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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1504**

Mahmood Khan,
Relator,

vs.

Minneapolis City Council,
Respondent.

**Filed August 6, 2012
Affirmed
Worke, Judge**

Minneapolis City Council

Mahmood Khan, Roseville, Minnesota (pro se relator)

Susan L. Segal, Minneapolis City Attorney, Lee C. Wolf, Assistant City Attorney,
Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

WORKE, Judge

In this certiorari appeal, relator challenges respondent city's order for demolition of his property due to the city's designation of the property as a nuisance condition, arguing that (1) the city's decision was arbitrary and capricious; (2) he was deprived of

due process of law; (3) he gained a vested right in the property; and (4) the city should be equitably estopped from demolishing his property. We affirm.

FACTS

In June 2008, relator Mahmood Khan purchased property located at 2222 4th Street North in Minneapolis. The City of Minneapolis had condemned the property the previous year. In July 2008, the city ordered demolition of the property; relator appealed the order.

In January 2009, respondent Minneapolis City Council stayed demolition of the property pending the development of a restoration agreement between relator and the city. In February, relator and the city entered into a restoration agreement, which required all repairs to be completed by August 9. Relator worked on the property between February and August but did not complete the work. In September, the city sent relator a letter stating that the restoration agreement “ha[d] expired.” A few months later, the city council voted to rescind the stay and to approve the demolition order.

Relator filed a certiorari appeal challenging the demolition order. In *Khan v. Minneapolis City Council*, 792 N.W.2d 463, 467 (Minn. App. 2010), this court concluded that the city council “has the authority . . . to abate a nuisance through demolition.” But this court concluded that the city’s decision to rescind the stay of the demolition order was arbitrary. As a result, this court reversed and remanded to the city council for findings regarding whether the property currently constituted a nuisance.

On remand, the city council referred the matter to the Nuisance Condition Process Review Panel (review panel) for a determination of whether the property currently

constituted a nuisance. The city completed an inspection of the property on March 16, 2011, and found that “a significant amount of work” still needed to be completed, including work on the home’s exterior, interior, mechanical systems, garage, and landscaping. In addition, the property needed to go through the Plan Review Committee because relator converted a duplex to a single-family home without the proper plan review. A representative for the city testified that the property constituted a nuisance, but recommended that the city enter into a restoration agreement with relator within 30 days and require a \$20,000 cash deposit.

At the hearing, relator testified that the work at the property was 90% completed. He testified that he was willing to work with the city to address all of the outstanding issues, but argued that he could not afford a \$20,000 cash deposit in addition to the cost of completing the work on the property. He suggested posting a \$5,000 cash bond instead. Four witnesses also testified in support of relator.

The review panel concluded that the property was a nuisance but was divided about whether the property should be demolished. The panel forwarded the matter to the Regulatory, Energy and Environment Committee (RE&E committee) without making a recommendation about whether to demolish or rehabilitate the property.

On June 20, 2011, the city’s representative testified before the RE&E committee that the property constituted a nuisance condition, but recommended that the city enter into a restoration agreement with relator. The representative reported that there has “been a history of neglect” at the property and in the last two years the city “issued orders to

remove rubbish, to secure the property, the dwelling and the garage, and those have all been assessed and are pending as assessments against the owner's property taxes."

Relator testified that he was willing to pay a \$10,000 cash bond rather than the \$20,000 bond that the city was requesting. Relator acknowledged that the RE&E committee had revoked his rental license in another case. The city's representative testified that relator "has probably been through the [review panel] on several occasions. I know he owns over 30 properties, and we've had substantial problem[s] with many of those properties. It's always an active situation dealing with one of [relator's] renovations, because they're always about as substandard as they can be." The RE&E committee voted to demolish the property.

The city council adopted the RE&E committee's findings and voted to demolish the property. This certiorari appeal follows.

