there's nothing council 5 could have done that would have been administrative 6 in this particular case? 7 MR. MENDENHALL: They had to send it back. 8 MR. RICH: They had to send it back. 9 MR. MENDENHALL: That is administrative. 10 MR. RICH: Yeah. 11 MR. MENDENHALL: They send it back. That's 12 what they're directed to do by their charter. It 13 would have added several weeks, I imagine, to the -- 14 to the process. 15 MR. GALONSKI: And you would concede that 16 if -- if Project Gumbo calls up the City of Twinsburg 17 and they say it's got to be -- can't be more than 18 35 feet and they put 35 feet in and then presumably 19 council passes it, right, because it's 35 feet, you 20 would -- you would -- you would concede that's not 21 subject to a referendum. 22 MR. MENDENHALL: That's not what we're 23 talking about here; right? That would be subject to 24 an administrative appeal. 25 MR. GALONSKI: Which you did file as well.</p>	<p style="text-align: right;">40</p> <p>1 action which differs from the recommendation of 2 planning commission shall not take effect unless 3 approved by five members of council," what does that 4 mean? What does that give council the power to do? 5 MR. MENDENHALL: Okay. So planning 6 commission, it gives the -- if planning commission 7 denies a plan, council can override it with -- that 8 denial with five votes as is. So the developer comes 9 in and submits a plan to the planning commission, the 10 planning commission votes against it, it still goes 11 to council and council can either accept it by 12 majority vote or override it by a 5 to 2 vote. 13 MR. RICH: So if the planning commission were 14 to deny a plan, you're saying the council could, by a 15 5 to 2 vote -- 16 MR. MENDENHALL: Accept it. 17 MR. RICH: -- approve the plan. 18 MR. MENDENHALL: Yeah. They could. 19 MR. RICH: Okay. But they can't approve it 20 with a condition. 21 MR. MENDENHALL: Yeah. 22 MR. RICH: I'm not sure -- it doesn't seem to 23 me the language actually is so limiting. And if it 24 were, I'd have trouble understanding why. 25 MR. MENDENHALL: Because they have the option</p>
<p style="text-align: right;">39</p> <p>1 MR. MENDENHALL: Yeah. And let me just 2 clarify that. I mean, obviously I'm covering my 3 bases. I have asked the supreme court to resolve 4 this issue. They didn't resolve it. If I don't have 5 an administrative appeal pending, I lose that option. 6 MR. WILLIAMS: But in your conversation here 7 is exhausting your administrative -- your 8 administrative remedies as well. 9 MR. MENDENHALL: Yeah. 10 MR. WILLIAMS: So your presence here is 11 required in order to pursue potential litigation if, 12 depending on what the board's decision is. 13 MR. GALONSKI: I have -- I have one more 14 question. Maybe -- maybe more than one, 15 Mr. Williams. Or Mr. Rich. Sorry. Mr. Rich, don't 16 hold me to it. Maybe at least one more question. 17 MR. RICH: For a minute I thought our 18 nametags were switched. 19 MR. WILLIAMS: You're the chair. 20 MR. GALONSKI: I was looking at you. Well, 21 Mr. Williams is the one who directed me for 22 questions, so. 23 All right, Mr. Mendenhall. So we've 24 discussed 1181.09; obviously everyone who's familiar 25 has read that statute. So what -- what does "council</p>	<p style="text-align: right;">41</p> <p>1 to send it back down. They have the option to send 2 it back down and the developer can propose a 3 condition or change -- let's call it a change. 4 Planning commission then accepts or rejects the 5 change and it comes back up. 6 MR. RICH: But by hypothesis that council is 7 already in disagreement with the planning commission 8 because -- 9 MR. MENDENHALL: But the change -- 10 MR. RICH: -- because they're approving a 11 plan that the commission denied. 12 MR. MENDENHALL: The scheme, though, is to 13 get input at the planning commission. They have 14 extensive public hearing, extensive public input. 15 That's -- that's the issue in Twinsburg. It is 16 very -- they are very jealous of their zoning code as 17 citizens, so they have maintained a lot of power 18 under specifically 7(A)01 of their charter, which 19 allows any charter change or any zoning change to be 20 voted on by the people. So it comes back, you know, 21 if there's a zoning change, it comes right back to 22 the people. But this planning commission process is 23 kind of part of that jealous, you know, protection of 24 the zoning issue so that there is full-blown -- 25 full-blown public hearing about whatever the plan is</p>

<p style="text-align: right;">42</p> <p>1 before it's presented to council. 2 MR. RICH: Listen -- 3 MR. MENDENHALL: This is getting into things 4 that, you know -- 5 MR. RICH: -- suppose that in the proceedings 6 before the planning commission a change had been 7 advocated and the zoning commission said, 8 essentially, no, that's not good enough. Denied. 9 And then it went to the council. So there was -- 10 there was already -- people had already been heard on 11 the question of whether that change should be -- 12 should be made. It comes to the council, and the 13 council thinks that with that change the plan is a 14 good one, it should be approved. What would be the 15 reason why they should have to send it back to the 16 planning commission under those circumstances? 17 MR. MENDENHALL: I think the cart there is a 18 bit ahead of the horse. If there's an amendment to a 19 plan before the planning commission, it would be 20 presented by the developer, whoever is developing the 21 property. Maybe the planning commission does 22 disapprove it because of the change, but if it's 23 made, it then goes to council as a disapproved plan 24 but council can override it. You don't change it 25 later. The changes get made at the planning</p>	<p style="text-align: right;">44</p> <p>1 straightforward administrative appeal. 2 MR. RICH: So really, in other words, if 3 the -- if the council had approved without this 4 condition -- 5 MR. MENDENHALL: 45. 6 MR. RICH: -- it would still be a 35-foot 7 height limit. 8 MR. MENDENHALL: No. They would have -- they 9 would have then violated the zoning code and we would 10 have had to have an administrative appeal, possibly a 11 TRO. 12 MR. RICH: And would you have won? 13 MR. MENDENHALL: Yes. Oh, absolutely. 14 MR. RICH: And what would the height limit 15 be? 16 MR. MENDENHALL: 35 feet. 17 MR. RICH: So if council had passed the plan 18 as presented by the planning commission, you still 19 have a 35-foot height limit. 20 MR. MENDENHALL: No. 21 MR. RICH: You just said -- 22 MR. MENDENHALL: They would have passed a 23 plan -- they would have passed the plan as 45 feet. 24 MR. RICH: Right. 25 MR. MENDENHALL: And if nobody did</p>
