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Just Block 112, LLC

JUST BLOCK 112, LLC,

Plaintiff,

vs.

THE CITY OF HOBOKEN,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

Docket No.:

Civil Action

VERIFIED COMPLAINT

Plaintiff Just Block 112, LLC (“Plaintiff” or “JB112”), by way of this Verified Complaint against Defendant the City of Hoboken (“Defendant” or “Hoboken”), alleges as follows:

NATURE OF ACTION

1. This action involves Hoboken’s unlawful denial of access to government records requested by JB112 pursuant to the Open Public Records Act (“OPRA”), N.J.S.A. 47:1A-1, *et seq.*, and the common law right of access.

PARTIES

2. Plaintiff JB112 is a limited liability company authorized to do business in the State of New Jersey, with offices at 1414 Grand Street, Suite 204, Hoboken, New Jersey 07030.

3. Defendant Hoboken is a municipality organized under the laws of the State of New Jersey, with its principal place of business at 94 Washington Street, Hoboken, New Jersey 07030.

JURISDICTION & VENUE

4. This Court has jurisdiction to hear proceedings challenging the denial of access to records requested under OPRA and the common law right of access, and for the award of attorneys' fees and collection and enforcement of penalties under OPRA.

5. The acts and omissions set forth in this Verified Complaint occurred in the State of New Jersey (including Hudson County) and harmed JB112 in the State of New Jersey (including Hudson County).

FACTS COMMON TO ALL COUNTS

JB112's OPRA Request

6. On January 27, 2023, JB112, through its counsel at Gibbons P.C., submitted a government records request to Hoboken, under OPRA and the common law, seeking a copy of all appraisals performed on 106 Hudson Street (Block 212.01, Lots 4 through 11) (the "Property"), together with certain other government records related to any such appraisals ("Request"). On information and belief, the Property owned by Hoboken and the current headquarters of the Hoboken City Police Department. (A true and accurate copy of JB112's Request is attached hereto as **Exhibit 1**.) Specifically, JB112 requested the following:

(1) A certified copy of Resolution No. 22-783 related to the property located at 106 Hudson Street (Block 212.01, Lots 4 through 11) (the "Property");

(2) All correspondence (including all e-mails and attachments) between [Hoboken's Director of Community Development] Christopher Brown and Lasser Sussman Associations, LLC regarding the appraisal of the Property between November 2, 2022 to present;

(3) All appraisals for the Property; and

(4) Any orders or invoices, from October of 2022 to the present, for any appraisal for the Property.

7. On February 3, 2023, Michael Mastropasqua, OPRA Records Clerk for Hoboken, responded to the Request by email from the address “cityclerk@hobokennj.gov,” as follows: “The City of Hoboken has received your OPRA request Log # 23-124 and the due date for the request is Tuesday February 7, 2023. The City of Hoboken requires an additional ten (10) business days to respond to the request. The new due date will be Wednesday February 22, 2023. T.Y.” (A true and accurate copy of the email chain containing the communications with Mr. Mastropasqua is attached hereto as **Exhibit 2**.)

8. That same day, counsel for JB112 replied to Hoboken:

Thank you for your response regarding the above-referenced OPRA request. We consent to the requested extension to February 22, 2023 for Items 2-4 of the January 27, 2023 Request.

Item 1, however, involves only a single document easily identified and confirmed to be available at recent Council meetings. We therefore consent to an extension of Hoboken’s time to respond to Item 1 until February 10, 2023, but request that you provide the document requested in Item 1 no later than that date, or contact us to discuss the reasons for delay in providing that document.

[(Ex. 2 at 3.)]

9. That same day, Mr. Mastropasqua provided the document requested as “Item 1” (a copy of Resolution No. 22-783) and answered: “Sorry, the responsive record is attached for question # 1. I was going to forward [sic] the response for the OPRA all at the same time.” (Ex. 2 at 2.)

10. Resolution No. 22-783 of the City of Hoboken, dated November 2, 2022, is a “*Resolution Awarding a Professional Services Contract to Lasser Sussman Associates, LLC in the Amount of \$9,500.00 for Real Estate Appraisal Services.*” (A true and accurate copy of Resolution No. 22-783, as provided by Hoboken, is attached hereto as **Exhibit 3**.)

