

NO. A10-187

State of Minnesota
In Court of Appeals

Mahmood Khan,

Relator,

vs.

Minneapolis City Council,

Respondent.

RESPONDENT'S BRIEF

SUSAN L. SEGAL
Minneapolis City Attorney

Lee C. Wolf (#0252505)
Assistant Minneapolis City Attorney
350 South Fifth Street
Room 210
Minneapolis, MN 55415
(612) 673-2359

Counsel for Respondent

DAVID L. SHULMAN (#260721)
Law Office of David L. Shulman PLLC
1005 W. Franklin Ave. #3
Minneapolis, MN 55405
(612) 870-7410

Counsel for Relator

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

LEGAL ISSUES.....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS.....4

ARGUMENT.....9

I. THE DECISION OF THE MINNEAPOLIS CITY COUNCIL TO RESCIND THE STAY OF DEMOLITION AND APPROVE THE DEMOLITION OF THE PROPERTY LOCATED AT 2222 4TH STREET NORTH WAS NEITHER ARBITRARY, CAPRICIOUS NOR UNREASONABLE, WAS SUPPORTED BY THE EVIDENCE AND WAS NOT AN ABUSE OF DISCRETION9

A. RELATOR WAS AFFORDED ADEQUATE DUE PROCESS15

B. THE ORDER TO DEMOLISH WAS NOT BASED ON IMPROPER FACTORS OUTSIDE THE RECORD.....17

C. THE NUISANCE ABATEMENT PROCESS REVIEW PANEL’S DECISION IS NOT RELEVANT TO THE DECEMBER 4, 2009, COUNCIL DECISION TO RESCIND THE STAY OF DEMOLITION AND ORDER THE DEMOLITION OF THE PROPERTY.....20

CONCLUSION.....21

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).

TABLE OF AUTHORITIES

MINNESOTA CASES

<i>Arcadia Dev. Corp. v. City of Bloomington</i> , 125 N.W.2d 846 (Minn. 1964).....	10
<i>Barton Contracting Co., Inc. v. City of Afton</i> , 268, N.W.2d 712, 716 (Minn. 1978).....	15
<i>Cable Communications Bd. v. Now-West Cable Communications P'shp.</i> , 356 N.W.2d 658 (Minn. 1984).....	10,14
<i>City of Minneapolis v. Meldahl</i> , 607 N.W.2d 168, 172 (Minn. App. 2000)....	15,20
<i>In re Excess Surplus Status of Blue Cross & Blue Shield</i> , 624 N.W.2d 264 (Minn. 2001).....	9,10,14
<i>Larson v. New Richland Care Ctr.</i> , 538 N.W.2d 915 (Minn.App.1995).....	9
<i>Roseville Educ. Ass'n v. Indep. Sch. Dist. No. 623</i> , 391 N.W.2d 845, 849 (Minn. 1986).....	19
<i>Senior v. Edina</i> , 547 N.W.2d 411 (Minn.App.1996).....	10,14,15,19
<i>Village of Medford v. Wilson</i> , 230 N.W.2d 458 (Minn.1975).....	9

ORDINANCES

Minneapolis, Minn. Code of Ordinances § 249.50.....	11,17
---	-------

STATEMENT OF ISSUES FOR REVIEW

- I. Whether the Minneapolis City Council's quasi-judicial decision to raze Relator's vacant, boarded, and condemned building pursuant to the nuisance abatement procedure of Minneapolis Code of Ordinances Chapter 249 was arbitrary and capricious; made upon unlawful procedure or unsupported by any substantial evidence in the record?**

The City's decision to demolish Relator's property is supported by substantial evidence in the record, was not arbitrary or capricious, and was not made upon unlawful procedure.

