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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2440**

Andrew Ellis,
Relator,

vs.

City of Minneapolis,
Respondent.

**Filed January 20, 2009
Affirmed; motion denied
Lansing, Judge**

Minneapolis City Council

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Considered and decided by Lansing, Presiding Judge; Klaphake, Judge; and Worke, Judge.

UNPUBLISHED OPINION

LANSING, Judge

On remand following Andrew Ellis's initial appeal from an order by the City of Minneapolis to raze Ellis's fire-damaged building, the city promulgated written findings and renewed its determination, under the city's nuisance-abatement ordinances, that the building should be demolished. By writ of certiorari, Ellis again appeals the city's

demolition order and asks that the new findings be stricken from the record. Because the findings were properly prepared and presented to council members, we include them as part of the record and conclude that the city proceeded lawfully and arrived at a decision that has a legal and substantial basis. We affirm.

FACTS

Andrew Ellis's building at 3448 Twentieth Avenue South in Minneapolis was badly damaged by fire in January 2006. In the months that followed, Ellis attempted to persuade the city that the building could safely be rehabilitated, but city officials rejected Ellis's plans because they did not have the approval of a licensed structural engineer. Based on Ellis's failure to meet that requirement, the city initiated a nuisance-abatement process, which resulted in a May 2006 recommendation by the Public Safety & Regulatory Services (PS&RS) committee to raze the building. The city council unanimously approved the PS&RS recommendation. Ellis appealed by writ of certiorari and the order was affirmed in part, reversed in part, and remanded because of the inadequacy of findings and the incompleteness of the record. *See Ellis v. City of Minneapolis*, No. A06-1063, 2007 WL 1815743, at *6 (Minn. App. June 26, 2007).

On remand, city staff members drafted new findings and provided them to members of the PS&RS committee before its November 28, 2007 meeting. That document lists seventeen items, designated as findings, that summarize the building's history, various abatement steps, Ellis's rehabilitation estimates, actions by city departments, and considerations pertinent to the requirements of the nuisance ordinance.

The document recommends adoption of the findings and demolition of the property located at 3448 Twentieth Avenue South.

At the committee meeting, an attorney for the city summarized this court's remand instructions in *Ellis*. He re-created the May 2006 record by identifying documentary evidence and introducing a manager from the Department of Inspections, who restated essentially verbatim his prior testimony. The attorney did not refer to or recapitulate any other testimony that had been heard at the 2006 meeting. He emphasized that, according to the remand instructions, the committee was to take no new testimony or evidence. The attorney informed the committee members that Ellis had been notified of the meeting and had chosen to submit a letter in lieu of attending. The letter was submitted to the committee. At the conclusion of the city attorney's presentation, he recommended adopting the proposed findings of fact and recommendation.

The presiding committee member "close[d] the public hearing," and then raised "questions for staff" about photos in the record and about "the status of the property." In response to these questions, the manager summarized the fire damage and also the structural damage that predated the fire. The manager pointed out specific interior and roof damage depicted on the photos. In response to another committee member's question, the manager confirmed that the building's roof trusses had been destroyed, which had prompted the city to insist on a structurally sound rehabilitation plan. A final question by another committee member referred to the two-by-fours that were being used to help shore up the building. On motion by the presiding committee member, the committee approved the written findings.

The city clerk transmitted the approved findings to the full council for consideration at the December 7, 2007 council meeting. The city council approved the recommended demolition along with sixteen other recommendations forwarded by the PS&RS committee. The council member presenting the PS&RS report described the agenda item relating to Ellis's property as a request "to adopt the findings of fact and conclusions that were remanded to us by the court system." The council's adoption of the recommendation was published in *Finance and Commerce*.

By writ of certiorari, Ellis challenges the city's findings and its final order. He has also moved, on appeal, to strike the city's written findings from the record.

D E C I S I O N

A city's decision to demolish a building through its nuisance-abatement process is quasi-judicial and subject to review by writ of certiorari to this court. *City of Minneapolis v. Meldahl*, 607 N.W.2d 168, 171 (Minn. App. 2000). Certiorari review is limited to questions of jurisdiction, the regularity of proceedings, and, consistent with rules of administrative deference, the merits of the decision. *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992). The decision on the merits will be sustained unless it is arbitrary, oppressive, unreasonable, fraudulent, rests on an erroneous theory of law, or lacks evidentiary support. *Id.* In our review we do not retry facts or make independent credibility determinations and will uphold the decision if the government entity "furnished any legal and substantial basis for the action taken." *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996) (quotation omitted).

Ellis's current appeal raises three issues: (1) whether the city's revised findings are properly part of the appellate record, (2) whether the city's proceedings on remand were conducted "in a lawful manner," consistent with the remand directions in *Ellis*, and (3) whether the decision to demolish Ellis's building has a substantial evidentiary and adequate legal basis. We examine the issues in this order.

I

Ellis moves to strike the city's revised findings from the record. The record in a certiorari appeal includes the papers filed, exhibits received, and proceedings transcribed in the process of making the decision under review. Minn. R. Civ. App. P. 115.04, subd. 1 (cross-referencing rule 110).

The findings were stricken on the previous writ to this court because discrepancies in their provenance were left unexplained by the city on appeal. *Ellis*, 2007 WL 1815743, at *3-*4. The findings on remand, submitted in this appeal, do not present these flaws. We agree with Ellis that findings must be drafted *after* a public hearing and approved at a subsequent PS&RS meeting. *Id.* at *5. The revised findings satisfy this timeline because they were drafted after the May 2006 hearing and before the November 2007 committee meeting. We also agree that the PS&RS findings must be transmitted to the committee members and the council members before their meetings. The city submitted a signed affidavit attesting to the fact that the revised findings were provided to committee members before their meeting and to all council members before the full council meeting. And, the transcript of the full meeting and the record of the meeting in

Finance and Commerce must refer specifically to the document containing the revised findings. The record confirms that both requirements were met.

II

Ellis does not challenge any specific provision of the city's nuisance-abatement process. Instead, he takes issue with whether the city, in addition to following its established process, also obeyed the remand instructions. The *Ellis* opinion directed the city to make findings "sufficient to permit meaningful review," but only based on the existing evidentiary record. *Id.* at *6. Because a remand for findings is not designed to provide the city with a second opportunity to obtain the information necessary in the first proceeding, the remand in *Ellis* required the city to identify the May 2006 record and prohibited the city from "supplement[ing] the evidentiary basis for its decision." *Id.*

The attorney for the city adequately re-created the May 2006 record at the November 2007 meeting. He provided the entire documentary record and the manager from the Department of Inspections repeated his prior testimony. The testimony of Ellis and other witnesses in May 2006—although not reproduced verbatim in November 2007—was substantially captured in Ellis's letter submission or in other documentary evidence. Ellis argues that the exchanges that took place at the 2007 meeting between committee members and the manager supplemented the evidentiary basis for the decision. Members' questions did address facts relevant to the decision to demolish, but they did not supplement the evidence: the exchanges elicited nothing that was not already established by the photographs, documents, and testimony that was previously under

consideration. Nor did the few questions and answers alter the content of the written findings, which were approved immediately after the brief exchanges took place.

The clerk's office made the findings available to all council members and included the item on its agenda for the December 7, 2007 meeting. A vote by the full council approved the demolition. Ellis argues that the city has not proven that the findings were actually considered by council members because nothing in the record conclusively shows that any member read them or reviewed the record. This argument misstates the city's burden. On certiorari review, we presume the correctness of a municipal decision, and the burden to show irregularity lies with the challenging party. *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 563 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001). Presuming the correctness of decision-making means presuming that decision-makers are familiar with the record. It is Ellis's burden to show, as he did with respect to the original findings, that they were not. Ellis has not shown on remand that the decision-makers were unfamiliar with the record; consequently, the presumption prevails.

III

In addressing the merits of the city's decision, we will sustain the city's order if it has provided a legal and substantial basis for the action that it has taken. *Senior*, 547 N.W.2d at 416.

In Minnesota, municipalities are authorized to address by ordinance the problem of hazardous buildings. Minn. Stat. § 463.161 (2008). A Minneapolis ordinance provides that a decision to order rehabilitation or demolition must be made upon

consideration of specific criteria: (a) housing needs; (b) historic value; (c) neighborhood impact; (d) possible neighborhood uses for the property; (e) zoning and plan classifications; (f) market potential; (g) rehabilitation costs; (h) past neglect; (i) availability of rehabilitation funds; and (j) structural condition of the building. Minneapolis, Minn., Code of Ordinances § 249.40(1) (2006). The ordinance does not provide a fixed formula for determining which alternative—rehabilitation or demolition—is appropriate, although it does provide alternatives to demolition that the city “may consider.” Minneapolis, Minn., Code of Ordinances § 249.50(a) (2006).

The findings recommended by the city staff and adopted by the city council address the pertinent criteria. In particular, the facts refer to structural damage, the costs of rehabilitation compared to market potential, the landlord’s history of code violations, and the unanimous concerns of neighborhood residents about the negative effects of the burned-out building. These findings are supported by the documentary and testimonial record that was provided to the council members before they made their final decision. Ellis was aware of the evidence as of the May 2006 meeting and was given an opportunity to address it then and again in November 2007.

Ellis’s principal argument is that neither the written findings nor any of the council members explicitly stated which specific factor or combination of factors persuaded the city to raze the building instead of allowing reconstruction. We recognize that, ultimately, findings are of more value to the owner of a razed building and to a reviewing court when they plainly and explicitly state that the building is to be razed “because the city concludes X, Y, and Z.” But the law does not require a rigid formula for the

structure of the findings. And, there can be little doubt on this record, together with reasonable inferences drawn from the list of written findings, that Ellis was sufficiently aware of why the city razed his building. The city did have an adequate basis to make a negative assessment about the building's long-term stability and lacked confidence that Ellis was proceeding in a manner that realistically dealt with the building's condition based on the city's assessment of its structural problems. The legal basis for the city's action is provided in the ordinance, which *requires* the city to order demolition when an owner who has been given permission to rehabilitate has failed to timely provide rehabilitation plans as required by the Department of Inspections. Minneapolis, Minn., Code of Ordinances § 249.50(a)(1).

The record provides a legal and substantial basis for the city's decision, which defeats Ellis's claims that the decision was arbitrary or unlawful. On remand, the city followed the proper procedure, and the record supports the city's claim that it relied on a lawful and substantial basis for ordering the demolition of Ellis's property.

Affirmed; motion denied.