STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2118

DLJ Mortgage Capital, Inc.,
Relator,

vs.

St. Paul City Council,
Respondent.

February 26, 2008
Reversed and remanded
Shumaker, Judge

City of St. Paul
Council File No. 06-936

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Considered and decided by Shumaker, Presiding Judge; Klaphake, Judge; and Worke, Judge.

U N P U B L I S H E D O P I N I O N

SHUMAKER, Judge

By writ of certiorari, relator DLJ Mortgage Capital, Inc. challenges the City of St. Paul's resolution, adopted according to its nuisance-abatement ordinance, ordering the

demolition or removal of DLJ's property within 15 days. We conclude that the city failed to follow its own procedure, which deprived DLJ of its right to due process, and that the city's decision is unsupported by the evidence and is, therefore, arbitrary and capricious. We reverse and remand.

FACTS

Relator was the mortgage-holder for a two-story triplex located at 719 Case Avenue in St. Paul. The city condemned the property in September 2005, and it has been vacant since that time. In May 2006, relator foreclosed on the owner's mortgage and purchased the property. After successfully reducing the redemption period, relator took full possession of the property on September 6, 2006.

In June 2006, the city inspected the property and found it to be a nuisance as defined in the city code: "[a] vacant building . . . which has multiple housing code or building code violations or has been ordered vacated by the city and which has conditions constituting material endangerment . . . or which has a documented and confirmed history as a blighting influence on the community." St. Paul, Minn., Legislative Code § 45.02 (2006). On July 17, 2006, the city issued an Order to Abate, which listed 19 interior and exterior conditions that required correction by August 17, 2006. The abatement order was posted at the property and served on the former owner.

Relator was not notified of the abatement order and it did not know that there were problems with the property until August 18, 2006, when the city determined that the abatement order had not been complied with, ordered an owner-encumbrance report, and issued a Notice of Public Hearings to all interested parties. According to this notice,

relator was to appear at a public hearing before the city's Legislative Hearing Officer (LHO) on September 19, 2006. The LHO would then recommend certain action to the city council at its next meeting on October 4, 2006.

Relator appeared at the September 19 hearing and requested more time to assess the problems with the property and "to find out what's best for our property interest." In opposition, community activists testified that "[t]he neighbors want this property torn down" and that "[a] triplex is untenable, we feel, at this site." They submitted pictures of the property, several impact statements detailing structural and tenant-behavioral problems, and two signed petitions requesting that the city demolish the property. Relator acknowledged that "there's been an issue with screening of tenants" but emphasized that those problems are not an issue now that the property is vacant and under new ownership.

The LHO said she would recommend to the city council that it postpone public hearing on this matter, but only if relator obtained a code compliance inspection, posted a performance bond, registered the property, paid vacant property fees, and provided a work plan and evidence of financial capacity to repair the property, all before the city council's October 4 meeting.

Relator appeared before the LHO on October 3, and reported that it had substantially complied with her requirements. Relator also reported that it was about to sign a purchase agreement with a local buyer, who would in turn post the performance bond and submit work and financial plans. The buyer testified that he owned and had

restored property across the street from relator's property, and that he planned to rehabilitate the property as a triplex and sell it.

The LHO cautioned relator that the city council wanted the party that rehabilitates the property to also manage it on a long-term basis. The city's Vacant Buildings Supervisor reiterated the neighborhood's concern that "they have too much density of rental property in that specific area and that . . . leads to ongoing problems." Relator countered that the problems complained of were outdated, relating to the previous owner's neglect, and renewed its request to delay public hearing on this matter. The LHO agreed to recommend postponement until October 18 and directed the parties to develop work and financial plans before that meeting.

The city council approved the LHO's recommendation. The parties provided the LHO with a work plan and financial documentation. At the October 18 public hearing, the LHO recommended that the city council grant the parties 180 days to rehabilitate the property.