Apposite Authority

Senior v. City of Edina, 547 N.W.2d 411 (Minn.App. 1996)

Arcadia Dev. Corp. v. City of Bloomington, 125 N.W.2d 846 (Minn. 1964)

In re Excess Surplus Status of Blue Cross & Blue Shield, 624 N.W.2d 264 (Minn. 2001)

- II. Whether the Minneapolis City Council afforded Relator with adequate due process before ordering the demolition of his property?**

The Minneapolis City Council afforded Relator adequate due process before ordering the demolition of his property.

Apposite Authority

City of Minneapolis v. Meldahl, 607 N.W.2d 168, 172 (Minn. App. 2000).

Barton Contracting Co., Inc. v. City of Afton, 268, N.W.2d 712, 716 (Minn. 1978).

Roseville Educ. Ass'n v. Indep. Sch. Dist. No. 623, 391 N.W.2d 845, 849 (Minn. 1986)

STATEMENT OF THE CASE

On July 25, 2008, the Minneapolis Department of Inspections (Department) issued an order to demolish the property located at 2222 4th Street N., Minneapolis, MN (Property). Relator appealed the order to demolish and on September 25, 2008, a hearing was conducted before the Nuisance Condition Process Review Panel which found the property to be a nuisance condition and upheld the recommendation to demolish the Property.

The matter was then brought before the Public Safety and Regulatory Services Committee of the Minneapolis City Council (PS&RS Committee), which on December 17, 2009, voted to stay the demolition of the Property pending completion of a restoration agreement between the Department and Relator. On January 9, 2009, the Minneapolis City Council reviewed the recommendation of the PS&RS Committee and found that the Property constituted a nuisance condition and should be demolished, but stayed demolition on the condition that Relator enter into a restoration agreement with the Department and complete all repairs to the Property. A restoration agreement was signed on February 3, 2009, calling for all repairs at the Property to be completed on or Before August 9, 2009.

On September 4, 2009, the Department cancelled the restoration agreement as Relator had not completed the repairs at the Property. The matter was brought before the PS&RS Committee on October 7, 2009, with a recommendation from the Department to rescind the January 8, 2009, Council action to stay the order to

demolish, and authorize demolition of the Property. The PS&RS Committee forwarded the matter to the City Council without recommendation. On October 16, 2009, the City Council referred the matter back to the PS&RS Committee for further review at the October 21, 2009, PS&RS Committee meeting, where discussion was postponed until the November 18, 2009, PS&RS Committee meeting.

On November 18, 2009, the PS&RS Committee voted to approve demolition of the Property and the matter was set before the City Council on December 4, 2009. On December 4, 2009, the City Council acted to rescind the stay of demolition of the Property and approved the demolition of the Property.

On January 29, 2010, Relator filed this certiorari appeal, challenging the December 4, 2009, quasi-judicial decision of the Minneapolis City Council to rescind the stay of demolition and ordering the Property to be demolished.

STATEMENT OF THE FACTS

On July 25, 2008, the Department issued an order to demolish the Property. (A-App., 8). On August 19, 2008, Relator filed an appeal of the order to demolish. (A-App., 22). On September 25, 2008, a hearing was conducted before the Nuisance Condition Process Review Panel (Review Panel), to hear Relator's appeal of the order to demolish. (A-App., 8). After hearing the matter the Review Panel found that the Property constituted a nuisance condition and upheld the Department's recommendation to demolish. (A-App., 19-24).

The matter was brought before the PS&RS Committee on October 29, 2008, upon the Department's request that the PS&RS Committee adopt the findings of the Review Panel and uphold the recommendation to demolish the Property. (A-App., 5). The PS&RS Committee postponed the matter and directed Department staff to meet with Relator to discuss a possible restoration agreement. (A-App., 3).

Relator met with Department staff and worked out a restoration agreement, which called for the rehabilitation of the property so the property would no longer constitute a nuisance, and the matter was brought back to the PS&RS Committee on December 17, 2008. (12/17/08 Tr., 1-2, 4,6). The PS&RS Committee approved the rehabilitation plan with a condition that Relator provide a management plan for the exterior of the property to Department staff within 30 days. (A-App., 26).

