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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1232**

Steven A. Darmer,  
Relator,

vs.

City of St. Paul,  
Respondent.

**Filed May 18, 2010  
Affirmed  
Kalitowski, Judge**

City of St. Paul  
Council File No. 09-594

William G. Clelland, Carson, Clelland & Schreder, Minneapolis, Minnesota (for relator)

Gerald T. Hendrickson, Interim St. Paul City Attorney, Virginia D. Palmer, Assistant City Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Kalitowski, Judge; and Minge, Judge.

**UNPUBLISHED OPINION**

**KALITOWSKI**, Judge

Relator Steven A. Darmer challenges the St. Paul City Council's decision that his metal storage rack and improperly stored materials constitute a nuisance, arguing that (1) the city's decision was arbitrary and capricious because it was not supported by substantial evidence; and (2) he was denied due process of law. We affirm.

## DECISION

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). Certiorari review is limited to "questions affecting the jurisdiction of the board, 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 County*, 487 N.W.2d 237, 239 (Minn. 1992) (quotation omitted). In our review we do not retry facts or make independent credibility determinations and will uphold the decision if the government entity "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).

### I.

When a city makes a quasi-judicial decision, this court applies the substantial evidence test. *In re N. States Power Co.*, 416 N.W.2d 719, 723 (Minn. 1987). Substantial evidence is "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Env'tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002). A reasoned decision that rejects one point of view is not arbitrary and capricious; we will not disturb an agency's decision if it is supported by

substantial evidence. *In re Grand Rapids Public Utilities Comm'n*, 731 N.W.2d 866, 871 (Minn. App. 2007).

Relator argues that the city's decision that his metal storage rack is an attractive nuisance and a nuisance is arbitrary and capricious and unsupported by substantial evidence. As defined by the city, an attractive nuisance is "[a] condition such as a dangerous structure . . . which in the opinion of the enforcement officer may attract nonowner(s) or other unauthorized person(s) and which would expose them to risk, peril or danger." St. Paul, Minn., Legislative Code § 45.02 (2008). A nuisance is something that "threatens the public peace . . . or has a blighting influence on the community." *Id.* § 45.03 (2008).

Here, the evidence presented to the city council included (1) an inspection report and summary abatement order stating that relator had a large metal storage rack and improperly stored materials on his property; (2) inspector testimony that the structure and materials constituted an attractive nuisance; (3) inspector testimony that relator's property was "a blighting influence" that "threatened the peace of the neighborhood"; and (4) photographs of relator's property. On this record we conclude that the city's determination is supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" that relator's storage rack constituted a nuisance and an attractive nuisance. *See Minn. Ctr. for Envtl. Advocacy*, 644 N.W.2d at 466 (stating definition for substantial evidence).

Relator contends that “[t]his type of metal rack is not itself prohibited by Section 45.02 or 45.03.” But the city is not required to list every structure or item that could be included as a nuisance under the code. Further, the purpose of nuisance enforcement is to protect the public health, safety, and welfare. St. Paul, Minn., Legislative Code § 45.01 (2008). And the enforcement officer has broad discretion in making determinations of what constitutes a nuisance. *See id.* § 45.02 (defining an attractive nuisance as a condition that “*in the opinion of the enforcement officer* may attract nonowner(s) . . . and expose them to risk, peril or danger.”). *Id.* § 45.02 (emphasis added). Here, the inspector found that relator’s metal rack was an attractive nuisance, and the legislative hearing officer and the city council unanimously agreed. The city is permitted to adopt the findings of the legislative hearing officer, and we are to uphold the decision of the city if it “furnished any legal and substantial basis for the action taken.” *Senior*, 547 N.W.2d at 416. The city has done so here. Relator has not established that the city’s decision that his unsecured metal storage rack constituted a nuisance and an attractive nuisance is arbitrary or without support in the record.

## II.

“[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.* Relator claims that he was denied due process; but because he was provided with reasonable notice and an opportunity to be heard prior to the city council’s decision, we disagree.

Relator contends that, because the inspector and legislative hearing officer never mentioned a violation of section 34.08 of the St. Paul Legislative Code as authority to order nuisance abatement, he did not have notice of that violation or an opportunity to correct it. But throughout the administrative process, the city inspector, legislative hearing officer, and city council consistently stated that relator was cited for a violation because of the metal storage unit and improperly stored materials. Relator was not prejudiced by the city inspector or legislative hearing officer's failure to cite to section 34.08, because he was given a full opportunity to show photos, describe the storage, discuss what he had done to attempt to abate the nuisance, and explain why he believed the rack and materials did not constitute a nuisance. Similarly, the time limit imposed on relator's presentation to the city council did not violate his right to due process, because the record indicates he was given a full opportunity to be heard and relator has not shown how he was prejudiced by the time limitation.

Relator also argues that the city used an improper abatement procedure because the cost of abating the nuisance would have exceeded \$5,000. But relator provides no evidence of this, only an unsubstantiated allegation. Further, the substantial abatement procedure to which relator refers, is used only "[w]hen the enforcement officer determines that . . . the cost of abatement of the nuisance is estimated to exceed five thousand dollars (\$5,000.00), or the abatement involves demolition of a building other than a structure accessory to a residential building, or the abatement substantially diminishes the value of the property." St. Paul, Minn., Legislative Code § 45.11 (2008). Here, the record does not support relator's contention that this case involved a substantial

abatement. We conclude that relator's claim that the city used an improper abatement procedure is without merit.

**Affirmed.**