

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY

STATE EX REL. OMNI FIBER, LLC

Relator

v.

CITY OF SPRINGFIELD
BRYAN HECK, IN HIS OFFICIAL
CAPACITY, CITY MANAGER
CHRIS MOORE, IN HIS OFFICIAL
CAPACITY, SERVICE DIRECTOR

Respondents

C.A. No. 2026-CA-42

**DECISION AND FINAL JUDGMENT
ENTRY**

PER CURIAM:

{¶ 1} This matter is before the court on relator Omni Fiber, LLC’s September 16, 2026 “Motion for Leave to File Amended Petition for Writ of Mandamus, Instanter,” the September 29 memorandum in opposition filed by the respondents, the City of Springfield, Ohio, its city manager, Bryan Heck, and its service director, Chris Moore, and Omni’s October 2 reply thereto. For the following reasons, this court denies the motion for leave to amend the petition, grants the respondents’ May 27 motion to dismiss for failure to state a claim upon which relief may be granted, and denies the writ.

I. Factual & Procedural Background

{¶ 2} Omni filed its petition in this court on May 6. The factual allegations of the petition and the amended petition are similar in nature. Omni, a public utility, intends to build high-speed broadband infrastructure within the City of Springfield utilizing the public right-of-way. To that end, Omni filed applications for permits to use the public right-of-way on

March 21 (SPI01-F04, SPI01-F51) and March 28 (SPI04-F86).

{¶ 3} Consent of a municipality is required to occupy or use a public right-of-way. R.C. 4939.03(C)(1). State law requires a municipality to grant or deny its consent within sixty days. R.C. 4939.03(C)(2). A municipality may not unreasonably withhold or deny its consent. R.C. 4939.03(C)(3). Indeed, municipalities must “provide public utilities or cable operators with open, comparable, nondiscriminatory, and competitively neutral access to its public ways.” R.C. 4939.04(A)(1).

{¶ 4} Nevertheless, “[i]n occupying or using a public way, no person shall unreasonably compromise the public health, safety, and welfare.” R.C. 4939.03(B). Public policy “recognize[s] the authority of a municipal corporation to manage access to and the occupancy or use of public ways to the extent necessary with regard to matters of local concern, and to receive cost recovery for the occupancy or use of public ways in accordance with law.” R.C. 4939.02(A)(5). Moreover, “[t]he management, regulation, and administration of a public way by a municipal corporation with regard to matters of local concern shall be presumed to be a valid exercise of the power of local self-government granted by Section 3 of Article XVIII of the Ohio Constitution.” R.C. 4939.04(A)(3).

{¶ 5} Springfield has enacted ordinances pertaining to right-of-way use management. *See generally* Springfield Cod.Ord. Ch. 902. Among other public policies, the city’s ordinances seek “[t]o promote the utilization of right-of-way for the public health, safety and welfare and to promote economic development in the City.” Springfield Cod.Ord. 902.01(d)(2). The ordinances specify that:

All Permits shall specify the use or uses for which such Permits are granted and contain such other non-discriminatory terms and conditions as the Service Director determines are necessary to accomplish the City policy

objectives set forth in Subsection 902.01(d), such terms and conditions as are set forth in this Chapter and such terms and conditions as are negotiated and agreed to by the City and the Permittee to provide for the public health, safety or welfare.

Springfield Cod.Ord. 902.03(b). So too, right-of-way users must “obtain a right-of-way Work Permit from the Service Director prior to the beginning of any work in the right-of-way.” Springfield Cod.Ord. 902.06(c). There is no dispute among the parties that the city’s service director has neither granted nor denied Omni’s permit applications.

