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STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1222

Curtis G. Urbanski,
Relator,

vs.

City of St. Paul,
Respondent.

Filed May 23, 2011
Affirmed
Bjorkman, Judge

St. Paul City Council
File No. 10-528

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Considered and decided by Bjorkman, Presiding Judge; Stoneburner, Judge; and Randall, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

BJORKMAN, Judge

Relator Curtis Urbanski challenges a resolution of the city council of respondent City of St. Paul ordering the demolition of relator's home, arguing the city council's decision was arbitrary and capricious, unreasonable, oppressive, without evidentiary support, and based on an erroneous theory of law. We affirm.

FACTS

Relator owns a single-family residence in St. Paul. In July 2007, Xcel Energy notified the city that the utilities had been shut off for nonpayment. After relator failed to comply with a city correction order, the city condemned the property for lack of basic services and registered the home as vacant in August. The house has not been occupied since then.

After the house was declared vacant, it was repeatedly vandalized and burglarized. Between July 2007 and March 2010, the city issued six summary abatement notices and 12 work orders directing relator to board up the windows, secure the house, remove refuse and debris, clear the sidewalk, and cut grass and weeds. In January 2010, the city inspected the property and issued a deficiency report. On February 11, the city sent relator a nuisance-abatement notice that declared the property "comprise[d] 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 order listed 15 internal and external deficiencies, including ceiling water damage; basement mold; missing copper pipe; cockroach and rodent infestation; lack of gas, water, and electric service;

defective interior walls; missing and damaged windows, storm windows, and window screens; and defective garage walls. The order directed relator to arrange a code-compliance inspection to identify specific necessary repairs and stated that if relator did not correct the deficiencies by March 15, the city would "begin a substantial abatement process to demolish and remove the building."

When a March 15 re-inspection revealed that relator had not corrected any of the deficiencies, the city initiated the substantial abatement process. The city notified relator that a legislative hearing would be conducted on April 27, followed by a city-council hearing on May 19. The notice stated that the department of safety and inspections recommended that the city order relator to abate the nuisance or demolish the house.

Prior to the legislative hearing, the city determined that the code-compliance inspection had not occurred, relator owed over $12,000 in delinquent taxes for the years 2005-2009, none of the deficiencies listed in the notice to abate had been corrected, and the estimated cost of repairs exceeds $30,000. As of April 2010, the house and land were worth approximately $116,000.

At the conclusion of the legislative hearing, the legislative hearing officer (LHO) agreed to provide relator with additional time to bring the house into compliance. The LHO imposed seven conditions relator must meet to avoid demolition: post a $5,000 performance bond; apply for a code-compliance inspection; submit contractor bids; submit a work plan with timelines; provide financial documentation indicating the ability to finance the rehabilitation; pay or arrange a payment plan for the delinquent property taxes; and maintain the property.

At the May 11 continued legislative hearing, relator admitted that he had not attempted to meet any of the seven conditions. He testified that he had decided to sell the house because he had "no way to get money to repair it," and that he did not even have enough money to pay contractors who would perform work for him at a reduced rate. The LHO told relator that the "drop-dead deadline" for fulfilling all of the conditions was June 5.

As of the first of two city-council hearings, on May 19, relator had not met any of the conditions. Relator testified that he was unemployed but expected to earn money in the near future. He challenged the city's $30,000 repair estimate as vastly exaggerated, claiming that the only necessary major repair involved replacing 26 feet of copper piping. The council reiterated that relator must submit proof of compliance with the seven conditions to the LHO by June 5.

In partial fulfillment of these conditions, relator timely submitted the code-compliance report, a price list for furnace work, proposals for roofing, plumbing, and electrical work, and a work plan itemizing the cost of all code-compliance work. The code-compliance report listed dozens of deficiencies in the house and garage, including structural problems and multiple defects in the electrical, plumbing, and heating systems. The work plan indicated that the total cost of bringing the property up to code was approximately $5,200, far less than the city's estimate. The LHO informed relator that his submissions were lacking in several respects: his itemization did not include all the work required by the code-compliance report; the price list for furnace work was an advertisement, not a proposal; he did not provide a sworn construction statement; the

property taxes had still not been addressed; and the performance deposit had not been posted. Nonetheless, the LHO informed relator that she would recommend that he be given 15 days to repair or remove the house.

On June 14, relator submitted to the LHO a performance bond, a sworn construction statement, a letter from Ramsey County taxpayer services regarding payment of his delinquent taxes, a written commitment from a friend to loan him $12,000, and a proposal for furnace work.

