

NO. A06-1146

State of Minnesota
In Court of Appeals

Ronald Staeheli,

Relator,

vs.

City of St. Paul,

Respondent.

RESPONDENT'S BRIEF AND APPENDIX

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LEGAL ISSUES

1. Was Relator Afforded Procedural Due Process Prior to the City Council's Decision to Affirm the Revocation of Relator's Truth-In-Sale of Housing (TISH) Evaluator's License?

Yes.

2. Was the City Council's Decision to Affirm the Revocation of Relator's TISH Evaluator's License Supported by Substantial Evidence?

Yes.

STATEMENT OF THE CASE

This appeal arises from the quasi-judicial decision of the Saint Paul City Council against Relator Ronald Staeheli. Relator was a licensed evaluator for the Saint Paul TISH Program. TISH Program staff received, investigated and notified the TISH Examining Board of complaints made against Relator's conduct and a disclosure report he prepared as a licensed evaluator for the TISH Program. After conducting disciplinary hearings regarding the complaints, the TISH Examining Board determined that Relator had violated provisions of the City of Saint Paul Legislative Code Chapter 189 and the TISH Evaluators' Code of Ethics. The TISH Board revoked Relator's TISH Evaluator's license. Relator appealed the TISH Board's decision to the Saint Paul City Council. The City Council conducted a public hearing and affirmed the TISH Board's decision which revoked Relator's TISH Evaluator's license. Relator seeks reversal of the City Council's decision.

STATEMENT OF THE FACTS

In July and August 2005, TISH Program staff received complaints regarding a disclosure report prepared by Relator. [A-6, 7; RA-1, 2, 3].¹ The first complaint alleged errors and omissions in the report prepared by Relator that presented life/safety issues for the homeowner. Specifically, the initial complaint alleged that Relator failed to identify problems with the waste piping in Relator's disclosure report of 1638 Middleton Ave. in April 2004. [A-6, 7]. The complaint was then referred to two City of St. Paul code enforcement inspectors to perform an independent review and determine if the complaint was legitimate. On July 27, 2005, the code enforcement inspectors examined the property at issue and observed two conditions which had not been properly reported in the disclosure report prepared by Relator - the waste and vent piping and the electrical service installation. [RA-4]. TISH staff then notified Relator of the complaint, noted the deficiencies in his report, and advised Relator to contact the two code enforcement inspectors to schedule an inspection of the property at issue. [A-29; RA-37].

Relator telephoned the homeowner, Annette Peters, asked to inspect the property, and offered to work something out with her. [RA-2]. Ms. Peters refused Relator's offer and told him he could not inspect the property until the code enforcement inspectors were present. [RA-2]. Shortly after terminating the call from Relator, Ms. Peters received a

¹ Relator's Appendix is paginated "1", "2", etc., and will be cited herein as "A-1". Respondent's Appendix is paginated "RA-1", "RA-2", etc., and will be cited herein as "RA-__".

telephone call from a person who identified herself as Susan Brown, from the St. Paul City Attorney's Office. The caller claimed to be investigating Ms. Peters' complaint against Relator and solicited detailed information from Ms. Peters. [RA-2]. However, the City Attorney's Office did not employ anyone named Susan Brown. [RA-59, 67].

On August 1, 2005, Relator met the code enforcement inspectors at Ms. Peters' home to review the noted deficiencies in Relator's disclosure report. [RA-9]. Relator brought a video camera with him and indicated that he wanted to videotape Ms. Peters' home. Ms. Peters told Relator that he could not videotape her home. [RA-2, 9]. During the meeting, Relator made statements regarding matters which Ms. Peters had shared only with the person who identified herself as Susan Brown from the City Attorney's Office. [RA-2]. Relator also ignored Ms. Peters statement and videotaped portions of her home, as well as personal papers that were in her kitchen when she was not present and without her permission. [RA-77, 78, 79, 80].

