STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0275

Steven Meldahl,
Appellant,

vs.

City of Minneapolis,
Respondent.

Filed November 25, 2013
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 27-CV-11-24739

David L. Shulman, Craig Buske, Law Office of David L. Shulman PLLC, Minneapolis, Minnesota (for appellant)

Susan L. Segal, Minneapolis City Attorney, Gregory Sautter, Kristin R. Sarff, Assistant City Attorneys, Minneapolis, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and Stauber, Judge.

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

HALBROOKS, Judge

In this assessment matter, appellant challenges the district court's grant of summary judgment to respondent city. Appellant argues that (1) the city's assessment appeal procedures are inadequate and the city failed to adequately review the assessments

it adopted; (2) two city ordinances are unconstitutionally vague; (3) the city's vacant-building registration (VBR) fee does not reflect the regulatory costs associated with his vacant buildings; (4) the district court erred in ordering reassessments for only one of eight properties for which the parties agreed reassessment was warranted; and (5) the city did not provide proper notice of sidewalk-repair assessments. We affirm.

FACTS

The material facts are undisputed. Appellant Steven Meldahl owns 85 rental properties located in respondent City of Minneapolis. From approximately 2008 through 2011, the properties accrued delinquent utility (water, sewage, and solid waste) bills, and the city conducted nuisance-abatement work and sidewalk repairs to address uncorrected code violations. Additionally, the city determined that three of Meldahl's properties were subject to a VBR fee.

Meldahl did not challenge the delinquent utility bills or the VBR fees.[1] Meldahl did not make the repairs or corrections ordered by the city and appealed only two of the administrative citations relating to nuisance abatement. Evidentiary hearings were held concerning the two citations (one of which Meldahl attended), and the citations were affirmed.

When Meldahl failed to pay the bills, fees, and citations, the city issued notices of intent to assess. Meldahl challenged many of the assessments, and assessment appeal hearings were held on at least 12 separate dates in 2010 and 2011. Meldahl participated in some of these hearings. Hearing officers reviewed the city's proposed assessments and

[1] Nor did Meldahl pay the delinquent utility bills or the VBR fees.

concluded that they were supported by the evidence, but also reduced some of the amounts. Two properties are illustrative of the varied procedural history:

Property 1A: This property accrued $305.26 in delinquent water and sewer charges from October 2009 through February 2010. It also incurred a $60 snow-removal charge relating to solid-waste removal. Meldahl received notice of the $365.26 unpaid balance. On June 20, 2011, the city sent Meldahl a notice stating that if the unpaid balance was not paid by November 1, 2011, it would be submitted for assessment to the property taxes. A public hearing was held on September 29, 2011, in which Meldahl participated. The hearing officer issued a written decision, determining that the water charges were substantiated but that the snow-removal charge was not. Accordingly, the hearing officer reduced the city's proposed assessment by $60 to $305.26.[2]

Property 59A: On April 14, 2010, the city notified Meldahl by letter that an April 8 inspection of the property revealed a code violation in the form of vehicles parked on the lawn in the backyard. The city ordered correction by April 25, 2010. On April 26, reinspection revealed no correction. The inspector subsequently issued an administrative citation for failure to correct the violation. Meldahl appealed the administrative citation. A hearing was held on July 27, 2010, but Meldahl did not attend. On July 29, 2010, the hearing officer issued a written decision ordering Meldahl to pay a civil penalty of $200. On August 6, 2010, the decision was mailed to Meldahl with a letter that explained how

[2] On November 18, 2011, the city council adopted the assessment at the full amount of $365.26. In its summary-judgment motion, the city requested authorization to recalculate the assessment, taking into account the $60 reduction. The district court granted the motion. *See supra* section IV.

to make payment and noted that, if payment was not made, a penalty would accrue and an unpaid fine may be assessed. The letter also advised Meldahl that he could appeal the administrative-citation decision to this court. Meldahl neither appealed the decision nor paid the fine.

