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NO. 4-22-0208

FILED
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Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

CITY OF ROCK FALLS, an Illinois Municipal Corporation, Petitioner-Appellant, v. AIMS INDUSTRIAL SERVICES, LLC, an Illinois Limited Liability Company, Respondent-Appellee	))))))))	Appeal from the Circuit Court of Whiteside County No. 19CH85 Honorable Stanley B. Steines, Judge Presiding.

JUSTICE DOHERTY delivered the judgment of the court.
Justices DeArmond and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment denying a petition for injunctive relief was reversed and the case was remanded.

¶ 2 This appeal centers on ordinances passed by the City of Rock Falls, Illinois (the City) which require, under certain circumstances, the owner of property connected to a private sewage disposal system to abandon that system and connect to the City's public sewage system. The City filed a petition for injunctive relief against respondent, Aims Industrial Services, LLC (Aims), asserting that Aims violated one of these ordinances because it purchased property within the City and with a private sewage system but refused to connect to the City's system. Following a bench trial, the trial court denied the City's petition. The City appeals that judgment, contending that the court erred when it) denied the City's request for injunctive relief after the City proved that Aims was in violation of the relevant ordinance; (2) applied a balance-of-hardships test and considered the cost of compliance as a factor in denying the request for

injunctive relief; (3) allowed evidence that the City granted a different property owner a waiver of the requirement of connecting to the City's sewage system; and (4) substituted its judgment for that of the city council's with regard to Aims's request for a similar waiver. For the reasons that follow, we reverse the decision of the trial court denying the City's petition and remand this case for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 The record establishes that on March 3, 2017, Aims purchased property commonly known as 2103 Industrial Park Road in Rock Falls, Illinois (the Property), which was improved with a building used for industrial purposes. The Property was serviced by a private sewage disposal system and was not connected to the City's public sewage system. At the time Aims purchased the Property, section 32-189(g) of the Code provided:

> "Upon sale or transfer of property all private sewage disposal systems within the city limits *shall connect to the public sanitary sewer when available in accordance with sections 32-186 and 32-190*, a direct connection shall be made to the public sewer, and the private sewage disposal system shall be abandoned and shall be cleaned of sludge and filled with granular materials. The county health department shall be notified and inspect the abandoned septic system prior to any remedial actions being taken." (Emphasis added). Rock Falls Municipal Code, § 32-189(g) (amended July 20, 2010).

Section 32-186 of the Code states:

> "No person having his residence or place of business within the territorial limits of the city shall be permitted to dispose of sewage of such residence or place of business located in the city otherwise than through the sewer mains of the

city whenever the sewer mains of the sewerage system of the city are adjacent to his property, without the written permission of the council." Rock Falls Municipal Code, § 32-186.

Section 32-190 of the Code states:

> "The owner of each house, building or property used for human occupancy, employment, recreation or any other purpose, situated within the city is required, at his expense, to install suitable toilet facilities therein, meeting the requirements of the [state] plumbing code, and to connect such facilities directly with the public wastewater treatment system in accordance with the provisions of this division, and within 60 days after official notice to so connect. This provision shall be effective provided that there [is] a wastewater treatment system main located: (i) within 300 feet of the property line of a property utilized for residential purposes; (ii) within 300 feet of the property line of a property utilized for nonresidential purposes which has a daily sewage flow of less than 1,500 gallons per day; or, (iii) within 1,000 feet of the property line of a property utilized for nonresidential purposes which has a daily sewage flow of 1,500 gallons per day or greater." Rock Falls Municipal Code, § 32-190 (amended Sept. 15, 2015).

Finally, at the time of purchase, the Code set forth a remedy for a violation of the above sections. Specially, section 1-41(n) of the Code provides:

> "Violations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief. The imposition

of a penalty does not prevent injunctive relief." Rock Falls Municipal Code, § 1-41(n) (amended Sept. 6, 2016).

Aims declined to connect the Property to the City's public system due to the City's failure to install lateral hookups running from the Property that were necessary to make such a connection and what it claimed was the resulting prohibitive cost of doing so.

¶ 5 On August 25, 2019, the City filed its petition alleging the City had informed Aims that its ordinance required it to connect to the City's sewage system, but Aims had refused. The City requested a fine and an injunction commanding Aims to abandon its private sewage system and connect the Property to the City's system.