<p style="text-align: right;">43</p> <p>1 commission level in Twinsburg at this level. That's 2 where changes get made. They don't modify it in 3 council. 4 MR. WILLIAMS: What if we decide that the 45 5 to 35 is not tantamount to a change? 6 MR. MENDENHALL: I -- I can tell you, if you 7 look at the opinion it's -- it's a major issue. It 8 is tantamount to a change. I mean, that court 9 ruled on that, I believe. 10 MR. RICH: Let me ask the question this way. 11 MR. WILLIAMS: Sure. 12 MR. RICH: Thank you for asking the same 13 question. 14 Suppose the council had confirmed the site 15 plan that was recommended by the commission with no 16 condition, no change. 17 MR. MENDENHALL: Right. 18 MR. RICH: What would we have? 19 MR. MENDENHALL: Well, I certainly have an 20 administrative appeal for abuse of power. 21 MR. RICH: No, no. 22 MR. MENDENHALL: Yeah, they approve it and 23 then I've got a straight-up administrative appeal 24 that we would win on because they absolutely violated 25 the zoning code. Yeah, it's a straight-up,</p>	<p style="text-align: right;">45</p> <p>1 anything -- 2 MR. RICH: That would have been ineffective, 3 right, because of the zoning ordinance. 4 MR. MENDENHALL: If nobody does anything, 5 nobody sues or brings an administrative appeal, that 6 building gets built at 45 feet. They have already 7 had six buildings built at 45 feet in the interim, so 8 there have been six violations that we know of so far 9 of the zoning code. The citizens are now aware of 10 it. Had this happened, we would have filed an 11 administrative appeal and won that and/or we would 12 have filed, along with that, possibly a restraining 13 order against the city and against the builder to 14 stop construction. But that's a totally -- that's 15 the administrative process. That's totally 16 different. 17 MR. RICH: I don't know whether that helped 18 or not. 19 MR. MENDENHALL: No, I -- 20 MR. WILLIAMS: Well, it's interesting. 21 Where did the -- how -- what was the on- 22 process for changing the 45, the plans with the 23 45-foot building reduced, where was it reduced to 35? 24 MR. MENDENHALL: As far as I know, there were 25 not revised plans being submitted. That raises a</p>

<p style="text-align: right;">46</p> <p>1 whole other issue because the plans themselves by the 2 builder, I don't think they had plans of 35 feet that 3 were ever presented to council or presented to 4 planning commission. I mean, you guys correct me if 5 I'm wrong, but the plans had not been revised. 6 That's another element to this. 7 MR. WILLIAMS: So what got passed 5 to 2 with 8 whatever words you wanted to use to talk about the 9 reduction from 45 to 35, is that anywhere here in 10 front of us? 11 MR. MENDENHALL: It is, yes. It's Resolution 12 57-2022. I believe we both put it in there and it's 13 on page 1 of my brief. I extracted it here. 14 MR. REED: It's on the fifth page back, 15 Bryan, of the resolution. 16 MR. MENDENHALL: It's in my brief. 17 MR. WILLIAMS: Is that your Exhibit A? 18 MR. MENDENHALL: I think it's Exhibit -- yes, 19 it's Exhibit A, yes. 20 MR. RICH: While he's looking at that, it 21 seems to me that we've identified a possible policy 22 reason for not allowing the council to make a change, 23 which is you wouldn't have plans at that point that 24 would reflect that change. Is that right? 25 MR. MENDENHALL: Exactly.</p>	<p style="text-align: right;">48</p> <p>1 begin, but I'll begin with your last question. That 2 might be a good. 3 If you look at 57-2022, in the fourth whereas 4 clause, you'll see, "Whereas, after considering 5 public testimony, the applicant requested to reduce 6 the height of their project so that the project's 7 building height does not exceed 35 feet." So the 8 applicant came before council and said, hey, you're 9 right, it's 35 feet. The ministerial act of actually 10 changing that is irrelevant because all it does is 11 change the height from 45 to 35, which, as you 12 indicated, Mr. Rich, is absolutely correct. It's 13 administering the correct law. Somehow or the other, 14 I think they're trying to obfuscate all of this by 15 trying to say that they should have made a mistake 16 and therefore it would have gone back to the planning 17 commission and then it would have come back to the 18 council, and that's just not how the government goes. 19 That's not how the ordinance goes. Because what he 20 doesn't -- 21 I just have to go back and read two things to 22 you. One, 1181.09, "Council action which differs 23 from the recommendation of the planning commission 24 shall not take effect unless approved by five members 25 of council." That's exactly what happened here. It</p>
<p style="text-align: right;">47</p> <p>1 MR. WILLIAMS: So where is the final site 2 plan? 3 MR. MENDENHALL: There isn't one. That's the 4 point. As far as I know. Guys, speak up if you have 5 a final site plan. 6 MR. SUGERMAN: When it's my turn. 7 MR. MENDENHALL: Okay. Okay. You see the 8 final site plan is May 16 and that had the 45-foot 9 height issue. 10 MR. WILLIAMS: Yeah, I think you've 11 articulated something -- I was going to say of value 12 but I don't want to imply that that's a rare 13 occurrence. 14 MR. RICH: I thought you were going to say it 15 wasn't completely unreasonable. 16 MR. WILLIAMS: But I think that -- that -- 17 MR. RICH: And wrong but you're not 18 completely unreasonable. 19 MR. WILLIAMS: But I'd like to hear what 20 Mr. Sugerman seems to -- 21 MR. RICH: Sure. Is there anything else? 22 MR. MENDENHALL: No. No. Thank you very 23 much for your time. 24 MR. WILLIAMS: Mr. Sugerman. 