On March 17, 2011, the city sent Meldahl a notice of intent to assess the unpaid fine against the property taxes, noting a public hearing on April 21, 2011. Meldahl appealed the proposed assessment but did not appear at the assessment hearing. The hearing officer issued a written decision, determining that the city had complied with all substantive and procedural requirements, including timely notice, and ordered the assessment of $200 plus a $20 late fee. The notice of decision stated that the city council would adopt the assessment at its November 18, 2011 meeting.

At two separate meetings (October 21, 2011—sidewalk repairs; November 18, 2011—all other assessments), the city council adopted all of the challenged assessments. In all, the city levied 144 special assessments on Meldahl's property taxes (96 utility-bill assessments, 44 nuisance-abatement-related assessments, and 4 sidewalk-repair assessments). Meldahl appealed the determination of the assessments to the district court and moved for summary judgment, arguing that "[a]ll of the assessments should be set aside because the assessment proceedings conducted by the City failed to comply with the most basic notions of due process."

The city also moved for summary judgment, arguing that (1) the utility, nuisance-abatement, and VBR-fee assessments were properly adopted; (2) the appeal of the sidewalk repairs was untimely; and (3) eight of the assessments should be reduced or

reassessed in light of notice defects or discrepancies between the hearing officer's decision and the city council's action. The district court denied Meldahl's summary-judgment motion and granted the city's motion in full. This appeal follows.

D E C I S I O N

In reviewing the district court's grant of summary judgment, we determine whether there are genuine issues of material fact and whether the district court properly applied the law. *Offerdahl v. Univ. of Minn. Hosps. & Clinics*, 426 N.W.2d 425, 427 (Minn. 1988). Here, the parties agree that no material facts are in dispute and that the issues concern the interpretation of Minnesota statutes, the Minneapolis charter, and Minneapolis ordinances. The interpretation of a statute, charter, or ordinance involves a question of law, which we review de novo. *See Hibbing Educ. Ass'n v. Pub. Emp't Relations Bd.*, 369 N.W.2d 527, 529 (Minn. 1985). The constitutionality of an ordinance is also a question of law, which we review de novo. *Hard Times Cafe, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 171 (Minn. App. 2001).

I.

Meldahl challenges the city's assessment appeal procedures. He argues that (1) the use of forms by hearing officers violates due process and the hearing officers' findings were insufficient; (2) the city failed to follow proper procedures when it declined to hold full evidentiary hearings at the assessment appeal stage and did not invite him to make objections directly to the city council; (3) one of the hearing officers was biased; (4) the city failed to provide sufficient notice of intent to assess; and (5) because of these procedural defects, Meldahl was deprived of due process.

Use of Forms and Sufficiency of Findings

Meldahl argues that the hearing officers, city council, and district court merely "rubber-stamped" the assessments that were proposed by city employees. Meldahl specifically objects to the hearing officers' use of forms prepared by city employees as the framework for assessment appeal decisions. Meldahl's concerns appear to be that the use of forms suggests that determinations were made in advance of hearings and that hearing officers' dispositional options were limited by the templates.

At the assessment appeal stage, when the underlying charges have been established and the issue is the propriety of levying the overdue amounts, relying on city documentation is to some degree unavoidable. Although it appears that pre-printed forms were used as templates for many decisions, hearing officers made handwritten notes and the forms contain other deviations from the prepared content. Hearing officers reviewed the proposed assessments, asked questions, and heard from Meldahl when he appeared. And the fact that assessments were reduced in 13 cases is indicative of individual attention to the cases. We therefore conclude that the use of forms here neither dictated the outcome nor inhibited meaningful review.

Meldahl also challenges the hearing officers' failure to incorporate his arguments and specific evidentiary findings into decisions, citing *Carter v. Olmsted Cnty. Hous. & Redevelopment Auth.*, 574 N.W.2d 725 (Minn. App. 1998). In *Carter*, the hearing officer failed to make sufficient findings after the evidentiary hearing in a termination of section 8 housing-assistance case. 574 N.W.2d at 730. We stated that an agency "must state the facts and conclusions essential to its decision with clarity and completeness."