On January 9, 2008, the matter was brought before the Minneapolis City Council. (A-App., 29). The City Council voted to adopt the findings of fact, conclusions and recommendation on file with the City Clerk's Office, which found that the Property constituted a nuisance condition and should be demolished, however, the City Council stayed the order to demolish and authorized the execution of a restoration agreement between Relator and the Department. (Id.). The City Council also required Relator to provide a management plan and a landscaping plan for the exterior of the property to Department staff within 30 days. (Id.).

Relator did not appeal the City Council's quasi-judicial decision, finding that the property constituted a nuisance condition and should be demolished but staying of the demolition of the Property. Instead Relator, on February 3, 2009, entered into a restoration agreement with the City. (A-App., 50-52). The restoration agreement stated that the Director's Order issued on July 23, 2008, was declared and deemed to be reasonable and the City agreed not to demolish the Property or take other regulatory actions against the Property until August 9, 2009, on condition that all work was completed by that date. (A.App., 50). Relator agreed to retain 100% ownership in the property until the repairs were completed or the Property was razed. (Id.). Relator also agreed to put into escrow \$30,000 performance bond, in cash, cash equivalent or irrevocable letter of credit to pay for the cost of demolition or completion of rehab if necessary. (Id.). Relator was required to make all repairs, improvements and alterations necessary to bring the

Property into compliance on or before August 9, 2009, or the City would cause the Property to be razed and removed and the costs of the demolition would be paid from the amount deposited in the escrow account. (Id.). Under the restoration agreement the City was required to give written notice to Relator if it determined that the repairs to the Property had not been completed as required and that the City was proceeding towards demolition of the Property. (A.App., 51).

On September 4, 2009, the Department, pursuant to the restoration agreement, gave Relator written notice that the restoration agreement had expired and that the conditions of the restoration agreement had not been met. (A.App., 49). The Department set the matter on the agenda for the October 7, 2009, PS&RS Committee meeting, recommending a rescission of the January 8, 2009, City Council action to stay the order to demolish and authorize demolition of the Property. (A.App., 38). At the October 7, 2009, PS&RS Committee hearing Department staff testified that Relator had not completed the repairs at the Property, some two months after the due date for the completion of repairs. (Trans. 10/7/09 PS&RS Committee p. 3). Department staff testified that of the repairs that were completed, Relator had used two different styles and color of siding (having apparently run out of the original siding), had used different cabinets that did not match in the kitchen and also used several different types and styles of windows. (Id. at 7,8). Relator admitted that he had not completed the repairs stating "I have been running a little bit late, because I am doing six code compliances at the same time", and requested 30 days to complete the project. (Id.

at 4,5). After a long discussion of the matter the PS&RS Committee voted to send the matter forward to City Council without recommendation. (Id. at 27).

At the October 16, 2009, City Council meeting the matter regarding the Property was returned to the PS&RS Committee for further action. The PS&RS Committee met on October 21, 2009, and postponed discussion on the matter to the November 18, 2009, PS&RS Committee meeting.¹ At the November 18, 2009, PS&RS Committee meeting Grant Wilson, Manager of the Department's Problem Properties Unit, explained the reason behind the postponement of the matter at the October 21, 2009, Committee meeting, stating "the Committee continued the item for two cycles in order for staff to determine the extent of the remaining work, and the requirements for a new or extended restoration agreement, if that is the decision of the Council. To ascertain this information, staff informed the owner that he would need to request a new code compliance inspection. A new code compliance inspection was completed on November 3rd, '09, and the results were made available to the owner, Mr. Khan, on November 13th." (Trans. 11/18/09 PS&RS Committee p.2).