{¶ 6} In its petition, Omni claims that the respondents will not issue a right-of-way permit unless it agrees to six requirements. The petitions characterize these requirements as “unlawful,” “discriminatory,” and “economically infeasible.” The amended petition alleges that the city has withdrawn three of the requirements but still seeks to impose upon Omni the other three requirements. These requirements pertain to the placement of infrastructure under sidewalks, the mapping of gas lines, and the replacement of lead water lines damaged during construction of infrastructure. Both the petition and the amended petition seek to compel the city’s service director to grant Omni’s right-of-way permit applications. Omni also seeks to require the respondents to “[i]ssue future applications for permits consistent” with any writ we may grant in its favor.¹

{¶ 7} On May 27, the respondents moved to dismiss the petition pursuant to Civ.R. 12(B)(6). On June 11, Omni filed its memorandum in opposition, and, on June 29, the respondents filed a reply thereto. The parties then requested that this court stay its ruling on the respondents’ motion to dismiss while they attempted to negotiate a settlement, which we

¹ Mandamus does not lie for prospective relief. *State ex rel. Federal Homes Properties, Inc. v. Singer*, 9 Ohio St.2d 95, 96 (1967).

agreed to do. Because Omni has moved for leave to amend the petition, we understand that the parties no longer seek to stay our ruling. We proceed to resolve the matters pending before this court accordingly.

II. Law & Analysis

A. Mandamus Elements

{¶ 8} To prevail in a mandamus action, the relator must demonstrate that (1) they have a clear legal right to the relief prayed for, (2) the respondent is under a clear legal duty to perform the acts, and (3) the relator has no plain and adequate remedy in the ordinary course of the law. *State ex rel. Berger v. McMonagle*, 6 Ohio St.3d 28, 29 (1983).

B. Civ.R. 12(B)(6) Standard

{¶ 9} A motion to dismiss pursuant to Civ.R. 12(B)(6) is procedural and tests the sufficiency of a complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 1992-Ohio-73, ¶ 9, citing *Assn. for the Defense of the Washington Local School Dist. v. Kiger*, 42 Ohio St.3d 116, 117 (1989). For purposes of the motion, we assume that the factual allegations of the complaint are true and make all reasonable inferences in favor of the relator. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988). If it appears “beyond doubt that the relator can prove no set of facts in support of [their] claim which would entitle [them] to relief,” then this court will dismiss a complaint for failure to state a claim upon which relief can be granted. *O’Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 245 (1978), citing *Conley v. Gibson*, 355 U.S. 41, 45 (1957).

C. Civ.R. 15(A) Standard

{¶ 10} A relator “may amend a [petition] as a matter of course within (1) 28 days of service of the [petition], or (2) the earlier of 28 days of service of (a) a responsive pleading or (b) a motion to dismiss, to strike, or for a more definite statement.” *Hunter v. Shield*, 2019-

Ohio-1422, ¶ 13 (10th Dist.), citing Civ.R. 15(A). After the applicable 28-day period elapses, unless the respondent consents to amendment of the petition, the relator must seek leave of this court to amend. *Id.* This court “shall freely give leave when justice so requires.” Civ.R. 15(A). However, “A trial court properly refuses to grant leave to amend when amendment would be futile.” *Burks v. Dayton Public Schools Bd. of Edn.*, 2023-Ohio-1227, ¶ 14 (2d Dist.), quoting *Maas v. Maas*, 2020-Ohio-5160, ¶ 85 (1st Dist.).

D. Amendment of the Petition Would be Futile Because Omni Fails to State a Claim Upon Which Relief May Be Granted

{¶ 11} The respondents argue that this court should deny leave to amend because amendment of Omni’s petition would be futile. In particular, the respondents argue that amending the petition would be futile because, with or without an amendment, the relator fails to state a claim upon which relief may be granted.

{¶ 12} We note that the respondents previously raised the adequate remedy issue in their motion to dismiss. “Mandamus will not issue when the relators have an adequate remedy in the ordinary course of law.” *State ex rel. Voleck v. Powhatan Point*, 2010-Ohio-5679, ¶ 7; R.C. 2731.05. The respondents have argued that the administrative process will provide an adequate remedy after the city’s service director acts on Omni’s applications. “If the response of the official is to refuse the permit, the right to test the correctness of his decision is furnished by way of appeal to the Court of Common Pleas, after all administrative remedies of appeal, if any, are exhausted.” *Federal Homes*, 9 Ohio St.2d at 97. But Omni responds that it cannot exhaust administrative remedies unless the city acts on applications in the first place.