25 MR. SUGERMAN: I don't even know where to</p>	<p style="text-align: right;">49</p> <p>1 differed from the planning commission because they 2 changed the 45 to the 35. And as both of you have 3 indicated, or acknowledged here, council simply did 4 the right thing. Let me read the test again because 5 I think that's -- all this other stuff is really 6 irrelevant to the test. The test is whether the 7 action of a legislative body is legislative or 8 administrative is whether the action taken is one 9 enacting a law, ordinance, or regulation. Council 10 didn't do that here. They did not do that. Or 11 executing or administrating a law, ordinance, or 12 regulation already in existence. We've stipulated 13 that the 35 feet -- he stipulated that the 35 feet 14 was already in existence. 15 MR. RICH: Yeah, but that's not the law -- 16 that's not the law that he's talking about when he 17 makes that argument. He's talking about 1181.09(a). 18 He's saying that they -- by changing the plan, by 19 imposing that condition, that they violated 20 1181.09(a) because that allows them only to -- to 21 confirm or not confirm a site plan. It doesn't give 22 them the option of confirming it with -- on a 23 condition. And he further argues that if they acted 24 in violation of 1181.09(a) when they confirmed with 25 modification, with the condition, that that makes</p>

<p style="text-align: right;">50</p> <p>1 what would otherwise be an administrative act a 2 legislative act. So that's, I think, the argument 3 you need to respond to. 4 MR. SUGERMAN: You could not make it a 5 legislative act because it did not enact a law, 6 ordinance, or regulation. That's the simplest answer 7 that I could give, and that's the correct answer. 8 MR. RICH: You're saying it's not effectively 9 amending 1181.09(a) to give the council the option of 10 confirming a plan with the modification. 11 MR. SUGERMAN: It's already in 1181.09(a). 12 It's already there. He just doesn't want to read 13 that sentence. That's already there. You can 14 differ. And again, it's done all the time. 15 MR. RICH: Right. So you've got differing 16 interpretations of that sentence in 1181.09. Suppose 17 that he, for a second, just hypothetically, that he 18 were -- his interpretation of 1189.0 -- 1181.09(a) 19 were correct. And that, therefore, when the council 20 did what it did it was acting in violation of that 21 section. Would that make it a legislative act rather 22 than an administrative act because it effectively is 23 somehow permanently giving the council a third option 24 there. Or a fourth option. I lost count. 25 MR. SUGERMAN: I guess I'm having trouble</p>	<p style="text-align: right;">52</p> <p>1 or legislative act. And you were right at the very 2 beginning. I appreciated Mr. Mendenhall, I think he 3 said I appreciate your argument. What you indicated. 4 And hopefully I'm not going to -- I'm paraphrasing 5 what you said, but, you know, by doing this it was an 6 administrative act. I appreciate it too, because 7 you're right. This was an administrative act. 8 MR. RICH: I mean, I tend to think of it as, 9 on the hypothesis that Mr. Mendenhall's 10 interpretation of 1181.09(a) is correct, and I'm -- 11 and I'm just hypothesizing that, I'm not agreeing 12 with it. It seems to me that -- that what the 13 council did under that hypothesis would be an 14 unlawful administrative act. I don't see it making 15 it a legislative act. 16 MR. SUGERMAN: I would agree with that to 17 the -- to the extent that you're making that 18 argument, if you will. Or reaching that conclusion. 19 MR. RICH: Just on the hypothesis. 20 MR. SUGERMAN: Reaching that conclusion, it 21 could not transform, somehow or the other, whatever 22 council did that day into a legislative act. No 23 matter what they did, it was a -- it was an 24 administrative act. Even under his rather 25 far-fetched scenario, that's what it was. It was an</p>
<p style="text-align: right;">51</p> <p>1 responding because I don't understand the argument. 2 If -- if they say 45 feet -- 3 MR. RICH: Essentially that they're -- that 4 they're amending 1181.09(a) when they exercise the 5 power to do something that he is saying, and I 6 realize you disagree with this but assume for the 7 sake of argument he's correct on this, when 8 they're -- when they're exercising an option that 9 1189 -- 1181.09(a) doesn't give them, doesn't allow 10 them, he's saying then that makes this a legislative 11 act rather than administrative act because they're 12 effectively amending 1181.09 to give themselves this 13 additional option. 14 MR. SUGERMAN: I guess I can answer that by 15 agreeing with Mr. Mendenhall that he would have had 16 an administrative appeal right under -- under 2506, 17 but the legislation that you're here to talk about 18 today doesn't talk about amending 1181.09 directly or 19 indirectly. What he's talking about is the power of 20 council and if they exceeded that power. That's a 21 whole different lawsuit. What -- what we're talking 22 about here is 57-2022. That's what he filed the 23 mandamus on, that's what he filed the administrative 24 appeal on, and that's what you need to decide. 25 Whether this, what is in here, is an administrative</p>	<p style="text-align: right;">53</p> <p>1 administrative act. And it's a really -- again, it's 2 just a simply -- 3 MR. RICH: Not scenario. His interpretation 4 of 1189 -- 1181.09(a). 5 MR. SUGERMAN: Interpretation, scenario. I'm 6 probably using -- 7 MR. RICH: Right. If his interpretation of 8 it is correct, then council acted unlawfully, that 9 is, in violation of 1181.09(a). When it approved the 10 plan conditionally. As opposed to didn't approve it 11 at all or approved it as presented. 12 MR. SUGERMAN: That's the argument he made in 13 the supreme court. He never made an argument about 14 his hypothesis today about 1181.09. That was nowhere 15 in the brief. 16 MR. RICH: Well, we're not limited to the 17 argument he made in the supreme court. 18 MR. SUGERMAN: I understand that, but I'm 19 just saying that, you know, that was never an 20 argument before the supreme court. So he just sort 21 of came up with that one between then and now. 22 But -- 23 MR. RICH: Okay. Sometimes people can do 24 good argument. That's what we do. 25 MR. SUGERMAN: Even if that argument, he's</p>