The results of the November 3, 2009, Code Compliance inspection contradicted Relator's statement at the October 21, 2009, hearing where he claimed that the Property was 90 to 95% completed, and confirmed that there was

¹ Relator failed to request the transcript from the October 21, 2009, PS&RS Committee hearing.

extensive work left to complete the rehabilitation at the Property. (Id.) When asked by the PS&RS Committee to list some of the items that needed to be completed at the Property, Mr. Wilson stated:

Mr. Khan failed to go through site plan review, which is required when the building has gone through a conversion from a duplex to a single family. Code requirements state that architectural drawings are required when it's a conversion. Preliminary findings are that the current floor plan is inadequate and will probably need to be redesigned, and this includes properly enclosing and conditioning the rear stairwell in such that there was a rear stairwell that tenants of the second floor duplex would access to go to their home, whereas now is being reconfigured so that the persons living on the front floor of the single family dwelling would have to exit the building to go upstairs and that is not a heated or fully enclosed stairway. Much of the existing work will need to be redone or replaced, because it was not done to manufacturer's specifications. Replacing the flooring. The carpet was not installed to manufacturer's recommended standards, such as putting padding in it, or using tact strips to adhere it to the walls. They must repair and replace the siding. The siding is already falling off in places and was not installed to manufacturer's standards. They must replace the windows, because it was used windows put in; inefficient windows. They must redo gas piping that was done improperly and without permits. Complete work on a duct system including verification that they are sized and properly adequate to heat all of the rooms. There's gonna be a double fee permit on the gas range, because it was installed without permits. Inspectors also found several major items that were identified in the original code compliance but have not been completed, and that's including replacing/repairing the roof. Repair and replace rafters that were insufficient. Repair chimney and flashing items. Complete exterior landscaping and ground cover, which virtually none is done. Repair walls and sheathing in the garage to correct the structural instability and repair and replace the slab in the garage floor.

(Id. at 4,5).

The PS&RS Committee members then heard from Relator who admitted that he had not completed the rehab of the property and admitted using different siding and mixed matched windows and cabinets stating “this one property I am having difficulty, because I’m running low on funds.” (Id. at 18). The PS&RS Committee, after a long discussion on how to proceed with the matter, voted to rescind the stay of demolition and demolish the property. (A-App., 70).

On December 4, 2009, the City Council voted to rescind the stay of demolition for the Property and approved demolition. (A-App.71).

I. THE DECISION OF THE MINNEAPOLIS CITY COUNCIL TO RESCIND THE STAY OF DEMOLITION AND APPROVE THE DEMOLITION OF THE PROPERTY LOCATED AT 2222 4TH STREET NORTH WAS NEITHER ARBITRARY, CAPRICIOUS NOR UNREASONABLE, WAS SUPPORTED BY THE EVIDENCE AND WAS NOT AN ABUSE OF DISCRETION

This case, as an appeal of a municipal quasi-judicial decision, is reviewable by writ of certiorari. *Larson v. New Richland Care Ctr.*, 538 N.W.2d 915, 918 (Minn. Ct. App. 1995). It is not the function of the appellate court to either resolve conflicting evidence or to assume the role of a city council in weighing appropriate policy considerations. *Village of Medford v. Wilson*, 230 N.W.2d 458 (Minn. 1975). Municipalities and agencies enjoy a broad presumption of propriety in their quasi-judicial decisions, to which a reviewing court must defer. *In re Excess Surplus Status of Blue Cross & Blue Shield*, 624 N.W.2d 264, 278 (Minn. 2001). This Court may not substitute its own judgment, retry the facts, or weigh

credibility and must affirm if there exists “any legal and substantial basis” supporting the decision. *Senior v. City of Edina*, 547 N.W.2d 411, 416 Minn. Ct. App. 1996).

Furthermore, if the reasonableness of the action of a municipal governing body is at least doubtful, or fairly debatable, a reviewing court must not interject its own conclusions as to the more preferable action. *Arcadia Dev. Corp. v. City of Bloomington*, 125 N.W.2d 846 (Minn. 1964). Most importantly, decisions of administrative agencies, including cities, are presumed to be correct, and this court will reverse or modify an agency decision only if a party’s substantial rights have been prejudiced because the decision exceeded the agency’s authority, was made upon unlawful procedure, was affected by error of law, or was arbitrary or capricious. *Blue Cross* at 278. The agency or municipal decision must be upheld if the action has a legal basis demonstrated by substantial evidence in the record. *Cable Communications Bd. v. Now-West Cable Communications P’shp.*, 356 N.W.2d 658, 668 (Minn. 1984).

