**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A13-0313**

Alex Jerome, et al.,
Relators,

vs.

City of St. Paul,
Respondent.

**Filed April 28, 2014**
**Affirmed**
**Johnson, Judge**

City of St. Paul
File No. RLH RR 12-68

Larry Leventhal, Elizabeth Royal, Larry Leventhal & Associates, St. Paul, Minnesota (for relators)

Sara R. Grewing, St. Paul City Attorney, Virginia D. Palmer, Assistant City Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Cleary, Presiding Judge; Johnson, Judge; and Rodenberg, Judge.

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

**JOHNSON**, Judge

Alex Jerome and Ameena Samatar purchased a vacant building that the City of St. Paul previously had declared to be a nuisance. After their purchase, the city suspended

its nuisance-abatement process to give them an opportunity to rehabilitate the building. But after several months and multiple hearings, Jerome and Samatar failed to satisfy the city's requirements for a further suspension of the nuisance-abatement process. After several extensions of time, the city council eventually adopted a resolution that ordered the building to be either repaired or removed within 30 days. We conclude that the city council's decision is not arbitrary, capricious, oppressive, or unreasonable, and is supported by substantial evidence; that the city's procedures were not unlawful, irregular, or contrary to city ordinance; and that the city did not violate Jerome's and Samatar's rights to due process. Therefore, we affirm.

## FACTS

The building at issue in this case is a two-story commercial building located at 601 Western Avenue North. The building previously was occupied at various times by the Moonlight Magic Bar, a bar called Lucy's, and Wilebski's Blues Saloon. But the building has been vacant since December 2011.

In May 2012, the city performed an inspection of the building, which revealed multiple code violations, including a deteriorated roof, a foundation in need of repair, defective interior ceilings, rodent infestation, mold, open plumbing, loose and open electrical wiring, and the lack of a properly installed and operable smoke detector. On June 1, 2012, the city declared the building to be a nuisance and ordered that the nuisance be abated by July 1, 2012. At the same time, the city gave notice to the owners and interested parties of record: Bayview Loan Servicing, the Murnane Brandt law firm, and the Internal Revenue Service.

On July 13, 2012, the city sent a notice of public hearing to the interested parties of record, informing them that a hearing before a legislative-hearing officer (LHO) was scheduled for August 14, 2012. The notice also stated that a public hearing before the city council was scheduled for September 5, 2012, to consider a resolution ordering the repair or removal of the building.

Between July 17 and 19, 2012, relators Jerome and Samatar purchased the property. Relators acknowledge that they were aware before their purchase that an order to abate nuisance had been issued. On July 31, 2012, the city performed a follow-up inspection, which is summarized in a report listing eight pages of building-, fire-, and safety-code violations.

Over the next four months, city staff held four legislative hearings concerning the property, and the city council considered the matter at five meetings. The first legislative hearing occurred on August 14, 2012. The LHO first asked the city's code-enforcement officer to give a report on the status of the property. The LHO then asked the code-enforcement officer about the current owners of the property. At that time, Samatar came forward and stated that she and Jerome recently had purchased the property, a fact of which the LHO previously was unaware. After further discussion with the LHO, Samatar stated that she and Jerome had not decided on their intended use of the building, but they anticipated that the first floor would be used for a retail store of some kind and that the second floor would be used for either offices or a wedding hall. City staff informed Samatar that the paved parking lot next to the building is zoned residential and would need to be rezoned if relators wanted to use it for parking. The LHO noted that taxes had

been paid, that the vacant building fee had been paid, that a performance deposit had been posted, and that the "only things left then are plans to do the rehab and demonstration that there is the money available to execute the rehab." The LHO stated that the city needed three things from relators: (1) contractor bids, (2) a work plan, and (3) a demonstration of available funds to complete the project. The LHO asked Samatar to submit a work plan by August 28, 2012, or to let her know if relators needed more time. Samatar acknowledged each of the LHO's statements. Throughout the hearing, the LHO expressed enthusiasm about the project and told Samatar, "I'm excited that you're doing this."

On September 5, 2012, the city council considered the matter at a public hearing for the first time. Relators were present. They previously had submitted to the LHO a bank statement indicating a balance of approximately $46,000, a $50,000 home-equity line-of-credit statement, and a spreadsheet with the estimated costs of the project. The LHO reported to the city council that relators had submitted a work plan and financial statements but that they were "very sketchy, a few lines long" and "woefully inadequate to demonstrate the capacity to execute the rehab for this property." Because of the inadequate documentation, the LHO recommended that the city council adopt a resolution to repair or remove the property but asked that the matter be laid over for two weeks to allow time for notice of the recommendation to be sent to relators.

Relators spoke in opposition to the LHO's recommendation. The council president informed relators that the work plan they had provided was inadequate because it needed to "have more detail in it." Jerome responded: "I can do it in phases, so the first

time I'm going to do the outside, and then the second time I'm going to do the electrical and the water, and then I can do the rest. That's the plan." Council Member Carter then sought to clarify exactly what the city needed from relators, apparently to ensure that relators understood the city's expectations:

> COUNCIL MEMBER CARTER: [W]hat we need from you is like a more specific written work plan, like with real specific bids from contractors about each different part of the work that needs to be performed . . . . [Y]ou've got a list of orders from the City, right, that says here's all the things that the City wants done on the property?
>
> JEROME: Yeah, I have a very long list of things that get done, but --
>
> COUNCIL MEMBER CARTER: Right. So what we need from you in order to -- so what we need from you is a real specific work plan that says, Here's how I'm -- here's how I'm going to address all of these issues on this list and here's some specific bids from contractors who will actually be doing the work. I will need a demonstration that you have the resources to be able to do those things, so that -- so that we can have some confidence that work will actually be done.
>
> JEROME: I've put a lot of money into this product -- to this project already, and, you know -- and I have absolute confidence that I can do it. And I can't -- you know, all I can say is, you know, this is -- this is what I've got. I mean, I already did the tuck pointing on the outside, so I spent $7,000. That's what I spent.
>
> COUNCIL MEMBER CARTER: Okay.
>
> JEROME: I've done the electrical. That, I spent twenty-two hundred there. What else am I -- am I supposed to -- I hired contractors and I let them do the work. And I gave out some -- you know, whatever I thought was appropriate.
>
> COUNCIL MEMBER CARTER: Okay.

> JEROME: But I, you know -- I'm not -- I have done this before.
>
> COUNCIL MEMBER CARTER: I understand.
>
> JEROME: I'm confident I can do it.

Samatar then addressed the city council, stating that she and Jerome had provided the financial documents required by the city. She referred to a spreadsheet and stated, "[T]his is the plan of how to spend the money on the property." Jerome also referred to the spreadsheet and stated: "This is the plan. This is it. I mean, it shows little spreadsheets, estimates of what we think is going to be spent on the thing, but -- you know, if we had, you know, millions of dollars, we could have used it, you know, for fancy plans, but we don't. We have, you know, limited means . . . but we have experience and we can do it." Council Member Carter suggested that a one-on-one meeting might help and said that he would try to meet with relators the next day. Council Member Carter moved to accept the LHO's recommendation for a two-week layover and said to relators, "Hopefully we can work together and get it figured out between now and then." The city council approved the motion by a vote of seven to zero.

After the September 5, 2012 city council meeting, the city sent relators a follow-up letter via e-mail to confirm that the matter had been heard by the city council and would be continued to its September 19, 2012 meeting. The letter further stated:

> [Y]ou need to submit a detailed work plan in accordance with the code compliance inspection report or a sworn construction statement by your contractor for the project. [The LHO] will also need an affidavit dedicating the funds from an account for this project. These conditions need to be submitted to our office by Monday, September 10. If you wish to attend the

> Legislative Hearing on Tuesday, September 11 . . . to go over your plans and affidavit, please let me know and I will add you to the Agenda.