D E C I S I O N

The city council's decision to demolish relator's property is quasi-judicial in nature and reviewable by writ of certiorari. *City of Minneapolis v. Meldahl*, 607 N.W.2d 168, 171 (Minn. App. 2000). On certiorari, this court's review is limited "to questions affecting the jurisdiction of the [decision-making body], the regularity of its proceedings, and, as to merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Dietz v. Dodge Cnty.*, 487 N.W.2d 237, 239 (Minn. 1992) (quotation omitted). The city's decision "enjoy[s] a presumption of correctness." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624

N.W.2d 264, 278 (Minn. 2001). This court will not retry facts or make credibility determinations and will uphold the city council's decision if it "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).

Arbitrary and capricious

Relator first argues that the city council's decision to demolish his property was arbitrary and capricious. This court will conclude that a city council's decision was arbitrary and capricious when:

- (1) it relied on factors not intended by the ordinance;
- (2) entirely failed to consider an important aspect of the issue;
- (3) offered an explanation that conflicts with the evidence; or
- (4) it is so implausible that it could not be explained as a difference in view or the result of the city's expertise.

Rostamkhani v. City of St. Paul, 645 N.W.2d 479, 484 (Minn. App. 2002). A city council's decision is "not arbitrary and capricious so long as a rational connection between the facts found and the choice made has been articulated." *Blue Cross & Blue Shield*, 624 N.W.2d at 277 (quotation omitted).

The city council concluded that relator's building constituted a nuisance pursuant to Minneapolis, Minn., Code of Ordinances (MCO) § 249.30(a)(1), (2) (2012). The city ordinance provides that a building is "a nuisance condition" when "[i]t is vacant and unoccupied for the purpose for which it was erected and . . . has remained substantially in such condition for a period of at least six (6) months; or" it "is unfit for occupancy." MCO § 249.30(a)(1), (2). Once the city has determined that a building is a nuisance, the

director of inspections may order it to “be rehabilitated or razed.” MCO § 249.40 (2012).

In making this determination, the director must consider:

- a. The need for neighborhood housing;
- b. The historic value of the building;
- c. The impact on the neighborhood and the ability of the neighborhood to attract future residents;
- d. The capacity of the neighborhood to use the property;
- e. The zoning and comprehensive plan classifications for the property use;
- f. The market potential for the property;
- g. The estimated cost of rehabilitation;
- h. The severity and the history of neglect;
- i. The availability of funds for rehabilitation to the owner; [and]
- j. The structural condition of the building.

Id. (1).

Relator does not argue that his property is not “a nuisance condition” pursuant to MCO § 249.30(a). Instead, he contends that the city council’s decision to demolish the building was arbitrary and capricious. He argues that the RE&E committee and the city council relied on factors outside of the ordinance and the record in making its decision. Specifically, relator argues that they considered factors such as past extensions of time, his status as an investor, and a report that there was rubbish in the yard.

The review panel and the RE&E committee both made detailed findings about the condition of the property, which were later adopted by the city council. In addition, both the review panel and the committee held hearings in which they questioned the city’s representative and relator about the condition of the property, the work required to finish the property, and timelines for and cost of completing the work. During those hearings, as relator asserts, the review panel and the committee questioned relator about the

number of properties he owns, his past work on the property, and the city's orders to remove rubbish at the property. Relator was given an opportunity at both hearings to respond to those issues. While the review panel's findings do not specifically include the information to which relator objects, the RE&E committee's findings, which were adopted by the city council, address violation notices that the property has received since 2010, relator's "history of noncompliance" at the property, and his ability to pay a cash bond, which is related to his occupation as an investor. These findings directly relate to the factors set forth in MCO § 249.40(1), which the city council is required to consider to determine how to abate a nuisance, including "[t]he severity and the history of neglect" and "[t]he availability of funds for rehabilitation to the owner." *Id.* (h), (i). Thus, we conclude that the city council did not rely on factors not intended by the ordinance.