On August 2, 2005, Ms. Peters contacted TISH staff to initiate a second complaint against Relator. [RA-2]. This second complaint alleged that Relator was rude and disrespectful toward Ms. Peters after she complained about the deficits in his disclosure report. [RA-1, 2]. TISH staff notified Relator of the complaint regarding Relator's behavior toward Ms. Peters and allegation that he orchestrated the impersonation of a City official to solicit information from Ms. Peters. [A-30].

In September 2005, TISH staff notified the TISH Board in writing of the complaints against Relator. [A-28, 29, 30, 31, 32, 33]. A copy of this correspondence was forwarded to Relator. [A-76, 77].² During the next regularly scheduled TISH Board meeting on October 12, 2005, the TISH Board voted to hold disciplinary hearings regarding the complaints against Relator. [RA-16, 17]. The TISH Board also discussed the procedures that would be followed for the hearing. [RA-16, 17]. The TISH Board did not discuss the substance of the complaints against Relator during that meeting. [RA-16, 17].

By letter dated November 4, 2005, TISH staff notified Relator that an investigation into the complaints revealed that Relator had violated the TISH Evaluator Guidelines and Code of Ethics and that the TISH Board would consider adverse action against Relator's license. [A-76, 77]. This letter informed Relator that a disciplinary hearing would take place on November 29, 2005, and explained the procedures that would be followed during the hearing. [A-76, 77]. In response to Relator's request for a continuance, the hearing was rescheduled. By letter dated November 22, 2005, TISH staff notified Relator that the new date for the disciplinary hearing on the complaints against him would be January 10, 2006. [A-34, 35].

² The Notice of Intent of the Board to Consider Adverse Action indicates that the September 9, 2005, correspondence to TISH Board had been mailed to Relator on September 9, 2005.

On December 26, 2006, Relator sent an electronic message to Bob Kessler containing criticism and allegations against the TISH staff and TISH Board. Relator also asked Kessler “to step in and stop this January 10, 2006 hearing.” [A-36]. On December 28, 2006, Relator sent additional electronic mail messages to Bob Kessler seeking to cancel the January 10, 2006 disciplinary hearing. [A-41, 42]. In response to Relator’s correspondence, Bob Kessler indicated that he would be in California until January 2nd, and that on January 3rd or 4th he would talk to the City Attorney about delaying the hearing. [A-41]. Bob Kessler did not cancel or postpone the January 10, 2006 disciplinary hearing. By electronic mail dated January 9, 2006, Bob Kessler confirmed that the January 10, 2006 hearing date had not changed. [A-43].

On January 10, 2006 and January 31, 2006, the TISH Board conducted public hearings to review the complaints and determine the appropriate level of discipline to impose upon Relator for failing to adhere to TISH Guidelines and Code of Ethics. During the hearing the TISH Board discussed the substance of the complaints, the findings of the investigation, and considered documentation, statements and testimony presented by the Relator and witnesses. After giving full consideration to the evidence presented, the TISH Board decided to revoke Relator’s license. [RA-26, 27, 28, 29, 30].

The City Attorney’s Office and TISH staff notified Relator of the TISH Board’s decision to revoke his license by letters dated February 10, 2006 and February 28, 2006. [RA-31, 32, 35]. On February 20, 2006, Relator appealed the TISH Board’s decision to

revoke his license. [RA-33, 34]. Pursuant to St. Paul Legislative Code § 189.11, the appeal was scheduled to be heard by the City Council. By letter dated February 28, 2006, Respondent notified Relator that the hearing on his appeal to the City Council would take place on April 5, 2006. [RA-36]. On April 5, 2006, the City Council conducted a public hearing to review Relator's appeal and voted to affirm the TISH Board's decision to revoke Relator's license. [A-4, 5].