The record does not indicate that relators contacted the city to request to be added to the September 11, 2012 legislative-hearing agenda.

On September 19, 2012, the city council considered the matter at a public hearing for the second time. Neither Samatar nor Jerome was present. With respect to relators' property, Council Member Carter stated: "Yep, we're still working on it. We've got some momentum going and I'm told by the legislative hearing officer that we've got some positive indicators, but it's not done yet, so I'm going to ask for a four-week layover." The city council approved a motion to lay the matter over to October 17, 2012, by a vote of seven to zero.

On September 25, 2012, the second legislative hearing occurred. Samatar was present; Jerome was not. Relators still had not provided the city with a detailed work plan, contractor bids, or affidavits indicating that funds were dedicated to the project. The LHO again informed Samatar of the city's requirements: "We've got to get the building stabilized . . . . And then to pick a use for it, get the zone in place, and develop plans that are specific to that use." Samatar stated that she intended the second floor to be a rental hall and the first floor to be a restaurant on one side and a retail store on the other side. There was extensive discussion between Samatar and city staff with respect to parking, zoning, and licensing issues that might arise, depending on the ultimate use of the building. The LHO instructed Samatar to schedule a meeting for the following week with a particular person in the department of safety and inspections to discuss the

parking, zoning, and licensing issues. The LHO expressed concern that relators had not yet obtained bids to determine the cost of the project. Samatar confirmed that an architect would be putting together a report with detailed cost estimates, which would be ready for the city's review by the end of the week. The LHO instructed Samatar to speak with her bank and with Historic Saint Paul, a non-profit organization, to discuss financing. The LHO concluded by stating that the matter would be laid over for six weeks, to November 13, 2012, to allow Samatar time to meet those requirements. The LHO also stated that she would ask the city council to lay the matter over to its December 5, 2012 meeting.

On October 17, 2012, the city council considered the matter at a public hearing for the third time. Neither Samatar nor Jerome was present. The LHO suggested that the matter be laid over to the December 5, 2012 council meeting. The LHO stated that she had scheduled two legislative hearings in November, which would provide "a chance to not only have the plans developed, but then revised, if necessary, and there could be continued staffing on this issue." Council Member Carter asked the LHO whether she had the sense that relators were working with the city in good faith and actually could complete the rehabilitation. In response, the LHO stated that some progress had been made (specifically, that a structural-engineering analysis had occurred) but that the city had not yet received certain documents. She also stated that work on rezoning had been suspended because relators had not yet informed the city how they intended to use the property. The LHO concluded by saying that she could not give the project a "resounding endorsement at this time" but that the city was providing assistance to

relators to help them succeed. Council Member Carter stated that he "wonder[s] if the owner understands the kind of severity of what we're discussing right now" but that "it sounds like some progress is being made." Council Member Carter moved to lay the matter over to December 5, 2012. The city council approved the motion by a vote of seven to zero.

Shortly thereafter, the city mailed a letter to relators to give them notice of the legislative hearings scheduled for November 13 and 27, 2012. The letter also informed relators of the work that needed to be accomplished before the hearings:

> In the meantime, you will need to:
>
> 1) work with Larry Zangs on rezoning issues and necessary license applications for assembly usage;
>
> 2) work with your architect on costs and plans, a real estate agent on market value of the property (when the structural analysis is complete and you have preliminary plans from the architect, please share them with our office), and
>
> 3) work with Craig O'Brien, PED, on additional funding, if needed. We also recommend that you explore project funding with Historic Saint Paul. This is the link to the website: http://www.historicsaintpaul.org/loans.

