STATE OF MINNESOTA
IN COURT OF APPEALS
A10-0346
A10-0347

The Housing and Redevelopment Authority
in and for the City of Hopkins, petitioner,
Appellant (A10-346),

vs.

Aleksander Mark Teplitski, a/k/a Aleksandr M. Teplitski; et al.,
Respondents Below (A10-346),
and
Hopkins Park Plaza LLC,
Respondent (A10-347),

vs.

City of Hopkins, et al.,
Appellants (A10-347).

Filed October 19, 2010
Affirmed
Stauber, Judge

Hennepin County District Court
File Nos. 27CV0815980; 27CV05016628

John M. LeFevre, Jr., Roberty J. Lindall, Peter G. Mikhail, Kennedy & Graven, Chtd., Minneapolis, Minnesota (for appellants)

Bradley J. Gunn, Malkerson Gunn Martin, L.L.P., Minneapolis, Minnesota; and

Marc D. Simpson, Leonard Street and Deinard, P.A., Minneapolis, Minnesota (for respondents)

Susan L. Naughton, League of Minnesota Cities, St. Paul, Minnesota (for Amici Curiae)

Considered and decided by Stoneburner, Presiding Judge; Stauber, Judge; and Harten, Judge.*

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

On appeal from cross motions for summary judgment and reconsideration, appellants claim that the district court (1) erred in finding that the City of Hopkins did not validly establish Tax Increment Financing District 1–3; (2) erred in concluding that the City of Hopkins did not have statutory authority to condemn the Hopkins Park Plaza property; and (3) abused its discretion in awarding attorney fees and costs. We affirm.

FACTS

In 2004, GPS Development, LLC (GPS) approached appellant City of Hopkins and expressed an interest in constructing a mixed-use redevelopment project on "Block 64" located in downtown Hopkins. Respondent Hopkins Park Plaza (HPP) owns an apartment complex consisting of six older but functional and code-compliant buildings located on Block 64. In early 2005, the city and appellant Hopkins Housing & Redevelopment Authority (HRA)[1] began considering the establishment of a Tax Increment Financing (TIF) district and a TIF Plan for Block 64 to implement the GPS proposal. The city contracted with LHB, Inc., an engineering company, to inspect and evaluate properties on Block 64 for TIF qualification. Thereafter, LHB issued a report finding Block 64 qualified as a TIF district based on its analysis.

---

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

[1] When referred to collectively, the city and the HRA will be referred to as "appellants."

In June 2005, the Hopkins City Council held a public hearing on the establishment of TIF District 1-3 for Block 64. Counsel for HPP attended the hearing and submitted opposition testimony claiming that, inter alia, there were an insufficient number of "structurally substandard" properties to qualify Block 64 as a TIF district. Two more hearings were held in July 2005, at which time HPP again objected to the creation of the TIF district and claimed that HPP was prepared to do a "comparable project without the use of TIF funds."

On July 26, 2005, the city council passed Resolution No. 2005-055 establishing TIF District 1-3, which incorporated the findings of the LHB Report. Three months later HPP brought an action against appellants challenging TIF District 1-3. After appellants began to establish the TIF and commence condemnation proceedings, the Minnesota Legislature made extensive changes to the state's eminent-domain laws in an apparent effort to limit a governing authority's use of condemnation to take private property from one private party and transfer it to another private party. *See generally* 2006 Minn. Laws ch. 214.

Following appellants' answer and discovery, the lawsuit became inactive while negotiations occurred. Finally, a public hearing was held on June 17, 2008, after which the HRA Board of Commissioners adopted Resolution No. 453 authorizing the acquisition of HPP and other property by eminent domain. Shortly thereafter, the condemnation petition against HPP's owner was filed with the district court.

In December 2008, HPP moved for summary judgment challenging the validity of TIF District 1-3 and, in a separate action, challenging the validity of the condemnation

petition. Appellants also moved for summary judgment arguing that the TIF district and the condemnation action were valid. The district court denied in part and granted in part appellants' motion for summary judgment, and denied HPP's motions for summary judgment and attorney fees. After appellants and HPP both moved for reconsideration, the district court issued an order reversing its earlier order and granting HPP's motion for summary judgment on both the TIF case and the condemnation case. The court also awarded HPP costs and attorney fees. The entry of judgment was stayed for 60 days to determine attorney fees and costs. On December 23, 2009, the district court awarded HPP attorney fees and costs in the total amount of $222,986.50 for both actions. This appeal followed.

D E C I S I O N

On appeal from summary judgment, the appellate court determines whether (1) there are any genuine issues of material fact and (2) the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). When the district court grants summary judgment based on the application of a statute to undisputed facts, the result is a legal conclusion, which we review de novo. *Lefto v. Hoggsbreath Enters., Inc.*, 581 N.W.2d 855, 856 (Minn. 1998).

