2026 IL App (1st) 252649-U
No. 1-25-2649
Order filed November 4, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23 and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT, THIRD DIVISION

B&D INVESTMENT GROUP, LLC-8507-8527 S. 88th AVENUE SERIES, Plaintiff-Appellant

v.

JUSTICE-WILLOW SPRINGS WATER COMMISSION, an Illinois Municipal Corporation, Defendant-Appellee

Appeal from the Circuit Court of Cook County.
Honorable Joel Chupack, Judge, Presiding.
No. 21-CH-3125

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Quish and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the grant of summary judgment for defendant on plaintiff's amended complaint for declaratory and injunctive relief.

¶ 2 Plaintiff, B&D Investment Group, LLC-8507-8527 S. 88th Avenue Series, is the owner of a strip mall in the Village of Justice (Village). Defendant, the Justice-Willow Springs Water Commission, is a municipal utility providing water service throughout the Village. In 2021, defendant notified plaintiff of its intention to reduce the number of water meters located at the strip mall so as to lower the administrative expenses relating to billing for water usage. Plaintiff filed an amended three-count complaint, seeking a declaration that defendant's attempt to reduce only

the number of water meters at its strip mall, while not reducing the water meters at other similarly situated strip malls within the Village, violated the equal protection clause and was arbitrary and capricious. Plaintiff also sought injunctive relief. The circuit court granted summary judgment in favor of defendant. Plaintiff appeals. We affirm.

¶ 3 Plaintiff's strip mall contains eight commercial units consisting of seven stores and a day care center. Each store has its own water meter. The day care center has two additional water meters. There is a tenth water meter for the fire sprinkler system, which is not the subject of this appeal. Defendant uses specialized equipment to remotely read the water meters and determine the amount of water used by each commercial unit and then prepares a separate water bill for each such unit. In January 2021, defendant's Executive Director, Colleen Kelly, told plaintiff's manager and sole member, Dr. Mohamed Eldibany, that defendant wanted to consolidate seven of the water meters in the commercial units into one water meter, which would result in plaintiff receiving one total water bill for all the units. As a result of the consolidation, defendant no longer would prepare a separate water bill for each commercial unit, meaning that plaintiff would be required to determine each of the units' water usage and then bill each unit accordingly. Eldibany objected to the consolidation as it would entail extra expenses for plaintiff.

¶ 4 On January 28, 2021, defendant held a board meeting and directed its attorney to speak with Eldibany again about consolidating the water meters in plaintiff's strip mall. On March 24, 2021, defendant's attorney sent Eldibany a letter informing him of defendant's decision to consolidate the water meters in plaintiff's strip mall. Eldibany continued to voice his objection. On June 17, 2021, defendant informed plaintiff that unless it made an appointment to consolidate the water meters within the next 14 days, defendant would "begin the process of terminating water

service" at the strip mall. Plaintiff contends that if defendant terminates the water service, five of its commercial tenants including the day care center would have to shut down.

¶ 5 Plaintiff filed its initial complaint in this matter on June 25, 2021. In count I, plaintiff alleged that there were nine other strip malls located within the Village and receiving water from defendant. Those nine strip malls contained multiple commercial units, each of which was serviced by its own water meter. Defendant was not requiring any of those strip malls to consolidate or reduce their water meters. Plaintiff sought a declaration that defendant's attempt to consolidate the water meters at its strip mall, while leaving the multiple water meters at the other nine strip malls intact, violated the equal protection clause. In count II, plaintiff sought a declaration that defendant's attempt to consolidate the water meters at its strip mall was arbitrary and capricious. In count III, plaintiff sought a temporary restraining order and preliminary injunction enjoining defendant from consolidating the water meters at its strip mall during the pendency of this action and a permanent injunction restraining the same conduct.