11. Resolution No. 22-783 retains Lasser Sussman Associates, LLC (“Lasser Sussman”) “to appraise Blocks 212.01, lots 4, 5, 6, 7, 8.01, 8.02, 8.03, 9, 10.02, 10.01, and 11 to determine the fair market value of the property,” i.e., the Property. (Ex. 3 at 3.)

12. The remaining items (numbers 2 through 4) of JB112’s Request relate specifically to the Lasser Sussman appraisal of the Property (“Appraisal”).

The Appraisal

13. Upon information and belief, Lasser Sussman performed and submitted to Hoboken an Appraisal of the Property prior to Hoboken’s February 3, 2023 email to JB112 requesting an extension of time within which to respond to the Request, which Appraisal remains in the possession of Hoboken.

14. On October 27, 2022, Lasser Sussman submitted a Proposal for Appraisal Services for the Property to Hoboken, care of Christopher Brown, Hoboken’s Director of Community Development, in response to a request for proposal previously made by Hoboken. (A copy of the Proposal for Appraisal Services is attached hereto as **Exhibit 4**.)

15. Subsequent to passage of Resolution 22-783 authorizing the Appraisal on November 2, 2022, Hoboken represented in a court conference held November 7, 2022 in ongoing litigation in Hudson County, Just Block 112, LLC et al. v. City of Hoboken et al., No. HUD-L-4207-21 (the “Redevelopment Litigation”), that Hoboken would be obtaining the Appraisal of the Property as expeditiously as possible.

16. On information and belief, Hoboken ordered the Appraisal to be completed by December 2022. In connection with communications related to the Redevelopment Litigation and further to discussions at the November 7, 2022 court conference, counsel for JB112 inquired with Hoboken’s Redevelopment Litigation counsel at McManimon, Scotland & Baumann, LLC (“MSB”) and requested a copy of the Appraisal in correspondence sent December 14, 2022,

December 19, 2022, January 3, 2023, and January 12, 2023. Litigation counsel for Hoboken (MSB) did not respond to these requests or otherwise deny that the Appraisal had been obtained.

Additional Extensions of Time Provided by JB112 to Hoboken for Hoboken to Respond to the Request

17. Subsequent to Hoboken's initial request for extension on February 3, 2023 (which was granted by JB112), on or about February 17, 2023, MSB confirmed (via phone conversation to JB112's counsel) its representation of Hoboken for Hoboken's response to JB112's Request.

18. Despite MSB stating that it would be representing Hoboken with regard to the Request, Hoboken's representation at the November 7, 2022 court conference that it intended to obtain an Appraisal expeditiously, and Lasser Sussman having delivered a "Proposal for Appraisal Services (Ex. 4) and having communicated directly with the Hoboken administration regarding the Appraisal, on February 21, 2023, Hoboken (via Mr. Mastropasqua) inaccurately stated: "OPRA LOG # 23-124 – No other responsive records exist concerning your OPRA request." (Ex. 2 at 2.) Hoboken's statement was made despite Hoboken having failed to provide JB112 with any Appraisal or the other requested records.

19. Because Hoboken's February 21, 2023 response was logically inconsistent with information known to JB112 regarding steps taken by Hoboken to order an Appraisal, on March 8, 2023, JB112 inquired further with Hoboken's counsel at MSB about the Appraisal records outlined in the Request. (Ex. 2 at 1.)

20. Hoboken's counsel responded to JB112's March 8, 2023 inquiry the same day, asking for "some time please to see." (Ex. 2 at 1.)

21. JB112 granted this request but, on April 17, 2023, having heard nothing from Hoboken's counsel, JB112 again followed up regarding the open items in the Request. Hoboken's counsel responded that "there still was not an appraisal" but that Hoboken's counsel would

“inquire again to see if they received one.” JB112 responded that it was “our understanding that an appraisal indeed occurred (draft or otherwise)” (Request Item No. 3), including “the communications around the appraisal” (Request Item No. 2) and/or “however the order was placed, invoicing, messages regarding timing, [etc.]” (Request Item No. 4). (A true and accurate copy of the email chain with MSB is attached hereto as **Exhibit 5**.)