ARGUMENT

I. STANDARD OF REVIEW.

In a review by certiorari of a municipality's quasi-judicial decision, the court is confined to questions regarding jurisdiction and the regularity of the proceedings at issue. With respect to the merits of the controversy, a municipality's quasi-judicial decision may be modified or reversed if it is arbitrary or capricious or unsupported by substantial evidence in view of the entire record as submitted or erroneous as a matter of law. VanLandschoot v. City of Mendota Heights, 336 N.W.2d 503, 508 (Minn. 1983); In Re License of West Side Pawn, 587 N.W.2d 521, 523 (Minn. Ct. App. 1998). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion or more than a scintilla of evidence. The party seeking reversal bears the burden of proof. Montella v. City of Ottertail, 633 N.W.2d 86, 88 (Minn. Ct. App. 2001). "Routine municipal decisions should be set aside only in those rare instances where the decision lacks any rational basis." City of Mankato v. Mahoney, 542 N.W.2d 689, 691-92 (Minn. Ct. App. 1996). A reviewing court must exercise restraint and defer

to the city's decision. Id. The fact that a court reviewing the action of a municipal body may have arrived at a different conclusion, had it been a member of the body, does not invalidate the judgment of the city officials if they acted in good faith and within the broad discretion accorded them by statutes and the relevant ordinances. VanLandschoot, 336 N.W.2d at 508. See also, Yeh v. County of Cass, 696 N.W.2d 115, 125 (Minn. Ct. App. 2005) (stating court's authority to interfere in the management of municipal affairs is limited and should be sparingly invoked).

II. THE PROCEDURES AFFORDED TO RELATOR DURING THE PUBLIC HEARING BEFORE THE CITY COUNCIL SATISFIED CONSTITUTIONAL DUE PROCESS REQUIREMENTS.

The United States Supreme Court has held that the fundamental requirements of due process are notice and the opportunity to be heard "at a meaningful time and in a meaningful manner." Mullane v. Central Hanover Tr. Co., 339 U.S. 306 (1950); Armstrong v. Manzo, 380 U.S. 545, 552 (1965).

A. Respondent Provided Relator With Reasonable Notice of the Substance of the Complaints and the Date for the Hearing.

Relator claims he was denied due process because he did not receive reasonable notice of the initial disciplinary hearing before the TISH Board and he was not informed of the allegations until the hearing occurred. These allegations are not supported by the record in this case. First, Relator received notice of the allegations against him in August 2005 and again by correspondence dated September 9, 2005. Relator also was informed of the substance of those allegations when he attended an inspection of the property on

August 1, 2005. Thus, Relator was well aware of the substance of the allegations contained in the complaint several months before the TISH Board's disciplinary hearing. Any decision to limit or reduce the allegations to be addressed during the hearing did not result in a denial of due process.

The uncontroverted facts establish that Relator was notified of the January 10, 2006 hearing on or about November 22, 2005 - approximately forty-five (45) days in advance of the scheduled hearing. Relator claims the January 10, 2006 hearing was cancelled and he was not notified that the hearing would take place as scheduled until the day before it occurred. This allegation, however, does not establish a due process violation. Relator's allegation is contrary to the evidence presented to the TISH Board, the City Council, and this Court. There is nothing in the record which establishes Relator's contention that the January 10th hearing was ever actually cancelled. The only item which comes close is a statement from Bob Kessler indicating that he would discuss the possibility of a continuance with the City Attorney's Office. This statement did not indicate that the hearing had been cancelled or postponed.

Even if Relator reasonably believed the hearing had been cancelled, the notice of the hearing provided to Relator on January 9, 2006 satisfied due process. Due process requires notice and the opportunity to be heard at a meaningful time and in a meaningful manner. Armstrong, 380 U.S. at 552. See In Re West Side Pawn, 587 N.W.2d at 523, rev. denied (Minn. March 30, 1999) (holding notice received one day before hearing

satisfies due process requirements). In this case, Relator had adequate time to investigate the complaints and prepare his defense.

