

STATE OF MICHIGAN  
COURT OF APPEALS

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AMERICAN EAGLE FIREWORKS, INC.,

Plaintiff-Appellant,

v

LANSING FIRE MARSHAL and CITY OF  
LANSING,

Defendants-Appellees.

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UNPUBLISHED

March 1, 2002

No. 228474

Ingham Circuit Court

LC No. 00-091945-CZ

Before: Bandstra, P.J., and Murphy and Murray, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order dismissing its complaint for mandamus. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sought a writ of mandamus directing defendants to issue a permit to sell wholesale fireworks after it completed an application pursuant to city ordinance. The circuit court dismissed the complaint, finding that defendants had no clear legal duty to issue the permit.

Mandamus is an extraordinary remedy that may lie to compel the exercise of discretion, but not to compel its exercise in a particular manner. *Teasel v Dep't of Mental Health*, 419 Mich 390, 410; 355 NW2d 75 (1984). Issuance of a writ of mandamus is proper where (1) the plaintiff has a clear legal right to performance of the specific duty sought to be compelled, (2) the defendant has the clear legal duty to perform such act, and (3) the act is ministerial, involving no exercise of discretion or judgment. *Vorva v Plymouth-Canton Community School Dist*, 230 Mich App 651, 655; 584 NW2d 743 (1998). The plaintiff must be without other adequate legal or equitable remedy. *Tuscola Co Abstract Co, Inc v Tuscola Co Register of Deeds*, 206 Mich App 508, 510; 522 NW2d 686 (1994).

MCL 750.243b(2) gives local authorities the discretion to grant permits to allow resident wholesale dealers to possess fireworks otherwise prohibited by MCL 750.243a. Specifically, that statute indicates that the “council or commissioner of a city . . . may grant a permit . . .” MCL § 760.243b(2). Contrary to plaintiff’s argument, the use of the word “may” indicates a discretionary act, not a mandatory act. *People v Grant*, 445 Mich 535, 542; 520 NW2d 123 (1994); *Port Huron v Amoco Oil Co*, 229 Mich App 616, 631; 583 NW2d 215 (1998). The City of Lansing adopted an ordinance allowing such permits to be issued. City ordinance 1615.04 establishes three requirements for an application for a permit to be considered complete. While

plaintiff argues that the satisfaction of these conditions requires defendants to issue the permit, the ordinance does not state that a permit must be issued when a complete application is filed. Where the fire marshal found that plaintiff did not meet the storage requirements of MCL 750.243d, there is no showing that defendants were required to issue the permit. Plaintiff is not entitled to mandamus relief.

Affirmed.

/s/ Richard A. Bandstra

/s/ William B. Murphy

/s/ Christopher M. Murray