<p style="text-align: right;">54</p> <p>1 making that argument, he's creative, yeah, I'll give 2 him that. But the fact is, you know, a creative 3 argument doesn't transform it into a legislative act, 4 because it's not. 5 MR. RICH: Well, a good creative argument 6 would. I'm just not sure this is it. 7 MR. SUGERMAN: To that, I would agree. 8 MR. WILLIAMS: I have a question for the 9 prosecutor. 10 MR. RICH: Uh-huh. 11 MR. WILLIAMS: If I were to -- if I were to 12 decide that passing this with the whereas change does 13 not change the municipal ordinances or zoning 14 therefore, that the effect of how they got there 15 didn't change it and therefore it was administrative 16 in nature, does the -- is it -- is it a board 17 consideration that the underlying reality is there is 18 no final site -- that the underlying reality that 19 there is no final site plan, is that relevant to our 20 concern about it being an administrative or 21 legislative action? 22 MR. GALONSKI: I think the board's limited to 23 making a determination whether it's administrative or 24 whether it's legislative. There could be other 25 issues, you know, that I think Mr. Mendenhall says I</p>	<p style="text-align: right;">56</p> <p>1 fact, if it is a fact, that we don't have -- that 2 they don't have a final site plan at 35 feet could be 3 a reason why the council would have intended, when it 4 enacted 1181.09(a), a reason why they were not giving 5 themselves that fourth option to approve with a 6 condition. Because they wouldn't have had -- under 7 those circumstances, they wouldn't have a final site 8 plan, and maybe they should have a final site plan. 9 But the only relevance of that -- 10 MR. VAZZANA: Excuse me. May I -- may I 11 approach? I apologize. 12 MR. WILLIAMS: We're going to finish. 13 MR. VAZZANA: I wanted to talk about the site 14 plan. 15 MR. WILLIAMS: Yeah. Let me just finish the 16 thought. 17 What do I say about the meaning of the 18 1181.09? You know, it's -- it's very broadly worded. 19 I think it does allow for a modification. Can't be 20 sure that that's what council meant here, but they 21 didn't limit themselves. And is this a modification? 22 MR. RICH: Of? Is what a modification? 23 MR. WILLIAMS: Does what we have before us 24 represent a modification? 25 MR. RICH: The condition?</p>
<p style="text-align: right;">55</p> <p>1 have multiple options and multiple lawsuits I could 2 file. He certainly, not, you know, knowing anything 3 more really than what I found out so far on the case, 4 you have a lawsuit that's pending, obviously you've 5 made some administrative error issues. So as far as 6 you, the board of elections, you would make a 7 decision does it fall within the category of an 8 administrative subject to referendum. The 9 consequences of that determination -- 10 MR. WILLIAMS: Administrative not subject to 11 referendum. 12 MR. GALONSKI: Correct. Administrative not 13 subject to referendum or legislative. Whatever 14 determination you make, there obviously are 15 underlying issues that can be raised. Your 16 determination doesn't indemnify, for lack of a better 17 term, the City of Twinsburg from another action 18 related to there's no site plan, X, Y, Z, so you're 19 limited in your scope. 20 MR. WILLIAMS: The only relevance of the 21 question of whether there is a final site plan is any 22 light that that sheds on whose interpretation of 23 1181.09(a) is correct. So Mr. Mendenhall is arguing 24 that it doesn't give the council the option of doing 25 what it did, approving with the condition. And the</p>	<p style="text-align: right;">57</p> <p>1 MR. WILLIAMS: Yeah. 2 MR. RICH: Well, that's another good 3 question, because the 45 feet in there would be 4 ineffective. Because it violates the zoning law. 5 But somebody would have to go to -- as a practical 6 matter, I think somebody would have to go to court. 7 Well, unless the city just voluntarily -- and the 8 developer voluntarily adhered to the 35-foot limit 9 despite what's in the resolution. 10 Go ahead. 11 MR. GALONSKI: If I could just jump in real 12 quick. So you kind of asked, you know, what 13 precedent, what we've done in the past. I think in 14 the past consistently we've also looked to the law 15 director for the community as it relates to the 16 interpretation of their statues, at least to put 17 forth the position. We've done that with Norton, I 18 think least year we did it, there was an issue with 19 Norton. So I think we have the Twinsburg law 20 director here. 21 MR. VAZZANA: I think I was going to say 22 thank you, that's a perfect segue. 23 MR. GALONSKI: Not that you always agree, but 24 you at least listen. 25 MR. VAZZANA: So before we -- I guess we'll</p>

<p style="text-align: right;">58</p> <p>1 start with that. So I guess I'll start with the 2 Donnelly test, which we've talked about; right? So 3 an administrative action where the tests for 4 determining whether the action of a legislative body 5 is legislative or administrative is whether the 6 action is enacting a law, ordinance, or regulation, 7 or if the council is executing and -- or 8 administering a law. 9 So when you asked, like, where I was at with 10 this all along, this is where I started. So is it 11 administrative or is it legislative. You fast 12 forward to this -- and we'll get into the site plan 13 in a second. You fast forward as Project Gumbo is 14 working its way through the process. It goes to the 15 planning commission. The planning commission then 16 makes a recommendation. At that time, Mr. Warner 17 approaches me at the first night when this 18 recommendation is brought before council for 19 confirmation and he informs me that the -- the height 20 that I've been operating on, you know, I've been law 21 director for nine months now in the city, isn't the 22 correct height. The zoning ordinance doesn't have 23 the right number associated with it. So I take a 24 step back. I advise council to continue this 25 confirmation on Project Gumbo to the next meeting and</p>	<p style="text-align: right;">60</p> <p>1 land use practice, it is not uncommon, on the final 2 vote night, that a condition is added on by