The council heard testimony from the property's long-time neighbor, who reported structural deficiencies and repeated problems with previous owners and tenants. Relator testified as well, and emphasized that it "has been very diligent in performing everything we've been asked to do in a very short amount of time," and that relator had "nothing to do with the former owner." The buyer also testified that he has "a long history of being a landlord in the city, very few police calls, very few evictions," and that he has "the same concerns the neighborhood do[es,] that I put good people in" the property.

Council member Bostrom stated that he was "not convinced that anything is going to change overnight on this," and that he "want[s] to make sure something happens" at the property "because this has been just unacceptable what's been going on." He moved the council to order removal of the property within 15 days. No other council members voiced any concerns about the property or its ownership. The council unanimously adopted the resolution to order relator to remove the property. The mayor approved the resolution on October 23, 2006. This appeal followed.

D E C I S I O N

"The governing body of any municipality may order the owner of any hazardous building or property within the municipality to correct or remove the hazardous condition" by enacting and enforcing ordinances addressing this problem. Minn. Stat. §§ 463.16, .26 (2006). Pursuant to this statutory authority, the City of St. Paul enacted a nuisance-abatement procedure, under which the resolution here was issued. St. Paul, Minn., Legislative Code §§ 45.01-.14 (2006).

"[T]he city's decision to order demolition of the building [i]s quasi-judicial." *City of Minneapolis v. Meldahl*, 607 N.W.2d 168, 171 (Minn. App. 2000). We review quasi-judicial decisions by writ of certiorari. *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992). Certiorari review "is limited to an inspection of the record . . . [and is] confined to" issues of jurisdiction, procedure, and whether the order in question "was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Id.* (quotation omitted). We will affirm a city's decision if it is reasoned and supported by the evidence, even though a different

conclusion could have been reached. *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 562 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001).

1. *Due Process*

Relator claims that it was denied due process when the city failed to serve it with an abatement order before the city scheduled hearings on demolishing the improvements on the property. Procedural due process should "'be tailored, in light of the decision to be made, to the capacities and circumstances of those who are to be heard, to insure that they are given a meaningful opportunity to present their case.'" *Sweet v. Comm'r of Human Servs.*, 702 N.W.2d 314, 320 (Minn. App. 2005) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 349, 96 S. Ct. 893, 909 (1976)), *review denied* (Minn. Nov. 15, 2005). Nuisance-abatement procedures are subject to two overriding principles that serve to protect the rights of property owners: (1) abatement and removal should be exercised with caution, and (2) notice and the opportunity to be heard should be granted without restraint. *Village of Zumbrota v. Johnson*, 280 Minn. 390, 395-96, 161 N.W.2d 626, 630 (1968). Relator must show it was prejudiced by the city's alleged due-process violations. *See Sweet*, 702 N.W.2d at 321 (concluding that due process did not entitle relator to an oral hearing because relator was able to submit his case in writing).

The city has two nuisance-abatement procedures relevant to these circumstances. The first is general abatement, under which an order is served upon the owner of record, who is given "a reasonable time" to remedy the described nuisance conditions. St. Paul, Minn., Legislative Code § 45.10(1). If the owner fails to request a public hearing or to

comply with the order before the deadline, "the city may abate the nuisance." St. Paul, Minn., Legislative Code § 45.10(5).

The second procedure is substantial abatement, which is triggered when the estimated cost of abating the nuisance is over $5,000. St. Paul, Minn., Legislative Code § 45.11. A substantial abatement order is served "upon the owner, all interested parties and any responsible party," and if the order provides for demolition of the building, it should also be posted at the property. *Id*., (1), (2)c. If the owner or party does not remedy the described nuisance within the "reasonable time" specified, a public hearing is automatically scheduled before the city council. *Id.*, (3). Before the public hearing, the owner may participate in an informal meeting with the LHO, who can submit a recommendation to the full council. *Id*., (4a). "[T]he city council shall adopt a resolution describing what abatement action, if any, the council deems appropriate." *Id*., (5).