Id. at 729. The city does not dispute that the hearing officers' decisions here are brief, but notes that "somewhat meager and conclusory" findings satisfy the law. *See In re Applications for Auth. to Provide Alternative Operator Servs*., 490 N.W.2d 920, 924 (Minn. App. 1992).

The record indicates that the hearing officers were aware of the requirements of the ordinances and considered them when evaluating evidence and issuing decisions. *See id*. The hearing officers' decisions identify the property and the nature and timing of the delinquent charges. Accordingly, the facts and conclusions essential to the decisions are stated, and the findings are sufficient.

Hearing Procedures

Meldahl argues that the city failed to follow procedural requirements of either Minn. Stat. §§ 429.011-.111 (2012) or its own assessment ordinances and that therefore the assessments must be set aside. He specifically challenges the city's failure to apply the protections of administrative hearings, such as issuance of subpoenas, to assessment appeal hearings.

The city is entitled to establish its own procedures for assessment appeal hearings. *See Curiskis v. City of Minneapolis*, 729 N.W.2d 655, 658 (Minn. App. 2007). Minneapolis has done so through Minneapolis, Minn., Code of Ordinances (MCO) §§ 2.120 (general procedures), 227.100 (nuisance abatement), and 509.930 (utility charges) (2013). In addition, the city has established procedures for review of the charges underlying assessments. *See, e.g.*, MCO § 2.100 (2013). As the district court noted, Meldahl did not directly appeal the vast majority of the administrative charges. He

waited until they proceeded to assessments, and he is not entitled at that later stage to the full panoply of administrative remedies available under MCO § 2.100.

Meldahl also argues that he was prevented from addressing the city council, as required by Minn. Stat. § 429.061. But Minn. Stat. § 429.061 is inapplicable, because the city opted to establish its assessment procedures by charter. *See Curiskis*, 729 N.W.2d at 658. The city does not dispute that Meldahl was not invited to address the city council regarding adoption of the assessments. The city notes that the city council delegated its hearing function to the hearing officers who considered Meldahl's appeals. The city also notes that Meldahl opted not to submit written objections to the city council as other taxpayers have done, and Meldahl does not directly dispute this. Nor does Meldahl argue that he was unaware of the November 18, 2011 city council meeting at which the assessments were adopted. The district court concluded that Meldahl has not sustained his burden of proof that the city council failed to consider his objections to the assessments. The record supports this conclusion, and we will not disturb it.

Hearing Officer

Meldahl argues that the hearing officer who handled 97 of the 144 assessments at issue here was biased and wrongly refused to recuse on Meldahl's request. The record shows that Meldahl and this hearing officer have a history of discord. At a hearing on a proposed assessment under MCO §§ 227.10-.190 (2013) (failure to remove tree debris), Meldahl orally requested that the hearing officer recuse.

> Mr. Meldahl: First off I would like to ask . . . that you recuse yourself. As you know, you have done hearings against me for over ten years, even though you're only supposed to have

> a three-year contract. You are totally biased against me. I'm sure a lot of it stems in part from a complaint I filed against you in 2008. We have had some [acrimonious] dealings together. You called the police on me a couple of times over the years.
>
> [City inspections representative]: Steve, we're not here—
>
> Mr. Meldahl: So I ask that you recuse yourself, and I would like to have you put in the file a notice that under the rules that I am requesting you remove yourself.
>
> [Hearing Officer]: Okay. How do you defend this one? I'm not going to remove myself.
>
> Mr. Meldahl: Well, we did the work. Here's a copy . . . .

The record also contains numerous district court notice-of-removal forms with "judge" scratched out and the hearing officer's name written in. The purported notice-of-removal papers do not cite any rule applicable to assessment appeal hearings.

In support of his claim that he has the right to remove a hearing officer, Meldahl points to MCO § 2.100, which provides, in relevant part, "The alleged violator requesting a hearing will have the right to request, no later than five (5) days before the date of the hearing, that the assigned hearing officer be removed from the case. One request for removal for each case will be granted automatically by the city attorney." But MCO § 2.100 is not applicable to assessment appeal hearings. *See* MCO § 2.100. It applies, as indicated by its title, to "administrative hearing procedures," and addresses the procedural protections afforded to those who challenge administrative citations, orders to correct, or civil fines. MCO §§ 2.50, .60 (2013). Meldahl failed to take advantage of administrative

hearing procedures because he appealed only two administrative citations and attended only one of those hearings.

Meldahl's only specific complaint about this particular hearing officer is the fact that he did not dismiss outright any of the proposed assessments. Notably, Meldahl does not point to any evidence of biased conduct during hearings, and a review of the transcripts reveals none. Accordingly, we agree with the district court that the hearing officer conducted the hearings in an impartial manner and made the necessary findings to support his opinions. Meldahl did not meet his burden of proving that his due-process rights were violated by the hearing officer's refusal to recuse or by the hearing officer's conduct.

Notice of Hearings

Meldahl contends that he did not receive proper notice of some of the assessment appeal hearings. The list of assessments for which Meldahl reportedly did not receive notice varies from his own summary-judgment brief to his brief in response to the city's summary-judgment motion. The city counters that Meldahl received proper notice for all but five proposed assessments, for which the district court ordered reassessment.

The city presented a detailed history of each assessment, including records of notices sent to Meldahl. The district court referenced the city's factual recitation in its order, and concluded, based on the record before it, that Meldahl received proper notice of all contested assessments. The record supports this conclusion.

Due process

The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902 (1976) (quotation omitted). The city presented voluminous documentary evidence supporting the assessments and the underlying charges, including provisions of notice and a series of opportunities to be heard. Meldahl failed to take full advantage of the procedural protections available to him. But this does not require the conclusion that the procedures were inadequate or that Meldahl's due-process rights were impaired. The district court concluded that Meldahl was afforded proper notice and an opportunity to be heard on the assessments. We conclude that the district court did not err.

II.

Meldahl argues that MCO §§ 509.1030, .1080 (2013), which govern delinquent utility bills, are unconstitutionally vague because property owners are liable for delinquent utility bills but the city decides when to give notice of delinquency and when to turn off the water. The district court concluded that the city's discretion was supported by law. We agree.

MCO § 509.1080 provides, "All water, sewer, solid waste, recycling, and other charges that have not been paid within twenty (20) days after the bill has been sent shall be considered delinquent and may thereafter be assessed against the property served." MCO § 509.1030 provides, "the department shall not discontinue water service unless at least ten (10) calendar days prior to the date of the proposed discontinuance, the

department sends a written notice to the bill payer by first class mail or by personal service."

A municipal ordinance is presumed constitutional. *Hard Times Cafe, Inc.*, 625 N.W.2d at 171. A statute is void due to vagueness if it "defines an act in a manner that encourages arbitrary and discriminatory enforcement," or the law is so indefinite that people "must guess at its meaning." *Humenansky v. Minn. Bd. of Med. Exam'rs*, 525 N.W.2d 559, 564 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995). A party challenging the constitutionality of an ordinance on vagueness grounds "must show the ordinance lacks specificity as to its own behavior rather than some hypothetical situation." *Hard Times Cafe, Inc.*, 625 N.W.2d at 172 (quotation omitted).

A property owner has a duty to pay delinquent utility bills regardless of the date that the city turns off the water at a non-paying property. *See* MCO § 509.840 (2013); *Prudential Co. of Minn. v. City of Minneapolis*, 202 Minn. 70, 74-75, 277 N.W. 351, 353 (1938). The city follows internal protocols for identifying delinquent accounts, providing notices of impending shut-off, entering into promise-to-pay agreements, shutting off the water, and turning it back on. MCO §§ 509.900-.1050 (2013) (scattered sections). Although the protocols afford the city a certain degree of discretion and flexibility regarding shutting the water off and turning it back on, there is no threat that the challenged ordinances, read together, require Meldahl to "guess at [their] meaning" as to his own duties or behavior. Meldahl therefore fails to meet his burden of proving that MCO §§ 509.1030, .1080 are unconstitutionally vague.