a board 3 that has the authority to approve or deny. That 4 night, the city council simply relied on the third 5 administrative option that is provided for them in 6 clearly 1189 -- 1181.09 -- now I'm doing what you 7 were doing, Mr. Rich. It's a tough one to say. And 8 they added a condition for approval and then carried 9 the requisite vote for that third option, five votes, 10 and they did. That's it. 11 If we go back to what I said in the 12 beginning, the test for administrative versus 13 legislative, administrative is are you enacting or 14 administering existing law. 1181.09 was on the 15 books. It's an existing law that council had already 16 approved that set forth three options for the 17 council. They exercised that third option. I don't 18 know how Mr. -- or Attorney Warner Mendenhall can 19 argue that the first two options within 1181.09 are 20 administrative but the third option where the council 21 exercises its five-vote authority to amend, modify, 22 differ, whatever word you want to use, it's all the 23 same, how that can now be a legislative action. 24 Council approved 1181.09. 25 MR. RICH: That's not exactly what he's</p>
<p style="text-align: right;">59</p> <p>1 I look at what the options are. 2 So as a municipal lawyer, I've been doing 3 this over a decade now, I went back to was that, you 4 know, administrative, legislative, and I looked at 5 the ordinance in question, the operative ordinance, 6 which is 1181.09, which sets forth the three options 7 that council has when faced with a planning 8 commission recommendation, they can confirm it, they 9 can confirm the denial, and actually I think I 10 misstated that. I apologize. They can confirm 11 the recommendation of planning commission for 12 approval, they can confirm the recommendation of 13 planning commission for denial, or if they want to 14 differ from either of those options, if they hit a 15 five-person vote they can differ from the 16 recommendation of the planning commission. 17 So faced with those three administrative 18 choices for the council to act, now the application 19 is back up for its second night and I proposed the 20 revision to the resolution where we put a simple 21 condition on the site plan that was that it couldn't 22 be in excess of 35 feet. So when he's talking about 23 final site plan, it's common in large developments 24 that you'll see a lot of different iterations of site 25 plans as it works its way through the process. In my</p>	<p style="text-align: right;">61</p> <p>1 arguing. 2 MR. VAZZANA: It's one of the things. 3 MR. RICH: He's arguing that the differs -- 4 differs doesn't include modification of the plan. 5 Imposing a condition that effectively modifies the 6 plan. 7 MR. VAZZANA: So he's -- 8 MR. RICH: And then he's arguing when the -- 9 when the council acts in violation of 1181.09 by 10 approving a slightly different plan from the one that 11 came to the planning commission, that converts what 12 would otherwise be an administrative act to a 13 legislative act. That's what he's arguing. 14 MR. VAZZANA: And I would just kind of pose a 15 question for all of us to think about. How is that 16 not, when something differs, modifies condition, how 17 is that action by council of putting that 35-foot 18 condition not fall squarely within the line that says 19 "Council action which differs from the recommendation 20 of the planning commission shall not take effect 21 unless approved by five members of council." That is 22 a previously enacted piece of law, and when council 23 exercised their authority underneath that they were 24 exercising their administrative authority. They were 25 not creating a new law that applied citywide. This</p>

<p style="text-align: right;">62</p> <p>1 is about an individual site plan where council 2 exercised that third option. 3 MR. RICH: So it's your -- it's your position 4 that approval by five, six or seven, any change is -- 5 no change is if it's single conditional is tantamount 6 to a legislative action. 7 MR. VAZZANA: No change as long as it's 8 consistent with law, of course. 9 MR. WILLIAMS: Yeah. 10 MR. VAZZANA: So the key here is, to your 11 question, the key here is just the change from what 12 the planning commission approved. So much has been 13 talked about heights that are in excess of the 14 existing law, and I think that's important. Nobody 15 is suggesting here that we could place a condition 16 that creates a new zoning ordinance that applied 17 citywide. So a new height condition, or new height, 18 for example. But my argument, and to go back to 19 answer your question, when I looked at all this when 20 I saw this third prong here within 1181.09, I thought 21 that that clearly granted the city council the right 22 to place a condition because that condition is 23 differing from the planning commission's 24 recommendation and that they could exercise that 25 administrative authority to do that.</p>	<p style="text-align: right;">64</p> <p>1 doesn't make the action legislative. And I think 2 Mr. Mendenhall has smartly opined on that that the 3 legal recourse in that situation would be an 4 administrative appeal. I mean, that's -- it's not a 5 legislative action. You know, we got to think 6 about -- let's go back to that Donnelly test. To me 7 it's pretty clear it's enacting a new law. To take 8 the facts that you just set forth in your 9 hypothetical, if council had considered and passed a 10 law that permitted some new type of use with 11 yellow-tinted windows, sure, that's subject to the 12 power of referendum in the state of Ohio. But 13 council didn't do that with this site plan for this 14 privately owned parcel. They merely placed a 15 condition on their approval when Warner told me 16 personally that the height wasn't correct on it, so 17 the condition relates to that to make sure the plan 18 is in conformance with the law, and by doing that 19 they exercised that third prong of authority within 20 1181.09 which permits them to administratively differ 21 from the previous -- the planning commission's 22 approval. 23 I also want to note something else before I 24 forget. I think it was mentioned, if I was listening 25 clearly, about the idea of sending things back to</p>