The second city-council hearing took place on June 16. Prior to the hearing, council members received the documents relator had submitted to the LHO. Councilmember Lee Helgen observed that relator had failed to pay his property taxes or post the performance bond, that relator's cost estimates did not seem realistic, and that it did not appear that relator got "anywhere close to what would be needed to come up with a rehab for this property that needed extensive work." Helgen moved to "approve the hearing officer's recommendation and order the building to be removed within 15 days with no option for repair"; the motion passed unanimously, and the mayor approved the resolution. This certiorari appeal follows.

D E C I S I O N

A city's decision to demolish a building through its 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).

As a reviewing body, we do not retry facts or make credibility determinations and will uphold a 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). 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). "If the reasonableness of the action of the city council is at least doubtful, or fairly debatable, a court will not interject its own conclusions as to more preferable actions." *Arcadia Dev. Corp. v. City of Bloomington*, 267 Minn. 221, 226, 125 N.W.2d 846, 850 (1964).

I.

Relator argues that the city council's decision to order demolition of his property with no option to repair was arbitrary and capricious on several grounds. A quasi-judicial decision will be deemed arbitrary and capricious if the decision-making body (1) relied on factors not intended by the ordinance; (2) entirely failed to consider an important aspect of the issue; (3) offered an explanation that conflicts with the evidence; or (4) rendered a decision so implausible that it could not be explained as a difference in view or the result of the city's expertise. *Rostamkhani v. City of St. Paul*, 645 N.W.2d

479, 484 (Minn. App. 2002). A city council's action is not arbitrary when it bears a reasonable relationship to the purpose of the ordinance. *Arcadia Dev. Corp*., 267 Minn. at 227, 125 N.W.2d at 851.

A. The St. Paul abatement ordinance authorizes the demolition of nuisance structures.

Relator first argues the city's decision was arbitrary because the city disregarded the plain language of the St. Paul abatement ordinance, which, relator contends, authorizes demolition only of buildings that are dangerous or abandoned, and his house is neither. The interpretation of ordinances presents a question of law, which we review de novo. *Gadey v. City of Minneapolis*, 517 N.W.2d 344, 347 (Minn. App. 1994), *review denied* (Minn. Aug. 24, 1994).

The city council is authorized to abate nuisances by both statute and ordinance. *See* Minn. Stat. § 412.221, subd. 23 (2010) (granting cities "power by ordinance to define nuisances and provide for their prevention or abatement"); St. Paul, Minn., Legislative Code (SPLC) §§ 45.08-.14 (2010) (granting the city authority to order abatement of and to abate nuisances and defining procedure for the city's nuisance-abatement actions). The St. Paul code defines "abatement" for purposes of nuisance-abatement actions:

> Abatement may include, but shall not be limited to, removal, cleaning, painting of exterior surfaces, extermination, cutting, mowing, grading, sewer repairs, draining, securing, boarding unoccupied structures, barricading or fencing, removing dangerous portions of structures and demolition of dangerous structures or abandoned buildings.

SPLC § 45.08(b). Relator argues that because the word "demolition" only appears with the prepositional phrase "of dangerous structures or abandoned buildings," the city's

power to abate by demolition is limited to dangerous structures or abandoned buildings. He contends that because his house does not meet the code definition of a dangerous structure and is not abandoned, the city lacked a legal basis to order demolition. We disagree.

Relator is correct that the St. Paul code does not explicitly state that abatement includes demolition of nuisance buildings, as some municipal codes do. *See* Minneapolis, Minn., Code of Ordinances § 249.40 (2010) ("Buildings determined to be a nuisance condition may be rehabilitated or razed by order of the director of inspections."). But relator's assertion that the ordinance only permits demolition of a house that is dangerous or abandoned is contrary to the plain language of section 45.08(b) and to the legislative intent expressed in this provision and elsewhere in the code. The ordinance provides that "[a]batement *may* include, but *shall not be limited to*" various actions, including demolition of dangerous or abandoned buildings. SPLC § 45.08(b) (emphases added). The use of "may include" and "shall not be limited" plainly indicates that the list of actions constituting abatement is illustrative and inclusive, not exhaustive and exclusive, and authorizes the city council to take any abatement action that is consistent with the ordinance's purpose of "[p]rovid[ing] remedies to eliminate public nuisances." SPLC § 45.01(3) (2010); *see also Arcadia Dev. Corp.*, 267 Minn. at 227, 125 N.W.2d at 851 (council's action is reasonable when it bears a rational relationship to the purpose of the ordinance). To read this provision, as relator urges, to preclude the city council from ordering the demolition of nuisance buildings would frustrate, rather than further, the purpose of the ordinance.