This matter, however, is before this Court on appeal from the April 5, 2006, decision of Respondent's City Council. The City Council's decision occurred pursuant to Relator's appeal from the TISH Board's final decision. Prior to rendering its decision, the City Council conducted a separate hearing for which Relator received approximately thirty-six (36) days advanced notice. Because Relator has offered no facts, law, or arguments to establish a denial of due process in the notice provided for the hearing conducted by the City Council, Relator has not established a due process violation.

B. The Time Limitations and Procedures Followed During the TISH Examining Board's Disciplinary Hearing Did Not Violate Relator's Procedural Due Process Rights.

Relator claims he was denied due process because of the time limitations imposed during the disciplinary hearings conducted by the TISH Board. He contends that the time limits were improper because the TISH program guidelines, disciplinary procedures, and TISH Board bylaws were silent on the issue. First, this Court should note that Relator was not restricted to a thirty (30) minute defense during the TISH Board disciplinary hearings as Relator has argued in his brief. The TISH Board's disciplinary hearing was conducted on two separate dates - during which Relator was allowed 75 minutes to present evidence to the TISH Board.

On January 10, 2006, the first date of the hearing, and prior to the submission of any evidence, Relator was informed that he would have 45 minutes to present evidence

and cross examine witnesses. He was also told that the hearing would continue on January 31, 2006, at which time he would have an additional 30 minutes to present rebuttal or additional information. [RA-52, 71]. In addition, Relator was invited and encouraged to submit written information as well as audio/video tapes to the TISH Board for review prior to each hearing date. [A-76; RA-52, 70, 71].

Relator also claims denial of due process because he allegedly received conflicting instructions regarding the hearing process. Specifically, he claims that he was given conflicting information regarding the opportunity to communicate with the TISH Board prior to the January 10, 2006 hearing. This argument is disingenuous and lacks merit. The conflicting instructions Relator alleges relate only to the issue of whether Relator could submit documentary evidence to the TISH Board in advance of the hearing. There is no evidence in the record which establishes that Relator was disadvantaged by any of the instructions he received. All evidence Relator offered during the TISH Board's disciplinary hearing was admitted into evidence. Relator has not identified any evidence which establishes that the TISH Board rejected any proposed evidence.

The procedures followed during the TISH Board's disciplinary hearing are not under review. This appeal is limited to the regularity and merits of the City Council's decision to revoke Relator's license. In that regard, Relator has made no allegations of irregularity and offered no law or arguments to establish a denial of due process with regard to the City Council's decision. All evidence submitted to the TISH Board was

presented to the City Council for review. Relator had a fair and adequate opportunity to be heard by the City Council during his appeal. The procedures afforded Relator during the hearing before the City Council satisfied constitutional due process requirements.

C. References to Trespass Allegations and Criminal Statute Did Not Violate Relator's Due Process Rights.

Relator also alleges that he was denied due process because TISH staff introduced evidence regarding trespass allegations against the Relator and cited a criminal statute in reference to Relator's conduct. Relator, however, fails to identify how the introduction of this evidence violates his due process rights. The City did not assert criminal charges against Relator nor make any determinations or references regarding the propriety of such charges. The City did not utilize this information to initiate additional complaints against Relator. The City did not rely on this information to impose additional discipline against Relator. In fact, the TISH Board was advised on the record during the disciplinary hearing that there were no criminal charges against Relator. [RA-81]. Relator has not presented any facts, evidence, or case law to establish that either of these items served as an independent basis for discipline, resulted in an increase in the final penalty imposed, or had any discernable impact upon the TISH Board or City Council's decision to revoke Relator's license. Thus, the reference to the trespass allegations and criminal statute did not violate Relator's due process rights.