¶ 6 The circuit court dismissed plaintiff's complaint for failing to state a cause of action under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2020)). Plaintiff filed an appeal from that dismissal order (see *B&D Investment Group, LLC-8507-8527 S. 88th Avenue Series v. Justice-Willow Springs Water Commission*, 2022 IL App (1st) 211357-U), which we proceed to discuss. First, plaintiff contended in the appeal from the dismissal order that its complaint stated a cause of action for an equal protection violation. *Id.* ¶ 13. We noted that an equal protection claim generally is concerned with governmental classifications affecting some groups of citizens differently than others. *Id.* Therefore an individual pursuing an equal protection challenge usually alleges that he has been arbitrarily classified as a member of an identifiable

group. *Id.* However, the equal protection clause is also understood to protect an individual (a so-called "class of one") against purely arbitrary governmental classifications. *Id.*

¶ 7 We further noted that in the instant case, plaintiff was alleging such a class of one equal protection claim based on its being irrationally singled out for consolidation of its water meters. *Id.* ¶ 14. To state a cause of action under this theory, plaintiff must allege it was intentionally treated differently from others who were similarly situated. *Id.* To be similarly situated, plaintiff and its comparators must be *prima facie* identical in all relevant respects or directly comparable in all material respects. *Id.* Plaintiff must further allege that there is no rational basis for the different treatment. *Id.*

¶ 8 We determined that "[u]ltimately, after discovery is completed," the evidence may show some differentiation between plaintiff's strip mall and the other strip malls in the Village which justifies the difference in treatment regarding the consolidation of the water meters. *Id.* ¶ 21. However, we found that "[f]or our purposes here at the pleading stage," plaintiff's complaint alleged facts sufficient to show that defendant intentionally treated it differently from other similarly situated strip malls for no rational reason and as such that defendant's consolidation decision contravened the equal protection clause and was arbitrary and capricious. *Id.* ¶¶ 21-24. Accordingly, we reversed the dismissal of counts I and II and remanded for further proceedings. *Id.* As counts I and II stated causes of action underlying count III's claim for injunctive relief, we also reversed the dismissal of count III and remanded for further proceedings. *Id.* ¶ 26.

¶ 9 On remand, plaintiff filed an amended complaint realleging that defendant's attempt to consolidate only the water meters at its strip mall, while not reducing or consolidating the water meters at the comparator malls within the Village, violated the equal protection clause, was arbitrary and capricious, and merited injunctive relief. The difference between the original and

amended complaints is that the amended complaint now alleged that there are seven (not nine) comparator strip malls located within the Village which have not been required to consolidate their water meters.

¶ 10 During discovery, Colleen Kelly, defendant's Executive Director, gave a deposition in which she testified that she made the decision, on behalf of defendant, to consolidate the water meters at plaintiff's strip mall. Kelly stated that her decision was based on the fact that "many" of plaintiff's tenants were delinquent in making their water payments, thereby requiring defendant to shut off their water supply. Kelly also stated that a dispute between plaintiff and one of its tenants, J & J Fish & Chicken (J & J) regarding whether plaintiff had illegally tapped into J & J's water line was an additional factor in the decision to consolidate plaintiff's water meters.

¶ 11 Kelly also filed an affidavit stating that consolidating the water meters in plaintiff's strip mall would promote operating efficiencies for defendant and would result in lower administrative expenses for billing and collecting for water usage. Kelly further attested that multi-unit buildings with commercial tenants with a single consolidated water meter "have a lower number of delinquent payments, lower administrative expenses related to billing and collecting for water usage and require less servicing than buildings served by multiple meters."

¶ 12 Plaintiff filed interrogatories directed to defendant, asking it in pertinent part to state the factual basis for its decision to require plaintiff to consolidate the water meters at the strip mall. Defendant stated:

> "The Plaintiff's Property had substantially more delinquent accounts than similarly situated properties from the period covering January 1, 2015, through December 31, 2020. Specifically, during the foregoing period, the Plaintiff's property had the highest number of delinquent bills (*i.e.*, bills issued which included a delinquent balance) in total and the

highest number of delinquent bills on a percentage basis of bills issued from January 1, 2015 through December 31, 2020."

¶ 13 Defendant provided a chart prepared by its administrative assistant, Tabatha Sutera, showing that plaintiff's strip mall had 477 delinquent water bills, whereas the comparator strip malls in the Village had between 31 and 296 delinquent bills. The chart further showed that 72% of the water bills for plaintiff's strip mall were delinquent. The comparator strip malls in the Village had between 8% and 54% delinquent bills.

¶ 14 In further response to plaintiff's interrogatories, defendant also stated that it decided to consolidate the water meters in plaintiff's strip mall, and not in the comparator strip malls, because water service for three of plaintiff's tenants was terminated for non-payment between January 1, 2015, through December 31, 2020, whereas none of the tenants in the comparator strip malls had their water service terminated for non-payment during that same period; in 2020, one of plaintiff's tenants, J & J, complained that plaintiff tapped into its water line, thereby causing it to be charged for water service attributable to another tenant, whereas no similar complaints were lodged by the tenants in the comparator strip malls; defendant has received requests from plaintiff to terminate its tenants' water service for the non-payment of bills, whereas defendant has received no similar requests from the comparator strip malls; and fines and penalties were assessed against plaintiff on December 16, 2016, for cutting the lock off one of its water meters at its strip mall, whereas no similar fines and penalties were assessed against the comparator strip malls. Defendant further stated that consolidating plaintiff's water meters will lower the number of delinquent payments and decrease defendant's administrative expenses.

¶ 15 Dr. Mohamed Eldibany, plaintiff's sole member, filed an affidavit attesting that plaintiff had never tapped into J & J's water line. Eldibany also gave a deposition in which he stated that

defendant does not lose any money when one of plaintiff's tenants fails to timely pay its water bill, because Eldibany ultimately ends up paying the bill. Eldibany stated that whenever he pays a tenant's delinquent bill, he also pays an additional $3.72 penalty, and therefore defendant actually ends up "mak[ing] money off of me." Elsewhere in his deposition, though, Eldibany admitted that "the manpower costs related to servicing a non-delinquent account is less than a delinquent account" and that "multiunit commercial tenants with consolidated water meters have a lower rate of delinquent payments and require less service" than tenants with one meter.

¶ 16 Ann Majstoric, one of plaintiff's managers, also attested that plaintiff never tapped into J & J's water line. Majstoric further attested that in 2013, defendant claimed she had cut off a locked water meter inside plaintiff's strip mall. A hearing was held on December 6, 2016, at which Majstoric denied cutting the lock. Defendant determined that the lock had been cut and issued a fine against plaintiff. Majstoric averred that defendant's findings were incorrect and did not support consolidation of plaintiff's water meters because "[n]o representative of the Plaintiff had or has cut off a lock for the water meter or any other water meter."

¶ 17 Following discovery, defendant filed an amended motion for summary judgment on all three counts of plaintiff's amended complaint. First, defendant argued that the equal protection claim asserted in count I fails because the comparator strip malls were not similarly situated to plaintiff's strip mall for the reasons stated in the answers to plaintiff's interrogatories. Specifically, defendant noted that the tenants in plaintiff's strip mall had a higher number of delinquent water bills, both in total delinquencies and on a percentage basis, than the comparator strip malls; three of plaintiff's tenants had their water service terminated for non-payment, whereas the alleged comparators had none; one of plaintiff's tenants, J & J, complained that plaintiff tapped into its

water line, which did not occur with the alleged comparators; and, unlike the comparators, fines and penalties were assessed against plaintiff for cutting the lock off a water meter.

¶ 18 Next, defendant argued for summary judgment on count II's claim of arbitrary and capricious conduct because Kelly's affidavit and deposition testimony showed that the decision to consolidate the water meters at plaintiff's property was made to reduce the number of delinquent accounts and lower administrative costs. Finally, defendant argued for summary judgment on count III's claim for injunctive relief because such relief was not available in the absence of a viable underlying cause of action.