Relator next argues that the city council made findings that conflict with the evidence. Relator contends that the city council's finding that relator "stated at the hearing that he would be unable or unwilling to meet the bond requirement" was contradicted by the record. He also asserts that the city council's finding that he had been unable to work on the property since 2010 conflicted with the evidence because he had been unable to work on the property since 2009. But the record reflects that relator testified that he was unable to pay the cash bond required by the city and he attempted to negotiate a lower cash bond. The record supports relator's argument that he has been unable to work on the property since 2009, but the city council's error in providing the wrong year was harmless. The finding that relator objects to focuses on the violations that have accrued on the property to demonstrate that relator has failed to maintain the

premises; thus, because relator has consistently failed to maintain the property, whether he was last able to work on it in 2009 or 2010 is immaterial.

Finally, relator argues that the city council's decision to demolish his building was arbitrary and capricious because the city council rubber-stamped the review panel's decision rather than independently analyzing the facts. The Minnesota Supreme Court has emphasized the importance of agencies, including a city council, "employing their expertise to reach independent decisions and not to simply 'rubber stamp' [] findings." *City of Moorhead v. Minn. Pub. Utils. Comm'n*, 343 N.W.2d 843, 846 (Minn. 1984). But the fact that an agency agrees with findings does not prove that the agency "is 'rubber stamping' them." *In re Universal Underwriters Life Ins. Co.*, 685 N.W.2d 44, 46 n.3 (Minn. App. 2004).

The review panel first issued findings in 2008 and then, on remand, it issued findings regarding the same property in 2011. As relator argues, three of the review panel's findings of fact in its 2011 order are exactly the same as the findings in its 2008 order. But two of the findings provide information that did not change between 2008 and 2011: one finding describes the property and the second states that the city conducted a historic review of the property.

The third finding that appears in both orders discusses the vacant housing rate for the neighborhood where the property is located. While relator's argument that this information likely changed over a three-year time period has merit, it was harmless error to include this out-of-date information. The rest of the review panel's 2011 findings establish that the review panel carefully considered up-to-date information in order to

determine whether relator's property currently constituted a nuisance condition. The review panel made detailed findings regarding the procedural history of the case since its 2008 decision, the March 2011 inspection that the city conducted at the property, the city's recommendations, and relator's testimony. The review panel also addressed the factors set forth in MCO § 249.40(1), including making an updated finding about the estimated cost to rehabilitate the building. The review panel concluded in its 2011 order that the property was a nuisance condition pursuant to fewer subdivisions of the ordinance than it had in its 2008 order. Thus, the city council did not simply "rubber stamp" its previous findings but independently analyzed current information about relator's property.

Accordingly, we conclude that the city council's decision to demolish relator's building was not arbitrary and capricious.

Due process

Relator next argues that he was denied due process of law. The United States and Minnesota Constitutions prohibit a city from taking private property without just compensation. U.S. Const. amend. V; Minn. Const. art. I, § 13. "If a city council fails to follow the proper procedure in razing property, the destruction of property without due process of law constitutes a taking But when the state properly uses its police powers to abate a nuisance by destroying property, no taking occurs." *Meldahl*, 607 N.W.2d at 172 (citation omitted). As a quasi-judicial proceeding, the city council's nuisance-abatement process does not "invoke the full panoply of procedures required in regular judicial proceedings." *Barton Contracting Co. v. City of Afton*, 268 N.W.2d 712,

716 (Minn. 1978). Only “reasonable notice of hearing and a reasonable opportunity to be heard,” which are “[t]he basic rights of procedural due process,” are required. *Id.*

Relator first argues that his due-process rights were violated because the review panel’s 2011 findings were copied from its 2008 findings. But, as discussed previously, the review panel made detailed findings in 2011 based on the city’s updated information about the property, and those findings are supported by the record. Relator also complains that the review panel “gave short shrift to the four witnesses who appeared on [his] behalf.” But all four witnesses were given an opportunity to testify and be questioned by the review panel, and we defer to the city council’s credibility determinations. *See Senior*, 547 N.W.2d at 416. Thus, we conclude that the review panel’s 2011 findings did not violate relator’s due-process rights.