I.

Appellants first argue that the district court erred in granting summary judgment asserting that, as a matter of law, the decision to establish TIF District 1-3 was not arbitrary and capricious, but rather was supported by substantial evidence on the record. A city acts in a quasi-judicial manner when it establishes a redevelopment TIF district.

Reiling v. City of Eagan, 664 N.W.2d 403, 406 (Minn. App. 2003). Review of the city's decision is therefore limited to determining whether the city "erred as a matter of law, issued a decision unsupported by substantial evidence, or acted arbitrarily or capriciously." *Walser Auto Sales, Inc. v. City of Richfield*, 635 N.W.2d 391, 401 (Minn. App. 2001) (quotation omitted), *aff'd*, 644 N.W.2d 425 (Minn. 2002).

The definition of a redevelopment district is found at Minn. Stat. § 469.174, subd. 10 (2008). For a city to designate an area as a redevelopment TIF district, more than 50% of the buildings in the district must be found "structurally substandard to a degree requiring substantial renovation or clearance." Minn. Stat. § 469.174, subd. 10(a)(1) (2004). "Structurally substandard" means "containing defects in structural elements or a combination of deficiencies in essential utilities and facilities, light and ventilation, fire protection including adequate egress, layout and condition of interior partitions, or similar factors, which defects or deficiencies are of sufficient total significance to justify substantial renovation or clearance." *Id.*, subd. 10(b). The law further provides that "[a] building is not structurally substandard if it is in compliance with the building code applicable to new buildings or could be modified to satisfy the building code at a cost of less than 15 percent of the cost of constructing a new structure of the same square footage and type on the site." *Id.*, subd. 10(c).

Appellants argue that the district court erred in concluding that the TIF district was improperly established because LHB thoroughly investigated every building in the proposed TIF district and determined that 11 out of 14 buildings were "structurally substandard." We disagree. The district court concluded that LHB's method of

determining structurally substandard buildings was flawed because it was similar to the method determined to be flawed in *Walser*. In that case, this court held that

> although Minn. Stat. § 469.174, subd. 10(c) specifically provides a mathematical formula for determining, for certain, when a building is *not* structurally substandard, [the city's consultant] flipped this guideline around; every property that the statutory formula did not specifically except from those potentially structurally substandard was determined to be structurally substandard. There is no legal basis for this methodological assumption.

Walser, 635 N.W.2d at 402.

Here, LHB used a two-step methodology to determine that the buildings were structurally substandard. For the first step, the "threshold step," LHB calculated the cost of replacing each building and also the cost of repairing code deficiencies at each building in order to determine whether the repair costs would exceed replacement costs by the statutory threshold of 15 percent. For the second step, the "conditions step," LHB examined all the deficient conditions, code and non-code, to determine if renovation would be "substantial" or clearance would be justified. Also, in determining whether substantial renovation was justified, LHB included a dollar amount for annual maintenance and repair based on 2.5% of total replacement costs for each building. But, LHB specifically did not include energy code costs in its analysis because the court in *Walser* found there was no basis in law for considering such costs when determining whether properties are structurally substandard.

We agree with the district court that LHB's two-step methodology incorporates factors not required by state law. There is no statutory definition of "substantial

renovation," yet, LHB created one to mean: "renovation with costs exceeding 20% of the building's replacement value." This figure includes an annual maintenance and repair cost based on 2.5% of total replacement costs for each building. Using this definition, LHB concluded that more than half of the buildings on Block 64 would require "substantial renovation" costing in excess of 20% of the replacement value of the buildings and were therefore "structurally substandard." The main author of the LHB Report describes his approach as follows: "Our standard procedure is to verify that the building is going to exceed 15 percent in code deficiencies and then set those aside and determine if the building requires 'substantial renovation.'"

However, the law initially presumes that a building is not structurally substandard if it is in compliance with the building code applicable to new buildings or could be modified to come into code compliance at a cost of less than 15 percent of replacement value. Minn. Stat. § 469.174, subd. 10 (2004). Evidence to support a conclusion that a building is structurally substandard includes documents such as: "recent fire or police inspections, on-site property tax appraisals or housing inspections, exterior evidence of deterioration, or other similar reliable evidence." Minn. Stat. § 469.174 subd 10(c).