In the present case the City Council made a quasi-judicial decision on January 9, 2009, which found that the Property constituted a nuisance and should be demolished, the City Council then stayed the demolition on the condition that Relator enter into a rehabilitation agreement that would bring the Property out of the nuisance condition it was in. (A.App., 29). Relator did not file a certiorari appeal challenging the City Council’s decision and instead, Relator entered into a restoration agreement with the City of Minneapolis on February 3, 2009. (A.App.

50-52). Pursuant to the restoration agreement, if Relator failed to complete repairs to the Property on or before August 9, 2009, the City had the authority to cause the Property to be razed and removed. (A.App., 50). Minneapolis Code of Ordinances § 249.50 (c) states:

The owner of the subject property shall comply with the city council's decision and order. If the owner fails to abide by the order, the director of inspections shall immediately notify the city council which may then order immediate demolition or otherwise amend its order.

On September 4, 2009, the Department sent Relator a letter indicating that the repairs at the property had not been completed and that the restoration agreement was being cancelled. (A.App., 49). The Department, rather than proceeding straight towards demolition, which they had the right to do under the restoration agreement, brought the matter before the PS&RS Committee on October 7, 2009. (A.App., 38). The decision of the PS&RS Committee and the City Council at this time was to decide if there was a breach of the restoration agreement and if so, whether to demolish the property or allow Relator additional time to complete the rehabilitation.

Relator was given notice that at the October 7, 2009, PS&RS Committee hearing the Department would be requesting rescission of the stay of demolition of the Property and that the Property be demolished. (A.App., 38). Relator appeared at the hearing and was given an opportunity to respond to the Department's claims that the repairs, at the Property, had not been completed by the August 9, 2009, date set in the restoration agreement and that the quality of work done at the

Property was below an acceptable level. Relator admitted that he had not completed the work by August 9, 2009, but claimed that he was 90 to 95 percent completed with the repairs. (Trans. 10/7/09 PS&RS Committee p. 4,5). Relator also requested more time to finish the repairs. (Id.)

After hearing from the Department and Relator, PS&RS Committee members had a long discussion regarding the property and the amount of work that had been completed and the work that still needed to be done. (Id. 6-27). Council Member Schiff indicated that he could not imagine demolishing a house that has been 90 percent rehabbed. (Id. at 6). Council Member Ostrow spoke about the possibility of using the performance bond or letter of credit to finish the rehab and recommended that the matter go forward without recommendation from the Committee. (Id. 8-11). Council Member Hofstede discussed her concerns regarding the level of compliance and quality of work done by Relator, and its effect on the neighborhood. (Id. at 16).

A motion to move forward the staff recommendation to rescind the stay of demolition and demolish the property failed upon vote and a motion to send the matter forward without recommendation was approved, with Council Member Ostrow stating he was willing to give Relator an opportunity to remedy the situation, but that he did not want Relator to feel that the Council was not concerned about the nature and the inadequacies of the rehab and that “we can’t simply accept an unacceptable rehab of the property. (Id. at 25).

The matter was eventually brought back before the PS&RS Committee on October 21, 2009, and the PS&RS Committee agreed to a two week delay so that a Code Compliance inspection could be completed. The Code Compliance inspection would provide information to the PS&RS Committee and to the City Council, as to the extent of the work that still needed to be completed at the Property, so that a decision could be made to either demolish the Property or allow Relator additional time to rehabilitate the property. (Trans. 11/18/09 PS&RS Committee p.2) The Code Compliance inspection confirmed that there was extensive work to be completed at the Property, this directly contradicted Relator's testimony at the October 7, 2009, PS&RS Committee hearing that 90 to 95 percent of the work had been completed. (Id. at 3-5).