Relator argues that the city issued the July 17 abatement order under its substantial abatement procedure and failed to provide relator notice as required under code section 45.11. Alternatively, relator argues that the substantial abatement procedure began on August 18 when the city found noncompliance with the July 17 order, and so the city was required to serve relator with a second abatement order. The city conceded at oral argument before this court that this was a substantial abatement but that, regardless of the procedure under which the July 17 order was issued, relator should have received an abatement order and was entitled to the time specified in that order to take remedial action under code section 45.11. We agree.

The face of the July 17 order clearly states that it was issued according to the substantial abatement procedure described in code section 45.11. And it is undisputed that relator is an interested party within the meaning of that section. If proper notice had been given, relator would have had at least the 30 additional days provided in the order within which to comply with the city's requirements under code section 45.11. The city's failure to follow its own procedure was not a mere misstep, but effectively denied relator the opportunity to remedy the situation. *Cf. Hamline-Midway Neighborhood Stability Coal. v. City of St. Paul*, 547 N.W.2d 396, 399 (Minn. App. 1996) (concluding that City failed to follow proper procedure when it issued a license without public hearing or council approval, as opposed to "merely fail[ing] to post proper notice, barely missing a procedural deadline, or skipping a minor step"), *review denied* (Minn. Sept. 20, 1996). We conclude that relator was prejudiced and was denied due process by the city's failure to provide proper notice.

2. *Substantial Evidence*

Relator asserts that the city's decision to demolish the improvements on its property was arbitrary and capricious and lacked any evidence to support it. We apply the substantial evidence test to a city's quasi-judicial decision, to determine whether it is supported by legally sufficient reasons and facts in the record. *In re N. States Power Co.*, 416 N.W.2d 719, 723 (Minn. 1987); *Watab Twp. Citizen Alliance v. Benton County Bd. of Comm'rs*, 728 N.W.2d 82, 93-4 (Minn. App. 2007), *review denied* (Minn. May 15, 2007). 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 Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002). A city's decision is arbitrary if it reflects its will and not its judgment. *In re Excess Surplus of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001).

Relator argues that the city council's decision was a thinly veiled zoning action based solely on the neighbors' complaints, which were outdated, pertained only to a prior owner, and were irrelevant to relator's current ownership. The city conceded at oral argument before this court that the density issue raised by neighbors played a part in the council's decision. And the record shows that the prevailing theme of the neighbors' complaints was the revolving-door of owners of this property and their tenants' persistent misbehavior. The record also shows that the neighborhood repeatedly requested that the property be reduced to a single-family residence. We agree with relator that it should not be held legally responsible for the actions and inactions of past owners, with whom relator has no connection and as to whose conduct relator had no knowledge.

The city claims that its decision is based in part on its lack of confidence in the parties' abilities to rehabilitate and manage the property. This claim, however, has no basis in the record. While the LHO advised relator that the party repairing the property should also manage it, neither the city's abatement procedures nor its ordinances contain any language requiring long-term property management. No council member indicated concern with the parties' intentions or wherewithal to complete the project. And the

record shows, contrary to the city's claim, that the city's LHO approved of the parties' work and financial plans.

Relator argues that it was unreasonable for the city council to ignore the LHO recommendation that the council grant relator 180 days to rehabilitate the property. The LHO's recommendation is the only evidence in the record regarding a reasonable time-frame within which relator might comply with the city's abatement process. No one presented any evidence or even raised the issue whether an alternative deadline would be more reasonable. Instead, the city council rejected the LHO's recommendation without any basis in the evidence presented at the hearing.

The city conceded at oral argument before this court that relator was entitled to 180 days for repairs, as recommended by the LHO. We conclude that the city's decision to remove relator's property within 15 days is not supported by any evidence in this record, and that it is arbitrary and capricious.

We find no merit in relator's constitutional and statutory interpretation arguments.

Reversed and remanded.