2013 IL App (2d) 130475-U
No. 2-13-0475
Order filed December 23, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

LIBERTY ARBOUR LLC; JOHN "JACK" FELDKAMP; and JOHN BOYLE,	)	Appeal from the Circuit Court of McHenry County.
Plaintiffs-Appellants,	)	
v.	)	No. 11-MR-41
McHENRY COUNTY; RILEY TOWNSHIP; and DAVID DIAMOND,	)	Honorable Michael J. Sullivan,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly granted defendants summary judgment on plaintiffs' complaint for a declaratory judgment: the County's subdivision ordinance, which conditioned the County's approval of plaintiffs' proposed subdivision on approval by the affected township's highway commissioner, was authorized by section 2 of the Plat Act and thus was valid.

¶ 2 Plaintiffs, Liberty Arbour LLC (Liberty Arbour), John "Jack" Feldkamp, and John Boyle, sought a declaratory judgment (see 735 ILCS 5/2-701 (West 2010)) against defendants, McHenry County (the County), Riley Township, and David Diamond, Riley Township's highway

commissioner, asserting that the County's subdivision ordinance is invalid insofar as it conditions the County's approval of plaintiffs' proposed subdivision on Diamond's approval of plaintiffs' preliminary and final plats of subdivision. The trial court denied plaintiffs summary judgment and granted defendants summary judgment (see 735 ILCS 5/2-1005(c) (West 2010)). Plaintiffs appeal.[1] We affirm.

¶ 3 Plaintiffs' complaint alleged as follows.[2] Plaintiffs own a 48-acre vacant parcel of land in Riley Township, in McHenry County. On or about November 1, 2006, Liberty Arbour filed with the County an application for permission to subdivide the property. Liberty Arbour also filed a "sketch plan" and a tentative plat. The requirements for obtaining permission to subdivide the property include two provisions of the County's subdivision ordinance. At all pertinent times, article 9, section 901.2 of the ordinance has stated, in relevant part, "All Tentative Plats must be approved by the Township Highway Commissioner of each political township in which the subdivision lies." McHenry County Subdivision Ordinance, art. 9, §901.2 (1991). At all pertinent times, article 9, section 902.5(A)has stated, in relevant part, "All Final Plats must be approved by the Township Highway Commissioner of each political township in which the subdivision lies." McHenry County Subdivision Ordinance, art. 9, § 902.5(A) (1991). Plaintiffs' application was still in the "tentative plat" stage because Diamond had not approved the tentative plat; thus, the application could not proceed to the next stage. Further, even if Diamond approved the tentative plat, the application could not be granted unless he eventually approved the final plat.

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[1]Feldkamp died on June 7, 2011, while the case was in the trial court.

[2]Plaintiffs' complaint included a second count requesting that defendants be held in contempt of court for violating a prior judgment. Plaintiffs later voluntarily dismissed this count.

¶ 4 Plaintiffs' complaint contended that both of the foregoing provisions were void, because no statute authorizes a county to condition the grant of a subdivision application on approval by a township highway commissioner (THC), and no statute authorizes a THC to make a legally binding decision approving or disapproving such an application.

¶ 5 Defendants answered. The parties eventually filed cross-motions for summary judgment. Plaintiff's motion essentially reiterated the complaint. In contending that the County had the authority to condition the grant of plaintiffs' application on Riley's approval, defendants first invoked sections 5-1041 and 5-1042 of the Counties Code, each of which authorizes counties to prescribe, by resolution or ordinance, "reasonable rules and regulations governing the location, width and course of streets and highways." 55 ILCS 5/5-1041, 1042 (West 2010). Defendants contended that the County had acted reasonably in requiring a subdivision applicant to obtain the pertinent THC's approval of the preliminary and final plats of subdivision, as that official would assume jurisdiction over, and responsibility for maintaining, roads within the subdivision.