¶ 6 In response, Aims admitted that the Property was adjacent to the City's sewer system but asserted two affirmative defenses. The first was that the City should be equitably estopped from enforcing its ordinance because prior to the date of purchase, a City building inspector told Aims that the Property would be "grandfathered in" and would not be required to connect to the City's sewage system. The second defense asserted that the City's ordinance only required that upon the sale of property, a connection be made to the public sanitary system "when available." Aims claimed that no connection was "available" due to the City's failure to include lateral hookups to the sewer main and the depth of the sewer main.

¶ 7 The City subsequently filed a motion for summary judgment. The trial court granted the motion with respect to Aims's first affirmative defense but denied the motion with respect to the second defense. The court found that a genuine issue of material fact existed as to whether it was feasible for Aims to connect to the public sewage system given the cost of such a connection.

¶ 8 Approximately one week prior to trial, Aims requested permission from the city council to continue utilizing the private sewage disposal system at the Property. That request was denied, and no reason for denial is apparent from the record.

¶ 9 A bench trial was held on the City's petition on August 20, 2021. Due to our ultimate resolution of this appeal, we need only summarize the evidence adduced at trial. Testimony from the superintendent of the City's sewage department established that the Property was adjacent to Industrial Park Road, which runs north to south along the western line of the Property. A city sewer system line runs along Industrial Park Road, lying between the Property and the road itself. Approximately three years before trial, the superintendent informed Aims's owner of the ordinance requiring it to abandon its private system and connect the Property to the public sewage system. The superintendent was also present on "two or three" occasions when the City's utility committee met with Aims's owner and explored different options for connecting to the public sewage system. The superintendent also explained that lateral connections run from a property to the main sewage system and are necessary to connect a property to a sewer main. In this case, there were no lateral connections running from the sewer main to the Property. Lateral connections are installed by a property developer, not the City, usually at the time the sewer main is installed.

¶ 10 Nathan Simonton, a project manager and estimator from a civil engineering firm, testified that, at Aims's request, he prepared an estimate of the cost of connecting the Property to the City's adjacent sewer main via a gravity-feed system; he estimated the cost to be $157,010.45. Simonton prepared another estimate at the City's request based on using an alternative connection method using pumps flowing to a manhole box to be placed just outside of the property. The cost estimate for this approach was $51,455, plus costs for electrical work.

Simonton opined that both options would allow for the requisite connection to the City's sewer main. The higher estimate was based on using the general method used to make such a connection, and the lower estimate was based on an "unusual" method.

¶ 11 The City's administrator testified that in 2020, the city council approved an ordinance waiving the requirement that a gun range located within the City connect to the City's sewer system. That ordinance was admitted into evidence and states that the gun range requested a waiver based upon the estimated cost of a direct connection to the City's sewage system of $36,000 and the lack of feasible alternatives. The City granted the waiver and allowed the range to install a private sanitary disposal system because connecting to the City's sewer mains "would constitute an undue hardship *** due to the prohibitive cost and lack of alternative methods of connection." The waiver was only effective until the property was sold or the private sewage system failed. Upon the occurrence of either condition, the range was required to abandon its private sewage system and connect to the City's system.

¶ 12 The trial court denied the City's petition. As relevant to this appeal, the court initially noted that section 32-189(h) of the Code was passed after Aims purchased the property and found that application of that subsection violated the prohibition against *ex post facto* laws. The court stated that injunctive relief was nevertheless "permissible" as an equitable remedy under section 1-41(n) of the Code. The court next addressed whether it should allow the defense of selective enforcement based on the waiver granted to the gun range. The court stated that it was not making a finding as to "whether or not it is an affirmative defense," and that it was "enough for this Court to say that that argument is not a surprise to the City." The court then found that the City had met its burden of proof under section 32-190(ii) of the Code by

establishing that a wastewater treatment system was within 300 feet of the Property which had a daily sewage flow of less than 1,500 gallons per day.