III. THE CITY COUNCIL'S DECISION TO AFFIRM THE REVOCATION OF RELATOR'S TISH EVALUATOR'S LICENSE WAS NOT ARBITRARY, CAPRICIOUS, AN ERROR OF LAW AND IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

Relator contends that the revocation of his license was arbitrary and capricious and not supported by the evidence because the discipline was based upon an invalid complaint against an expired disclosure report, insufficient evidence, and because the penalty imposed exceeded the presumptive penalty stated in the legislative ordinance. In reviewing this matter, it is not the court's function to pass on the wisdom of the revocation, but only to determine whether the City Council exercised an honest and reasonable discretion, or whether it acted capriciously, arbitrarily, or oppressively. Sabes v. City of Minneapolis, 120 N.W.2d 871, 875 (1963). The decision must be upheld if the City Council "furnished any legal and substantial basis for the action taken." Senior v. City of Edina, 547 N.W.2d 411, 416 (Minn. Ct. App. 1996). Respondent did not act arbitrarily, there was no error of law, and the record before this Court contains substantial evidence to support the revocation of Relator's license.

A. Relator's License Revocation Was Based Upon A Valid Complaint.

Relator claims the revocation of his license must be reversed because it was based upon an invalid complaint. Relator contends the complaint was invalid because it was initially submitted by telephone and later reduced to writing by TISH staff. Relator's contention is baseless. Nothing in the TISH Bylaws, Guidelines, or Disciplinary Procedure precludes the TISH Board from acting on a complaint prepared by TISH staff.

In fact, under the TISH Board Disciplinary Procedure “commencement of disciplinary action(s) against an evaluator may be initiated at the request of the board, or by written complaint, or by the supervisor.” [A-16]. Further, the TISH Bylaws indicate that complaints must be from persons or organizations who 1) have a demonstrable and compelling interest in the property evaluated, or 2) are employed by or directly represent the City of St. Paul. [A-13]. The Bylaws also require the complaint to be in writing and that the filing person or organization completes the documents or other complaint requirements. [A-13]. In this case, Connie Sandberg, the Administrator of the TISH Program, completed the written complaint on the basis of information received from the property owner. Sandberg signed the complaint as the complaining party. [A-6, 7]. Under the TISH Board Bylaws and Disciplinary Procedure the complaint was valid and there was no impropriety in the TISH Board taking adverse action on that complaint.

Relator contends the revocation of his TISH Evaluator’s license was improper because the disclosure report on which the complaint was based had expired prior to the investigation of the complaint. The disclosure report which served as the basis for the complaint was not expired or invalid for purposes of the disciplinary action under review. Under St. Paul Leg. Code § 189.02, a disclosure report is valid for 365 days. The validity of a disclosure report, however, applies to the timeframe in which it can be used by the owner listed on the report for the sale of the home evaluated in the report. City of St. Paul Legislative Code § 189.02. Nothing in St. Paul Leg. Code Ch. 189, the TISH

Disciplinary Procedure, TISH Board Bylaws or TISH Guidelines for Disciplinary Action limits the validity of a disclosure report for purposes of disciplinary action by the TISH Board or review by the City Council. Thus, Relator's April 16, 2004, disclosure report was not invalid for purposes of investigating the complaint or taking disciplinary action. The City Council's decision to revoke Relator's license based upon the complaint regarding that report was not arbitrary and capricious or an error of law.

B. The Record Contained Substantial Evidence to Support the Revocation of Relator's TISH Evaluator's License.

Relator contends that the revocation of his license was arbitrary and capricious because there was insufficient evidence to support the findings upon which the revocation decision was based. Under Minnesota law, if the record contains a rational and legally substantial basis for the City Council's decision, it must be upheld. Mahoney, 542 N.W.2d at 692. The record in this case contained ample evidence to support the revocation of Relator's license.

1. Waste and Vent Piping.

The revocation decision was based upon allegations that Relator failed to note in his disclosure report the use of improper piping materials and failed to identify the waste piping problems in the home. Relator argues that there was insufficient evidence to support these allegations because some of the plumbing at issue was not visible at the time of Relator's inspection of the home, and the City code enforcement inspectors could not identify the date the plumbing at issue was installed. Relator intimated that the

plumbing at issue was installed after he completed his disclosure report. Relator submitted little else to dispute the allegations regarding his failure to properly report the waste piping problems and other plumbing deficiencies that existed in the home. The record, however, contained evidence establishing that some of the waste piping problems at issue were noted by Relator in a report he prepared for the same property in November 2003. Permit records regarding the property do not support Relator's contention that the waste piping was changed after he completed his April 16, 2004, disclosure report.