¶ 19 Plaintiff filed a response to the summary judgment motion, arguing that defendant "grossly overstated" the number and percentage of delinquent water bills for the tenants of plaintiff's strip mall and understated the number and percentage of delinquent water bills in the comparator strip malls. Plaintiff prepared a new chart showing that one of the comparator malls had more total delinquent water bills than plaintiff's strip mall, while two of the comparator malls had a higher percentage of delinquent bills. As these comparator malls had more delinquent water bills and a higher percentage of delinquent bills than plaintiff's strip mall, plaintiff argued that defendant's stated justification for consolidating only plaintiff's meters was a sham and that the consolidation amounted to an equal protection violation.

¶ 20 Defendant subsequently filed supplemental answers to plaintiff's interrogatories, stating:

> "[S]ince the filing of its original answer to Plaintiff's interrogatories, it has become known to Defendant that the delinquency numbers provided in the original answer were incorrect due to mathematical errors. Plaintiff's property still has substantially more delinquencies than the comparators, but after reviewing the financial activity logs, which were provided

to Plaintiff in response to Plaintiff's request for production, Defendant has amended its spreadsheet with new numbers."

¶ 21 Defendant provided a new chart with revised numbers showing that the tenants in plaintiff's strip mall had 391 delinquent water bills, whereas the comparator strip malls had between 63 and 360 delinquent bills. The chart showed that 64.27% of the water bills for plaintiff's strip mall were delinquent. The comparator strip malls had between 8.61% and 50% delinquent bills. Even with the revised numbers, plaintiff's strip mall still had the most delinquent water bills and the highest percentage of delinquent bills.

¶ 22 Plaintiff filed a response, arguing that defendant still miscounted the number of delinquencies at the comparator strip malls and that one of those comparator malls located at 8007-8027 W. 79th Street actually had a higher percentage of delinquent water bills than plaintiff's strip mall. Defendant filed a reply, arguing that the comparator mall located at 8007-8027 W. 79th Street includes an additional address at 8029 W. 79th Street and that "[w]hen the missing address, 8029, is included in the total count for this building, the delinquency rate for this property decreases so that its average rate of delinquency falls below [plaintiff's] property." Plaintiff subsequently stated that it "accepts the correction made to the property listed on the Penalty Schedule as 8007-8027 W. 79th Street because the financial activity report for 8029 W. 79th Street was not included." Plaintiff further acknowledged that the revised numbers show that plaintiff's strip mall had a higher percentage of delinquent water bills than any of the comparator strip malls.

¶ 23 On September 8, 2025, the circuit court entered an order granting defendant's motion for summary judgment on all three counts of plaintiff's amended complaint. As to count I's equal protection claim, the court found that plaintiff's strip mall has a higher number of delinquent water bills and a greater percentage of delinquent bills than the comparator strip malls and, as such, that

the comparator malls are not similarly situated to plaintiff's mall. The court further noted that plaintiff's strip mall "has encountered unique issues not present at the putative comparable strip malls, such as terminated water service, tenant complaints, and tampering with water service. The putative comparable strip malls are neither identical nor directly comparable to [plaintiff's strip mall] in any material respect." The court also found that defendant had a rational basis for consolidating plaintiff's water meters so as to promote operating efficiencies by decreasing the number of delinquent payments, thereby lowering defendant's administrative expenses relating to the billing for plaintiff's water usage. Accordingly, the court granted summary judgment for defendant on count I.

¶ 24 Next, the court granted summary judgment for defendant on count II's claim for arbitrary and capricious conduct because defendant's decision to consolidate plaintiff's water meters was not arbitrary or capricious where it was done to reduce the number of delinquent water bills and decrease administrative expenses. Finally, the court granted summary judgment for defendant on count III's claim for injunctive relief, stating that as it had "found as a matter of law [that] the claims in Counts I and II fail, there can be no basis for the imposition of an injunction."