<p style="text-align: right;">63</p> <p>1 And to circle all the way back, Mr. Williams, 2 of course they couldn't put a condition that 3 permitted something that wasn't allowed in the city, 4 whether it be use or height or a setback or, you 5 know, name your zoning flavor. But they were 6 permitted to place a condition -- 7 MR. RICH: Let me ask you, if they had voted, 8 said there's a difference, though, because what they 9 were allowed to do and what they were not allowed to 10 do and what's administrative and what's a legislative 11 act. So, you know, suppose they put a condition 12 that, you know, all the windows need to be tinted 13 yellow, which I assume is not a requirement. 14 MR. VAZZANA: It's not requirement, no, not 15 that I know of. But Warner knows the zoning code 16 real well. As he mentioned, he may sue the city -- 17 MR. RICH: Assume for the sake of argument -- 18 I just make this up. But assume for the sake of 19 argument there's no zoning law that would require 20 that the windows be tinted yellow, but suppose the 21 council imposed that and they shouldn't have, right, 22 or that they imposed a condition that the zoning 23 ordinance actually doesn't even allow, would that 24 act -- could that act could be unlawful? 25 MR. VAZZANA: Could be unlawful but that</p>	<p style="text-align: right;">65</p> <p>1 planning commission. As a land use lawyer, yes, 2 you'll see that in many different communities' zoning 3 codes, charters, depending on where they put it, but 4 that's not a mandatory-type thing unless your zoning 5 code makes it mandatory, and maybe most importantly, 6 that's not an exclusive action in the sense that if 7 you have that right you can't also use 1181.09. 8 So I just wanted to clarify that it's common 9 that cities give that right. And I'll tell you kind 10 of where that comes from, at least from my practice. 11 The right to refer back, and I bring this back to 12 Rich because I think you're curious about that. The 13 right to refer back to the planning commission is 14 rooted in a pretty simple idea. A recommendation 15 comes forward from a planning commission to a city 16 council. The city council begins debating it, as we 17 all know city councils do. City council might say, 18 you know, we have an idea that we're not wholly, you 19 know, 100 percent on, so maybe they're debating a 20 legislative change, debating whether or not to add in 21 yellow windows as a mandatory-type thing. They want 22 to add that piece in. They'll send it back down to 23 the planning commission to consider. It's a 24 legislative action, they'll take a look at it, but 25 that's not relevant here. Here, the council just</p>

<p style="text-align: right;">66</p> <p>1 exercised an authority they had already had in the 2 code under 1181.09. 3 MR. GALONSKI: So if I could jump in. So if 4 I understand your argument, your argument is 5 basically the council passed the 35 height 6 requirement because the 35-foot height requirement 7 was the existing law for the city of Twinsburg. So 8 they weren't changing the law; 35 feet was the law. 9 It just wasn't -- 10 MR. VAZZANA: 100 percent. 11 MR. GALONSKI: Is that your argument? 12 MR. VAZZANA: Yeah. And if I can just make 13 sure I understand, or I'm confirming the correct 14 thing, the gentleman in here, Attorney Mendenhall, 15 brought to my attention that the height law that the 16 city council and the planning commission had looked 17 at that was part of that site plan, the 45-foot 18 height, was incorrect. So what I did was I 19 immediately said you have to place a condition on 20 this. It cannot exceed 35 feet. And that's -- 21 that's as simple as that, and they were allowed to do 22 that under that third prong. 23 MR. GALONSKI: So what if the opposite was 24 true; that Project Gumbo, the council modified it and 25 everyone agrees the height was 35 feet and Project</p>	<p style="text-align: right;">68</p> <p>1 online code wasn't correct. And like I said, I was 2 reassured because 1181.09 gave the city council the 3 power to add that condition on to it and differ, to 4 use the language from the exact, from the code, to 5 make that. 6 MR. WILLIAMS: The -- so you're arguing two 7 things, not one. You're arguing that the change that 8 council made in the runup to their 5 to 2 affirmative 9 vote was not a legislative change because they were 10 simply making the -- making the project admit -- 11 submit to current law. 12 (Mr. Zeigler leaving room.) 13 MR. VAZZANA: That's correct. 14 MR. WILLIAMS: And you're making the argument 15 that some changes can -- substantive changes can be 16 made by council after the planning commission sends a 17 recommendation as long as they get a 5 to 2 vote, and 18 if those are permissible -- I see this table that was 19 submitted in one of the pleadings that talks about 20 what are permissible conditional. And building 21 height under I-2 is not one of the boxes checked. 22 But -- 23 MR. VAZZANA: Yeah. 24 MR. WILLIAMS: -- but if it was -- if it was 25 one of these that allowed for prescribed conditional</p>
<p style="text-align: right;">67</p> <p>1 Gumbo came to the council and said we want it to be 2 45 feet now. So you would say now would be a 3 legislative action because we would be changing the 4 law. 5 MR. VAZZANA: No. 6 MR. GALONSKI: You're still saying that's 7 administrative. 8 MR. VAZZANA: Yeah, I would say that that's 9 an administrative action that the council couldn't 10 take. 11 MR. GALONSKI: Okay. 12 MR. VAZZANA: But to answer your question, if 13 somebody did say that, I would say, well, you have to 14 file an application for a legislative change in the 15 City of Twinsburg, and legislative changes within the 16 City of Twinsburg, by and large, are subject to 17 referendum of the people. So you have to begin that 18 process, which would ultimately end up in a vote of 19 the people to change the law. Not change the site 20 plan, but to change the law to allow, you know, 21 75-foot buildings. The action of placing the 22 condition limiting to 35 feet was to make sure that 23 we weren't exceeding the existing law in the zoning 24 code and it was done in direct response to Warner 25 alerting me, the new law director for the city, that</p>	<p style="text-align: right;">69</p> <p>1 zoning, then even if they had made a change to the 2 recommendation of the planning committee, that too 3 would have been administrative. 