22. Then, on May 18, 2023, MSB provided JB112 with an additional eleven (11) page PDF, containing a copy of JB112’s Request and five (5) PDF pages of documents related to the Appraisal, which included certain emails between Christopher Brown (Hoboken’s Director of Community Development) and Lasser Sussman (Request Item No. 2) -- but nothing dated later than November 9, 2022 (despite JB112’s request being for correspondence “between November 2, 2022 to present” (see Ex. 1)). Emails included in the documents discussed Hoboken’s request that Lasser Sussman deliver the Appraisal on an expedited basis but did not include either delivery of the Appraisal or other communications resolving the order. (A true and accurate copy of the supplemental documents produced by Hoboken on May 18, 2023 is attached hereto as **Exhibit 6**.)

23. JB112 responded to the May 18, 2023 production, stating that “[s]omething is missing” (whether the appraisal had been canceled, held in abeyance, or had been conducted), and inquired further about these missing documents based on the comments in the newly produced emails. For example, the emails show that, on November 7, 2022, the same date as the court conference held in the Redevelopment Litigation, Christopher Brown stated to Mark Sussman of Lasser Sussman that:

Per our conversation earlier, the Judge presiding over the City’s ongoing litigation in connection with a redevelopment project in the Western Edge would like the police station appraisal completed in 30 days (ideally by November 30[, 2022]). Could you please let us know if that timeline is possible to meet, and if not, why not?

[(Ex. 6 at 9.)]

24. In response to Christopher Brown's email requesting that Lasser Sussman perform an Appraisal of the Property by November 30 pursuant to the Court's request, Mark Sussman of Lasser Sussman responded on November 8, 2022 that: "Per our discussion, I need 45 days due to prior commitments...." (Ex. 6 at 9.)

25. The emails produced by Hoboken on May 18, 2023 strongly indicate that Hoboken ordered an Appraisal to be delivered in December 2022, and that an Appraisal should be available for public inspection. Alternatively, if the order discussed in the emails was canceled or left unfulfilled, such cancellation or other communication between Hoboken and Lasser Sussman regarding an Appraisal should exist and would be responsive to the Request.

26. Based on JB112's May 18, 2023 response to MSB that Christopher Brown's and Lasser Sussman's emails indicated that additional records were logically "missing," MSB requested "a few days to work on this" in a response also sent May 18, 2023. (Ex. 5 at 1.) JB112 granted this further extension request.

27. On July 14, 2023, having heard nothing from Hoboken, JB112 sent a letter to MSB "to confirm a final extension and set a definitive deadline for the City's response to the Request." (A true and accurate copy of JB112's July 14, 2023 letter to MSB is attached hereto as **Exhibit 7**.)

28. The July 14, 2023 letter recapped the history of communications between JB112 and Hoboken regarding the records at issue in the Request and the numerous extensions of time granted by JB112 to Hoboken for its response to the Request, and stated that "Items Nos. 2 through 4 of the Request have remained open while we acceded to the multiple extensions of time requested by the City." JB112 therefore requested a "final response to the Request by **July 19, 2023**, [or] we will deem the Request denied." (Ex. 7 at 3.)

29. Neither MSB nor any other representative of Hoboken has responded to JB112's July 14, 2023 letter. Such failure to respond constitutes a denial of access to the requested records under OPRA.

30. In an effort to avoid litigation over the Request, JB112 has repeatedly attempted, over the course of nearly six (6) months, to resolve the open issues in the Request, granting Hoboken numerous extensions of time to respond to the Request, and cooperating in good faith to clarify and follow-up on the records to which it sought access. Hoboken has not provided any basis for withholding otherwise available records.

31. JB112 has a clear interest in the requested records, as they relate directly to materials discussed at the November 7, 2022 court conference in the Redevelopment Litigation, and because JB112 is a developer that has an interest in property values in Hoboken, particularly for prominent sites such as the Property, and may have an interest in purchasing the Property if available based on the value determined by an Appraisal. This interest outweighs any interest in keeping the requested records confidential.

