

[Cite as *State ex rel. Berry v. Cleveland*, 2017-Ohio-1546.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104060

STATE OF OHIO, EX REL.
ROBIN BERRY

RELATOR

VS.

CITY OF CLEVELAND

RESPONDENT

JUDGMENT:
WRIT DISMISSED

Writ of Mandamus
Order No. 506214

RELEASE DATE: April 26, 2017

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ANITA LASTER MAYS, J.:

{¶1} On January 28, 2016, the relator, Robin Berry, commenced this public records mandamus action against the respondent, the city of Cleveland, to compel Cleveland to produce the following records:

(I) Records

which pertain to in whole or in part to the proposed Map Change #2515 (City of Cleveland Ordinance No. 981-15):

1. All documents to any Department of the City of Cleveland which refer or relate in whole or in part, resulted in, or resulted from the proposed Use District Change #2515 or the proposed Map;

2. Documents sufficient to identify all City of Cleveland areas zoned Residence-Industry;

3. Documents sufficient to identify all current proposed re-zoning in Cleveland and the date first proposed and by which councilperson; and

4. All drafts of Use District Change #2515 submitted to anyone for any reasons and all comments, marks or other response.¹

(II) Documents pertaining in whole or in part to any meeting scheduled or had regarding the 3007 Clinton Avenue Zoning Amendment (Ordinance No. 981-15 / proposed Map Change #2515), including but not limited to the meeting (with representatives of the Geis Company on May 27, 2015 in the Mayor's Dining Room at 3:00):

1. All agenda, minutes, notes, or other transcription which memorializes each meeting;

¹The relator sent this request via email on September 9, 2015.

2. All e-mails, texts and other communication between any City representative or employee regarding each meeting;

3. All notices and invitations sent prior to the meeting; and

4. All attendees and guests at each meeting.²

{¶2} The relator avers that when no records were forthcoming, she commenced this mandamus action.

{¶3} After Cleveland filed its answer, this court ordered the parties to certify the status of the case. Cleveland on May 6, 2016, certified that on February 25, 2016, it submitted responsive documents from the city planning commission and the office of the mayor; previously on November 23, 2015, Cleveland advised Berry that the board of zoning appeals did not have any responsive documents. Cleveland explained that the planning commission would have the records for the first request and that the mayor's office and the planning commission would have records for the second request. Cleveland concluded that it believed the production of those records satisfied Berry's public records requests and that it was presently unaware of any additional unproduced responsive documents.

{¶4} Berry certified on May 6, 2016, that for request I.1, records that relate to the proposed Use District Change #2515, no records were produced and that Cleveland needs to produce them, "unless there are no documents related to what became an Ordinance presented by a City Department and signed by the Mayor, except those in the

²The relator sent this request by email and facsimile to Cleveland on November 17, 2015.

hands of City Council.” For request I.2, documents sufficient to identify all areas zoned Residence-Industry, Berry certified that on February 25, 2016, Cleveland satisfied this request by emailing a map showing the areas zoned Residence-Industry. For request I.3, records identifying all current proposed rezoning in Cleveland and the date first proposed and by which councilperson, Berry certified that one proposed rezoning ordinance was provided by email on February 25, 2016, and she deemed the request fulfilled. For request I.4, all drafts of Use District Change #2515 submitted to anyone for any reason and all comments, marks, or other responses, Berry certified that Cleveland provided an unnumbered ordinance by email on February 25, 2016, and that if this was the only draft and record, then the request had been fulfilled.

{¶5} For request II.1, all minutes, notes, or other transcription of the May 27, 2015 meeting, Berry certified that no records were provided. For request II.2, all emails, texts, and other communications between a Cleveland representative and employees regarding the meetings, Berry certified that emails regarding scheduling of one meeting were provided by Cleveland via email on February 25, 2016, but no other records were provided. For Request II.3, all notices and invitations sent prior to the meeting, Berry certified that emails regarding scheduling of the May 27, 2015 meeting were provided by Cleveland via email on February 25, 2016, and that if this was the only meeting, then the request was fulfilled. For request II.4, all attendees and guests at each meeting, Berry certified that emails regarding scheduling of the May 27, 2015 meeting were provided via email on February 25, 2016, and that if there was only one meeting,

and if every attendee and guest at that meeting were named within those emails, then the request was fulfilled.

