2014 IL App (1st) 132934-U

FIRST DIVISION
September 29, 2014

No. 1-13-2934

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

VAMSTD HOMEOWNERS ASSOCIATION, an Illinois not-for-profit corporation, Plaintiff-Appellant, (Shaf Home Builders, Inc., an Illinois corporation and Shaf Enterprises, Inc., an Illinois corporation, Plaintiffs), v. THE VILLAGE OF MORTON GROVE; DELAINE FARM HOMEOWNERS ASSOCIATION, an Illinois not-for-profit corporation; ELLIOTT HOME BUILDERS, INC., an Illinois corporation; DELAINE FARM CONDOMINIUM ASSOCIATION, an Illinois not-for-profit corporation and DELAINE FARM, L.L.C., an Illinois limited liability company, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 09 CH 51316 Honorable David B. Atkins, Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 ***Held:*** Plaintiff has standing to bring its appeal. The circuit court's dismissal of plaintiff's complaint pursuant to section 2-619 of the Illinois Code of Civil Procedure was appropriate where: (1) the ordinance at issue did not create a contract between plaintiff and the defendant village requiring specific performance; and (2) no affirmative duty arose from the language of the ordinance requiring *mandamus* relief.

¶ 2 Plaintiff Vamstd Homeowners Association (Vamstd) appeals from the circuit court's order granting the motion of defendant Village of Morton Grove (the Village) to dismiss Vamstd's complaint pursuant to section 2-619 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2012)). Vamstd sought specific performance and *mandamus* relief to enforce an alleged contract between it and the Village regarding the development of a water retention pond located in the Vamstd subdivision. We find Vamstd has standing to bring this appeal. However, we affirm the circuit court's decision to dismiss the verified complaint under section 2-619.

¶ 3 BACKGROUND

¶ 4 On December 22, 2009, Vamstd and plaintiffs Shaf Home Builders, Inc. and Shaf Enterprises, Inc. (collectively, Shaf) filed a verified complaint alleging the following facts which we must accept as true for the purpose of this appeal. *Butler v. Mayer, Brown & Platt*, 301 Ill. App. 3d 919, 922 (1998) (citing *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 85 (1995)). In April 1977, the Village and Shaf entered into an agreement to provide for water drainage from the Vamstd subdivision. The Village and Vamstd applied to the Metropolitan Sanitary District (MSD)[1] for a sewer connection permit, but were initially rebuffed.

¶ 5 In February 1979, the Village, Shaf, and the MSD entered into a supplemental agreement, in which Shaf agreed to draft and prepare a modified subdivision plan of the Vamstd subdivision

[1] The MSD is now known as the Metropolitan Water Reclamation District of Greater Chicago (MWRD). See generally, 70 ILCS 2601/1 *et seq.* (West 2012).

to be known as the "resubdivision," establishing an additional area for water detention as recommended by the MSD and the Village. According to the supplemental agreement, the dedication of property for water detention purposes was "in the form of a conditional dedication for a maximum period, not to exceed seven (7) years" and that "[i]f after seven (7) years, no new, alternate or additional detention has been provided, the conditional dedication will ripen into a permanent dedication with all maintenance, upkeep and costs to be borne by the property owners in the subdivision." In other words, Shaf agreed to bear the maintenance costs for water detention for the first seven years following the execution of the supplemental agreement, but if no new water detention source materialized within those seven years, Vamstd would pay the maintenance costs thereafter. The Village agreed to accept the Vamstd resubdivision. The supplemental agreement specifically provided that "[i]n the event that [an] off-site detention is available and feasible, the Village shall agree to the vacation of the conditional dedication on Lots 1, 2 and 3 of the VAMSTD RESUBDIVISION during the seven (7) year period thereby permitting the improvement of the area conditionally dedicated by construction of three (3) single family residences."

¶ 6 The First National Bank of Skokie as Trustee under Trust #50374T recorded a "Declarations of Covenants, Conditions and Restrictions" shortly after the execution of the supplemental agreement, which acknowledged the supplemental agreement and declared that Vamstd "shall be responsible as hereinafter set forth for the care and maintenance of Lots 1, 2 and 3 of VAMSTD RESUBDIVISION during the time that said Lots 1, 2 and 3 shall be used as a temporary or permanent detention area or as hereinafter set forth." This declaration repeated the wording of the supplemental agreement, but also stated "[i]f, after the seven (7) year period, no new, alternate or additional detention has been provided as contemplated in the Supplemental

Agreement, then, and in that event, fee simple title of the following described property and all improvements, structures or fences thereon shall be conveyed to the Association and be deemed to be Association Land," which included a legal description of lots 1, 2, and 3 of the Vamstd resubdivision. Article V, section 1(a) of the declaration provided that the Vamstd Homeowners Association, after receiving the conveyance of title from the developer, "shall have the obligation of maintaining and caring for the detention area" and to "pay the real estate tax bill assessed against Lots 1, 2 and 3 after conveyance thereof." In addition, the declaration stated that Vamstd "shall care for and maintain Lots 1, 2 and 3 as a detention area for so long as [the Village] requires same."

¶ 7 In January 1996, defendant Elliott Home Builders, Inc. (Elliott) sought to develop land across the street from the Vamstd subdivision known as the Delaine Farm. Vamstd and Shaf alleged in their complaint that the supplemental agreement anticipated a water detention pond might be built on this property.

¶ 8 On January 22, 1996, the Village passed Ordinance No. 96-4 (Ordinance 96-4), which granted Elliott a "Planned Unit Development As A Special Use" (PUD) for the Delaine Farm property. Vamstd was not a party to Elliott's request for a PUD, but asserts that the ordinance is a contract for which they are entitled to specific performance. Vamstd alleges the following paragraph in the ordinance mandates that the proposed Delaine Farm detention pond accommodate the vacation and detention of the water from the Vamstd detention pond:

> "That the developer shall cause the Storm Water Detention Facility required for the proposed development to be increased in volume to allow detention from Morton Woods Subdivision Lot 11 and the Vamstd Resubdivision, Lots 1, 2, and 3 to be accepted into this facility."

In addition, the ordinance required the developer to "transfer title to the designated storm-water detention area, including an access-way twenty (20) feet wide from the detention facility to the nearest public street, to the Village of Morton Grove."

¶ 9 On March 1, 1996, Larry Arft, then the Village's administrator, sent letters to each of the Vamstd homeowners regarding Ordinance 96-4, the supplemental agreement, and declaration of covenants previously executed. This correspondence explained to the homeowners that "there was a set of unusual covenants included with your subdivision related to the care and maintenance of the storm water detention facility located at the corner of Beckwith Road and Neenah Avenue." Arft noted that the purpose of a Village meeting on February 27, 1996 "was to provide some history to the homeowners regarding the storm water detention facility and to discuss steps to be taken in order to divert storm water to a new detention basin which will be located on the Delanie Farm property." The correspondence also stated that "[i]n order to clarify the current title holder to the three lots and to facilitate the necessary storm water relocation, the formation of a Homeowner's Association by the residents of the Vamstd Subdivision may be required." Arft suggested that the Vamstd homeowners retain an attorney "to clarify this entire matter" and further stated that "it is assumed that eliminating the detention area and redeveloping the lots with new custom built single family homes would be desirable for not only Vamstd Homeowners but for other residents of the Village as well." Thereafter, the residents of the Vamstd subdivision incorporated into a homeowners association.

¶ 10 In 1999, Vamstd sued Shaf to obtain a judgment recognizing Vamstd's claim regarding construction on lots 1, 2, and 3 of the Vamstd resubdivision and to enable Vamstd to connect its water detention pond to the Delaine Farm detention pond. On February 27, 2003, the circuit court granted summary judgment in favor of Vamstd and ordered Shaf to convey lots 1, 2, and 3

of the Vamstd resubdivision to Vamstd. Shaf appealed the decision to this court. During the pendency of the appeal, Vamstd and Shaf entered into a settlement agreement which required Shaf to purchase the three lots from Vamstd, pay all engineering and architectural fees, site development expenses, construction costs, permit fees and other expenses, and, ultimately, build three houses, one each, on lots 1, 2, and 3.