¶ 25 Plaintiff now appeals the order granting summary judgment for defendant on its amended complaint.

¶ 26 Summary judgment is appropriate when the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the non-movant, show that no genuine issue of material facts exists and that the moving party is entitled to judgment as a matter of law. *Pielet v. Pielet*, 2012 IL 112064, ¶ 29. Review is *de novo*. *Id.*¶ 30.

¶ 27 First, we address the grant of summary judgment for defendant on plaintiff's equal protection claim. As discussed, plaintiff is alleging a class of one equal protection claim, whereby

it must show that it was intentionally treated differently from others who were similarly situated. *B&D Investment*, 2022 IL App (1st) 211357-U, ¶ 14 (citing *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) and *Kaczka v. Retirement Board of the Policemen's Annuity and Benefit Fund*, 398 Ill. App. 3d 702, 707 (2010)). In litigation of this type, "if the plaintiff can't identify a similarly situated person or group for comparison purposes, it's normally unnecessary to take the analysis any further; the claim simply fails." *Monarch Beverage Co., Inc. v. Cook*, 861 F. 3d 678, 682 (7th Cir. 2017). To be considered similarly situated, the class of one challenger and its comparators must be *prima facie* identical in all relevant respects or directly comparable in all material respects. *United States v. Moore*, 543 F. 3d 891, 896 (7th Cir. 2008).

¶ 28 Plaintiff here points to seven other strip malls in the Village which it claims are similarly situated to it because, like plaintiff's strip mall, they have multiple commercial units each served by its own water meter and they receive their water from defendant. Plaintiff contends that defendant is intentionally treating it differently than the owners of these comparator malls by requiring it to consolidate seven of its commercial units' water meters into one meter while allowing the comparator malls to retain separate water meters. Plaintiff also argues that "[b]y reducing the number of water meters at the Plaintiff's Property and forcing the Plaintiff to have to allocate the water bill to the tenants and collect from the tenants, the Plaintiff will be getting less service from the Defendant than other similarly situated strip-malls will be receiving for the same water rate."

¶ 29 Contrary to plaintiff's argument, the undisputed evidence in the record shows that plaintiff's strip mall is not similarly situated to the comparator malls for purposes of plaintiff's class of one equal protection claim. Specifically, defendant's Executive Director, Colleen Kelly, testified to a significant difference between the comparator malls and plaintiff's strip mall, namely,

that the tenants in plaintiff's mall had more delinquent water bills than the comparators. The delinquent water bills increased defendant's administrative expenses when servicing the multiple water meters due to the extra work necessitated by the delinquent accounts. Such extra work included shutting off the water of tenants behind in their payments. In their answers to plaintiff's interrogatories, defendant elaborated on Kelly's testimony, providing a chart showing that plaintiff's mall had more delinquent bills and a higher percentage of delinquent bills than any of the comparator malls. Plaintiff responded that defendant had overstated the number and percentage of its delinquent bills while understating the number and percentage of the comparators' delinquent bills. Both plaintiff and defendant prepared new charts with revised information regarding the number and percentage of delinquent bills for plaintiff's mall and for the comparator malls. Ultimately, the parties agreed that even after considering all the revised information, plaintiff's mall still had a higher percentage of delinquent bills than any of the comparator malls.

¶ 30 In her deposition and affidavit, Kelley attested that the higher costs associated with servicing the delinquent accounts in plaintiff's strip mall led to her decision to consolidate plaintiff's water meters while leaving the water meters in the comparator malls intact. Eldibany, the sole member and a manager of plaintiff, essentially corroborated Kelly when he admitted in his deposition testimony that the higher percentage of delinquent bills associated with plaintiff's multiple water meters led to higher administrative costs for defendant. Given that plaintiff's strip mall had the highest percentage of delinquent accounts, leading to administrative costs that were greater than those associated with the comparator malls, the circuit court correctly concluded that plaintiff had failed to show that its mall and the comparator malls were similarly situated for purposes of its class of one equal protection claim.