On November 13, 2012, the third legislative hearing occurred. Neither Samatar nor Jerome was present. The prior evening, Jerome had sent an e-mail message to the legislative-hearing coordinator, saying: "We can't make it tomorrow. Our understanding is there is a hearing scheduled on 601 Western Ave. N St Paul, however the owners have too many pressing issues that have to be addressed." At the hearing, the LHO told the legislative-hearing coordinator to send relators a letter stating that "they've got to come

in with all of their plans together on the 27th, and if they don't, my recommendation will be for the property's removal with no option." On November 15, 2012, the legislative-hearing coordinator sent an e-mail message to Jerome, stating, "This is to confirm that if the conditions don't meet by November 27, [the LHO] will recommend removal of the building with no option for repair."

On November 27, 2012, the fourth and final legislative hearing occurred. Samatar was present; Jerome was not. The LHO reiterated that the city had requested the structural-engineer's report, contractor bids, an affidavit to prove adequate financing, and a scope-of-work document, but stated that she had not yet received any of the required documents. Samatar then gave some documents to the LHO. After reviewing the documents, the LHO stated that Samatar had presented documents regarding financing and contractor bids but that the documents were inadequate. Specifically, the LHO stated that the bank statements provided by Samatar were inadequate because no affidavit states, as required, that funds would be segregated for the rehabilitation project. The LHO stated that the contractor bids were unacceptable because they were unsigned, lacked detail, and did not provide timelines in which the work would take place. The LHO informed Samatar that she would recommend to the city council that the building be repaired or removed within 30 days.

On December 5, 2012, the city council considered the matter at a public hearing for the fourth time. The LHO recommended that the city council order the building to be repaired or removed within 30 days. In the alternative, if the city council wished to give relators more time, she recommended the following conditions: (1) that relators develop a

scope-of-work document; (2) that relators place the funds for the rehabilitation in escrow; and (3) that relators hire a project manager to handle day-to-day decisions on the project.

Jason LeTourneau then addressed the city council. He stated that he had been hired by relators three weeks earlier to be the project manager. He stated that he had learned of the abatement proceedings only the prior week and had not previously realized the amount of work required. Council Member Carter communicated to LeTourneau that the city would give relators only one more chance:

> And this is what I'm trying to tell you. Like, we -- we are literally -- I want you guys to succeed. I really do. We're literally beyond the place where, you know, where I've been comfortable with this for a while, honestly, you know, but want you guys to succeed, so we're trying to give you guys every opportunity to. We're sort of at the end of the opportunity, all right?

Council Member Carter then stated that he would support another layover with the conditions recommended by the LHO. He noted that the third condition had been met because LeTourneau had been hired as project manager. He stated that the second condition, placing the funds in escrow, should be easy to meet within two weeks. He then asked LeTourneau how long it would take to develop a scope-of-work document. LeTourneau requested 30 days. Council Member Carter stated his position as follows:

> Okay. . . . [S]o here's what my inclination is going to do -- is going to be: I'm going to ask for a two-week layover. Within two weeks' time -- we've already got an outside project manager, which is you Mr. LeTourneau. We should be able to have the funds in escrow. That seems like that should take a couple minutes to do, right? And then, you know, so get to work on the scope for us.

LeTourneau responded, "Absolutely." Council Member Carter confirmed that relators and LeTourneau were clear about the three conditions that needed to be met, and then he moved to lay the resolution over until the city council's December 19, 2012 meeting. The city council approved the motion by a vote of six to zero.

Nothing in the record indicates that relators made any progress on the city council's three conditions after the December 5, 2012 meeting. On December 19, 2012, the city council considered the matter at a public hearing for the fifth and final time. Neither Samatar nor Jerome nor LeTourneau was present. The city council unanimously approved a resolution ordering the repair or removal of the building within 30 days. Relators appeal by way of a writ of certiorari.