The record contained a rationale basis for the City Council to affirm the TISH Board's determination that the problems associated with the waste piping did not likely arise after the report was completed and the problems associated with much of the waste piping were readily visible at the time Relator completed his April 2004 disclosure report. Due to the severity of the waste piping problems that existed in the home, the City Council affirmed the TISH Board's determination that Relator's failure to identify those problems constituted a violation of St. Paul Leg. Code Ch. 189.

2. Electrical Service Installation.

The disciplinary action was based also on allegations that Relator failed to properly note that the electrical service mast and the electrical service drop were too low. The record contains substantial testimony from the home owner, a code enforcement inspector and the Relator on this issue. Relator argues that he presented sufficient evidence that the electrical service wires were nine (9) feet from the deck, not six (6)

inches, and that the electrical service mast had been “damaged/bent” or installed improperly after he completed his disclosure report for the property. The TISH Board and the City Council considered Relator’s evidence in conjunction with other evidence including the code enforcement inspector’s report which rebutted Relator’s claims. The homeowner testified that the home was vacant when she purchased it and the electrical service mast and electrical service drop were in the same condition at the time she initiated the complaint as they were when she purchased the home. [RA-69a]. Relator admitted that the electrical service wires were 9ft. from the deck, however, proper height is 10ft. Taking all the evidence into account, the TISH Board determined that the electrical service mast and the electrical service drop were too low, the problem did not likely arise after the report was prepared, and Relator’s failure to note these items in his disclosure report violated St. Paul Leg. Code Ch. 189.

3. Code of Ethics.

Relator also claims that the TISH Board’s determination that Relator violated the TISH Code of Ethics is unsupported by the evidence. Specifically, Relator claims the Code of Ethics contains no requirements or prohibitions for evaluators regarding decorum, attitude or specific actions regarding the complaint process or members of the public. Relator contends, therefore, that he did not violate the Code of Ethics by his conduct or comments toward to Annette Peters or because he videotaped her home and personal papers against her express wishes. Relator’s arguments are based on the premise

that he was not acting in his capacity as a licensed evaluator at the time he engaged in the behavior in question, therefore, his conduct has no relationship to his license. Relator's arguments are not persuasive.

Relator completed an evaluation of Ms. Peters home as a licensed TISH Evaluator for the City of Saint Paul. Ms. Peters initiated a complaint against Relator alleging that his disclosure report was inaccurate. Relator contacted Ms. Peters in response to her complaint. Each encounter Relator had with Ms. Peters was based on the TISH disclosure report Relator prepared and the degree to which Relator fulfilled his obligations as a TISH Evaluator. This Court has held that "professional fitness" can be determined on the basis of conduct that is not directly related to the performance of one's professional duties. In Zahavy v. University of Minnesota, 544 N.W.2d 32, 37 (Minn. Ct. App. 1996), this court upheld the dismissal of a professor for unprofessional conduct because the professor hid and misrepresented his employment at another university. This court concluded that a tenured professor's "fitness in a professional capacity" need not necessarily be tied to the professor's teaching, scholarship, and service." Under this rationale, the City Council's determination that Relator violated the TISH Code of Ethics based on his conduct toward Ms. Peters was not arbitrary and capricious or an error of law. The City Council's decision to revoke Relator's license is supported by substantial evidence.

C. The City Council's Decision to Affirm the Revocation of Relator's License Did Not Violate the Presumptive Penalty Provision of St. Paul Legislative Code Chapter 310.