¶ 11 The settlement agreement between Vamstd and Shaf "was conditioned upon Morton Grove's issuance of a February 10th, 2004 letter relinquishing the water detention requirement for said lots 1-3, allowing the lots to be developed in accordance with Village ordinances." The letter from then-Village administrator Ralph Czerwinski stated that "[i]n order to effectuate settlement of the Litigation, it is necessary for Morton Grove to make the following commitments," including "the release of the Declaration of Detention and [authorization of] the connection of the existing storm sewer that drains into the Lot 1, 2, and 3 detention basin to be extended south of Beckwith Road and connect to the existing detention pond located on the northeast corner of the Delaine Farms subdivision property." The letter also stated that "[t]he extension and connection of the Vamstd storm sewer to the Delaine Farms pond is contingent upon Shaf's preparation of the engineering plans, their review and the final construction of the necessary facilities all to be performed and paid for by Shaf. There will be no costs incurred by the Village for this work."

¶ 12 In addition to assurances from the Village, the settlement agreement was subject to the Village's execution of a co-application permit to the Metropolitan Water Reclamation District of Greater Chicago (MWRD) to connect the Vamstd water detention pond to the Delaine Farm pond, and the Village's taking of title to the parcels on which the water detention pond for

Delaine Farm is located. Shaf obtained all the necessary engineering plans and approval for these plans from the MWRD, including a permit.

¶ 13 Vamstd and Shaf alleged in their complaint that the Village "has not taken title to the parcels on which the water detention pond for Delaine Farms is located as it had agreed, will not agree to the proposed construction by Shaf Homebuilders, and furthermore, Morton Grove has placed extra conditions and requirements on Shaf Homebuilders, beyond the original agreements, for such taking." In another exhibit attached to the complaint, an attorney for the Village stated in a May 7, 2004 letter to counsel for Vamstd that the Village "remains willing to work with the Vamstd Homeowners Association to relocate its detention to the Delaine Farm detention pond." Counsel for the Village stated "[w]hile the PUD requires Delaine Farm to quit claim its interest in the pond to the Village, the Village would prefer not to take title to this property, and to have the property owned and maintained by the Associations that utilize it."

¶ 14 Vamstd and Shaf alleged that the Village's failure to take title to the property containing the Delaine Farm water detention pond caused Shaf to incur expenses and that Shaf "now faces foreclosure proceedings due to [its] inability to market the 3 parcels for building single family residences." Plaintiffs requested that the circuit court direct the Village "to specifically perform under the agreement contained in Ordinance 96-4." Plaintiffs also sought *mandamus* relief to require the Village to take title of the Delaine Farm water detention pond. In addition, plaintiffs sought specific performance against defendants Elliott, Delaine Farm Homeowners Association, Delaine Farm Condominium Association, and Delaine Farm, L.L.C (collectively the Delaine defendants) to deed the property containing the Delaine Farm water retention pond and access easement to the Village.

¶ 15 On March 4, 2010, the Village moved to dismiss plaintiffs' complaint under section 2-619, arguing no contract existed between plaintiffs and the Village entitling plaintiffs to specific performance. The Village also argued that plaintiffs' *mandamus* claim was untimely and without merit.

¶ 16 The trial court granted the Village's motion to dismiss. In a memorandum opinion, the court found that Ordinance 96-4 did not contain an implicit agreement on the part of the Village to accept title to the Delaine Farm detention pond. According to the court, "[t]hat interpretation lies beyond the boundaries of the permissible in a claim for specific performance." The court also concluded the *mandamus* claim was inappropriate. The court found "Ordinance 96-4 does not impose any clear, affirmative duties on the Village" and that "the acceptance of title to storm water drainage basins by a municipality is a discretionary act under Illinois law," which cannot be compelled under a *mandamus* claim.

¶ 17 On September 28, 2010, plaintiffs moved to reconsider. In addition, plaintiffs moved for voluntary dismissal of the Delaine defendants without prejudice.

¶ 18 While these motions were pending, counsel for Elliott prepared a quit claim deed to transfer ownership of the Delaine Farm water detention pond to the Village. The Village rejected the quit claim deed. According to a November 22, 2010 letter prepared by the Village's attorney, the Village board expressed that "the detention area should be owned, controlled, and maintained by the homeowners' association representing the property owners serviced by this detention area."

¶ 19 On January 3, 2011, counsel for plaintiffs, Borek & Associates, moved for leave to withdraw its representation of Shaf. The circuit court granted that motion on February 17, 2011. The court denied plaintiff's motion to reconsider the section 2-619 ruling on May 19, 2011.

¶ 20 Defendant Elliott then moved for summary judgment on April 9, 2013. The court entered an order on August 7, 2013 dismissing all the Delaine defendants. On the same day, the court entered an order granting Elliott's summary judgment motion and finding that "[t]his order, the dismissal order and all prior orders dispose of the rights of the Defendants as to the entire case. Therefore, there is no just reason for delaying appeal."

¶ 21 Vamstd filed its notice of appeal on October 1, 2013, along with a motion to file a late notice of appeal. This court allowed the late appeal. Shaf is not a party to this appeal. On July 16, 2014, this court ordered Vamstd to address in its reply brief whether it had standing to pursue its claims due to Shaf's alleged loss of ownership of the Vamstd water retention pond by foreclosure.

¶ 22 ANALYSIS

¶ 23 We initially address whether this court has jurisdiction to consider Vamstd's appeal. See *In re Marriage of Nienhouse*, 355 Ill. App. 3d 146, 149 (2004) ("The existence of an actual controversy is an essential requisite to appellate jurisdiction, and courts of review will generally not decide abstract, hypothetical, or moot questions."). The Village argues that Vamstd and Shaf are no longer aligned as they once had been. Shaf obtained separate counsel and is not a party to the appeal. Plaintiffs' complaint alleged that Shaf sought approval of the development of three lots on the Vamstd water detention pond property and that Shaf incurred losses as a result of the Village's actions. Vamstd has acknowledged that Shaf no longer owns the property containing the Vamstd detention pond due to foreclosure. The Village contends that in light of the foreclosure, Vamstd no longer is an interested party. Vamstd responds that it never relied on Shaf's ownership of the Vamstd detention pond for purposes of arguing that the Village breached

its contract to take ownership of the property containing the Delaine Farm retention pond. We agree.

¶ 24 Standing in Illinois requires "some injury in fact to a legally cognizable interest." *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 492 (1988). The purpose of the doctrine of standing is to ensure that courts resolve actual controversies between parties rather than abstract questions or moot issues. *Owner-Operator Independent Drivers Ass'n v. Bower*, 325 Ill. App. 3d 1045, 1050 (2001). An actual controversy exists with respect to a particular party when the underlying facts of the case demonstrate "a concrete dispute that admits of an immediate and definitive determination of the party's rights." *Id*. at 1050. We exercise *de novo* review to determine whether an actual controversy exists. *Preferred Personnel Services, Inc. v. Meltzer, Purtill & Stelle, LLC*, 387 Ill. App. 3d 933, 938 (2009).

¶ 25 Considering Vamstd's argument as a whole, if Vamstd were to succeed in requiring the Village to take ownership of the Delaine Farm retention pond, it would benefit Vamstd's ultimate goal of developing the property currently containing its own retention pond. Shaf's lack of ownership of the Vamstd detention pond does not negate Vamstd's interest in its utilization of the Delaine Farm detention pond. As a result, we conclude an actual controversy exists and that Vamstd has standing before this court.

¶ 26 On the merits, Vamstd contends the circuit court erred by granting the Village's section 2-619 motion. According to Vamstd, the court viewed only some of the underlying facts through the lens constructed by the Village, directly negating the essential allegations of the complaint. Vamstd argues the court fixated on the questions of whether contractual rights can arise from a statute and whether a party can compel a government entity to accept real property. Vamstd asserts the court granted the motion without specific grounds and that it should have only

considered whether there was some external bar to the contract alleged. Vamstd also argues that the court erred by dismissing its *mandamus* claim, asserting the Village chose to bind itself through its own ordinance to accept the land.

¶ 27 Standard of Review

¶ 28 The circuit court's ruling on a section 2-619 motion to dismiss is subject to *de novo* review on appeal. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 368 (2003). In conducting that review, we must construe all of the pleadings and supporting documents in the light most favorable to the non-moving party. *Id.* at 367-68. The question on review of a dismissal under section 2-619 is "whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law." *Napleton v. Great Lakes Bank, N.A.*, 408 Ill. App. 3d 448, 450-51 (2011).

¶ 29 *Mandamus* is an extraordinary remedy traditionally used to compel a public officer's performance of an official duty that does not involve an exercise of discretion. *People ex rel. Birkett v. Jorgensen*, 216 Ill. 2d 358, 362 (2005). Typically, the decision to grant or deny a writ of *mandamus* will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Lombard Historical Comm'n v. Village of Lombard*, 366 Ill. App. 3d 715, 719 (2006). However, when the court's judgment turns solely on statutory construction, a question of law arises and our review is *de novo*. *State Board of Elections v. Shelden*, 354 Ill. App. 3d 506, 509 (2004).

¶ 30 Grounds for Dismissal Under Section 2-619

¶ 31 Vamstd contends that the Village's section 2-619 motion failed to state a specific ground for dismissal and included no external submission, affidavit, deposition transcript, or other document setting forth the alleged defect in the verified complaint. Vamstd asserts the Village's

motion merely articulated an argument with its own interpretation of what Vamstd sought from the court, namely, the enforcement of Ordinance 96-4 as a contract. Vamstd argues this is evidence it expected to submit in contesting the ultimate fact in its complaint and, therefore, the court should not have considered whether certain language in the ordinance created a contract.

¶ 32 Vamstd, as a plaintiff seeking relief, placed the issue of whether Ordinance 96-4 created an enforceable contract directly before the circuit court and included a copy of the ordinance in its verified complaint. It now argues before this court that it apparently did not intend to inject that issue at the time it filed its complaint because it was going to save it for trial to be contested as an "ultimate fact." The issue of whether a contract exists is a matter of law which may be properly dismissed by a section 2-619 motion. See *Ragus Co. v. City of Chicago*, 257 Ill. App. 3d 308, 311 (1993) (A court may interpret the contract as a matter of law and make an appropriate ruling, including a dismissal under section 2-619); see also *Bennett v. Evanston Hospital*, 184 Ill. App. 3d 1030, 1033 (1989) (existence of a contract is a matter of law for the court to decide). Furthermore, Illinois courts repeatedly have held that affidavits for section 2-619 motions are unnecessary if the grounds for the motion appear on the face of the pleading attacked. See *Meyers v. Rockford Systems, Inc.*, 254 Ill. App. 3d 56, 61 (1993); *Geick v. Kay*, 236 Ill. App. 3d 868, 874 (1992). The Village's motion included a copy of the ordinance at issue, which sufficed to support consideration of the motion. *Geick*, 236 Ill. App. 3d at 874. Finally, this court may affirm the circuit court's dismissal of the verified complaint on any basis in the record. *Citizen's Bank-Illinois, N.A. v. American National Bank and Trust Co. of Chicago*, 326 Ill. App. 3d 822, 828 (2001); *Park Superintendents' Professional Ass'n v. Ryan*, 319 Ill. App. 3d 751, 757 (2001). We must therefore reject Vamstd's argument on this issue.

¶ 33 Specific Performance

¶ 34 Vamstd next argues the circuit court's conclusion that Ordinance 96-4 was not a contract was error because the court did not identify a defect or bar to the claimed contract between the parties. Vamstd contends the court's findings amounted to a partial trial on the merits, which is inappropriate when resolving a 2-619 motion. Again, however, the issue of whether a contract exists is a matter of law which may be properly dismissed by a section 2-619 motion. See *Ragus Co.*, 257 Ill. App. 3d at 311; *Bennett*, 184 Ill. App. 3d at 1033.

¶ 35 In this case, Vamstd sought specific performance of an alleged agreement contained in Ordinance 96-4. Vamstd argues the following sentence in the ordinance required the Village to take title to the Delaine Farm detention pond property: "The developer shall transfer title to the designated storm-water detention area, including an access-way twenty (20) feet wide from the detention facility to the nearest public street, to the Village of Morton Grove."

¶ 36 Our supreme court has stated that "[a] party who asserts that a State law creates contractual rights has the burden of overcoming the presumption that a contract does not arise out of a legislative enactment." *Fumarolo v. Chicago Board of Education*, 142 Ill. 2d 54, 104 (1990). To determine whether a statute was intended to create a contractual relationship between the State and the affected party, the court must examine the language of the statute. *Id*.