{¶6} On May 11, 2016, this court referred the case to mediation. The case remained in mediation for most of 2016. A review of the docket indicates that there were at least three mediation conferences.

{¶7} On January 19, 2017, the court directed the parties to certify the status of the case. On February 1, 2017, Berry certified that following mediation, Cleveland on August 19, 2016, provided 96 pages of documents and 76 electronic files of documents, some containing well over 100 pages, in addition to video and audio recordings and PowerPoint presentations. Berry further certified that she was methodically reviewing the records but was “unable to accurately report whether issues remain” because her counsel had been short-staffed.

{¶8} On February 2, 2017, Cleveland certified that at the August 11, 2016 mediation conference Cleveland provided its city planner for its Landmarks Commission because it was clear that Berry “had questions concerning the process by which zoning decisions were made, and what, if any documents, were produced at the various stages throughout that process.” The commissioner “was able to provide counsel for the Relator with answers to her many questions, including clarifying why the City did not have, and thus did not produce, many types of documents that Relator expected to receive.”

{¶9} Cleveland continued in its certification that it was apparent that the commissioner had records in his possession that Berry desired, and Cleveland agreed to produce them, without admitting that they were necessarily included within the scope of the September 9, 2015 and November 17, 2015 requests. Similarly, Cleveland agreed to inquire whether the department of building and housing had permits related to demolition work on specific properties; in doing so Cleveland did not admit that those records came within the scope of the initial requests. After surmounting some technical difficulties, Cleveland provided these additional records to Berry, and they included two demolition files. Several very large architectural drawings were also provided for inspection. Cleveland concluded its certification that it believed it had fulfilled Berry's September and November 2015 requests, and that in the spirit of good faith it had provided Berry with information as to the city's zoning process and what types of records are and are not made, even though Ohio's Public Records Act does not encompass requests for information.

{¶10} After reviewing these certifications, the court directed the relator to recertify the status of the case by March 3, 2017, to allow the relator to finish her review of the records. The court also provided that Cleveland may file a response one week after the relator's certification.

{¶11} On March 3, 2017, relator submitted its certification. Berry stated that she had received a CD containing hundreds of documents mainly pertaining to the advancement of the building and demolition applications for the proposed apartment

building at #3007 Clinton Avenue in Cleveland. Berry then observed that the process ended when Councilman Joe Cimperman proposed a change to the zoning of the 3007 Clinton parcel and two others, which allowed the project to proceed without variance. Berry then stated that there were no documents “related to the decision to propose an ordinance, the wording, the justification and even the fact that an ordinance was under consideration.” For requests I.2 and I.3, Berry certified that she had received responsive records as stated in the previous certification. For request I.4, Berry certified that she had received an unnumbered version of 2515, but there were no comments or related records of any internal reaction.

{¶12} As to the requests relating to records of any meetings regarding the 3007 Clinton Avenue zoning amendment, Berry certified that for the May 27, 2015 meeting, the city provided emails responding to the scheduling of the meeting, but no attendance records, agendas, minutes, notes, or follow-up records were attached. Berry stated that if the email string contained all communications relating to the meeting, then the request was fulfilled. Berry further certified that on September 29, 2016, Cleveland provided emails from two individuals that they would attend a meeting scheduled for July 30, 2015, regarding the 3007 Clinton Avenue Project. The emails listed other invitees, but there were no other confirmations, no list of attendees, and no agendas, minutes, transcripts, notes, or other records relating to the meeting. Berry also stated that Cleveland had provided an email dated November 19, 2015, that lists invitees to an upcoming meeting and references what appears to be all the attendees of the May 27, 2015 meeting; the

subject was Berry's public records requests, but there were no other records relating to this email. Cleveland has not filed a response.

{¶13} After reviewing the entire case, the lengthy mediation process, and the certifications, especially Cleveland's providing the city planner for its Landmark's Commission to explain the zoning process and what records are and are not produced, this court is convinced that Cleveland has fulfilled its duty to produce what existing records it has. Accordingly, the court dismisses the application for a writ of mandamus as moot. Respondent city of Cleveland to pay costs. This court directs the clerk of courts to serve all parties notice of this judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶14} Writ dismissed.

ANITA LASTER MAYS, JUDGE

SEAN C. GALLAGHER, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR