

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 1272

STAR ACQUISITIONS, LLC

VERSUS

THE TOWN OF ABITA SPRINGS

DATE OF JUDGMENT: MAR 06 2015

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 2010-11900, DIVISION B, PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE AUGUST J. HAND, JUDGE

William M. Magee
Covington, Louisiana

Counsel for Plaintiff-Appellant
Star Acquisitions, LLC

J. Scott Thomas
Baton Rouge, Louisiana

Counsel for Defendant-Appellee
The Town of Abita Springs

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

Disposition: AFFIRMED.

Welch Jr. dissents and assigns reasons.

CHUTZ, J.

Plaintiff-Appellant, Star Acquisitions, LLC (Star), appeals a trial court judgment dismissing its claims against Defendant-Appellee, the Town of Abita Springs (Abita Springs). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Real estate developers, Michael Clark and Vincent Centanni, were the sole members of Star. In June 2005, Mr. Clark, on behalf of Star, executed a purchase agreement on a 19.6 acre tract of land to be used for development of a subdivision known as Tuscany Village. The property was located on Pratts Road in St. Tammany Parish near Abita Springs. Mr. Clark and Mr. Centanni had several discussions with Louis Fitzmorris, who was the mayor of Abita Springs at that time, regarding the possibility of annexing the property into the borders of Abita Springs. Mayor Fitzmorris represented to them that Abita Springs would be much easier to deal with than St. Tammany Parish would be.

Mr. Clark also met with Cindy Chatelain, the town's planning and zoning director, who provided him with a flow chart outlining the necessary steps in the development of a subdivision within the borders of Abita Springs. These sequential steps included tentative approval, preliminary approval, construction phase, final plat approval, and project acceptance.

At a meeting of the Abita Springs' Planning and Zoning Commission (PZC) on July 27, 2005, Mr. Clark requested annexation of Star's Pratts Road property into Abita Springs' borders. By letter dated August 2, 2005, Cindy Murry, planning and zoning clerk, notified the town council that the PZC had voted to recommend the requested annexation under the term that all town utilities would be extended at the costs of the developer.

Star completed the purchase of the Pratts Road property on October 14, 2005. Shortly thereafter, Mr. Clark requested that Mayor Fitzmorris memorialize in writing

the details of their discussions regarding the possible extension of town utilities to Star's property. In response, Mayor Fitzmorris sent a letter to Mr. Clark, dated October 17, 2005, representing that, in view of the increasing interest in the development of the area on Pratts Road where Star's property was located, a consolidated system for water and sewer facilities would be more effective and beneficial to Abita Springs than individual systems for each development. The Mayor proposed a project to extend the town's existing water system to Pratts Road as well as the construction of a sewer treatment plant in that area, to be paid for by the developers of the proposed subdivisions in the area through a special impact fee structure. The letter further stated that if the proposed project was not successfully bid for some reason, it would be the responsibility of Star "to provide and maintain a central water and sewer system for [its] individual development."

An ordinance annexing Star's property was adopted by the town council on November 15, 2005. Thereafter, Star's request for tentative approval of Tuscan Village as a Planned Unit Development (PUD) subdivision was placed on the agenda for the January 18, 2006 meeting of the PZC. At that meeting, however, the PZC deferred review of Star's request because of insufficient information in the plans submitted.

Before Star's request for tentative approval of Tuscan Village could be reviewed at the next PZC meeting, Mayor Fitzmorris, by letter dated March 28, 2006, advised the PZC that no approval of subdivisions under the PUD ordinance should be granted "until further notice," although requests under the subdivision ordinance could proceed. Due to the Mayor's letter, at its meeting the following day, the PZC tabled the requests for tentative approval of PUD subdivisions made by Mr. Clark on behalf of Star and by another developer on behalf of a different development. In response, a representative for Star immediately indicated that Star would alter its plans in order to proceed under the requirements of the subdivision ordinance.

Accordingly, Star redesigned the layout of the development, and at the next PZC meeting on April 26, 2006, obtained tentative approval of its subdivision plans for Tuscany Village under the subdivision ordinance, rather than under the PUD ordinance. At that same meeting in April, approval for a PUD subdivision was granted to the developer whose request for tentative approval of a PUD subdivision had been tabled at the March PZC meeting, together with Mr. Clark's request for tentative approval of Tuscany Village as a PUD subdivision. Neither at the April 2006 meeting, nor at any time thereafter, did Star again seek approval of Tuscany Village as a PUD subdivision.

Subsequently, an issue arose concerning a servitude on Star's property, and the subdivision plans were revised. Tuscany Village received tentative approval of the revised subdivision plans under the subdivision ordinance on December 26, 2006, and preliminary approval on January 24, 2007. By that point, it was becoming apparent that the proposal for the expansion of town utilities, as outlined by Mayor Fitzmorris in his October 17, 2005 letter to Mr. Clark, was no longer viable due to lack of participation by developers. Additionally, Star found the estimated costs for it to individually extend the service lines for town utilities to be prohibitively expensive due to the distance involved.

Star also was informed by Mayor Fitzmorris and Ms. Chatelain that it would not be allowed to provide its own well and sewer system on site, because the only benefit to the town would be for the service lines to be extended. Mayor Fitzmorris informed Mr. Clark, however, that if Star chose to de-annex its property, the town would not stand in his way. The substance of these discussions with Mr. Clark were contained in a letter from Ms. Chatelain to the PZC, dated July 25, 2007. There is no evidence that Star ever requested approval from the PZC for installation of an on-site well and sewer system at Tuscany Village.

It appears that Star took no further steps to move Tuscany Village toward the construction phase. In any event, it never requested approval of the next phase in the subdivision development process, which was the construction phase. Instead, sometime in early 2008, Star requested that its property be de-annexed from Abita Springs' borders. Mr. Clark sent a \$1,000.00 check¹ to the Town of Abita Springs, dated March 11, 2008, stating in an attached handwritten note that, "I trust the De-annexation process is underway-." Subsequently, on April 3, 2008, Mr. Clark met with Ms. Chatelain and discussed re-subdivision of Star's property into parcels of three acres or more, which would not be required to tie into Abita Springs' town utilities. Ms. Chatelain assumed from the fact that Mr. Clark was seeking re-subdivision of the property that Star had abandoned its prior request for de-annexation, since PZC approval to re-subdivide the property would not be necessary if the property was de-annexed. At the PZC meeting on August 27, 2008, Mr. Clark's request to re-subdivide Star's Pratts Road property into two parcels was approved.

On March 19, 2010, Star filed the instant lawsuit against the Town of Abita Springs, alleging it was entitled to damages based on detrimental reliance, a violation of its right to substantive due process, and various acts of misfeasance by Mayor Fitzmorris and the Town of Abita Springs. A bench trial was held on September 10 and October 25, 2013. After Star rested its case on the first day of trial, defense counsel orally raised the peremptory exception raising the objection of prescription. The trial court reserved ruling on the prescription issue until all evidence had been heard. After the trial court took the matter under advisement at the conclusion of trial, defense counsel filed a written exception of prescription on October 31, 2013.

¹ The note attached to the check indicated that the \$1,000.00 was for the original annexation fee. The typed notation on the memo line of the check stated "De-Annexation Process," although the "De" was marked out by an unknown person.

On January 27, 2014, the trial court rendered written judgment in favor of Abita Springs, dismissing all of Star's claims, with prejudice, at its costs. Additionally, the trial court noted in its written reasons for judgment that, although the prescription issue was raised orally by Abita Springs prior to submission of this matter, its written exception of prescription was not filed prior to submission and, therefore, was not timely. Star now appeals, arguing in four assignments of error that the trial court erred in failing to find that: (1) Star detrimentally relied on Mayor Fitzmorris' representations; (2) Abita Springs' refusal to allow an on-site well and sewer system constituted misfeasance by violating Star's statutory rights under La. R.S. 33:4004 and 4041 and depriving it of substantive due process; (3) the moratorium issued by Mayor Fitzmorris was an improper act of misfeasance; and (4) Star was damaged by the unlawful actions of Abita Springs. Although the Town of Abita Springs did not appeal or answer the appeal, it did file an exception of prescription in this court.

STANDARD OF REVIEW

Star argues that this court should conduct a *de novo* review of the trial court's entire judgment because each of the court's alleged errors constitutes legal error. We disagree. In Louisiana, appellate courts review both law and facts. La. Const. Art. V, § 10(B). Under the manifest error standard of review, however, a trial court's factual findings cannot be set aside unless this court finds that they are manifestly erroneous or clearly wrong. *Stobart v. State through Department of Transportation and Development*, 617 So.2d 880, 882 (La. 1993). Further, where there are two permissible views of the evidence, the fact-finder's choice between them cannot be manifestly erroneous or clearly wrong. *Rosell v. ESCO*, 549 So.2d 840, 844 (La.1989); *In re Adoption of J.L.G.*, 01-0269 (La. App. 1st Cir. 2/21/01), 808 So.2d 491, 498. Though Star repeatedly contends on appeal that the trial court erred in its interpretation of the law, close review reveals that Star's complaints primarily relate

to the trial court's application of the law to the facts of this case. In ruling on each of Star's claims, it was necessary for the trial court to make pertinent factual findings based on the evidence presented. Each of these factual findings is subject to the manifest error standard since our review of the record has revealed no legal error interdicting these findings.

DISCUSSION

Detrimental Reliance:

Star argues the trial court committed legal error in failing to find that, in making the decision to seek annexation into the borders of Abita Springs, Star detrimentally relied on Mayor Fitzmorris' representations, particularly those in his letter of October 17, 2005, that either the town's utilities would be extended to Star's property or it would be allowed to install its own well and sewerage system. According to Star, this legal error consisted of the trial court's failure to address and/or properly apply the elements of detrimental reliance. Star further contends that its reliance on the Mayor's representations was reasonable and, if not for those representations, it would not have sought annexation into Abita Springs and could have obtained approval of its PUD subdivision from the governing authority of the parish.

The doctrine of detrimental reliance is codified in La. C.C. art. 1967, which provides:

Cause is the reason why a party obligates himself. A party may be obligated by a promise when he knew or should have known that the promise would induce the other party to rely on it to his detriment and the other party was reasonable in so relying. Recovery may be limited to the expenses incurred or the damages suffered as a result of the promisee's reliance on the promise. Reliance on a gratuitous promise made without required formalities is not reasonable.

Generally, in order to prevail on a claim of detrimental reliance, a party must prove each of the following elements by a preponderance of the evidence: (1) a representation or promise; (2) justifiable reliance; and (3) a change in position to

one's detriment because of the reliance. *Luther v. IOM Company LLC*, 13-0353 (La. 10/15/13), 130 So.3d 817, 825. The Supreme Court has suggested, however, that proving detrimental reliance against a governmental entity should be more burdensome, requiring: (1) unequivocal advice from an unusually authoritative source, (2) reasonable reliance on that advice by an individual, (3) extreme harm resulting from that reliance, and (4) gross injustice to the individual in the absence of judicial estoppel. See *Luther*, 130 So.3d at 825; *Showboat Star Partnership v. Slaughter*, 00-1227 (La. 4/3/01), 789 So.2d 554, 562-63. Detrimental reliance does not require proof of a valid, enforceable contract. *Suire v. Lafayette-Parish Consolidated Government*, 04-1459 (La. 4/12/05), 907 So.2d 37, 59.

In this case, Star's insistence that the trial court legally erred in failing to apply the elements of detrimental reliance may arise from the fact that the trial court did not explicitly delineate and discuss these essential elements in its written reason for judgment. Regardless, it was unnecessary for the trial court to do so. In the absence of evidence to the contrary, none of which exists herein, it must be presumed that the trial court was aware of and applied the correct rule of law to the evidence presented. See *Motton v. Travelers Insurance Company*, 484 So.2d 816, 819-20 (La. App. 1st Cir. 1986).

In its written reasons for judgment, the trial court noted each of Star's claims, including its detrimental reliance claim based on statements made by Mayor Fitzmorris and the town's alleged refusal to allow Star to install its own well and sewer system. The trial court concluded that the evidence failed to support any of Star's claims, including those relating to detrimental reliance. In doing so, the trial court found that Star was given no guarantee by Mayor Fitzmorris that any expansion of town utilities would occur. Implicit in the trial court's reasons for judgment is a finding that Star's reliance on Mayor Fitzmorris' statements as a guarantee was not reasonable.

The trial court did not specifically refer in its written reasons to the statement in Mayor Fitzmorris' letter indicating that Star would be allowed to install its own well and sewer system if the expansion of town utilities did not occur. However, since it is presumed that a trial court properly applied the law, it is likewise implicit from the trial court's judgment that it concluded that Star's reliance on this statement was not reasonable under the circumstances.

The record supports the trial court's legal and factual findings. The reasonableness of a plaintiff's reliance is an issue of fact that is best determined by the trial court. See *McLin v. Hi Ho, Inc.*, 13-0036 (La. App. 1st Cir. 6/7/13), 119 So.3d 830, 834. Mayor Fitzmorris lacked authority to unilaterally grant the approval sought by Star for an on-site well and sewer system for Tuscany Village. Provisions for water and sewer facilities were essential components of the subdivision proposed by Star, yet the approval of subdivisions clearly was not a matter within the purview of the mayor of Abita Springs. Prior to making the decision to request annexation, Mr. Clark on several occasions met with Ms. Chatelain, the town planning and zoning director, who explained the procedural steps required for seeking the various approvals necessary from the PZC. She also provided Mr. Clark with a detailed flow chart outlining the requisite procedural steps. Moreover, by their own admission, Mr. Clark and Mr. Centanni were real estate developers who had prior experience with several real estate development ventures.

In view of the information provided to them, as well as their prior experience in real estate development, Star reasonably should have known that approval of an on-site well and sewer system was a matter for the PZC, which was responsible for making such decision, rather than Mayor Fitzmorris. Accordingly, the evidence supports the trial court's implicit finding that it was unreasonable for Star to rely on Mayor Fitzmorris' unilateral statement as a guarantee that Star would be allowed to

install its own well and sewer system in the event that town utilities were not expanded to Pratts Road, bypassing the necessity of obtaining PZC approval.

The trial court also found that Star failed to conform to proper procedures regarding subdivision approval. Specifically, the record is devoid of any evidence that Star ever formally requested approval from the PZC for an on-site well and sewer system for Tuscany Village. Consequently, the PZC never had an opportunity to render a decision on this matter. Based on our review of the entire record, we find no legal or manifest error in the trial court's conclusion that the evidence failed to establish Star's claim for detrimental reliance.

Substantive Due Process:

Star contends the trial court legally erred in failing to conclude that the alleged refusal of Abita Springs to allow Star to install its own well and sewer system violated its rights to substantive due process and constituted misfeasance. In making this argument, Star relies on La. R.S. 33:4004 and 33:4041, which provide that municipalities having a public sewerage system may compel owners of property within 300 feet of the system to connect therewith. Since these provisions only give municipalities the authority to compel connection to property located within 300 feet of a public sewerage system, Star extrapolates that property located more than 300 feet of a public sewer system cannot be compelled to connect to the system. Therefore, because its property is located more than 300 feet from Abita Spring's public sewer system, Star asserts a violation of its substantive due process rights has occurred.

Substantive due process may be broadly defined as the constitutional guaranty that no person shall be arbitrarily deprived of his life, liberty, or property. The essence of substantive due process is protection from arbitrary and unreasonable action. To establish a violation of substantive due process, a plaintiff must first establish the existence of a constitutionally protected property or liberty interest.

Boudreaux v. Larpenter, 11-0410 (La. App. 1st Cir. 6/1/12), 110 So.3d 159, 170. A government decision regulating a landowner's use of his property offends substantive due process only if the government action is clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.

Boudreaux, 110 So.3d at 170.

In the instant case, it is unnecessary to determine if Star established a constitutionally protected property interest as alleged because, as previously noted, there is no evidence that Star ever formally requested approval from the PZC for an on-site well and sewer system for Tuscan Village. Despite any statements Mayor Fitzmorris and Ms. Chatelain may have made regarding the necessity of connecting to Abita Springs' public utilities, Star was required to submit its request to install its own well and sewer system to the PZC for consideration. In the absence of such a request and rejection thereof by the PZC, the trial court properly concluded that no evidence existed to support Star's claim that its rights to substantive due process were violated.

Moratorium:

Star argues that the moratorium imposed on approvals of any subdivisions under the Abita Springs PUD ordinance, which was issued by Mayor Fitzmorris on March 28, 2006, constituted an act of misfeasance because it violated La. R.S. 33:406(F). Star further points out that the moratorium was imposed "until further notice" and has never been formally lifted.² Under La. R.S. 33:406(F), only the Board of Aldermen may suspend an ordinance.

During oral argument before this court, counsel for Abita Springs conceded that Mayor Fitzmorris lacked authority to issue the moratorium. Nevertheless, we find no error in the trial court's rejection of Star's misfeasance claim based on the

² Louisiana Revised Statutes 33:406(F) provides, in pertinent part, that: "every resolution suspending an ordinance shall fix the period of suspension, which shall not exceed beyond one year and thirty days after the date of the meeting in which the ordinance was suspended."

mayoral moratorium. As the trial court observed in its reasons for judgment, “tentative approval of [Star’s] subdivision plan was given within one month of the issuance of the moratorium.” It is true that the approval was for an ordinary subdivision, rather than a PUD development. However, despite Star’s allegation that the change from a PUD subdivision to an ordinary subdivision somehow contributed to the ultimate demise of the Tuscany Village development, the record does not support this contention. Immediately upon learning of the moratorium at the March 29, 2006 PZC meeting, Star voluntarily decided to change the layout of its plans in order to proceed under the subdivision ordinance, which was not affected by the moratorium. At the very next PZC meeting in April 2006, the other developer whose application for approval of a PUD subdivision was tabled at the March meeting, together with Star’s similar request, obtained tentative approval of his PUD subdivision. Given the circumstances, we find no manifest error in the trial court’s conclusion that Star failed to carry its burden of proving the improperly issued moratorium caused it to suffer damages.

De-annexation Request:

Star complains that no action has ever been taken on the request it made in early 2008 for de-annexation from the borders of Abita Springs. In rejecting this claim, the trial court made the following factual findings:

[Star] ... did not diligently follow up on its alleged intention to have the parcel de-annexed from the Town. The representatives of the Town of Abita Springs testified at trial, and have consistently stated, that it has no opposition to the de-annexation of this property.

The record reveals that after making the de-annexation request, Mr. Clark later had a meeting with Ms. Chatelain on April 3, 2008, during which they discussed the possibility of Star obtaining approval to re-subdivide Star’s property. As a result of this meeting, Ms. Chatelain testified she assumed that Mr. Clark had changed his mind about de-annexation, since PZC approval to re-subdivide the property was

necessary only if the property remained within the borders of Abita Springs. Further, there was no evidence that Star ever took any further action or asked for the de-annexation request to be presented to the PZC. Accordingly, we find no manifest error in the factual findings that resulted in the trial court's dismissal of this claim.³

CONCLUSION

For the reasons assigned, we hereby affirm the judgment of the trial court in favor of defendant, the Town of Abita Springs, and against plaintiff, Star Acquisitions, LLC, dismissing all of plaintiff's claims, with prejudice.⁴ All appeal costs are assessed to plaintiff.

AFFIRMED.

³ Star also asserted several additional claims in the trial court that are not addressed in this opinion because Star did not assign error to the trial court's dismissal of those claims.

⁴ In light of our decision upholding the trial court's decision on the merits, we pretermitt discussion of the prescription issue raised by Abita Springs, except to the extent of observing that, despite the fact that Abita Springs untimely filed its written exceptions of prescription after submission of the case for decision both in the trial court and this court, it nevertheless was entitled to raise the prescription issue pursuant to La. C.C.P. art. 2133(B). See La. C.C.P. arts. 928(B) & 2163 (peremptory exception must be filed prior to submission). Under Article 2133(B), a party who is not seeking modification, revision, or reversal of an appealed judgment may raise any argument in support of the trial court judgment that is supported by the record, even if he has not appealed or answered the appeal. See *Sewell v. Huey*, 00-0385 (La. App. 4th Cir. 1/24/01), 779 So.2d 1003, 1006-07. Nevertheless, it is unnecessary to address the issue of prescription since the record clearly supports the trial court's judgment on the merits.

STAR ACQUISITIONS, LLC

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Welch, J., dissenting in part.

JAW I disagree with the majority opinion in two respects. I find that the moratorium issued by the mayor prohibiting any PUD subdivisions violated La. R.S. 33:406(F). I further find that the trial court erred in concluding that no evidence existed to support Star's claim that its rights to substantive due process were violated.

Substantive due process is a constitutional guaranty that no person shall be arbitrarily deprived of his life, liberty, or property. **Boudreaux v. Larpenter**, 2011-0410 (La. App. 1st Cir. 6/1/12), 110 So.3d 159, 170. The essence of substantive due process is protection from arbitrary and unreasonable action. *Id.* In order to prove a violation of substantive due process, Star had to demonstrate: (1) the existence of a constitutionally protected property interest; and (2) the governmental action is arbitrary and capricious. *Id.* A government decision regulating a landowner's use of property offends substantive due process if it is clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.

Louisiana Civil Code article 477 provides that the owner of a thing may use, enjoy, and dispose of it within the limits and under the conditions allowed by law. In **State, Department of Transportation and Development v. Chambers Investment Company, Inc.**, 595 So.2d 598, 600 (La. 1992), the Louisiana Supreme Court held that in light of this provision, the claimant property owner had a right of ownership to use and enjoy its land by developing its as the owner may

chose, including as a residential subdivision. The court concluded that because this right is recognized by law, it is a property right that is protected by constitutional provisions. Thus, Star has a constitutionally protected property right in developing its property as a residential subdivision.

Of course, Star's right to develop its property as a residential subdivision is subject to reasonable governmental restrictions on that right. In order to demonstrate a violation of substantive due process, Star was required to show that the challenged governmental action, that is, the town's refusal to allow Star to provide an on-site water and sewer system on its property, is clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.

Star demonstrated that after it had obtained preliminary approval for the development of its subdivision from the Planning and Zoning Commission, Mayor Fitzmorris and Ms. Chatelain, the director of the Planning and Zoning Commission, informed Star that it would not be allowed to provide its own well and water system on-site during the construction, or final phase, of the project. The sole basis for the town's decision was that the only benefit to the town would be to have its service lines extended to Star's property. There is nothing in this record that could support a finding that the town's refusal to permit Star to install its own well and sewer system was rationally related to the public health, safety, morals, or general welfare. I find that Star demonstrated that the town's insistence that Star tie into its services in order to develop Tuscany Village is arbitrary and capricious, and deprived Star of its property rights without due process of law.

Moreover, I do not find the fact that Star did not submit its request to install its own water and sewer system to the Planning and Zoning Commission for consideration to be fatal to Star's claim that its right to substantive due process were violated. It is well settled that the law does not require the performance of a

vain and useless act. See **Swanola Club v. Tanner**, 209 So.2d 173, 175 (La. App. 4th Cir. 1968). Star was informed by the town officials that its request would not be honored. Further, the Planning and Zoning Commission's director informed the commissioners by letter dated July 25, 2007, of Star's request and made it clear that Star only had two options at that point: tie into the town's utilities or de-annex. Under the facts of this case, I find that Star was not required to seek permission from the Planning and Zoning Commission to install its own water and sewer system because any such request would have been a vain and useless act.

Additionally, I find that the mayoral PUD moratorium was illegal as it violated La. R.S. 33:406(F). On April 18, 2000, the Town of Abita Springs' Board of Aldermen enacted Ordinance #231 to amend its existing zoning ordinance to include PUDs. The stated purpose of the PUD regulations was to "encourage and allow more creative and imaginative design of land than is possible under district zoning regulations." On March 28, 2006, Mayor Fitzmorris unilaterally suspended the PUD ordinance for an indefinite period of time when he issued a letter instructing Ms. Chatelain to inform the Planning and Zoning Commissioners that no approvals of PUDs would be granted until further notice. The mayor's unilateral suspension of the PUD ordinance violated La. R.S. 33:406(F), which provides that only a board of alderman may suspend an ordinance, and only according to the same procedures and formalities required for the enactment of the ordinance. As the majority notes, the town has conceded that Mayor Fitzmorris lacked authority to issue the moratorium. The mayor's illegally issued PUD moratorium forced Star to abandon its ongoing efforts to obtain approval to build a PUD subdivision, go back to the drawing board, redesign its proposed development as a "box subdivision," and begin the subdivision approval process anew, all of which delayed Star's project.

I find that the town's illegal moratorium on PUDs, coupled with its arbitrary and capricious refusal to allow Star to install its own water and sewer system on Star's own property, combined to cause damage to Star. I would remand the case to the trial court for a determination of the amount of damages to which Star is entitled for the town's illegal and unconstitutional actions.