Here, the record reflects that LHB's determination of "structurally substandard" buildings does not comport with the city's housing inspector reports describing property-maintenance violations. These reports recommended the following remedies for the noted violations: (1) install screen in utility room; (2) install railing in basement area; (3) repair ceiling where damaged; (4) replace battery on smoke detector and move its location; (5) need "new outlet and cover for a.c."; (6) remove hot plate; (7) caulk behind

sink; and (8) sheetrock wall underneath kitchen sink. Upon reinspection, all recommendations were completed. Further, in a July 2008 letter to HPP's property manager, the housing inspector detailed the city's new point system for property inspections. The letter stated that HPP's property had "average deficiency points of 1.45 points per unit," meaning that HPP "meets the criteria for Category A." Because Category A is the best category, the letter stated that properties "will be inspected on a three-year cycle." A follow-up letter stated that "[a]t the time of re-inspection on September 4, 2008 all written orders of correction were completed." We conclude that the TIF district was based on an incorrect application of the law, and that the city's finding that greater than 50 percent of the buildings in the district were "substantially substandard" is contradicted by substantial evidence in the record.

Appellants also challenge the district court's conclusions that the term "building code" means the code which establishes standards for *existing* buildings and that "[b]ecause HPP's buildings satisfy the building code applicable to existing buildings, the City erred in determining that HPP's buildings were structurally substandard." Appellants contend that the second reference to the "building code" in section 469.174, subd 10(c) refers to the code applicable to *new* buildings, and accordingly, respondent's costs to bring the buildings up to new standards would be so extensive as to require "substantial renovation or clearance." Because district court did not err in concluding that the City applied the law incorrectly when making a determination of structurally

substandard buildings for the purpose of establishing TIF District 1-3, we need not address the issue.[2]

II.

The scope of judicial review is narrow in a condemnation action. *Lundell v. Coop. Power Ass'n*, 707 N.W.2d 376, 381 (Minn. 2006). The district court defers to the legislative determination of the condemning authority, and will overturn decisions only when they are manifestly arbitrary or unreasonable, and the appellate courts give deference to the findings of the district court, using the clearly erroneous standard. *Id.* Additionally, on questions of statutory interpretation, appellate courts conduct a de novo review. *Houston v. Int'l Data Transfer Corp.*, 645 N.W.2d 144, 149 (Minn. 2002).

At issue in this condemnation action, is the Minnesota Legislature's extensive changes to eminent-domain law in 2006. *See* 2006 Minn. Laws ch. 214. Appellants argue that because TIF District 1-3 was approved before February 1, 2006, and because the city entered into a binding agreement with the developer to finance the TIF plan before May 1, 2006, according to 2006 Minn. Laws ch. 214, § 22, they are not subject to the definition of "public use; public purpose,"–which contains a reference to "blighted area"–and thus they are also not governed by the new "blight" standard either. They seek a reversal of the district court's order in favor of respondent and a remand for further proceedings on the condemnation petition.

[2] HPP argues that appellants made numerous factual errors in estimating replacement costs for its apartment buildings, which contributed to LHB's erroneous findings that the buildings were structurally substandard, and that these errors were not refuted in appellants' reply brief. For the reason recited above, we need not address this issue.

HPP contends that if this court affirms the district court's finding that the TIF district was improperly established, there is no need to consider the issues on appeal in the condemnation action. We agree. Appellants' entire argument is premised on the validity of TIF District 1–3. Without a valid TIF district, appellants have no basis on which to appeal the denial of their motion for summary judgment on the condemnation issue. Consequently, there is no need for this court to address the applicability of the 2006 amendments to Minnesota's eminent-domain law to the facts in this case insofar as they pertain to the public-use exemption and the new blight standard, or whether appellants actually had a contractual obligation to GPS Development to finance the TIF plan.

III.

Appellants also challenge the district court's award of costs and attorney fees to HPP. Absent an abuse of discretion, an appellate court will not reverse a district court's award of attorney fees and costs. *Becker v. Alloy Hardfacing & Eng'g Co.*, 401 N.W.2d 655, 661 (Minn. 1987).

In an action for equitable relief or damage arising from a municipality's or authority's failure to comply with the provisions of Minn. Stat. §§ 469.174 to .1798 (2008), or related provisions within that chapter, a property owner in a city in which a tax increment financing district is located who prevails is entitled to costs, including reasonable attorney fees. Minn. Stat. § 469.1771, subd. 1(a) (2008). Similarly, in an action where a court finds that "a taking is not for a public use or is unlawful, the court *shall* award the owner reasonable attorney fees and other related expenses, fees and

costs." Minn. Stat. § 117.031(b) (2008) (emphasis added); *see* Minn. Stat. § 645.44, subd. 1b (2008) (stating "'[shall]' is mandatory").

Here, HPP is the prevailing party in this action. Because we affirm the district court's grant of summary judgment in favor of HPP, we also affirm the district court's award of attorney fees. Appellants do not dispute the amount of attorney fees awarded to HPP. Accordingly, we need not examine whether the district court abused its discretion in calculating the amount of its award.

Affirmed.