

NO. A10-187

STATE OF MINNESOTA

In Court of Appeals

MAHMOOD KHAN,

Relator,

vs.

MINNEAPOLIS CITY COUNCIL,

Respondent

**RELATOR'S REPLY BRIEF  
AND SUPPLEMENTAL APPENDIX**

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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).

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## **I. THE CITY COUNCIL'S DECISION-MAKING PROCESS LACKED DUE PROCESS**

On this appeal, the City Council argues that the “Committee and City Council were not limited to the same evidence and record” that were developed at the hearing before the Nuisance Review Committee. (Respondent’s Brief, pp. 17-18.) This statement is further proof that the City Council violated Mr. Khan’s procedural due process right to “a reasonable decision based solely on the record.” *Humenansky v. Minn. Bd. of Med. Examiners*, 525 N.W.2d 559, 565 (Minn. App. 1994).

To begin, the City’s position is contrary to the plain language of its ordinance: “The city council shall make such order as it deems appropriate based upon the evidence and record of the appeal hearing.” Minneapolis Ordinance § 249.50(b) (Emphasis supplied.) The “appeal hearing” referenced by the ordinance is the hearing conducted by the Nuisance Review Committee – not meetings of the Public Safety & Regulatory Services Committee (“Committee”) of the City Council. The City’s contention, therefore, that it could rely on evidence not found in the record of the Nuisance Review Committee hearing shows that it ordered the demolition of the Property “under an erroneous theory of law.” *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn.1992) (citation omitted). Minneapolis Ordinance § 249.50(b) simply does not allow the City Council to go outside the record.

The City Council’s decision to rely on evidence outside the record spelled the demise of the Property. Councilmember Samuels had a vendetta against Mr. Khan and introduced inflammatory and irrelevant allegations in advocating for demolition of the Property. These included allegations of a rape, a “poop house,” a “Frankenstein

building,” fifteen other properties owned by Mr. Khan, forty-eight other properties owned by Mr. Khan, and a meeting at Home Depot. (10-7-09 Tr., 16-19.) Councilmember Samuels intended to make an example of Mr. Khan: “[U]nless we do a couple of these, nobody’s gonna believe us.” (Id.) Of course, Mr. Khan did not have the opportunity to cross-examine Councilmember Samuels as he would have been able to do before the Nuisance Review Committee. See Minneapolis Ordinance § 249.45(g). Councilmember Samuels’ actions in straying from the record illustrate perfectly why this Court has held that due process guarantees a citizen the right to “a reasonable decision based solely on the record.” *Humenansky*, 525 N.W.2d at 565. The City Council’s violation of the rule of *Humenansky* requires reversal here.

## **II. THE NOVEMBER 3, 2009 INSPECTION REPORT DOES NOT JUSTIFY THE DECISION TO DEMOLISH THE PROPERTY**

The City Council argues that its order to raze the Property should be upheld because the November 3, 2009 code compliance inspection allegedly revealed that 90 to 95 percent of the work on the Property had not been completed. (Respondent’s Brief, pp. 13-14.) This argument should be rejected because (1) Mr. Khan had ceased work on the Property nearly three weeks earlier at the direction of the Department of Regulatory Services (“Department”); (2) the Department informed Mr. Khan of the results of the inspection just two days before the November 18 Committee meeting at which the Committee recommended demolition; (3) the inspection report did not put Mr. Khan on proper notice of what specifically had to be completed; (4) the Department itself admitted that it needed time to review the results of the inspection with Mr. Khan; and (5) acting with limited notice, Mr. Khan disputed the findings of the inspection. Under these

circumstances, “notice and opportunity to be heard which are the essence of due process of law” were not “provided freely and unequivocally,” and the decision of the City Council should be reversed. *Village of Zumbrota v. Johnson*, 161 N.W.2d 626, 630 (Minn. 1968).

First, Mr. Khan ceased work on the Property as of October 15, 2009, because the Department had told had told him to do so on account of the pending inspection. (11-18-09 Tr., 17, 22.) The City Council should now be estopped from arguing that the repairs identified in the inspection were not completed when the Department itself directed Mr. Khan to cease work. Where a party has “reasonably relied to his detriment” on the “representations or inducements” of an opposing party, the opposing party is estopped from taking advantage of that reliance. *Brenner v. Nordby*, 306 N.W.2d 126, 127 (Minn. 1981). Here, however, the City Council is doing just that by arguing that the November 3 code compliance inspection showed that less than 90-95 percent of the work on the Property had been completed. Had the City not instructed Mr. Khan to cease work, he would have completed additional work on the Property prior to the November 3 inspection. *Brenner* precludes the City Council from now arguing that the unfinished work warranted demolition.

Second, the City informed Mr. Khan of the results of the inspection and of the November 18 Committee meeting just two days before the meeting was to be held. (11-18-09 Tr., 15). This minimal notice was a far cry from the Minnesota Supreme Court’s admonition that “proceedings to abate a nuisance in exercise of the police power of the state... be executed prudently.” *Village of Zumbrota*, 161 N.W.2d at 630. Indeed,

Councilmember Schiff stated, “I think as a matter of fair, due process rushing to demolish the property at this time without having met with him to discuss what work remains to be completed would really be a rush in this case and would violate his due process.” (11-18-09 Tr., 8.) Under *Village of Zumbrota*, this “rush[] to demolish” requires reversal of the City Council’s order.