¶ 6 Defendants next invoked section 2 of the Plat Act (765 ILCS 205/2 (West 2010)). Under section 1(a) of the Plat Act, an owner of land who seeks to subdivide it into two or more parts, any of which is less than five acres, must submit a subdivision plat to the pertinent governmental authority (765 ILCS 205/1(a) (West 2010)). Section 2 of the Plat Act states:

> "Neither the *** county board of the county shall approve such plat, unless, in addition to any other requirements of such *** county board ***, the plat has been approved in writing *** (ii) *by the relevant local highway authority with respect to all other roadway access*[.] *** An applicant shall simultaneously file with the Illinois Department of Transportation, *relevant local highway authority*, or local health department, as appropriate, a copy of the

> application for preliminary approval of a proposed plat that is filed with the municipality or county. The department or *authority* receiving the application *shall review the application* *** *and provide written approval or disapproval* to the municipal or county plan commission and to the municipal or county corporate authorities not later than 90 days from the date the application is received. The 90 day period may be changed by mutual agreement. If disapproved, the department or *authority* shall provide reasons for the disapproval *** and identify improvements that will remove the disapproval. The municipal or county corporate authorities may approve the plat once the improvements have been incorporated into the application or in the event that the department or *authority* fails to respond in writing to the municipality or county within the 90 day period or other period established by mutual agreement." (Emphases added.) 765 ILCS 205/2 (West 2010).

Defendants contended that Diamond, as Riley Township's THC, was the "relevant local highway authority" (*id.*) and that he was not only authorized but required to consider plaintiffs' application and to provide his written approval or disapproval to the County's subdivision planning and review committee. Further, defendants argued, section 2 also required the County to deny plaintiffs' application if Diamond disapproved within the 90-day window.

¶ 7 The trial court granted defendants summary judgment. Plaintiffs moved to reconsider and also filed a notice of appeal. The trial court refused to rule on the motion to reconsider, explaining that the notice of appeal divested it of jurisdiction. We dismissed the appeal, holding that the trial court had erred, because we lacked jurisdiction to hear the appeal until the trial court decided the motion to reconsider. *Liberty Arbour, LLC, v. McHenry County*, 2013 IL App (2d) 120071-U. The trial court then denied the motion to reconsider, and plaintiffs timely appealed.

¶ 8 On appeal, plaintiffs contend that the County's requirement that the THC approve the tentative and final plats of a proposed subdivision is void because no statute authorizes it. Defendants respond that both the Counties Code and section 2 of the Plat Act authorize the approval provision. We agree with defendants that section 2 of the Plat Act validates the provision, and we therefore affirm without deciding whether the Counties Code also does so.

¶ 9 Summary judgment is proper if the pleadings, depositions, exhibits, and other matters on file demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010). Our review is *de novo*. *Metropolitan Life Insurance Co. v. Hamer*, 2013 IL 114234, ¶ 17. The issue raised in this appeal is one of statutory construction and is thus one of law, subject to *de novo* review. See *People v. Trzeciak*, 2013 IL 114491, ¶ 58. Our goal is to effectuate the intent of the legislature, the best guide to which is, ordinarily, the statutory language itself. *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, ¶ 56. If the language is unambiguous, we must apply it straightforwardly. *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 16. We hold that, at least as far as is pertinent here, the Plat Act is unambiguous and supports the judgment.

¶ 10 Under section 2 of the Plat Act, a county board may not approve a plat of subdivision unless the plat has been approved in writing by the "relevant local highway authority." 765 ILCS 205/2 (West 2010). Also, the same local highway authority shall "provide written approval or disapproval" to the county plan commission. *Id*. Further, the "authority"—plainly the "relevant local highway authority"—shall provide reasons for its "approval or disapproval" and, if the "authority" fails to do so within 90 days (or whatever period is agreed upon), then the county may approve the plat. *Id*. Thus, if Diamond, as Riley Township THC, is the "relevant local highway authority" (*id*.) in this

case, the County acted not only within its prerogative, but under an affirmative obligation, by requiring plaintiffs to submit their plat of subdivision to Diamond and by requiring his office's approval before the plat could be approved.[3]

¶ 11 We agree with defendants that Diamond, as Riley Township THC, is the "relevant local highway authority" in this case. "Highway authority" means "The Department [of Transportation] with respect to a State highway; the county board with respect to a county highway ***; *the highway commissioner with respect to a township or district road not in a county unit road district* ***." (Emphasis added.) 605 ILCS 5/2-213 (West 2010). Plaintiffs' proposed subdivision is located within Riley Township, not within a county unit road district, and Diamond, as Riley Township's THC, is Riley Township's highway commissioner. Therefore, we agree with defendants that the procedure that plaintiffs challenge is authorized by statute.