¶ 13 The court then observed that Aims was being treated differently than the previous owner of the Property. The "triggering event" for this case was the purchase of the Property by Aims, and it may not have made that purchase had it known of the requirement and costs associated with connecting to the public sewage system. The court agreed with the City that the relevant municipal code sections did not speak about "financial feasibility" as a prerequisite to connecting to the public sewage system and that the relevant caselaw indicated that such cost concerns should not be considered. The Court stated that nevertheless, based upon the waiver given to the gun range, "the City Council has already decided that cost is something that the city council will look at and will consider." According to the trial court, it was unfair to consider the cost of connecting to the public sewage system for the gun range but to not give that same consideration to Aims. Finally, the court observed the absence of lateral hookups and that it was the City's responsibility to either have those lateral hookups installed when the sewer main is installed or to work with the property owner to have them installed. Ultimately, the court believed that Aims did not create the situation that it found itself in and that the City helped create that situation by not making lateral hookups available. After considering the balance of the equities, the trial court denied the City's petition. This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 A. Standard of Review

¶ 16 This court will examine several of the trial court's rulings or findings, and a different standard of review may apply to each inquiry. Factual findings made by the trial court are reviewed under the manifest weight standard. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill.

2d 52, 71 (2006). Interpretation of the Code presents a legal question which is reviewed *de novo*. See *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 850 (2007) (stating that municipal ordinances are interpreted using the same rules of statutory interpretation as statutes and are reviewed *de novo*).

¶ 17 When we are called upon to interpret the Code, we must adhere to the fundamental rule of statutory construction: to ascertain and give effect to the legislature's intent. *Id.* The best indication of legislative intent is the plain and ordinary meaning of the statutory language. *Id.* The plain language of the statute is the best indicator of the legislature's intent, and when that language is clear, its meaning will be given effect without resort to other tools of interpretation. *Id.* A court may not rewrite a statute, and depart from its plain language, by reading into it exceptions, limitations, or conditions not expressed by the legislature. *People ex rel. Birkett v. Dockery*, 235 Ill. 2d 73, 81 (2009).

¶ 18 B. Triggering Event Requiring Connection

¶ 19 As noted above, section 32-189(g) triggers a duty to connect to the City's system "[u]pon sale or transfer of the property." It does not appear to be contested, as a matter of fact, that there was a sale of the Property from the prior owners to Aims. The trial court did not specifically articulate a finding that this triggering event occurred; it did, however, express its own sentiments toward section 32-189(g), stating that it had "a hard time understanding where the sale or transfer of the property is a triggering event that is reasonably related or a rational basis to protecting the public." Later, however, the court also stated that it had "not made a finding that Section 32-189, Subsection G is unconstitutional or inappropriate or should have been stricken."

¶ 20 Reading the trial court's decision in its entirety, we believe that the trial court found that the triggering event, *i.e.*, the sale of the property, had taken place. Had it not so found, the balance of the trial court's extensive analysis would have been completely unnecessary. Because the evidence clearly showed this essentially uncontested fact was true, we conclude that the trial court's implicit finding was not against the manifest weight of the evidence.

¶ 21 C. Whether a Connection Was "Available"

¶ 22 Section 32-189(g) of the Code requires, in pertinent part, that after the triggering event of a sale, "all private sewage disposal systems within the city limits shall connect to the public sanitary sewer *when available* in accordance with sections 32-186 and 32-190." (Emphasis added.) Rock Falls Municipal Code, § 32-189(g) (amended July 20, 2010). A central issue in the case is whether a connection to the City system was "available."

¶ 23 There are two other Code provisions which give form to the meaning of "available" under the Code. One is section 32-190, which requires that the City system be "within 300 feet of the property line of a property utilized for nonresidential purposes" with a sewage flow in a particular quantity. Rock Falls Municipal Code, § 32-190 (amended Sept. 15, 2015). The trial court specifically found that the City had "met their burden with regard to the parameters" of section 32-190. We conclude that this finding, which is not in dispute on appeal, is not against the manifest weight of the evidence.

¶ 24 The other Code provision referenced with respect to the definition of what is "available" is section 32-186, which is the City's general requirement for connection to the municipal sewage system. Section 32-186 makes clear that the connection requirement applies only to properties with an "adjacent" municipal sewer main. Aims specifically conceded this requirement was satisfied.

¶ 25 The City argues that satisfaction of sections 32-186 and 32-190 are sufficient to show that a sewer connection is "available" to Aims under section 32-189(g). The trial court, however, essentially read into the Code additional components of what it means for the sewer connection to be "available."

¶ 26 First, the trial court explicitly found that, although public health statutes normally "don't take into account the issue of cost," "the city council has already decided that cost is something that the city council will look at and will consider" when it comes to individual petitions seeking a waiver from the connection requirements. As this represents the trial court's construction of the Code, the matter presented is a legal one which we review *de novo*.

¶ 27 The Code reserves to the city council the authority to determine whether to grant "written permission" to be excluded from the provisions regarding connection to the municipal sewer system. Rock Falls Municipal Code, § 32-186. This authority is what the parties have referred to as a "waiver." Depending on the specific nature of the request, a municipality might be operating in a legislative, administrative, or quasi-judicial role, with different standards of judicial review being appropriate for each. See generally, *People ex rel. Klaeren v. Village of Lisle*, 202 Ill. 2d 164, 183 (2002). The instant case is not, however, a judicial review of the merits of the city council's decision in denying Aims's request for a variance; we are not called upon to evaluate the propriety of the denial of Aims's variance or the granting of some other party's variance. Also, we note that Aims has made no constitutional challenge to the application of the Code to its property.

¶ 28 Furthermore, if the other landowner's waiver had never occurred, the trial court would have had to determine the meaning of "available" in the Code by reference to normal sources, the best of which is always the words used by the drafters. Here, the trial court's

approach concludes, in essence, that the original meaning of the word "available" in section 32-189(g) *changed* because the city council later granted another landowner a waiver. Legislative enactments "are to be construed as they were intended to be construed *when they were passed*." (Emphasis added.) *O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 441 (2008). The actions of the city council in late 2020 give no insight into the intentions of the city council when it used the word "available" in initially adopting section 32-189(g). Neither Aims nor the trial court cited any authority for the idea that a municipality's subsequent action on a variance or waiver *changes the meaning* of words utilized in prior versions of an ordinance.

¶ 29 It would be inappropriate to utilize the city council's discretionary decisions on waivers as a basis for interpreting what is required by the Code. The text of the Code sets forth its requirements, and it is the court's role to determine whether those requirements have been satisfied in a particular case. Separately, the Code reserves to the city council the authority to grant waivers from those requirements. The court cannot take upon itself the discretion reserved to the city council. Such an approach ratchets in only one direction: the most permissive waiver becomes the *de facto* standard for the court to apply, if there is any standard at all. As noted above, the city council's decision is not insulated from appropriate judicial review, but this is not a case in which we are asked to review the denial of Aims's request for a waiver.

¶ 30 We conclude that the trial court misconstrued the Code by concluding that the city council's subsequent grant of a waiver introduced cost considerations into the determination of whether a sewer connection was "available."

¶ 31 The trial court also considered the absence of a pre-existing lateral connection in determining whether a connection was "available" under the Code. There is no Code requirement

that a lateral connection must be in place. Furthermore, the Code already speaks to issues of physical proximity to the sewer main, as it applies only to adjacent property within 300 yards of a sewer main. Beyond the legal inapplicability of the inquiry, the trial court's statement that lateral connections should have been installed "at the time that the main was put in" and that it was "the City's responsibility to cooperate with the property owner to get it done" is against the manifest weight of the evidence. It remains completely unclear what cooperation is being referenced or what failure of cooperation occurred at some earlier time before Aims owned the property. It is undisputed that the cost of installing a lateral connection is typically borne by the landowner, and we do not know why no lateral was installed when Aims' predecessor owned the property. As the trial court itself said, "I don't have any evidence with regard to any of that other than I know that in my mind" that the lateral connections should have been installed when the sewer main was installed.

¶ 32 We conclude that the trial court erred in incorporating a comparative cost analysis and in considering the absence of lateral connections when deciding whether a connection to the sewer main was "available" under the Code. This conclusion requires that we reverse the trial court's judgment and remand for the trial court to issue appropriate findings and conclusions under the appropriate Code provisions. However, aspects of the issues just discussed—cost and the other landowner's waiver—were also introduced into the trial court's discussion of the appropriate considerations for giving equitable relief. To completely resolve the issues on appeal, we examine those same matters as they impact issues of equitable relief.