The PS&RS Committee, after being advised by counsel that they had the authority to order demolition or explore the feasibility of an extension to the rehabilitation plan, discussed whether the Department should have further meetings with Relator regarding a new rehabilitation agreement or whether the PS&RS Committee should approve demolition of the Property. (Id. 6-13). After mistakenly taking a vote on a motion to approve demolition the PS&RS Committee voted to reconsider the vote and open the hearing to allow Relator to speak. (Id. at 13). Relator requested more time to complete the work and admitted that he was having difficulty with the Property as he was running low on funds. (Id. at 16,17). After hearing from Relator the PS&RS Committee voted to rescind the stay of demolition and demolish the property. (Id. at 35). The

recommendation of the Committee was then approved by the City Council on December 4, 2009, when the Council voted to rescind the stay of demolition and ordered the Property to be demolished.

Decisions of administrative agencies, including cities, are presumed to be correct, and this court will reverse or modify an agency decision only if a party's substantial rights have been prejudiced because the decision exceeded the agency's authority, was made upon unlawful procedure, was affected by error of law, or was arbitrary or capricious. *Blue Cross* at 278. The agency or municipal decision must be upheld if the action has a legal basis demonstrated by substantial evidence in the record. *Cable Communications Bd. v. Now-West Cable Communications P'shp.*, 356 N.W.2d 658, 668 (Minn. 1984).

The City Council's quasi-judicial decision to raze Relators' building at 2222 4th Street North was neither arbitrary nor capricious and was supported by substantial evidence. The PS&RS Committee heard from both the Department and Relator that the repairs to the Property had not been completed in the time set out in the restoration agreement. The PS&RS Committee, after continuing the matter for a Code Compliance inspection, received information that the amount of work left to be completed was much greater than the 5 to 10% claimed by Relator. Relator also admitted that he was having financial issues that were preventing him from finishing the work at the Property. This Court's role is to ascertain whether there exists *any* evidentiary basis for the City's decision to raze Relators' building. *Senior v. City of Edina*, 547 N.W.2d 411, 416 Minn. Ct. App. 1996). As is evident

in the applicable standard of review for certiorari appeals, this Court need not address the relative weight of that evidence, but rather its mere existence, and should not substitute its own conclusion for that of the governing body. *Id.*

A. RELATOR WAS AFFORDED ADEQUATE DUE PROCESS

A constitutional taking may occur if a city council fails to follow the proper procedures in razing a property, however, if a city properly uses its police powers to abate a nuisance by destroying property, no taking occurs. *City of Minneapolis v. Meldahl*, 607 N.W.2d 168, 172 (Minn. App. 2000). A city's nuisance-abatement process is quasi-judicial and subject to review by writ of certiorari to this court.

Id. at 171. “[Q]uasi-judicial proceedings do not invoke the full panoply of procedures required in regular judicial proceedings.” *Barton Contracting Co., Inc. v. City of Afton*, 268, N.W.2d 712, 716 (Minn. 1978). Due process requires reasonable notice of a hearing and a “reasonable opportunity to be heard.” *Id.*

On September 4, 2009, Relator was given notice that he had failed to make the repairs to the Property by the August 9, 2009, date specified in the restoration agreement. (A.App., 49). Relator appeared at the PS&RS hearings set on October 7, 2009, October 21, 2009, and November 18, 2009. The recommendation of the Department was to rescind the stay of demolition and order demolition of the Property. (A.App., 47). Relator was given notice of the PS&RS Committee hearings, was present and given the opportunity to explain the reasons why he had not completed the repairs in the time set out in the restoration agreement and given

the opportunity to make arguments to the PS&RS Committee as to why it would be appropriate to allow Relator to enter into another restoration agreement and finish the work at the Property. (See Committee Hearing Transcripts). At all hearings in this matter the options presented to the Committee involved rescinding the stay of demolition and ordering demolition or allowing Relator to finish the rehabilitation of the Property either through a new restoration agreement or an extension of the expired agreement.

