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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-531**

Bee Vue, et al.,
Relators,

vs.

City of Saint Paul,
Respondent.

**Filed April 13, 2010
Reversed
Peterson, Judge**

City of St. Paul
File No. 09-316

Paul F. Shoemaker, John R. Shoemaker, Bloomington, Minnesota (for relators)

John J. Choi, St. Paul City Attorney, Virginia D. Palmer, Assistant City Attorney, St. Paul, Minnesota (for respondent)

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

UNPUBLISHED OPINION

PETERSON, Judge

In this certiorari appeal, relators challenge a city-council resolution ordering the demolition of a building. Because the city council failed to consider an important aspect of the issue, its decision is arbitrary and capricious, and we reverse.

FACTS

Relators Bee Vue and Lamena Vue own a building located at 393-397 Case Avenue in St. Paul (the building). The building is a one-story former storefront-residence combination that was converted to strictly residential use. The building, which has been registered as vacant since September 27, 2007, has recently been maintained as a residential duplex in violation of zoning requirements. At some point, the city boarded up the building's windows to secure it from trespass. Four summary abatement notices have been issued for the building since 2007.

Following an October 6, 2008, inspection, an order to abate a nuisance building regarding relator's building was posted by the City of St. Paul on November 14, 2008, with a compliance date of December 15, 2008. The building was deemed to "comprise a nuisance condition in violation of the Saint Paul legislative Code, Chapter 45.02" and was "subject to demolition under authority of Chapter 45.11." The accompanying code-compliance report listed 59 notes and deficiencies that were divided among the subheadings "Building," "Electrical," "Plumbing," "Heating," and "Zoning." The order to abate stated that failure to take corrective action within the specified time would result in city-council action.

On December 19, 2008, St. Paul Vacant Buildings Manager Steve Magner sent a "Notice of Public Hearings" to relator Bee Vue. The notice stated that the nuisance at relators' property had not been addressed as of a December 16, 2008, re-inspection and that a legislative hearing regarding the repair or removal of the nuisance building would be held on February 24, 2009, followed by a city-council hearing on March 18, 2009.

The notice stated that it was the recommendation of the department of safety and inspections that a resolution be passed ordering the responsible person to abate or demolish and, failing that, that the city proceed to demolition and removal.

Bee Vue appeared at the February 24 legislative hearing. He testified that, with regard to the building's rehabilitation, the plumbing was complete, the electrical was almost done, the heating was complete, the interior had been painted, and that carpeting, windows, and doors still needed to be installed or replaced. Magner testified that some required permits had been pulled but that no application had been received for others. Legislative Hearing Officer Marcia Moermond recommended continuing the hearing to March 10, and relator was given eight conditions to meet, including that relator pay delinquent property taxes; pull the proper work permits; and address the exterior aesthetics of the building, possibly by consulting an architect.

Relators appeared at the continued legislative hearing on March 10, 2009. Following the February 24 hearing, an electrical permit and a mechanical permit were issued for the building. But relators had not contacted an architect or addressed the exterior of the building. Moermond stated that she would review the record and submit a recommendation to the city council.

On March 18, 2009, the issue of relators' building came before the city council. At the council meeting, Moermond presented a staff report indicating, in part through the submission of photographs, that a nuisance still existed, and she recommended that the city council adopt a resolution ordering removal of the building within 15 days with no option for repair. Relators also appeared before the city council. Bee Vue stated that he

had nearly completed the rehabilitation of the items listed in the code-compliance report, and that the heating, electrical, and plumbing items had been addressed. Vue stated that Moermond's report was not completely true. Vue also stated that he had tried to consult with an architect, but he questioned whether he should have to address the aesthetic state of the building because that did not relate to a code requirement. Vue distributed a packet of information to the city-council members to demonstrate his progress toward abating the nuisance.¹

After closing the public hearing, council member Lee Helgen expressed concerns about the building:

[This property is] in a location where having a blighted property with high traffic, high density, police calls right next to an elementary school is unacceptable. And I think it's unacceptable that he's had this property in his ownership a couple different times, and I can tell you the condition of the property hasn't changed from when he owned it back in 2004 to what it is now. It's just rotted. And I don't know about all of the transactions that have happened in the course of this, so I'm not at all inclined to want to have this rehabbed; I'd much prefer to see it demoed[.] . . . And I would recommend a five-day removal on this order.