Relator next argues that the city council punished him for his prior appeal and made its decision to demolish his property based on its personal bias against him. In support of this argument, relator points to a reference in the city council’s findings that he received “yet another significant extension of time” to complete the work and to a statement that the property “had an ongoing detrimental effect on the neighborhood.” But the record supports these findings. The record establishes that in February 2009 relator was given an extension to complete the work and that he did not successfully complete the work. The record further establishes that relator’s property had an ongoing detrimental effect on the neighborhood because it had been vacant since at least 2007 and it still needed numerous repairs. Finally, while the record establishes that members of the RE&E committee questioned relator about his past appearances in front of their

committee, relator has not established that the committee exhibited bias against him. Instead, the committee's questions were focused on gaining an understanding of the severity and history of neglect at the property and relator's ability and willingness to complete the work at the property.

Relator further argues that he was denied the opportunity to question witnesses. The applicable city ordinance provides that the owner must be provided with notice of a hearing before the review panel and of his right to question witnesses and offer evidence. MCO § 249.45(e) (2012). The ordinance further provides that "[p]arties having an interest in the property shall have the right to question witnesses at the hearing." *Id.* (g). Relator appeared at a hearing before the review panel, offered testimony and answered questions from the review panel, and four witnesses testified on his behalf. But relator never requested the opportunity to question witnesses. Thus, he was given a reasonable opportunity to be heard.

Relator also argues that the city council violated his due-process rights by failing to allow him to work on the property before ordering his property to be demolished. The city council gave relator an opportunity to work on the property in 2009, but was not required to provide him with an additional opportunity to work on the property in 2011. And the city council properly followed the procedure required by the city ordinance before ordering demolition. Accordingly, we conclude that relator was not denied due process of law.

Vested rights

Relator argues that he gained a vested right in the property. Minnesota courts apply the vested-rights doctrine “to protect landowners or developers from governmental interference with projects already in progress.” *Halla Nursery, Inc. v. City of Chanhassen*, 781 N.W.2d 880, 885 (Minn. 2010). The doctrine provides that “a person acquires a vested right when a right has arisen upon a contract, or transaction in the nature of a contract, authorized by statute and liabilities under that right have been so far determined that nothing remains to be done by the party asserting it.” *Id.* (quotations omitted).

This is not a situation when the government has stopped a landowner or a developer from continuing to work on a project after the landowner had performed significant work on a project. While relator has invested money in the rehabilitation of the property, he failed to fully comply with the requirements of the city’s nuisance-abatement procedure. Relator does not cite any cases that apply the vested-rights doctrine to a nuisance-abatement situation, and there do not appear to be any Minnesota cases that do so. Thus, we conclude that relator has not shown that the city erred by not applying the vested-rights doctrine to this matter.

Equitable estoppel

Relator argues that the city should be equitably estopped from demolishing his property. A party asserting equitable estoppel against the government has a “heavy burden of proof,” and must establish four elements. *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 25 (Minn. 2011) (quotation omitted). First, there must be “wrongful

conduct” by “an authorized government agent.” *Id.* (quotation omitted). Second, the party asserting equitable estoppel must have reasonably relied on the authorized government agent’s wrongful conduct. *Id.* Third, the party asserting equitable estoppel must have incurred a “unique expenditure.” *Id.* Fourth, “the balance of the equities must weigh in favor of estoppel.” *Id.*

Here, relator asserts that he gained an equitable right to retain his property because he completed extensive work on the property in good-faith reliance on the city’s order to stay demolition. But relator’s argument is unsuccessful because he does not allege, and has not established, that the city or its agent committed wrongful conduct.

Affirmed.