Relator's argument, that he was not given an opportunity to be heard regarding the results of the November 3, 2009, Code Compliance inspection and should have been given until May of 2010, to comply with the new orders, is faulty. The reason behind the postponement of the matter at the October 21, 2009, Committee meeting was to allow staff to determine the extent of the remaining work, and the requirements for a new or extended restoration agreement, if that was the decision of the Council. To ascertain this information, staff informed Relator that he would need to request a new code compliance inspection. (Trans. 11/18/09 PS&RS Committee p.2).

If the PS&RS Committee and City Council had voted to allow a new restoration agreement or extension of the expired agreement Department staff would have needed to meet with Relator to discuss the outstanding orders from the new Code Compliance inspection, however, after the Committee received the evidence of the extent of work that needed to be completed, the decision of the PS&RS Committee and City Council was to proceed with demolition of the

property. 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. In any event Relator was certainly given reasonable notice of the hearings and a reasonable opportunity to be heard.

B. THE ORDER TO DEMOLISH WAS NOT BASED ON IMPROPER FACTORS OUTSIDE THE RECORD

M.C.O. § 249.50, Alternatives to demolition, presents possible alternatives to demolition that the City Council may consider after a property has been found to be a nuisance condition. The alternatives listed consist of ordering the nuisance condition property to be rehabilitated in a specific period of time, for the City to rehabilitate the property and assess the costs, to use a revolving fund to give owners a loan to complete the rehabilitation. M.C.O. § 249.50 (a) (1), (2) and (3). In making its decision to order demolition or rehabilitation of a nuisance condition property the City Council is limited to the evidence and record of the appeal hearing. M.C.O. § 249.50 (b). This is the information the City Council used in January of 2009, when the City Council voted to demolish the Property but stayed the demolition on the condition that Relator enter into a restoration agreement with the Department that when completed would remove the Property from its nuisance condition. (A.App., 29).

The PS&RS Committee and City Council were not limited to the same evidence and record when the matter was returned to PS&RS Committee after

Relator failed to comply with the restoration agreement by not completing the rehabilitation of the Property in the time period set out in the agreement. The PS&RS Committee heard, at the October 6, 2009, PS&RS Committee meeting that Relator failed to comply with the restoration agreement by failing to complete the repairs at the property on or before August 9, 2009. (Trans. 10/7/09 PS&RS Committee p. 2-4). Relator admitted that he did not finish the rehabilitation of the Property. (Id. at 4-5). After discussion as to how it would proceed with the Property, the PS&RS Committee voted to forward the matter to the City Council without recommendation. (Id. at 27).

City Council then sent the matter back to the PS&RS Committee to gather more information. October 21, 2009, the PS&RS Committee continued the matter until November 18, 2009, so that a Code Compliance inspection could be completed and the PS&RS Committee would have more information as to the extent of the work that needed to be completed to have the building brought up to code. (Trans. 11/18/09 PS&RS Committee p. 2). The results of the Code Compliance inspection provided evidence to the PS&RS Committee that there was extensive work that still needed to be completed at the property, much more than the 5 to 10% claimed by Relator at the October 7, 2009, PS&RS Committee meeting. (Id. at 2-3).

After hearing this evidence and hearing Relator's argument for an extension of the restoration agreement, the PS&RS Committee members had an extensive discussion on the appropriate action to be taken with regards to the Property. The

PS&RS Committee members discussed whether it would be appropriate continue the matter to allow Relator to enter into a new restoration agreement, whether it would be appropriate to return the matter to the Nuisance Review Process Review Panel, or whether it would be appropriate to move for rescission of the stay of demolition and demolish the property. (Id. 20-32). Eventually, the PS&RS Committee voted, based upon all the evidence and arguments presented at the October 7, 2009, and November 18, 2009, Committee meetings, to rescind the stay of demolition and demolish the property. (Id. at 35). The decision of the PS&RS Committee was later adopted by City Council. (A.App., 71).