¶ 12 Plaintiffs' opening brief does not even address the Plat Act as a basis for the County's ordinance provision. In their reply brief, plaintiffs do address the Plat Act in summary fashion,

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[3]Plaintiffs' argument does not distinguish between the mandatory submission of the preliminary plat of subdivision to the THC and the mandatory submission of the final plat of subdivision to the THC. We therefore consider these two requirements as essentially a single one, especially as it would appear unreasonable to require only the submission of the final plat to the THC, and the requirement of submitting the preliminary plat is reasonably necessary to the THC's proper consideration of the proposed subdivision. Section 2 of the Plat Act does not limit the County and the THC in any such artificial manner. Both the tentative plat, which is submitted with the application, and the final plat, which is the same document as revised, should be considered as "the plat" (765 ILCS 205/2 (West 2010)).

contending (with no citation to pertinent authority) that "relevant local highway authority" (765 ILCS 205/2 (West 2010)) may refer to any of a number of authorities, such as the county highway commissioner, a nearby municipality, and a county surveyor—and "some other [*sic*] that the County Board determines is a local highway authority." Plaintiffs' curious argument simply ignores the statutory definition of "highway authority."

¶ 13 Plaintiffs make several other arguments that we reject. First, they contend that the Illinois Highway Code's provisions relating to THCs do not explicitly grant these officers any authority to assist a county in the subdivision-approval process. See 605 ILCS 5/6-101 *et seq*. (West 2012). As defendants note, the THC may still exercise such authority if it is granted by another statute. The Plat Act does so.

¶ 14 Next, to support their assertion that THCs lack any authorization to participate in the county subdivision-approval process, plaintiffs cite the statement in *Village of Montgomery v. Aurora Township*, 387 Ill. App. 3d 353, 359 (2008), "[A] township highway commissioner has the sole authority to repair and improve 'the roads of his district' " (605 ILCS 5/6-201.8 (West 2006)). Neither *Village of Montgomery* nor the quoted language bears on the issue in this case. *In Village of Montgomery*, the village and the City of Aurora sued Aurora Township and its THC, seeking a declaration of the parties' rights and liabilities respecting a bridge. *Village of Montgomery*, 387 Ill. App. 3d at 354. The township contended that it should not have been made a party, because it had no statutory power over roads and bridges. This court rejected the argument, explaining that, although the THC had the sole authority to repair and improve the roads in his district, the township was nonetheless a proper party, because it owned the roads within its road system and had to approve the THC's proposed budget and audit his accounts. *Id*. at 359. Plainly, *Village of Montgomery* has

no factual resemblance to this case. And plaintiffs simply attempt to rewrite the opinion. The quoted language says that *only the THC* has the authority to repair and improve the roads of his district. It does not say that the THC has the authority *only to repair and improve* the roads of his district. The Plat Act gives the THC the authority to participate in the subdivision-approval process of the county in which his township is located. No case law says otherwise.

¶ 15 Finally, plaintiffs argue that there is no need to involve a THC in the subdivision-approval process, because a county's plat review committee already has sufficient expertise to perform the task. Plaintiffs' policy argument might conceivably be relevant to whether the County's approval requirement is a "reasonable rule[] or regulation[]" per sections 5-1041 and 5-1042 of the Counties Code (55 ILCS 5/5-1041, 1042 (West 2010)). It is irrelevant to the construction of the Plat Act.

¶ 16 As we affirm on the foregoing ground, we need not consider whether sections 5-1041 and 5-1042 of the Counties Code also support the trial court's judgment.

¶ 17 The judgment of the circuit court of McHenry County is affirmed.

¶ 18 Affirmed.