Moreover, section 45.08(b) specifically states that abatement may include "removal," which is not defined in the code. To "remove" means "[t]o move from a place or position occupied" or "[t]o do away with; eliminate." The American Heritage Dictionary 1476 (4th ed. 2006). By its plain meaning, "removal" involves eliminating the nuisance, and logic suggests that, where the entire structure is deemed a nuisance, the removal would necessarily take place subsequent to demolition. Where, as here, the nuisance is an entire building, we are hard pressed to imagine how the nuisance could be removed without first being demolished or that the city, in drafting the ordinance, intended to authorize the removal of undemolished buildings. *See* Minn. Stat. § 645.17(1) (2010) (noting that when interpreting laws, courts presume that the drafting body does not intend absurd results).

Other code provisions further support the conclusion that the city's authority to abate by demolition extends to nuisance buildings like relator's. "The city is authorized to abate nuisances in accordance with the procedures set forth in sections 45.10, 45.11 and 45.12." SPLC § 45.08(a). Here, the city followed section 45.11, the "Substantial abatement procedure," used "[w]hen the enforcement officer determines that a nuisance exists on a property and . . . the abatement involves demolition of a building." SPLC § 45.11. These two provisions, read in concert, unambiguously authorize the demolition of a nuisance building, as does the order to abate a nuisance sent to relator, which states that a failure to correct the deficiencies by a certain date will trigger "a substantial abatement process to demolish and remove the building." We conclude that section 45.08(b) authorizes the city council to order the demolition of a nuisance building

without requiring that the building be abandoned or dangerous. Accordingly, the city council's application of the ordinance was not arbitrary.

B. The city's decision to demolish relator's house was not based upon his failure to pay property taxes.

Relator next argues the city's decision was arbitrary because it was based upon his failure to pay over $12,000 in delinquent property taxes, which is not a legal basis for a nuisance abatement. He contends that if the city's intent was to acquire possession of his property based on his failure to pay taxes, it was required to follow the statutory tax-forfeiture process. Relator's arguments misstate the role his delinquent taxes played in the city's decision.

The city's principal ongoing concern, as expressed during each of the legislative and council hearings, was that relator did not have the money necessary to rehabilitate his property. The significant amount of the back taxes was a factor in the city's analysis of relator's financial wherewithal to abate the nuisance conditions. Relator himself made inconsistent statements concerning his ability or desire to assume financial responsibility for the rehabilitation and delinquent taxes. At the April 27 hearing, he said he intended to fix the house; on May 11, he said he planned to sell it because he could not afford to make the necessary repairs. On May 19, he again said he wanted to repair the house. But he insisted that the actual repair costs would be far less than the city's $30,000 estimate, suggesting that he did not have the money the city required.

Relator's actions also called the adequacy of his financial resources into question. On the day of the second city-council hearing, the only progress relator had made toward

demonstrating he could finance the rehabilitation and pay his taxes was posting a $5,000 performance bond and producing a document indicating that a friend would loan him $12,000. Although he had contacted Ramsey County tax services to inquire about a payment schedule for his delinquent taxes, there is no evidence that he made any payments or established a payment plan. Rather, the letter he received and submitted as evidence simply indicated that "[p]artial payments of at least 25% are acceptable on delinquent taxes." And relator did not provide any evidence, other than his own unsupported prediction that he would have "plenty income coming in this summer" and his contention that the city's estimate of the rehabilitation cost was wildly inflated, to show how he would meet the financial obligations associated with the property.

The record reflects that the city's decision to demolish relator's house was not based on the nonpayment of taxes per se, but on relator's poor financial prospects as evinced, among other ways, by his failure to pay taxes for four years. We therefore conclude that the city did not improperly base the decision to order relator's house demolished on his failure to pay taxes.

C. The city did not disregard record evidence in deciding to demolish relator's house.

Relator argues the city's decision was arbitrary because the city council disregarded record evidence. He contends specifically that because the city council did not consider the documents he submitted on June 14, the council made a decision that was at best not supported by, and at worst contradicted by, available evidence. We disagree.

Relator's argument relies on statements made by councilmember Helgen at the June 16 meeting. Helgen said, referring to relator, "[W]e'd asked that he get his property taxes paid and the performance bond posted. Those didn't happen." Relator contends that Helgen (and the rest of the council) either did not receive or ignored the performance bond and tax-payment plan he submitted on June 14. But the meeting transcript indicates that the council did in fact get the documents. And councilmember Helgen's observation that relator did not post the bond or pay his taxes is arguably a reference to the fact that relator did not complete these tasks by the June 5 deadline, which is indisputably true and which could reasonably have led the council to conclude that relator had neither the will nor the means to rehabilitate his property.