¶ 37 Municipal ordinances, such as the ordinance at issue here, are interpreted under the general rules of statutory construction and interpretation. *LeCompte v. Zoning Board of Appeals*, 2011 IL App (1st) 100423, ¶ 22; *Puss N Boots, Inc. v. Mayor's License Comm'n of the City of Chicago*, 232 Ill. App. 3d 984, 986 (1992). The primary goal of statutory interpretation is to determine the legislative intent, which is best indicated by the statutory language, given its plain and ordinary meaning. *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 11. Where

statutory language is clear and unambiguous, we enforce it as written without reading into it exceptions, conditions, or limitations not expressed by the legislature. *Martin v. Office of State's Attorney*, 2011 IL App (1st) 102718, ¶ 10. "A statute is ambiguous if its meaning cannot be interpreted from its plain language or if it is capable of being understood by reasonably well-informed persons in more than one manner." *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2014 IL App (1st) 132011, ¶ 21. A statute or as in this case, an ordinance, is not ambiguous simply because the parties disagree as to its meaning. *Id*. We find no ambiguity in the contested language of the ordinance and, therefore, the issue of whether the ordinance created a legally enforceable contract between Vamstd and the Village is a legal question that may be resolved as a matter of law.

¶ 38 Specific performance is an equitable remedy that requires a defendant to perform an affirmative act to fulfill a contract. *Dixon v. City of Monticello*, 223 Ill. App. 3d 549, 560 (1991). In order to be entitled to specific performance, a plaintiff must prove: (1) the existence of a valid, enforceable contract; (2) the plaintiff's compliance with the contract or willingness and ability to perform; and (3) the defendant's refusal to perform his duties under the contract. *McCormick Road Associates L.P. II v. Taub*, 276 Ill. App. 3d 780, 783 (1995).

¶ 39 Here, Vamstd has not asserted the existence of a valid, enforceable contract. The language of Ordinance 96-4 imposes no affirmative act upon the Village. A close reading of the unambiguous language shows that if any contractual obligation arose, it was the developer, Elliott, who "shall transfer title" of the Delaine Farm water detention pond to the Village. Nothing in the ordinance requires the Village to take title. As the plain language of the ordinance is unambiguous, we need not resort to further aids of statutory construction. *Alvarez v. Pappas*, 229 Ill. 2d 217, 228 (2008). We find Ordinance 96-4 did not create a contract between

Vamstd and the Village requiring the Village to take title of the property containing the Delaine Farm water retention pond. The circuit court properly dismissed Vamstd's claim on this issue.

¶ 40 Vamstd's *Mandamus* Claim

¶ 41 Vamstd asserts the court erred in dismissing its *mandamus* claim because the Village chose to bind itself through its own legislation to accept the land described in Ordinance 96-4. Vamstd, however, acknowledges that another party cannot compel a government entity to accept land. According to Vamstd, the ordinance and letters from the Village regarding the Delaine Farm water retention pond are evidence that the Village accepted title to the property. Vamstd argues the rationale for the Village taking title to the Delaine Farm detention pond was to protect the public interest.

¶ 42 Our supreme court has found that *mandamus* will lie only when the movant shows " 'a clear affirmative duty' " to act and clear authority to comply with the writ, "not when the act in question concerns an exercise of the official's discretion." *People ex rel. Birkett v. Dockery*, 235 Ill. 2d 73, 76 (2009) (quoting *People ex rel. Devine v. Sharkey*, 221 Ill. 2d 613, 616-17 (2006)). Vamstd argues that mandatory requirements set forth in ordinances requiring the disposition of real property are enforceable on municipalities, but this does not explain how the language of Ordinance 96-4 created a clear affirmative duty on the part of the Village to accept title to the Delaine Farm water retention pond. Nothing in the ordinance or in the letters from the Village following the enactment of the ordinance shows the Village accepted the property encompassing the Delaine Farm water detention pond.

¶ 43 Furthermore, Vamstd admitted in its motion to reconsider that acceptance of the Delaine Farm property is discretionary, but argues that the language of the ordinance is discretionary. The plain language of Ordinance 96-4 requires the developer, Elliott, to affirmatively act, but

does not compel the Village to do anything. Section 11-105-1 of the Municipal Code establishes that the acceptance of the property at issue is for the Village to decide and is not appropriate for *mandamus*. 65 ILCS 5/11-105-1 (West 2012). We find the circuit court properly dismissed Vamstd's verified complaint on the *mandamus* issue.

¶ 44 CONCLUSION

¶ 45 We affirm the decision of the circuit court to grant the Village's motion to dismiss under section 2-619 (735 ILCS 5/2-619 (West 2012)).

¶ 46 Affirmed.