Third, the November 3 inspection report did not adequately specify the work that had to be completed, and the Department recognized this by first recommending that it be accorded more time to review the results of the inspection with Mr. Khan. A notice that fails “to specify precisely what [a citizen] was expected to do in order to comply” lacks due process. *Village of Zumbrota*, 161 N.W.2d at 630. Even a cursory review of the inspection report shows numerous requirements that are vague and subject to different interpretations. (A-App., 77-83.) For example, the report directs Mr. Khan to repair or remove the fence, gutters, downspouts, cabinets, and counters, among other things, without specifying what exactly was wrong with any of them. In other places, the report refers to performing tasks in a “professional manner.” The lack of detail in the report about what was actually wrong at the Property indicates that the report was intended to be a catch-all for anything that might need repair at the Property. The report did not “specify precisely” what Mr. Khan had to do to comply with it and thus violated his due process rights. *Village of Zumbrota*, 161 N.W.2d at 630.

At the outset of the November 18 Committee meeting, the Department admitted that the report lacked specific direction concerning the repair work when it recommended “that this item be continued for one more cycle so that [the Department] can meet with [Mr.

Khan], go over the new code compliance requirements and come back with a second recommendation on December 9.” (11-18-09 Tr., 2-3.) The Department stated that it planned to allow Mr. Khan another 90 days to complete the repair work and to have him post a \$50,000 performance bond. (Id. at 34.) In fact, the compliance notice to Mr. Khan from the Inspections Division of the City stated that Mr. Khan had until May 12, 2010 to complete the identified repairs and that after the due date, a reinspection would be performed. (A-App., 77-83.) Thus, rather than supporting the order for demolition, the inspection report and the Department’s recommendation weighed against demolition and in favor of allowing Mr. Khan more time to understand the report and, where necessary, bring the Property into code compliance. There was nothing “prudent[.]” about the City Council’s decision to disregard these undisputed facts. *Village of Zumbrota*, 161 N.W.2d at 630.

In its brief, the City Council states, “If the PS&RS Committee and City Council wished to pursue a restoration agreement they could have moved in that direction or even continued the matter and requested Department staff to try and negotiate an agreement with Relator.” (Respondent’s Brief, p. 17.) The Committee did so in part. At the November 18, 2009 Committee meeting, Councilmember Samuels stated that the “motion is to move the staff recommendation, but to direct staff to work on an agreement with the owner of the property...” (Tr. 9-18-09, 34.) Such negotiations never occurred, and two weeks later the City Council voted to demolish the Property.

Finally, Mr. Khan disputed the findings of the inspection under circumstances where he had no “opportunity to be heard” in a meaningful manner. *Village of Zumbrota*, 161 N.W.2d at 630. It was only after Councilmember Samuels’ motion to recommend

demolition was voted on and passed that the City Council allowed him to speak against the motion. (11-18-09 Tr., 13.) Being heard after a decision is made is hardly meaningful due process and does not satisfy the mandate of the Minnesota Constitution that “[n]o person shall be ... deprived of life, liberty, or property without due process of law.” Minn. Const. art. I, § 7.

When Mr. Khan spoke at the November 18 meeting, he did his best under the circumstances to dispute the alleged findings in the inspection report. He informed the Committee that the claim that the carpet was used was false; it was new carpet. (11-18-09 Tr., 14.) Similarly, the flooring and siding were new. (Id. at 14, 18.) Mr. Khan also pointed out that he was improving a neighborhood where there were eight or more vacant or boarded up houses on the block, three vacant lots, and only four occupied homes. (11-18-09 Tr., 15-16.)

In sum, the City’s use of the November 3 inspection report to justify the demolition of the Property epitomizes the lack of “notice and opportunity to be heard” in this matter and should be regarded as such by this Court. *Village of Zumbrota*, 161 N.W.2d at 630.

### **III. MR. KHAN HAS NOT WAIVED HIS RIGHT TO CONTEST THE NUISANCE REVIEW COMMITTEE DECISION**

The City Council argues that because Mr. Khan did not appeal the City Council’s decision of January 9, 2009 to stay the Director’s Order to Raze, he has waived any right to contest the decision of the Nuisance Review Committee. (Respondent’s Brief, pp. 20-21.) The City Council is wrong. The City Council issued its “final Council Action as per [ ] required by Minneapolis Code of Ordinances Chapter 249” on December 23, 2009. (A-

App., 84-85.) The “final Council Action” issued on December 23, 2009 was the only “final Council Action” issued in this matter and was thus the only City Council action appealable by Mr. Khan. Mr. Khan timely appealed this “final Council Action” and preserved his right to contest all of the proceedings below, including the hearing before the Nuisance Review Committee.

Contrary to its position on this appeal, at its January 9, 2009 meeting, the City Council did not issue a final decision to raze the Property. Rather, the City Council stayed the Order for Demolition of the Director of the Department of Inspections so that a Restoration Agreement could be executed with Mr. Khan. (A-App., 29.) Minneapolis Ordinance § 249.50(b) provides that “[t]he city council shall order demolition or rehabilitation.” The City Council chose rehabilitation for the Property at its January 9 meeting. The City Council did not issue its final decision to raze the Property until December 23, 2009, and Mr. Khan’s right to appeal that decision to this Court accrued at that time.

#### IV. CONCLUSION

For the foregoing reasons and those set forth in Mr. Khan's opening brief, this Court should reverse the order of the Minneapolis City Council to demolish the Property and direct the City Council to provide Mr. Khan adequate due process in resolving the remaining claimed code violations at the Property.

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