Relator's assertion that Helgen incorrectly characterizes relator's obligation with respect to his back taxes as a payment obligation when the LHO had only required relator to enter a written payment agreement with Ramsey County, has merit. But the letter from the county only states the general policy of accepting partial payments of 25% of the outstanding balance. The letter does not indicate when, or whether, relator will actually start paying the back taxes. And relator submitted the letter on June 14, well after the June 5 deadline.

Relator also challenges Helgen's statements that relator's bids and cost estimates didn't seem "realistic," arguing that the city council erroneously discounted his estimates without considering that he knows people in the construction industry who will do the work for him at a reduced rate. But judging the credibility of witnesses and weighing the evidence is strictly the province of the city council. The council was in no way bound to

accept relator's estimates or to credit his testimony about his anticipated income or his ability to correct his property's deficiencies.

Relator cites to *Rostamkhani* in support of the proposition that the city arbitrarily refused to consider his June 14 submissions. We find that case inapposite: there, a councilmember affirmatively concealed receipt of a letter expressing a homeowner's intention to rehabilitate a nuisance property. 645 N.W.2d at 484-86. Here, there is no allegation (or evidence) of concealment; indeed, the record reflects that the council considered relator's documents despite the fact that he submitted them long after the deadline imposed by the LHO. And even if the council did not consider the submissions here (either because they did not receive them at all or because they decided not to consider them because they were untimely), its decision was based on substantial evidence and relator failed, despite several extensions, to demonstrate to the council's satisfaction his ability to rehabilitate his property.

II.

Relator challenges the reasonableness of the city council's decision to demolish his house on the ground that the council disregarded the LHO's recommendation that he be given an option to repair the nuisance within 15 days. The substantial abatement procedure provides that the LHO "may submit to the council a recommendation based on the information" obtained from the property owner. SPLC § 45.11(4a). Then, "[a]fter the [public city council] hearing, the city council shall adopt a resolution describing what abatement action, if any, the council deems appropriate." SPLC § 45.11.

In a June 9, 2010 letter to relator, the LHO indicated that she intended to recommend that his house be removed or repaired within 15 days. Councilmember Helgen's motion to "approve the hearing officer's recommendation and order the building to be removed within 15 days with no option for repair" is seemingly at odds with this letter, but this discrepancy does not affect the reasonableness of the council's decision. The ordinance permits the LHO to make a recommendation but does not require the city council to defer to or even consider the recommendation. Rather, the ordinance vests the city council with the sole authority and responsibility to adopt a resolution. The city council presumably, and reasonably, concluded that in light of relator's demonstrated inability to timely correct the deficiencies and his failure to rectify the conditions that caused the house to be condemned and declared vacant in 2007, there was no reason to give him another 15 days to correct the deficiencies. It is therefore of little practical consequence that the council's resolution mandated a result different from the one the LHO told relator she would seek.

III.

Finally, relator argues that the city council's decision to demolish his house was oppressive because the city failed to consider the history of the property, the events leading to the abatement order, and the circumstances of his subsequent inability to abate the nuisance. We are sympathetic to the observations he makes in support of this argument, all of which appear true: he designed the house for his parents, who lived there until their death; the house is not a "drug house"; the house was not condemned because it is structurally unsound, but because relator did not pay the utility bills; he

owns the house outright; and demolishing the house would destroy his equity. But these facts do not excuse relator's failure to take timely corrective action despite the cooperation of the city, which has already granted him numerous continuances and opportunities to comply with the legislative requirements.

Relator had over 90 days after the deadline set out in the February abatement notice to correct the deficiencies. The city agreed to lay over both the legislative hearing and the city council hearing in order to give relator extra time to demonstrate that he was making material progress toward complying with the conditions the LHO imposed during the initial legislative hearing. Relator was given several opportunities to present his case to the city and negotiate the terms and timing of the rehabilitation. He nonetheless failed to correct the numerous deficiencies or to demonstrate that he can, in the foreseeable future, acquire the funds to correct them. The city council followed the procedure set out in the ordinance and made the requisite findings. On this record, we conclude that the city council's resolution and order authorizing demolition of relator's house within 15 days was not arbitrary and capricious and was supported by substantial evidence in the record.

Affirmed.