4 MR. VAZZANA: No, conditional use is a 5 separate land use permit. It would have to be 6 separately applied for. So no conditional uses were 7 granted, nor were they applied for in this site plan 8 review. I think that's the kind of stuff that you 9 want to talk about land use, that's where it gets a 10 little bit confusing. Conditional uses require a 11 separate approval from the planning commission before 12 you can get a certificate to operate under a 13 conditional use. So that's different. 14 What I think you're saying is if the city 15 council was to place a condition that differed from 16 the planning commission's approval that wasn't a 17 conditional use, wasn't a variance -- that's another 18 one of those things you got to get from a different 19 board -- but just was something like, oh, you have to 20 have hedges along the sideline that have to be at 21 least 5 feet, that would be permitted in R-R from the 22 city, to get back to your original question of where 23 was my head at, was that third prong in 1181.09 24 granted council the administrative authority to 25 differ, to use the exact word, to differ from the</p>

<p style="text-align: right;">70</p> <p>1 planning commission's recommendation. And if you go 2 back to the Donnelly test, the test is simple between 3 what's administrative and what's legislative. 4 Administrative is where you're executing or 5 administering existing law. 1181.09 exists, sets 6 forth three things council that do. One of them is 7 differ with a five vote on the planning commission's 8 recommendation. 9 MR. WILLIAMS: There you go. 10 MR. RICH: Okay. Mr. Mendenhall, anything 11 final to say that you haven't already said? 12 MR. VAZZANA: Thank you for your time, by the 13 way. I didn't expect to talk that much, so I 14 apologize. 15 MR. RICH: We've been listening very closely 16 to you, so we've heard everything you said. But if 17 you have something you feel you haven't said already. 18 MR. MENDENHALL: I'm going to repeat myself. 19 Just for a minute. 20 MR. RICH: Okay. I think we got it. 21 MR. MENDENHALL: Just remember, I'm not 22 really arguing about height. What I'm arguing about 23 is power, and I think you guys get that. 24 MR. RICH: Yeah. 25 MR. MENDENHALL: It's essentially what we</p>	<p style="text-align: right;">72</p> <p>1 I don't -- are we to consider anything beyond that? 2 I don't know if what was done was -- was allowable 3 under their ordinances and procedures. That can 4 be -- those issues can be fought elsewhere. 5 MR. RICH: Right. That's just -- I think 6 we're in agreement. I'm saying it really doesn't 7 matter whether -- in the end, whether 1181.09(a) was 8 violated or not by the council's action because I 9 think it is still administrative in nature. It just 10 would be -- you know, it just would be an unlawful 11 act. Doesn't make it a legislative act. An unlawful 12 administrative. I'm not saying it is unlawful. I'm 13 not -- 14 MR. WILLIAMS: Right. You're not passing 15 judgment on that. That's not our -- that's not in 16 our purview. 17 MR. RICH: Well, we would have to reach that 18 question if -- if we thought that acting in the 19 council's action which would otherwise be 20 administrative but in violation of -- of an ordinance 21 is legislative in character because it violates the 22 ordinance. 23 MR. WILLIAMS: Right. I get that. 24 MR. RICH: We'd have to reach that question 25 but I don't think we do because I think we agree that</p>
<p style="text-align: right;">71</p> <p>1 have is modification of 1181.09 to give the council 2 new powers, and it can't do it the way it did. 3 That's it. Thank you. 4 MR. WILLIAMS: What? 5 MR. RICH: I have to say I'm not persuaded 6 that 1181.09(a) precludes the council from approving 7 a plan with a condition. And further, I have to say 8 that I think if it did, and the council approved the 9 plan anyway, they would be in violation of 1181.09(a) 10 and that could be subject to an administrative appeal 11 but it wouldn't make the administrative act somehow 12 legislative in character. It's still administrative. 13 It's just in violation of 1189 -- 1181.09(a). That's 14 where I come down. 15 MR. WILLIAMS: So did the -- did what the 16 council passed enact an ordinance? 17 MR. RICH: No. No. 18 MR. WILLIAMS: That's what I believe. 19 MR. RICH: That it did or did not? 20 MR. WILLIAMS: Did not. 21 MR. RICH: Yeah. 22 MR. WILLIAMS: So I had to wrestle with that. 23 MR. RICH: Ordinance in the sense of a 24 permanent law. 25 MR. WILLIAMS: Right. And if that's -- if --</p>	<p style="text-align: right;">73</p> <p>1 no matter how -- no matter what the meaning of 2 1181.09(a) is on this point, the council resolution 3 was not legislative in nature. 4 MR. WILLIAMS: Right. I agree that the 5 effect of whatever they -- whatever they did at 6 council did not enact legislation based on that 7 Donnelly test. 8 MR. RICH: Okay. Want to make a motion? 9 MR. WILLIAMS: What's before the board? The 10 petition? The clerks never sent them to us. 11 MR. REED: Yeah, we received -- got those 12 petitions. We verified the signature count. We sent 13 that back to Twinsburg. 14 MR. RICH: What we don't exactly have is the 15 certification of their sufficiency and validity, but 16 that's because the clerk's position is they were not 17 valid because it's not a proper subject for 18 referendum. But I think that's a -- 19 MR. WILLIAMS: Well, we don't have the 20 authority to compel the clerk to give us something 21 they refuse to give us, do we? 22 MR. ZEIGLER: Well, they -- 23 MR. RICH: What they said was, Here, this is 24 in compliance with Item 5 in the supreme court's 25 order.</p>