¶ 31 The circuit court also correctly found that plaintiff's strip mall and the comparator malls were dissimilar because Kelly's testimony and defendant's answers to plaintiff's interrogatories revealed that another reason defendant decided to consolidate plaintiff's water meters was to foreclose any further disputes between J & J and plaintiff. J & J had accused plaintiff of tapping into its water line, thereby causing it to be charged for water service attributable to another tenant. As the dispute between plaintiff and J & J over the alleged water-line tapping was unique to plaintiff's strip mall and did not in any way involve the comparator malls, the circuit court did not err in finding that plaintiff and its comparators were not *prima facie* identical in all relevant respects or directly comparable in all material respects so as to be similarly situated for purposes of plaintiff's class of one equal protection claim.

¶ 32 Plaintiff's strip mall and the comparator malls were dissimilar for the additional reason that in 2016, defendant charged plaintiff's manager, Majstoric, with cutting the lock off one of plaintiff's water meters. A hearing was held at which Majstoric vehemently denied the accusation. Despite the denial, though, defendant upheld the charge and fined plaintiff for tampering with a meter. As the tampering charge, the hearing held thereon, and the subsequent fine were all unique to plaintiff and was not replicated in any way by any of the comparator malls, the circuit court correctly found that plaintiff had failed to make the requisite showing of substantial similarity with the comparators.

¶ 33 Plaintiff also has failed to establish that there is no rational basis for defendant's decision to consolidate the water meters at plaintiff's strip mall. "The rational-basis requirement sets the legal bar low and simply requires 'a rational relationship between the disparity of treatment and some legitimate governmental purpose.'" *D.B. ex rel. Kurtis B. v. Kopp*, 725 F. 3d 681, 686 (7th Cir. 2013) (quoting *Srail v. Village of Lisle, Ill.*, 588 F. 3d 940, 946 (7th Cir. 2009)) (internal

quotation marks omitted). The burden is on the challenging party " 'to eliminate any reasonably conceivable state of facts that could provide a rational basis for the classification.'" *Id*. (quoting *Srail*, 588 F. 3d at 946) (internal quotation marks omitted).

¶ 34 Kelly's affidavit and deposition testimony provide several reasons for the decision to consolidate the water meters at plaintiff's strip mall while leaving the water meters in the comparator malls intact. One of the reasons given is that the higher number of delinquent bills associated with plaintiff's multiple water meters led to administrative costs for defendant that were higher than the costs associated with the water meters serving the comparators. Kelly stated that consolidating the water meters in plaintiff's mall would promote operating efficiencies and reduce defendant's administrative expenses for billing and collecting for water usage. Kelly's affidavit and deposition testimony were supported by the revised charts prepared by defendant during discovery, which showed that plaintiff had a higher percentage of delinquent bills than the comparator malls, thereby increasing defendant's administrative costs.

¶ 35 Plaintiff argues, though, that defendant has forfeited the argument that it was consolidating plaintiff's meters to reduce administrative expenses because at the January 28, 2021, board meeting the only reason given for the consolidation was that J & J was asserting that plaintiff was tapping into its water line. No mention was made at the meeting regarding plaintiff's high number of delinquent bills and of defendant's need to reduce its administrative expenses for billing and collecting for plaintiff's water usage. Plaintiff cites *Data Marketing Partnership, LP v. United States Department of Labor*, 45 F. 4th 846 (5th Cir. 2022), which held that "[i]n reviewing an agency's action, we may consider only the reasoning articulated by the agency itself; we cannot consider *post hoc* rationalizations." (Internal quotation marks omitted). *Id*. at 856. However, we note that in its amended complaint, plaintiff states that prior to the board meeting Eldibany had a

conversation with Kelly about consolidating plaintiff's water meters, during which she told him "about the Tenants not paying their water bills." Thus, plaintiff was on notice that one of the reasons for the consolidation was due to the delinquent bills; such reasoning does not constitute a "post hoc" rationalization.

