

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0073

FARMCO, INC. AND B. A. BEAUVAIS

VERSUS

WEST BATON ROUGE PARISH GOVERNING COUNCIL

consolidated with

2006 CA 0074

W. T. RUPLE

VERSUS

WEST BATON ROUGE PARISH COUNCIL

Judgment Rendered: November 3, 2006.

On Appeal from the
18th Judicial District Court
Parish of West Baton Rouge,
State of Louisiana
Trial Court No. 29,745 c/w Number 32,350

Honorable James J. Best, Judge Presiding

W. T. Ruple
Bueche, LA

Plaintiff/Appellant
In Proper Person

Brent Beauvais
Torbert, LA

Plaintiff/Appellant
In Proper Person

Antonio M. Clayton
Port Allen, LA

Counsel for Defendant/Appellee
West Baton Rouge Parish
Governing Council

BEFORE: CARTER, C.J., WHIPPLE AND McDONALD, JJ.

CARTER, C.J.

Petitioner, W. T. Ruple, appeals a district court judgment denying his request for a writ of mandamus. For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Following approval by voters, the Home Rule Charter of West Baton Rouge Parish (Charter) became effective in January 1996.¹ According to the Charter, all legislative authority was vested in the West Baton Rouge Parish Council (Council), including the authority to adopt or modify subdivision and plat approval regulations.² In June 1997, the Council adopted “Subdivision Regulations” setting forth the standards to be adhered to and the procedures to be followed by applicants seeking to subdivide land within the parish. After receiving recommendations of the planning commission and hearing from interested parties, final authority for approval of subdivision plats rested solely with the Council. See Sec. 21-2.

In April 1998, Farmco, Inc. sought approval of a three-lot subdivision of certain property situated within West Baton Rouge Parish. The planning commission refused to recommend the plat for approval by the Council unless Farmco agreed to install fire hydrants and dedicate land to the parish for two streets, in accordance with the Subdivision Regulations. On June 11, 1998, the Council conducted a meeting during which it considered Farmco’s

¹ Prior to the enactment of the charter, the parish planning commission, created by ordinance in 1961, was charged with exercising the powers and duties conferred by LSA-R.S. 33:101 through 33:119. Ord. of 7-12-61, §§ 1, 5. Pursuant to LSA-R.S. 33:101.1 and 33:112, local planning commissions are endowed with the legislative authority to adopt subdivision regulations as well as the discretion to approve or disapprove proposed subdivisions of land within their jurisdictions.

² According to the Charter, all non-conflicting actions, ordinances, and administrative rules and regulations of the parish in force prior to the effective date of the Charter were to remain in full force and effect, until amended or repealed by the Council. Charter 8-01(B). Moreover, the Council was authorized to abolish, by ordinance, any administrative boards or commissions in existence at the time the Charter became effective. Charter 7-07(F). No such action was taken to dissolve the planning commission.

three-lot plat. At the meeting, a motion was made to adopt the recommendation of the planning commission and thus reject Farmco's proposed plat due to its failure to comply with the applicable regulations. Four members voted in favor of the motion, four voted against, and one member was absent; hence, the motion died due to the lack of a majority vote. Thereafter, the planning commission purportedly requested that Farmco resubmit an application for all lots that it intended to subdivide from the pertinent property. Farmco resubmitted an application for approval; this time the proposed plat reflected the original three lots plus an additional eight lots for a total of eleven lots. The planning commission again refused to recommend the plat for approval because it did not include the necessary streets and fire hydrants, nor did it provide for streetlights. Even so, at its September 10, 1998 meeting, the Council voted to conditionally approve Farmco's plat contingent upon its installation of fire hydrants and streetlights, and the Council granted Farmco a variance regarding the required streets.

In October 1998, Farmco³ filed a "Petition for Injunction, Declaratory Judgment and Appeal of Action by West Baton Rouge Parish Planning Commission and West Baton Rouge Parish Council." In its petition, Farmco alleged that the Subdivision Regulations were unconstitutional and sought to enjoin the Council from enforcing them. The Council filed a peremptory exception raising the objection of no cause of action. The district court sustained the Council's exception and dismissed Farmco's petition. Farmco appealed. This court affirmed the trial court's judgment; however, the

³ The petition was actually filed by Farmco, Inc. and B. A. Beauvais. However, a copy of the plat in the record indicates that it was submitted on behalf of Farmco, who was listed as the sole owner of the property.

supreme court subsequently reversed the lower court judgments and remanded the matter for further proceedings. **Farmco Inc. v. West Baton Rouge Parish Governing Council**, 99-2837 (La. App. 1 Cir. 12/22/00), 808 So.2d 412, reversed, **Farmco, Inc. v. West Baton Rouge Parish Governing Council**, 01-1086 (La. 6/15/01) 789 So.2d 568 (per curiam).

After acquiring a partnership interest in Farmco, W.T. Ruple joined the suit as party plaintiff in May 2002.⁴ In April 2003, Mr. Ruple filed a “Petition for Writ of Mandamus” seeking to compel the Council to approve the original three-lot plat Farmco submitted in April 1998, because the council had failed to approve or disapprove it within 60 days as required by LSA-R.S. 33:113. He further alleged that the Council had neither advertised nor conducted a hearing on a subsequent nine-lot plat submitted in July 2002. Therefore, he alleged that it too should be deemed approved because it was neither approved nor disapproved within the 60-day period. Exhibits submitted by Mr. Ruple in conjunction with his petition indicate that the planning commission refused to recommend that the Council approve the 2002 nine-lot plat because it did not comply with the Subdivision Regulations.