<p style="text-align: right;">74</p> <p>1 MR. ZEIGLER: Yes. 2 MR. RICH: What was the -- what were they 3 holding when they said "here." The petitions and the 4 certified copy of the resolution. 5 MR. ZEIGLER: And the memorandum. 6 MR. WILLIAMS: I'm asking these questions 7 because I don't know what motion would be in order. 8 MR. RICH: No, I understand. 9 MR. WILLIAMS: We've got nothing pending 10 before us because the clerk never gave us -- 11 MR. REED: These are the two. These would 12 have been two of the items that were brought to us on 13 Friday. 14 MR. WILLIAMS: Well, we have that. 15 MR. GALONSKI: We should put on the Record, 16 because I think this is one thing that is clear, was 17 there enough valid signatures, setting aside 18 everything else, to place it on the ballot? 19 MR. RICH: Yes. 20 MR. GALONSKI: And everyone agrees to that. 21 MR. MENDENHALL: I'm sorry. Say that again. 22 MR. GALONSKI: Were there enough signatures 23 that were valid to place it on the ballot. Everyone 24 agrees. 25 MR. RICH: We made that determination that</p>	<p style="text-align: right;">76</p> <p>1 MR. SUGERMAN: We're complying with the 2 supreme court's fourth step in returning this to you 3 and we had requested a hearing. 4 MR. WILLIAMS: I see. 5 MR. SUGERMAN: To determine. Okay. To 6 determine whether it was administrative or 7 legislative. 8 MR. VAZZANA: September 9. It's a memorandum 9 dated September 9 that was filed on Friday. 10 MR. SUGERMAN: Correct. So that was the 11 fourth step. So therefore you do have -- we submit, 12 respectfully, you do have the authority to go forward 13 and make that motion and make that determination. 14 MR. RICH: And I agree with that. 15 MR. WILLIAMS: So the motion -- 16 MR. GALONSKI: I would also suggest you give 17 to the court reporter whatever -- 18 MR. RICH: Yeah. 19 MR. GALONSKI: -- was submitted. 20 MR. REED: Passed around. 21 MR. GALONSKI: We're going to make a good 22 record here. I'll actually suggest a good record. 23 MR. WILLIAMS: Mr. Chairman, commission, I 24 move -- I make a motion to deny certification of 25 Twinsburg referendum on council Resolution 57-2022</p>
<p style="text-align: right;">75</p> <p>1 there were. 2 MR. GALONSKI: Got you. 3 MR. MENDENHALL: So the board of elections 4 has verified the signatures? 5 MR. SUGERMAN: And we've complied with Step 6 4. So if I could suggest the motion would be -- if 7 I'm hearing you correctly, the motion should be a 8 determination by this board that council's action was 9 administrative and not legislative and therefore the 10 referendum should not go on the November 8, 2022, 11 ballot. 12 MR. RICH: I think that's it. 13 MR. WILLIAMS: What referendum? 14 MR. SUGERMAN: The referendum petition -- 15 MR. WILLIAMS: We've got nothing in the 16 record that I know of that the board -- we've got 17 some paperwork but we don't have the referendum 18 before us. We don't have anything from Twinsburg 19 saying we believe that -- here's the referendum, we 20 believe that it should go on the ballot for these 21 reasons. 22 MR. SUGERMAN: Yes, that was given to you 23 Friday. That was given to you Friday. 24 MR. WILLIAMS: Is that what this is? 25 MR. REED: Correct. I think that is right.</p>	<p style="text-align: right;">77</p> <p>1 because the resolution is administrative and not 2 properly subject to referendum. 3 MR. RICH: I'm sorry. I should have done 4 this earlier. Certification to the ballot. Is that 5 okay? 6 MR. WILLIAMS: Uh-huh. I'll restate my 7 motion. Mr. Chairman, I'll restate my motion. 8 I move to deny certification to the ballot of 9 Twinsburg referendum on council Resolution No. 10 57-2022 because the resolution is administrative and 11 not properly subject to referendum. 12 MR. RICH: I second the motion, which is an 13 odd thing to do when there are only two of us 14 participating but just out of habit. 15 MR. WILLIAMS: Thank you. 16 MR. RICH: Is there any debate on the motion? 17 I think we've had plenty of debate. 18 MR. WILLIAMS: No. 19 MR. RICH: All in favor of motion signify 20 saying "aye." 21 Aye. 22 MR. WILLIAMS: Aye. 23 MR. RICH: The motion is adopted without 24 dissent. Mr. Weber -- 25 MR. WEBER: Abstained.</p>

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1 MR. WILLIAMS: Was the court reporter able to
2 get my motion?
3 MR. MENDENHALL: If I may, I have a question.
4 Do you have a quorum simply because Mr. Webster, is
5 that what you're doing?
6 MR. RICH: Weber is his name. Yeah. We have
7 a quorum. There are three of us present. Two of us
8 voted and one abstained.
9 MR. MENDENHALL: I thought he had recused.
10 MR. RICH: Thank you very much.
11 MR. SUGERMAN: Thank you. We appreciate your
12 time. Thank you.
13 MR. RICH: Next item is other business. Is
14 there other business to come before the board today?
15 MR. REED: I do not have any. Pete?
16 MR. ZEIGLER: No.
17 MR. WEBER: None here.
18 MR. WILLIAMS: Just Lance to keep in place.
19 MR. RICH: Is there any objection to
20 adjournment?
21 MR. WILLIAMS: No.
22 MR. RICH: Hearing none, I declare the
23 meeting adjourned.
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2 (The proceedings were concluded at 3:04 p.m.)
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C E R T I F I C A T E

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3 STATE OF OHIO)
4)SS
5 STARK COUNTY)
6
7 I, Laurie Maryl Jonas, a Registered Merit Reporter
8 and Notary Public in and for the State of Ohio, duly
9 commissioned and qualified, do hereby certify that this
10 meeting was by me reduced to Stenotype and afterwards
11 prepared and produced by means of Computer-Aided
12 Transcription, and that the foregoing is a true and
13 correct transcription of the proceedings.
14 I further certify that these proceedings were
15 taken at the time and place in the foregoing caption
16 specified.
17 I further certify that I am not a relative,
18 employee of or attorney for any party or counsel, or
19 otherwise financially interested in the event of this
20 action.
21 I do further certify that I am not, nor is the
22 court reporting firm with which I am affiliated, under a
23 contract as defined in Civil Rule 28(D).
24
25 IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my seal of office at Canton, Ohio, this
15th day of September, 2022.


Laurie Maryl Jonas
Laurie Maryl Jonas, RMR & Notary Public.
My commission expires January 6, 2027.

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