**D E C I S I O N**

"Decisions of administrative agencies, including cities, are presumed to be correct, and this court will reverse or modify an agency decision only if a party's substantial rights have been prejudiced because the decision exceeded the agency's statutory authority, was made upon unlawful procedure, was affected by other error of law, or was arbitrary or capricious." *Rostamkhani v. City of St. Paul*, 645 N.W.2d 479, 483 (Minn. App. 2002) (citing *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn*., 624 N.W.2d 264, 277 (Minn. 2001)). This court's review is "limited to the evidence in the record," and the city's decision must be upheld if it has "a legal basis demonstrated by substantial evidence." *Id.* (citing *Cable Communications Bd. v. Nor-West Cable Communications P'shp*, 356 N.W.2d 658, 668 (Minn. 1984)). The city's decision is arbitrary and capricious only if it

> (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) it is so implausible that it could not be explained as a difference in view or the result of the city's expertise.

*Id.* at 484.

The city's ordinances define a "nuisance building" to mean a "vacant building or portion of a vacant building as defined in section 43.02 which has multiple housing code or building code violations." St. Paul, Minn., Legislative Code § 45.02 (2007). Once the city determines that a building is a nuisance building, the city is authorized to take steps to abate the nuisance. St. Paul, Minn., Legislative Code § 45.08 (2004). Property owners typically are given six months to rehabilitate the property, but one six-month extension of that period may be approved if it can be shown that the code-compliance work is proceeding expeditiously and is more than fifty percent complete, or "if unforeseen conditions have had significant schedule impact on the completion of work." St. Paul, Minn., Legislative Code § 33.03(f)(4) (2009). The building at issue in this case has been vacant since at least 2011 and has a documented history of code violations, as described above. Relators' own structural engineer and architect identified several areas of the building that were in significant disrepair and in violation of city code.

Relators raise a number of arguments as to why the city council's decision is erroneous and should be reversed. We address each of them in turn.

**A.**

Relators argue that the city council's decision is not based on substantial evidence because there is "undisputed evidence" in the record of relators' substantial completion of the city's requirements.

The evidence in the record does not support relators' argument that they had substantially completed the abatement requirements, even if substantial compliance would be sufficient. Between September and November 2012, relators repeatedly were informed that they needed to provide the city with three things: (1) contractor bids, (2) a work plan, (3) and a demonstration of available funds to complete the project. Relators never satisfied those requirements. Although relators submitted some information, the documentation was deemed inadequate. The city explained to relators on multiple occasions why the documents they had provided were inadequate, and further explained specifically what relators needed to provide in order to meet the city's requirements. But relators failed to cure the deficiencies, despite repeated extensions of time.

Thus, the city council's decision is based on substantial evidence.

**B.**

Relators argue that the city council's decision is arbitrary and capricious because it "failed to consider undisputed evidence submitted by Relators that they were prepared to take all appropriate remedial action immediately to complete their renovation of the subject building." Similarly, relators argue that the city council failed to consider an important aspect of the issue because it failed to consider the degree of project completion and relators' willingness to complete the project.

This argument is inconsistent with the record. Relators' project manager admitted during the December 5, 2012 city council meeting that he previously was unaware of the extent of work to be done and needed more time to prepare a scope-of-work document. Council Member Carter made clear that relators had one last chance to prove that they had the capacity to complete the project. He suggested three conditions that needed to be satisfied by the city council's next meeting on December 19, 2012, to keep the project alive. The third of those conditions was the scope-of-work document. There is no evidence in the record, and no argument by relators, that relators ever submitted that document to the city.

Relators contend that the city failed to consider that they were "willing" to fulfill the city's conditions. Again, their contention is inconsistent with the record, which clearly indicates that they did not fulfill the city's conditions, even after being given multiple opportunities. Contrary to relators' contention, it appears that the city *did* consider the extent of relators' progress and their willingness to complete the project and simply found both wanting.

Thus, the city council's decision is not arbitrary and capricious, and the city did not fail to consider an important aspect of the issue.

**C.**

Relators argue that the city council's decision is so implausible that it cannot be explained as a difference in view or the result of the city's expertise. Relators contend that this is so because relators had repaired the roof and the nuisance "was almost wholly abated by the time the Council rendered its decision."