¹ It is not clear from the record what information was included in the packet. One council member referred to the packet during the meeting while discussing relators' payment of delinquent property taxes. And at the close of the public hearing, a council member thanked relator for the packet of information. However, the packet of information does not appear to be included in the appellate file prepared by the city clerk. The appendix to relators' appellate brief includes 101 pages of documents that are not in the appellate file. It is not clear whether the packet distributed to the city council included these documents. Among the documents are relator's bank-account statement, an affidavit by relator, various letters, invoices, and receipts for payment for services (including an invoice from a plumbing company and a receipt of payment from a heating company), and documents arising from a federal district court case regarding another property owned by relators.

By a vote of four to zero, the city council adopted an amended resolution to demolish and remove the structure within five days without option to rehabilitate. Relators filed a timely petition for a writ of certiorari, and this appeal followed.

DECISION

A city-council action is quasi-judicial and is subject to certiorari review by this court “if it is the product or result of discretionary investigation, consideration, and evaluation of evidentiary facts.” *Pierce v. Otter Tail County*, 524 N.W.2d 308, 309 (Minn. App. 1994), *review denied* (Minn. Feb. 3, 1995). Certiorari review is limited “to questions affecting the jurisdiction of the [decision-making body], 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). As a reviewing body, this court does not retry facts or make credibility determinations; it will uphold the decision if the decision-making body “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).

Relators argue that the city council’s decision to pass the resolution was arbitrary and capricious. A quasi-judicial decision will be deemed arbitrary and capricious if the decision-making body “entirely failed to consider an important aspect of the issue.” *Rostamkhani v. City of St. Paul*, 645 N.W.2d 479, 484 (Minn. App. 2002).

The city council passed the resolution to demolish relators’ building under its authority to abate nuisances granted by statute and by ordinance. See Minn. Stat.

§ 412.221, subd. 23 (2008) (granting cities “power by ordinance to define nuisances and provide for their prevention or abatement”); St. Paul, Minn., Legislative Code §§ 45.08-.14 (2009) (granting the city authority to order abatement of and to abate nuisances and defining procedure for the city’s nuisance-abatement actions). But in order for the city to act to abate a nuisance, a nuisance must exist. St. Paul, Minn., Legislative Code § 45.10(5), .11. Consequently, whether a nuisance exists is an important aspect of this issue.

Although the resolution passed by the city states that “the Subject Property comprises a nuisance condition as defined in Saint Paul Legislative Code, Chapter 45,” relators presented evidence that the city’s evidence of a nuisance was stale and that the nuisance had been abated or was in the process of being abated. While speaking to the council during the March 18 city-council meeting, relators stated that the electrical, plumbing, heating, and painting work had been completed. Bee Vue stated that the remaining work to be completed was limited to “the windows, the cupboardings, and some of the aesthetic stuff on the inside.” He estimated that, overall, 80% of the work had been completed. Despite this information, and although relators had requested an updated inspection, nothing in the record indicates that the city had recently inspected or planned to inspect the building to ensure that the finding of a nuisance was currently correct. The record indicates that the last inspection performed by the city occurred 92 days before the city-council meeting.

Furthermore, a video recording of the city-council meeting shows that relator distributed to the council members a packet of information documenting his progress on

the building. It appears from the video recording that the city council could not have considered the contents of the packet before passing its resolution because at every point during the approximately 13 minutes between the packet's distribution and the city council's vote, either a relator or a council member was speaking.

Even though sections 45.10(5) and 45.11 of the St. Paul legislative code require that a nuisance exist in order for the city to take abatement action, the city disregarded relators' evidence that the nuisance had been abated in the three months since the last inspection. The record contains evidence that the building was in the process of being rehabilitated and does not indicate that the city determined whether the building continued to constitute a nuisance. In light of this deficiency, we conclude that the city council entirely failed to consider whether relators' building constituted a nuisance at the time of the city council's resolution and, therefore, acted arbitrarily and capriciously.

Reversed.