Relator claims the revocation of his license was in error and not supported by the evidence because it violates the presumptive penalty provision of St. Paul Legislative Code Chapter 310. The TISH Board Guidelines for Disciplinary Action indicate that an evaluator's license may be revoked or subject to other adverse action if the evaluator "has intentionally or by established pattern violated any of the provisions of Ch. 189 or any duties specifically required by section 189.15." [RA-22]. "Adverse action" includes revocation, suspension, cancellation, imposition of conditions or a fine, and "any other disciplinary or unfavorable action taken by the board or council with respect to a license or licensee." [RA-23]. These guidelines establish presumptive penalties that may be imposed by the TISH Board for various types of violations. For instance, license revocation is the presumptive penalty for an evaluator that "has intentionally or by established pattern violated any of the provisions of Chapter 189 or any duties specifically required by Sec. 189.15." [RA-24]. Revocation is also the presumptive penalty for an evaluator that "has been the subject of substantiated complaints" involving class 1 - high life/safety risk - for his/her evaluation services. [RA-25]. The TISH Board's authority, however, is not limited or restricted by the existence of the presumptive penalties. The TISH Board may impose conditions or take any other adverse action authorized by law. "The occurrence of multiple violations or complaints shall be grounds for departure from

[the] penalties in the Board's discretion." [RA-25]. Thus, these guidelines do not require prior imposition of adverse action before an evaluator's license can be revoked.

In this case, Relator was the subject of substantiated complaints involving high life/safety risks. This factor alone was sufficient to support the TISH Board's decision to revoke Relator's license. However, the TISH Board also considered Relator's prior history of violations and determined that Relator had established a pattern of violating provisions of Chapter 189. This determination provided independent basis for revoking Relator's license. This same analysis applies to the City Council's decision to affirm the TISH Board's revocation of Relator's license.

The City Council's decision to affirm the revocation of Relator's license did not violate Relator's right to due process and did not violate the presumptive penalty provision of Chapter 310. St. Paul Leg. Code § 310.05(m) identifies the presumptive penalties for certain license violations. Under this provision, license revocation is the presumptive penalty for the fourth appearance for violating the provisions of the legislative code relating to the licensed activity. "However, the council may deviate therefrom in an individual case where the council finds and determines that there exists substantial and compelling reasons making it appropriate to do so." [RA-49]. "The occurrence of multiple violations shall be grounds for departure from such penalties in the council's discretion." [RA-49, 50].

In this case, the City Council determined that revocation was an appropriate penalty due to Relator's pattern and practice of errors and omissions in preparation of reports and the fact that Relator was on probation at the time he prepared the report in question and at the time of the subsequent disciplinary hearing. The City Council's decision to affirm the TISH Board's revocation of Relator's license did not violate Relator's right to due process, did not violate the provisions of St. Paul Leg. Code § 310.05, and was not an error of law. The record contains substantial evidence to support the revocation of Relator's license.

CONCLUSION

Relator bears the burden of demonstrating that the City Council's decision was unsupported by the record. Relator has not met this burden. When the City Council reviewed this matter, it did not violate Relator's due process rights and the record contained substantial evidence to support the revocation of Relator's license. Despite Relator's view of the evidence, the City Council believed there was sufficient evidence to establish that Relator failed to accurately report waste piping problems and the condition of the electrical service mast and electrical service drop at the time he completed his April 2004 disclosure report of the property, and that Relator's conduct toward the home owner during the investigation of the complaint violated the TISH Code of Ethics. Where there is room for two opinions on the matter, the decision is not arbitrary and capricious even though the court may believe that an erroneous conclusion was reached. In the Matter of Friedenson, 574 N.W.2d 465, 467 (Minn. Ct. App. 1998). The City Council's decision to

affirm the revocation of Relator's license was not arbitrary or capricious and is supported by substantial evidence.

Based upon all the foregoing arguments and authorities, Respondent respectfully requests that this Court affirm the decision of the Saint Paul City Council and deny Relator's appeal.

Dated: August 18, 2006.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).