This Court's role is to ascertain whether there exists *any* evidentiary basis for the City's decision to raze Relators' building. *Senior v. City of Edina*, 547 N.W.2d 411, 416 Minn. Ct. App. 1996). The PS&RS Committee heard that Relator had failed to complete the restoration agreement in the required time period, that Relator was having financial issues that had prevented him from completing the work on time and that the extend of the work remaining was much more extensive than the 5 to 10% claimed by Relator. As is evident in the applicable standard of review for certiorari appeals, this Court need not address the relative weight of that evidence, but rather its mere existence, and should not substitute its own conclusion for that of the governing body. *Id.*

C. THE NUISANCE ABATEMENT PROCESS REVIEW PANEL'S DECISION IS NOT RELEVANT TO THE DECEMBER 4, 2009, COUNCIL DECISION TO RESCIND THE STAY OF DEMOLITION AND ORDER THE DEMOLITION OF THE PROPERTY

A city's 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). In a certiorari appeal under Minn. Stat. ch. 606, issuance of a writ within 60 days is a jurisdictional prerequisite to judicial review. *Roseville Educ. Ass'n v. Indep. Sch. Dist. No. 623*, 391 N.W.2d 845, 849 (Minn. 1986).

In the present case, the Nuisance Panel issued its Findings of Fact, Conclusions and Recommendation, that the Property constituted a nuisance condition and that the Property should be razed to remedy the nuisance condition, after the September 25, 2008 Panel hearing. The matter was brought forth to the PS&RS Committee and City Council, where a final decision was made on January 9, 2009, declaring the Property a nuisance condition and ordering, but staying demolition of the property on the condition that Relator enter into a restoration agreement.. (A.App., 29).

Relator did not challenge the decision of the City Council and instead made a choice to enter into a restoration agreement with the City on February 3, 2009. (A.App., 50). Relator's argument that the Nuisance Panel's decision, in essence, denied him of a fair hearing from the outset, is moot. By way of his choice, not to challenge the January 9, 2009, decision of the City Council, Relator waived his

ability to challenge the City Council action and the underlying basis for that decision because this Court no longer has jurisdiction to hear that claim. *Roseville Educ. Ass'n v. Indep. Sch. Dist. No. 623*, 391 N.W.2d 845, 849 (Minn. 1986). The issue before this Court is the December 8, 2009, quasi-judicial decision of the City Council to rescind the stay of demolition and demolish the Property, therefore the decision of the Nuisance Panel and the underlying basis for that decision is not properly before this Court.

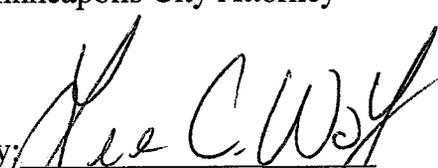
CONCLUSION

The City's decision to rescind the stay of demolition and to raze Relator's Property at 2222 4th Street North was neither arbitrary nor capricious, was supported by substantial evidence in the record and was made upon lawful procedure. Relator was given adequate notice and opportunity to be heard in his quest to have City Council extend the restoration agreement and not demolish the Property. Because of this the City Council decision of December 4, 2009, should be upheld.

Date: 7-6-10

Respectfully submitted,

Susan L. Segal
Minneapolis City Attorney

By: 
Lee C. Wolf (#0252505)
Assistant Minneapolis City Attorney
350 South Fifth Street
Room 210
Minneapolis, MN 55415
(612) 673-2359

STATE OF MINNESOTA

IN COURT OF APPEALS
NO. A10-187

Mahmood Khan,

Relator,

v.

**CERTIFICATION
OF BRIEF LENGTH**

Minneapolis City Council,

Respondent.

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, Subds. 1 and 3, for a brief produced with proportional font. The length of the brief is 5,244 words. This brief was prepared using Microsoft Word 97-2003.