{¶ 13} We agree that the salient issue is whether Omni has an adequate remedy in the ordinary course of law to challenge the service director’s failure to act now – not after a permit is formally denied. The general rule is that “[i]n any instance of a refusal, for whatever

reason, of an administrative official to act timely upon an application for a permit,” mandamus is “an appropriate remedy to compel his decision.” *Id.* Nevertheless, under the circumstances of this case, the respondents are correct that an administrative appeal provides Omni with an adequate remedy in the ordinary course of law to challenge the service director’s failure to act.

{¶ 14} Springfield’s ordinances provide an administrative remedy for the failure of a service director to grant a permit.

Any applicant may appeal the failure of the Service Director to grant a Permit. In order to perfect such appeal, the Applicant shall file an appeal to the City Manager within ten (10) days of the Service Director’s determination or after thirty (30) days but within one [sic] sixty (60) days of the filing of the application if the Service Director has taken no action. The City Manager shall then review the matter and render a final determination, in writing and with appropriate findings of fact, after serving upon the applicant at least twenty (20) days advance written notice of the Permittee’s opportunity for a hearing before the City Manager and granting the applicant an opportunity to be heard in person or in writing, as the applicant may [choose]. Except to the extent otherwise appealable by law, the City Manager’s decision shall be final.

(Emphasis added.) Springfield Cod.Ord. 902.04(e).

{¶ 15} In our view, this remedy is “complete, beneficial, and speedy.” *State ex rel. Beane v. Dayton*, 2007-Ohio-811, ¶ 31. The plain language of the ordinance contemplates an applicant aggrieved by the service director’s delay in granting or denying a permit may appeal to the city manager. In substance, the ordinance treats the service director’s failure to act on an application within 30 days as a de facto denial of the permit and allows for an

appeal within 60 days of the filing of the application. The appeal includes notice and hearing provisions which allow the applicant to present oral or written evidence in support of their application to the city manager. Moreover, the city manager's decision on a permit application is subject to further review by means of an appeal to the common pleas court. See *State ex rel. Painesville v. Lake Cty. Bd. of Commrs.*, 2001-Ohio-1609, ¶ 24 (R.C. 2506.01 provides for appeals from quasi-judicial proceedings where there is a requirement for notice, hearing, and the opportunity to introduce evidence), citing *State ex rel. Dublin v. Delaware Cty. Bd. of Commrs.*, 62 Ohio St.3d 55, 61 (1991).

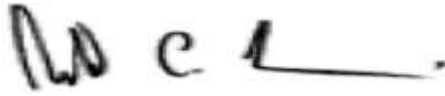
{¶ 16} More than 30 days have passed since Omni filed its permit applications. The parties agree that the service director has failed to act on them. Yet, neither the petition nor the amended petition alleges that Omni filed an appeal to the city manager to challenge the delay. Thus, Omni did not exhaust its administrative remedies before seeking extraordinary relief in this court. And Omni's failure to pursue that remedy within 60 days of the filing of the application does not make the remedy inadequate. See *State ex rel. Gaydosh v. Twinsburg*, 2001-Ohio-1613, ¶ 12, citing *In re Estate of Davis*, 1996-Ohio-347, ¶ 5. Therefore, we conclude that Omni's mandamus claim must fail because it is beyond doubt that Omni has an adequate remedy in the ordinary course of law to redress the service director's failure to act on its permit applications.

III. Conclusion

{¶ 17} For all the foregoing reasons, Omni's motion for leave to amend its petition is DENIED. The respondents' motion to dismiss is GRANTED. This action, Clark County Appellate Case No. 2026-CA-42, is DISMISSED.

{¶ 18} Writ of mandamus DENIED. Costs taxed to the relator.

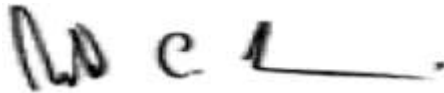
For the court,



RONALD C. LEWIS, PRESIDING JUDGE

EPLEY, J., and HANSEMAN, J., concur.

To The Clerk: Within three (3) days of entering this judgment on the journal, you are directed to serve on all parties not in default for failure to appear notice of the judgment and the date of its entry upon the journal, pursuant to Civ.R. 58(B).



RONALD C. LEWIS, PRESIDING JUDGE