III.

Meldahl next argues that the city's VBR fees do not bear a reasonable relationship to the regulatory expense incurred. Generally, a fee is reasonable if it is intended "to cover the expenses of issuing, the services of officers, and other expenses directly or indirectly imposed or incurred." *Lyons v. City of Minneapolis*, 241 Minn. 439, 442, 63 N.W.2d 585, 588 (1954).

The city has enacted MCO §§ 249.10-.90 (2013), which regulates vacant buildings, "to enhance the livability and preserve the tax base and property values of buildings within the city" and "to assure that buildings which are capable of rehabilitation are promptly rehabilitated." MCO § 249.10. The ordinance requires a property owner to register a building within five days of the building becoming vacant. MCO § 249.80(a). The city imposes a VBR fee "to recover all costs incurred by the city for monitoring and regulating vacant buildings, including nuisance abatement, enforcement and administrative costs." MCO § 249.80(j)(1). The city may waive or suspend the fee if the owner enters into a written restoration agreement with the city. *Id*. If an owner does not pay the annual fee, it is "levied and collected as a special assessment against the property." MCO § 249.80(j)(3). Under this ordinance, the city levied special assessments of more than $6,500 each on three of Meldahl's 85 properties.

The city presented calculations supporting the VBR rate structure as well as a recent order that includes updated fees. The city's calculations address many categories of costs attributable to vacant buildings in general, including police calls, property fires, nuisance orders, nuisance abatement, special assessments, and utility arrears. Meldahl, in

contrast, merely asserts that the VBR fees are unreasonable with respect to his vacant buildings because he maintains the properties, and thus they do not require any services by the city. His evidence in support of this assertion is his own affidavit stating the same. He also notes that the cities of St. Paul and La Crosse, Wisconsin, and Milwaukee, Wisconsin impose lower VBR fees than does Minneapolis. The district court concluded that Meldahl failed to meet his burden of proving that the VBR fees are excessive and not justified by the costs incurred by the city in monitoring vacant properties. We conclude that the district court did not err.

IV.

Meldahl argues that the district court erred in ordering reassessment on only one of eight properties for which the city conceded that reassessments are proper. Although the district court specifically identified only one property in its order, we understand the district court's ruling to order reassessment with respect to all eight properties for which reassessment was requested by the city.

The city requested in its summary-judgment memorandum, "summary judgment authorizing the City to reassess" eight properties identified as 1(A), 26(A), 32(A), 41(A), 41(B), 65(A), 66(A), and 74[A]. Three of the properties warrant reassessment because the city council adopted the assessments without including the reductions made by the hearing officer. Five properties warrant reassessment because city records indicate defective notices of intent to assess. Although the district court's order specifically references only the property identified as 1(A), it did not deny the city's request to reassess the other seven properties. Meldahl's claim of error is therefore unfounded.

V.

Meldahl challenges the sufficiency of the sidewalk-repair assessment notices he received from the city. We note that although Meldahl addressed the sidewalk-assessment appeal at oral argument, the issue was not argued in his appellate brief. Accordingly, any challenge to the sidewalk-repair assessments is deemed waived. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982). But even if we were to consider the issue, Meldahl does not prevail.

Minn. Stat. § 429.081 provides that within 30 days after the adoption of an assessment, the taxpayer may appeal to the district court by serving a notice upon the municipality. The notice must be filed with the district court within ten days after its service. Minn. Stat. § 429.081. The city council adopted the sidewalk assessments on October 21, 2011. Meldahl served his notice of appeal on the city clerk on December 5, 2011 and filed it with the Hennepin County district court on December 7, 2011. Falling outside of the statutory window for service and filing, the notice of appeal was untimely, and the district court properly granted the city's motion for summary judgment with respect to the sidewalk assessments.

Affirmed.