FIRST COUNT
(Violation of Open Public Records Act, N.J.S.A. 47:1A-1, *et seq.*)

32. JB112 repeats each and every allegation contained above as if fully set forth at length herein.

33. The records requested by JB112 are made, maintained, and/or kept on file by Hoboken and, as such, they are "government records" as defined by OPRA, N.J.S.A. 47:1A-1.1. No exemptions apply, and JB112 is entitled to access.

34. Hoboken's failure to respond to JB112's Request by the extended deadline of July 19, 2023 constitutes a denial of access pursuant to OPRA, N.J.S.A. 47:1A-5(i).

35. Hoboken has provided no valid legal basis for denying access to the records requested.

WHEREFORE, JB112 demands judgment:

- A. determining said actions of Hoboken to be illegal, invalid, and in violation of the Open Public Records Act;
- B. directing Hoboken to release the requested records to JB112 forthwith;
- C. awarding damages;
- D. awarding costs and counsel fees pursuant to N.J.S.A. 47:1A-6; and
- E. for such other relief as the Court may deem just and equitable.

SECOND COUNT
(Violation of Common Law)

36. JB112 repeats each and every allegation contained above as if fully set forth at length herein.

37. The records requested by JB112 are made, maintained, and/or kept on file by Hoboken and, as such, constitute common law public records.

38. JB112 has a legitimate and significant interest in access to the requested records, as they relate directly to materials discussed at the November 7, 2022 court conference in the Litigation, because JB112 is a developer that has an interest in property values in Hoboken and may be interested in purchasing the Property based on the value determined in the Appraisal, and because Hoboken has expended public funds to secure the Appraisal and JB112 has an interest in determining the result of that expenditure.

39. Despite JB112's interest in the requested records, Hoboken has refused to allow JB112 access to the requested records and has provided no countervailing governmental need for

confidentiality that would tip the balance, under a common law analysis, in favor of withholding access.

40. As Hoboken has offered no legal basis for withholding the requested records, JB112 has a vested right under the New Jersey common law to gain access to and inspect the requested records.

41. Hoboken's continued refusal to allow access to the requested records violates that vested right and constitutes an unjustified common law denial of public access.

WHEREFORE, JB112 demands judgment:

- A. determining said actions of Hoboken to be illegal, invalid, and in violation of the common law;
- B. directing Hoboken to release the requested records to JB112 forthwith;
- C. requiring Hoboken to pay JB112's costs and attorney fees for obtaining the requested records; and
- D. for such other relief as the Court may deem just and equitable.

Dated: August 31, 2023

GIBBONS P.C.

/s/ Charles S. Korschun
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DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:5-1, the undersigned are hereby designated as trial counsel for Plaintiff in this matter.

Dated: August 31, 2023

GIBBONS P.C.

/s/ Charles S. Korschun
Frederick W. Alworth, Esq.
Charles S. Korschun, Esq.
Michael A. Conforti, Esq.

CERTIFICATIONS PURSUANT TO R. 4:5-1

Pursuant to R. 4:5-1, I hereby certify that the above-captioned action is related in part to the action Just Block 112, LLC et al. v. City of Hoboken et al., No. HUD-L-4207-21, which is referenced herein. I further certify that, with the exception of the aforementioned action and to the best of my knowledge, the above-captioned action is not the subject of any other action pending in any court or the subject of a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated by Plaintiff. I further certify that I know of no other non-parties who should be joined in this action pursuant to R. 4:28 or who are subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transaction facts.

Dated: August 31, 2023

GIBBONS P.C.

/s/ Charles S. Korschun
Frederick W. Alworth, Esq.
Charles S. Korschun, Esq.
Michael A. Conforti, Esq.

CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(c)
PURSUANT TO RULE 4:5-1(b)(3)

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

Dated: August 31, 2023

GIBBONS P.C.

/s/ Charles S. Korschun
Frederick W. Alworth, Esq.
Charles S. Korschun, Esq.
Michael A. Conforti, Esq.

VERIFICATION

MARK LUIS VILLAMAR, of full age, hereby certifies as follows:

1. I am the managing member of Plaintiff Just Block 112, LLC and submit this Verification upon my personal knowledge.

2. I have read the foregoing Verified Complaint and state that the allegations set forth therein are true.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



MARK LUIS VILLAMAR

Dated: July 31, 2023