Contrary to relators' argument, the record does not indicate that relators had done the work required by the city or any substantial portion of the work required. The record shows that relators did a relatively minor amount of work related to tuckpointing and electrical wiring. Relators also failed to submit the documents required by the city to suspend its nuisance-abatement process. The city's decision can be explained by the city's expertise in managing the abatement of nuisance property and relators' failure to meet the conditions imposed by the city.

Thus, the city council's decision is not so implausible that it must be overturned.

**D.**

Relators argue that the city relied on factors not intended by the ordinance because the LHO was concerned with the aesthetics of the rehabilitation project, a factor not addressed by city ordinance.

Relators' argument is based on comments made by the LHO at the first legislative hearing, on August 14, 2012:

> I would love to see this building fixed. There's a lot of things that could be done to make it look horrible, and there's some things that can be done to make it look great. . . . So if it can be a handsome part of that neighborhood . . . you know, and a reputable business, great.

This comment is not connected to the city council's decision four months later to order the building repaired or removed. Relators never were "legally obligated to restore the building to please the LHO's sense of aesthetics," as they argue in their brief. Indeed, at the same legislative hearing, the LHO clarified that relators needed to provide the city with only three things: (1) contractor bids, (2) a work plan, (3) and a demonstration of

available funds to complete the project. The city never referred to aesthetics in any of the requirements imposed on relators.

Thus, the city did not rely on factors not intended by the ordinance.

**E.**

Relators argue that "the City's decision that demolition, without any right to repair the structure, is clearly oppressive and unreasonable." Relators are incorrect in arguing that the city council's resolution deprives them of the right to repair the building. Even after the resolution was approved, relators still had an opportunity to repair the structure, pursuant to the city's conditions. Furthermore, relators had ample opportunity to make repairs before the city council's December 19, 2012 meeting. Thus, the city council's decision is not oppressive and unreasonable.

**F.**

Relators argue that the city council's decision was made upon unlawful procedures because the city's enforcement officer did not "appear and present evidence" to the city council.

Relators rely on a city ordinance that requires the city council, as part of the nuisance-abatement process, to hold a public hearing at which the city council "shall hear from the enforcement officer and any other parties who wish to be heard." St. Paul, Minn., Legislative Code § 45.11, subd. 5 (2005). The record indicates that the city's code-enforcement officer was present at all four legislative hearings. He testified at length at the first legislative hearing. The city council was provided with the minutes of each of the legislative hearings, including a half-page description of his testimony at the

first legislative hearing. The city council also was provided with the order to abate nuisance, which had been prepared by the vacant-buildings enforcement inspector; a code compliance report, which was prepared by city inspectors; and over 40 photographs of the property. The city council's resolution states that the city council reviewed the exhibits from the department of safety and inspections, the minutes of the legislative hearings, and the testimony given at the legislative hearings. Relators cite no authority for the proposition that the city council must receive the code-enforcement officer's testimony orally instead of in writing. Furthermore, it does not appear that relators were prejudiced by the written format of the testimony because relators never challenged the accuracy of that testimony.

Thus, the city council's decision was not made upon unlawful procedures.

**G.**

Relators argue that the city council's decision constitutes an unlawful taking of their property because the city prevented them from rehabilitating the property by denying them permits, giving them inadequate time to resolve zoning issues, and requiring them to put money in escrow.

In their brief, relators cite the Fifth Amendment to the United States Constitution, which provides that "private property [shall not] be taken for public use without just compensation." U.S. Const. amend. V. Relators do not develop their argument any further by stating what is required for a regulatory taking or by citing any legal authority. "An assignment of error based on mere assertion and not supported by any argument or authorities in [an] appellant's brief is waived and will not be considered on appeal unless

prejudicial error is obvious on mere inspection." *Kaehler v. Kaehler*, 219 Minn. 536, 537, 18 N.W.2d 312, 313 (1945).