¶ 33 D. Availability of Injunctive Relief

¶ 34 The parties do not dispute that at the time the Property was transferred, section 32-189 of the Code did not include its own provision for equitable remedies; this provision was

added only after Aims's purchase of the property. See Rock Falls Municipal Code, § 32-189(h) (amended Aug. 21, 2018). The trial court correctly found that this later-adopted provision could not be applied to the present case, and neither party contests that ruling.

¶ 35 There is, however, another portion of the Code which applies here. When Aims purchased the property, section 1-41(n) of the Code provided that "[v]iolations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief." Rock Falls Municipal Code, § 1-41(n) (amended Sept. 6, 2016). This section must be read along with other sections of the Code, including section 32-189(g). See *In re Detention of Lieberman*, 201 Ill. 2d 300, 308 (2002) (Since all provisions of a statutory enactment are viewed as a whole, words and phrases should not be construed in isolation, but should be interpreted in light of other relevant provisions of the statute.). By its plain language, the Code specifically authorized injunctive relief as a remedy for a violation of any of its provisions which are continuous over time.

¶ 36 Without any reasoned analysis, Aims asserts that section 1-41(n) of the Code does not "rise to the level of providing a statutory injunctive remedy for the ordinance violation at issue in this case." However, Aims does not explain why this is the case. We find that Aims's cursory argument is insufficient to properly raise this issue. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (stating that points not argued are waived and shall not be raised in the reply brief); see also *Express Valet*, 373 Ill. App. 3d at 855 (an issue not clearly defined and sufficiently presented fails to satisfy the requirements of Rule 341(h)(7) and is, therefore, forfeited).

¶ 37 Even if the issue were properly raised, it is without merit. Aims relies on *Sadat v. American Motors Corp.*, 104 Ill. 2d 105, 109, (1984), in which the relevant statutes allowed customers injured by a breach of warranty to "bring suit for damages and other legal and

equitable relief." The supreme court noted that this "generalized" section was silent as to the types of equitable relief available or the conditions under which such relief is appropriate and therefore did not demonstrate the legislature's intent to dispense with traditional equitable pleading requirements. *Id.* at 113-14. In contrast, section 1-41(n) of the Code is not silent as to the type of equitable relief available or the conditions under which it is appropriate. To the contrary, it specifically identifies injunctive relief as a remedy and sets forth the conditions under which it is appropriate: when the violations of the ordinance are continuous over time.

¶ 38 E. Consideration of Equities or Hardship

¶ 39 The City contends that the trial court erred by applying a balance-of-hardships test and considering factors such as the cost to Aims of connecting to the City's sewage system and the waiver granted to the gun range. The City acknowledges that such considerations are normally appropriate for a court sitting in equity in deciding whether to grant injunctive relief. However, the City asserts that where, as here, an ordinance specifically authorizes injunctive relief to enforce its provisions, a court may not consider equitable factors; the agency seeking the injunction need only show that the ordinance was violated and that the ordinance allows for injunctive relief. Whether a court sitting in equity may balance the hardships when an ordinance authorizes an agency to seek injunctive relief presents a question of law. As such, our review of this issue is *de novo*. See *Leonard v. Department of Employment Security*, 311 Ill. App. 3d 354, 356 (1999).

¶ 40 Aims responds that the City has waived this contention because it was not raised in the City's written closing argument. However, our review of the record establishes that, in the trial court, the City sufficiently contested the court's ability to balance the hardships in deciding whether to grant injunctive relief. In its written closing argument, the City argued that the term

"available," as used in the ordinance, did not include financial considerations. The City asserted that the ordinance itself defined the term "available" without reference to "feasibility" or "financial ability," and that Aims's request to weigh the equities would improperly insert such language into the ordinance. The City also argued that any such considerations are the province of the city council under the ordinance's waiver provision. Similarly, in its reply to Aims's written closing argument, the City again addressed Aims's argument that the cost of connecting to the public sewage system was excessive, arguing that "[i]f consideration of the cost of connection is brought into such an analysis, it would eviscerate a municipality's ability to compel a connection." In other words, at its core, the City's position was that the trial court was not permitted to consider factors such as the cost of compliance when deciding whether to grant the request for injunctive relief.