¶ 36 Further, *Data Marketing* is factually inapposite as it involved whether an employer's proposed health insurance plan for its limited partnerships qualified as an employee welfare benefit plan under ERISA. *Id*. at 852. The instant case involves a class of one equal protection claim. All it takes to defeat plaintiff's class of one equal protection claim is "a *conceivable* rational basis for the difference in treatment." (Emphasis in the original). *Kopp*, 725 F. 3d at 686. " '[A]ny rational basis will suffice, even one that was not articulated at the time the disparate treatment occurred.'" *Id*. at 687 (quoting *Srail*, 588 F. 3d at 946-47). The reason Kelly gave in her deposition and affidavit for the consolidation decision, that the higher number of delinquent bills associated with plaintiff's multiple water meters led to higher administrative costs than those associated with the comparator malls, provides a conceivable rational basis for why plaintiff's mall was being treated differently than the comparator malls and defeats plaintiff's class of one equal protection claim.

¶ 37 We further note that Kelly's testimony and defendant's answers to plaintiff's interrogatories provide additional rational reasons as to why defendant required only plaintiff to consolidate its water meters. Specifically, defendant related how J & J had accused plaintiff of tapping into its water line, causing it to pay for water service attributable to another tenant. Defendant consolidated plaintiff's water meters in part to foreclose further such disputes between J & J and plaintiff. Also, plaintiff had been fined for tampering with and cutting off the lock of one of its tenant's water meters. Defendant consolidated plaintiff's water meters in part to prevent a recurrence of such behavior. None of the comparator malls had any similar landlord-tenant disputes or tampering

charges. As such, defendant had a rational basis for consolidating plaintiff's water meters while leaving the comparators' meters intact.

¶ 38 Plaintiff cursorily argues for reversal because it allegedly never received any notice of the January 28, 2021, board meeting at which defendant discussed consolidating the water meters. This is more of a procedural due process argument than an equal protection argument. See *Neighbors Against a Marijuana Dispensary at 2573-81 Lincoln, Inc. v. Zoning Board of Appeals of the City of Chicago,* 2026 IL App (1st) 241910, ¶ 42 ("The main tenets of procedural due process are meaningful notice and a meaningful opportunity to be heard"). Plaintiff forfeited review by failing to assert its procedural due process claim either in its amended complaint or in response to defendant's summary judgment motion. *Illinois State Toll Highway Authority v. South Barrington Office Center*, 2016 IL App (1st) 150960, ¶ 54.

¶ 39 Forfeiture aside, the record here indicates that plaintiff received notice and an opportunity to be heard prior to defendant's decision to consolidate the water meters. Eldibany stated in his affidavit that he had a telephone conversation with Kelly in January 2021, during which Kelly told him of defendant's interest in consolidating the water meters at plaintiff's strip mall due to the delinquent payments. Eldibany responded that he did not want to reduce or consolidate the number of water meters at plaintiff's strip mall because such a consolidation would cause "great hardship and make it extraordinarily difficult to allocate the water" used by its tenants. At the January 28, 2021, board meeting, the minutes reflect that Kelly informed the board of Eldibany's opposition to the consolidation of the water meters. Defendant's attorney, Michael Cainkar, was directed to contact Eldibany and speak with him about consolidating the meters. On March 24, 2021, Cainkar sent Eldibany a letter informing him of defendant's desire to consolidate plaintiff's water meters. Eldibany again expressed his opposition. Another board meeting was held on April 22, 2021, and

the minutes reflect that Cainkar informed the board of Eldibany's continued opposition to the consolidation of plaintiff's water meters. On this record, plaintiff was given notice and an opportunity to be heard prior to defendant's decision in June 2021 to require plaintiff to consolidate the water meters in its mall.