City staff refrained from issuing permits for the property because, as was explained to Jerome, the appropriate permits could not be issued until relators decided how the property would be used. The city did not arbitrarily deny permits to relators to prevent them from rehabilitating the property. The city simply required relators to follow certain steps to ensure that time, money, and resources were not wasted. The zoning issues remained unresolved because relators never decided how the property would be used. Furthermore, it was not unreasonable for the city to require relators to put funds in escrow.

Thus, relators have not established that the city council's decision constitutes an unlawful taking of their property.

**H.**

Relators argue that the city discriminated against them on the basis of race or national origin in violation of their constitutional rights to due process. This court may consider such a claim on a petition for a writ of certiorari, even though the claim was not presented to the city. *See Holt v. State Bd. of Med. Exam'rs*, 431 N.W.2d 905, 906-07 (Minn. App. 1988), *review denied* (Minn. Jan. 13, 1989).

Relators' discrimination claim is based primarily on their assertion that the city's LHO described relators' plans for the rehabilitated building in a derogatory manner as a "joke." Relators' brief states, "When Samatar described several potential usages, each designed to serve the Somali Community, the LHO understood that she was appearing as

a new owner [and] described the situation as 'a joke.'" At oral argument, relators' counsel stated further that the LHO's remark was a reaction to meeting Samatar, who presented as a Muslim woman dressed in a hijab.

The comment at issue was made during the first legislative hearing. The LHO was not previously aware that the property had been sold. After Samatar came forward and said that she and her husband were the new owners of the building, the LHO engaged in some informal conversation with Samatar, including the following exchange:

> L.H.O.: Do you folks live in town here or --
>
> SAMATAR: We're living in Minneapolis actually.
>
> L.H.O.: In Minneapolis. Oh, all right. [Laughter.] It's a joke.

The audio-recording of the hearing reveals that the LHO used a sarcastic tone when saying, "Oh, all right." The audio-recording also reveals that some persons who were present (but not the LHO or Samatar) briefly engaged in some mild laughter in response to the LHO's remark. The LHO then said, "It's a joke," as if to explain to Samatar that her sarcastic remark was an inside joke among city employees. Most importantly, for purposes of relators' discrimination claim, the audio-recording does not give a listener the impression that the LHO was referring in any way to Samatar's race or national origin when she either made the joking remark or referred back to it. Rather, the audio-recording gives the strong impression that the LHO's joking remark referred to relators' residence in the city of Minneapolis rather than the city of St. Paul. The LHO's remarks appear quite clearly to be an example of the rather common and innocuous practice of

residents of the Twin Cities to comment on, and sometimes joke about, the lighthearted rivalry between two cities.

Furthermore, at the time of the LHO's remark, there had not yet been any discussion regarding the potential uses of the property. The first time Samatar mentioned her ideas for potential uses of the property was later in that hearing, when she said that she and Jerome anticipated that the first floor would be used for a retail store of some kind and that the second floor would be used for either offices or a wedding hall. The record indicates that, at a later date, relators told the city that they planned to use the second floor of the property as a rental hall for weddings and events and the first floor as a restaurant on one side and a retail store on the other. Contrary to relators' appellate arguments, relators never indicated to anyone associated with the city that they intended to use the property for a purpose specifically associated with the Somali community, at least as far as the record reveals. At oral argument, relators' counsel repeatedly stated that relators had planned to use the property as a "Somali meeting hall." But there is nothing in the record to support that assertion. If relators intended for the building to serve the Somali community, it appears from the record that they never communicated that intention to the city in any way.

Thus, relators' claim that the city discriminated against them on the basis of race or national origin in violation of their constitutional rights to due process is without merit.

In sum, each of relators' arguments is without merit. The city did not commit reversible error in any respect. Accordingly, we affirm the city council's decision to approve a resolution requiring the repair or removal of the building within 30 days.

**Affirmed.**