¶ 41 It is true that an appellate court should not consider different theories or new questions not raised in the trial court if they might have been refuted or overcome had they been presented below. *Hall v. Eaton*, 259 Ill. App. 3d 319, 322 (1994). However, when facts to support a theory have been raised in argument and in affidavits or depositions before the court without objection, an appellant can raise that theory on appeal. *American Apartment Management Co. v. Phillips*, 274 Ill. App. 3d 556, 565 (1995). In this case, the City's position on appeal is not inconsistent with the position it took in the trial court. Moreover, its argument is legal, not factual, so it could not have been refuted by additional evidence at trial. We conclude that the issue of whether the trial court could consider equitable factors when deciding a request for injunctive relief was sufficiently raised below and may be considered here.

¶ 42 Having so found, we next consider whether it was appropriate for the trial court to balance the hardships when deciding whether to grant the City's request for injunctive relief.

Long ago, the United States Supreme Court stated that "[i]t is the commonest exercise of the police power of a state or city to provide for a system of sewers, and to compel property owners to connect therewith." *Hutchinson v. City of Valdosta*, 227 U.S. 303, 308 (1912). Such legislation "is founded upon the right of the public to protect itself from nuisances, and to preserve the general health." *City of Nokomis v. Sullivan,* 14 Ill. 2d 417, 421 (1958). "Because of the grave dangers to public health that are involved in the unsanitary disposition of human excrement, the power of municipalities to require property owners to discontinue the use of privies and to connect water closets with municipal sewer systems has consistently been sustained." *Id.* at 421; see also 65 ILCS 5/11-31-1 (West 2008).

¶ 43 Section 11-60-2 of the Illinois Municipal Code specifically provides that "the corporate authorities of each municipality may define, prevent, and abate nuisances." 65 ILCS 5/11-60-2 (West 2022). Moreover, the Illinois Supreme Court has rejected the argument that a municipality must wait until a particular private sewage system becomes an immediate hazard to the public health before it can require a connection to the public sewage system. The court characterized this argument as "unsound" and, as relevant to Aims's contention that there is nothing wrong with its current private sewage system, the court observed:

> "It has often been pointed out that the benefit to the public health that is afforded by a public sewer system is lost unless all can be required to use it. [Citations.] It is not necessary that the health officer should wait until a nuisance existed and the public health put in jeopardy before requiring the defendant to connect with the sewer. [Citation.]" (Internal quotation marks omitted.) *City of Nokomis,* 14 Ill. 2d at 422.

See also *Houpt v. Stephenson County*, 63 Ill. App. 3d 792, 795 (1978) (stating application of an ordinance requiring connection to the public sewer "was a reasonable exercise of [Stephenson] County's police power," and limiting the ordinance to property presently shown to constitute a nuisance or health hazard "would severely inhibit Stephenson County's ability to engage in comprehensive waste management").

¶ 44 Ordinarily, the party seeking an injunction must establish that it: (1) has no adequate remedy at law; (2) possesses a certain and clearly ascertainable right; and (3) will suffer irreparable harm if no relief is granted. *People v. Keeven*, 68 Ill. App. 3d 91, 96 (1979); *County of Kendall v. Rosenwinkel*, 353 Ill. App. 3d 529, 538 (2004). In addition, a court should generally balance the equities when considering whether to issue an injunction. *Id.*

¶ 45 However, where a governmental agency is expressly authorized by statute to seek injunctive relief, the traditional equitable elements necessary to obtain an injunction need not be satisfied. *Keeven*, 68 Ill. App. 3d at 96; *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 278 (2003). This rule is based on the presumption that harm to the public occurs when an ordinance is violated. *Sadat*, 104 Ill. 2d at 113; *Midland Enterprises, Inc. v. City of Elmhurst*, 226 Ill. App. 3d 494, 504 (1993); *People ex rel. Hartigan v. Stianos*, 131 Ill. App. 3d 575, 580 (1985). In such instances, the state or governmental body seeking injunctive relief need only show that the statute was violated and that the statute relied upon specifically allowed for injunctive relief. *Cryns*, 203 Ill. 2d at 277; *Sadat*, 104 Ill. 2d at 110-12. Once an ordinance violation has been established, no discretion is vested in the trial court to refuse to grant the injunctive relief authorized by statute. *Cryns*, 203 Ill. 2d at 278; *Keeven*, 68 Ill. App. 3d at 97; *Midland*, 226 Ill. App. 3d at 504. The Illinois Supreme Court explained the rational for this rule:

> "[S]tatutes expressly authorizing injunctive relief do so on behalf of either a public official in his capacity as enforcer of a regulatory scheme or, alternatively, provide for the private actions which may be necessary to restrain public officials from acting in a manner inconsistent with that which is prescribed by statute. Thus, the violation of such a statute implies an injury to the general public. Such injury necessitates the statutory authorization for equitable relief and supplants the traditional equitable pleading requirements. As the court in *City of Highland Park v. County of Cook* *** stated in response to the defendant's assertion that the plaintiff's claim for injunctive relief was insufficient for failure to allege irreparable injury: 'While this is a sound theory where a private party is the plaintiff, it is not when a city or another public body brings the action, alleging violation of its ordinances and State statutes, with resulting damage to its residents.' " *Sadat,* 104 Ill. 2d at 113 (quoting *City of Highland Park*, 37 Ill. App. 3d 15, 20 (1975)).

¶ 46 Despite the implication of the above principles, Aims relies upon *Rosenwinkel* for the proposition that it is permissible for a court considering injunctive relief to balance the equities even where a statute expressly authorizes a governmental agency to seek such relief. Thus, according to Aims, it was not error for the trial court in this case to consider equitable factors such as the cost of connecting to the public sewage system.

¶ 47 *Rosenwinkle* is somewhat difficult to decipher. It relies on a variety of cases involving disputes between private parties, not enforcement actions by a unit of government. See *Ariola v. Nigro*, 16 Ill. 2d 46, 48 (1959); *Whitlock v. Hilander Foods, Inc.*, 308 Ill. App. 3d 456, 457 (1999); *Reiter v. Neilis*, 125 Ill. App. 3d 774, 776 (1984). The only municipal case relied

upon in the relevant portion of *Rosenwinkel* is *Midland*. See *Rosenwinkel*, 353 Ill. App. 3d at 539 (citing *Midland*, 226 Ill. App. 3d at 505). However, examination of *Midland* shows that it more directly contradicts, rather than supports, the idea that a general balancing of the equities should take place before a court enjoins a violation of a municipal ordinance.

¶ 48 In *Midland*, the appellate court considered whether the trial court had erred in denying the government statutory injunctive relief concerning three construction projects that the government alleged had encroached on setbacks. As to one of the projects, *Midland* held that the trial court erred by applying general equitable principles in refusing to issue a statutory injunction; in other words, it supported the precise position advocated here by the City. *Midland*, 226 Ill. App. 3d at 505. It is true that *Midland* further found that the specific equitable *defense* of *laches* was properly considered as to one of the projects, but it held that this defense could be utilized against the State only "in extraordinary circumstances." *Id.* at 506. Allowing for a specific equitable affirmative defense in "extraordinary circumstances" does not seem to open the door to an open-ended balancing of the equities in a case seeking enforcement of a municipal ordinance.

¶ 49 *Rosenwinkle*, then, seems to stand alone in suggesting that balancing of the equities should be undertaken in a municipal enforcement case. Such a holding conflicts with valid supreme court precedent establishing that a "governmental body seeking injunctive relief need only show that the statute was violated and that the statute relied upon specifically allowed for injunctive relief." *Cryns*, 203 Ill. 2d at 277 (citing *Midland* in support of this proposition). We choose not to follow *Rosenwinkle*.

¶ 50 Based upon the above principles, the City in this case was required to prove only that Aims violated the ordinance; if it did, injunctive relief was specifically authorized as a

remedy under the Code. Neither Aims's cost of connection nor the fact that another landowner received a waiver had any proper place in the analysis. Because the trial court erred in considering equitable factors in denying the City's request for injunctive relief, the judgment of the trial court must be reversed, and the cause remanded for further proceedings.

¶ 51 III. CONCLUSION

¶ 52 For the reasons stated, we reverse the trial court's judgment and remand this case for further proceedings consistent with this order.

¶ 53 Reversed and remanded.