At the February 28, 2005 hearing on the writ of mandamus, Mr. Ruple reiterated his contention that the Council neither approved nor disapproved the pertinent plats within the 60-day period mandated by LSA-R.S. 33:113. Conversely, the Council argued they had been disapproved. Admitting much confusion, the trial court opined that the Council “in essence denied [Farmco’s] plats” because they did not conform to the Subdivision

⁴ In April 2002, Mr. Ruple had filed a separate suit that subsequently was transferred and consolidated with the present suit; however, the issues raised by Mr. Ruple in the April 2002 consolidated suit are not pertinent to this appeal.

Regulations. Accordingly, the trial court denied Mr. Ruple's request for a writ of mandamus compelling the Council to approve the subject plats.⁵ Nevertheless, the trial court was uncertain whether the denial had been put in writing or if notice of the denial and the reasons therefor had been provided to Farmco. Therefore, it ruled that Farmco be afforded the opportunity to resubmit its plats and receive an express and timely approval or disapproval.⁶ Following the denial of his motion for a new trial, Mr. Ruple filed this appeal arguing that the trial court erred in failing to grant his request for mandamus as required by LSA-R.S. 33:113.

LAW AND ANALYSIS

At the outset we note that mandamus never issues in doubtful cases. **Wiginton v. Tangipahoa Parish Council**, 00-1319 (La. App. 1 Cir. 6/29/01), 790 So.2d 160, 163, writ denied, 01-2541 (La. 12/07/01), 803 So.2d 971. Mandamus is an extraordinary remedy, which must be used sparingly by the court only to compel action that is clearly provided by law, and only where it is the only available remedy or where delay occasioned by the use of any other remedy would cause injustice. **Allen v. St. Tammany Parish Police Jury**, 96-0938 (La. App. 1 Cir. 2/14/97), 690 So.2d 150, 153, writ denied, 97-0599 (La. 4/18/97), 692 So.2d 455. Thus, mandamus will be denied when there has been an unreasonable delay in applying for it. LSA-C.C.P. art. 3862, comment (b).

⁵ Although not specifically stated in the judgment, the transcript and court minutes reflect that the trial court intended to deny Mr. Ruple his requested relief. Generally, when a judgment is silent as to a claim or demand placed before the court, it is presumed that the trial court denied the relief sought. **Barham & Arceneaux v. Kozak**, 02-2325 (La. App. 1 Cir. 3/12/04), 874 So.2d 228, 241, writ denied, 04-0930 (La. 6/4/04), 876 So.2d 87.

⁶ On March 21, 2005, the trial court signed a judgment, which provided as follows:

IT IS HEREBY ORDERED, ADJUDEGED [sic] AND DECREED that the Parish of West Baton Rouge allow Mr. W.T. Ruple to present his subdivision plan proposal to the Planning and Zoning Commission for a determination as to whether the subdivision plan is to be approved or disapproved.

In seeking mandamus, Mr. Ruple relies on LSA-R.S. 33:113, which provides, in pertinent part:

A planning commission shall approve or disapprove a plat within sixty days after the submission thereof to it; otherwise such plat shall be deemed to have been approved, and a certificate to that effect shall be issued by such commission on demand. The applicant for a commission's approval may, however, waive this requirement and consent to an extension of such period. The ground of disapproval of any plat shall be stated upon the records of such commission. Any plat submitted to such commission shall contain the name and address of a person to whom notice of a hearing shall be sent; and no plat shall be acted on by such commission without affording a hearing thereon.

However, located within the same Subpart is LSA-R.S. 33:106.2, which became effective on April 19, 2000, and states:

The provisions of this Subpart shall not apply to the planning commission of West Baton Rouge Parish to the extent that such provisions are in conflict with the provisions of the West Baton Rouge Parish Home Rule Charter and any ordinances adopted pursuant to such home rule charter provisions.

The Subdivision Regulations plainly state: "From and after the date of adoption, these regulations, including amendments[,] shall govern all subdivisions of land within the Parish of West Baton Rouge." Sec. 21-2. The regulations then set forth various standards to be adhered to and procedures to be followed. Nowhere in the regulations does it provide that applications not acted upon by the Council within a 60-day period are to be deemed approved. If, or to the extent that, LSA-R.S. 33:113 does allow the approval of plats within 60 days by operation of law, even when they are not in compliance with applicable regulations, it conflicts with the Subdivision Regulations at issue herein. The regulations, taken as a whole, amply establish that no plats are to be approved unless they comply with all Subdivision Regulations or unless an express variance has been granted by

the Council. See Sec. 21-4; Sec 21-27; Sec. 21-43. The record establishes that the subject plats do not comply with the regulations.⁷

CONCLUSION

For the foregoing reasons, we find that the district court did not err in denying Mr. Ruple's request for a writ of mandamus. Accordingly, we hereby affirm the judgment of the trial court. This matter is remanded for further proceedings consistent with this opinion. All costs of this appeal are assessed to Mr. W.T. Ruple.

AFFIRMED AND REMANDED.

⁷ It is alleged that the Subdivisions Regulations are unconstitutional. However, the issue of the constitutionality of the regulations is not presently before us.