¶ 40 For all the foregoing reasons, we affirm the grant of summary judgment in favor of defendant on count I of plaintiff's amended complaint.

¶ 41 Next, we address the grant of summary judgment for defendant on count II's claim that defendant's decision to consolidate plaintiff's water meters was arbitrary and capricious. By way of background, defendant is a water commission established under section 11-135-1 of the Illinois Municipal Code (Code) (65 ILCS 5/11-135-1 (West 2022)). Section 11-135-3 of the Code provides that the water commission "has full and complete supervision, management, and control of the waterworks system." *Id.* § 11-135-3. Other than the foregoing broad grant of authority, defendant (and its Executive Director Colleen Kelly) has complete discretion as to how to manage and control the waterworks system. Discretionary acts of public officials are reversible if they are arbitrary and capricious. *Bigelow Group, Inc. v. Rickert*, 377 Ill. App. 3d 165, 171 (2007). An action is arbitrary and capricious if the official: (1) relies on factors which the legislature did not intend for it to consider; (2) entirely fails to consider an important aspect of the problem; or (3) offers an explanation for its decision which is implausible or running counter to the evidence. *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 505-06 (1988). "The standard is one of rationality." *Id*. at 506.

¶ 42 As discussed earlier in this order, defendant has provided a rational basis for consolidating the water meters in plaintiff's strip mall while leaving the water meters in the comparator malls intact. We will not repeat that discussion but will simply note that since defendant's disparate

treatment of plaintiff and the comparator malls was rational, it cannot be considered arbitrary and capricious. *Id*.

¶ 43 Plaintiff cursorily contends that there are no ordinances or any formal rules or regulations for determining when a commercial facility's water meters should be consolidated and as such that defendant's decision to consolidate plaintiff's water meters must be considered arbitrary and capricious. Plaintiff cites no authority and makes no cogent argument in support thereof, thereby forfeiting review. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020). Even addressing the issue on the merits, we again note our supreme court's holding that a public official's discretionary decision is arbitrary and capricious only if it relied on factors which the legislature did not intend for it to consider, entirely failed to consider an important aspect of the problem, or offered an implausible, irrational decision. *Greer*, 122 Ill. 2d at 505-06. As discussed, plaintiff has failed to make any such showing of arbitrariness or capriciousness on the part of defendant.

¶ 44 Plaintiff argues, though, that it has had multiple water meters in its strip mall for about 50 years and that defendant's "sudden" decision to consolidate those meters is considered arbitrary under *Greer*. We disagree. In *Greer*, our supreme court stated, "While an agency is not required to adhere to a certain policy or practice forever, *sudden and unexplained* changes have often been considered arbitrary." (Emphasis added.) *Id*. at 506. In the instant case, defendant's decision to consolidate plaintiff's water meters is not sudden and unexplained, as it was made to reduce the high administrative costs associated with servicing the delinquent bills as well as to foreclose further disputes between plaintiff and its tenants over the water supply. As such, defendant's consolidation decision was not arbitrary or capricious.

¶ 45 For all the foregoing reasons, we affirm the grant of summary judgment for defendant on count II of plaintiff's amended complaint for arbitrary and capricious conduct.

¶ 46 Next, we address the grant of summary judgment for defendant on count III of plaintiff's amended complaint for injunctive relief. Injunctive relief is an equitable remedy predicated on a legally sufficient underlying claim. *Town of Cicero v. Metropolitan Water Reclamation District of Greater Chicago*, 2012 IL App (1st) 112164, ¶ 46. As the circuit court aptly noted, because "the claims in Count I and II fail, there can be no basis for the imposition of an injunction." Accordingly, we affirm the grant of summary judgment for defendant on count III.

¶ 47 For all the foregoing reasons, we affirm the judgment of the circuit court.

¶ 48 Affirmed.