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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1104**

Mahmood Khan,
Relator,

vs.

City of Minneapolis,
Respondent.

**Filed June 2, 2014
Affirmed
Ross, Judge**

Minneapolis City Council
File Nos.: BZH-27371 or BZZ-27371

James Heiberg, St. Paul, Minnesota (for relator)

Susan L. Segal, City Attorney, Lee C. Wolf, Assistant City Attorney, Minneapolis,
Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Ross, Judge; and Bjorkman,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Mahmood Khan owns an unoccupied apartment building damaged in a May 2011
tornado. Two years passed and Khan had not repaired the building. The Minneapolis City
Council ordered it demolished. Because the city council had an adequate legal and

substantial basis to demolish the building after giving Khan sufficient process to challenge the demolition decision, we affirm.

FACTS

Mahmood Khan owns an unoccupied eleven-unit apartment building that a tornado damaged in May 2011. After the tornado, thieves stripped the building of plumbing and heating materials and electrical wires, adding to the cost of potential repair. Seven months after the tornado, Khan had not begun any repairs. The City of Minneapolis's inspections division gave Khan a demolition order in December 2011 informing him that he had one month to demolish his property or the city would do it for him.

Khan timely appealed administratively, claiming that the order violated his due process rights and that the city lacked cause to demolish the building. The Nuisance Condition Process Review Panel heard Khan's appeal in March 2012. Minneapolis Department of Regulatory Services employee Kellie Jones described the building as "severely damaged," explaining that the building had "extensive roof damage, window damage, [and damage to] the brick face." The building inspector working on the case added that "the interior ha[d] been pretty much destroyed." But Jones stated that the Minneapolis Heritage Preservation Commission thought the property might be a historic resource, so she recommended that Khan and the city pursue a restoration agreement. Khan indicated that he wanted to fix the building but maintained that he was waiting for an insurance settlement. The review panel continued the hearing.

The panel returned to the issue in a hearing in May. Khan had still not commenced repairs. He claimed he was unable to obtain permits due to the city's attempt to demolish the building. Jones acknowledged that repairing the property "would . . . be a gamble" due to the "possibility of demolition," but she emphasized that Khan had made no repairs even before the demolition order despite having had seven months to do so. Khan also still had not signed a restoration agreement. The building inspector had recently visited the property and estimated the rehabilitation cost would be somewhere between \$618,000 and \$870,000. Khan had provided a document indicating that the insurance proceeds would amount only to about \$300,000. He provided no detailed list of planned repairs with costs. Jones recommended demolition. The review panel agreed. But before demolition, the city's regulatory services officials sought approval from the preservation commission.

The Minneapolis Heritage Preservation Commission considered the case in July 2012. City planner Aaron Hanauer told the commissioners that the property had historic significance but stated demolition might be necessary for safety. Commissioners viewed photos and heard about the building's structural and other problems: "not having a permanent roof, no windows in some of the openings, . . . major water intrusion, extensive mold growth, compromised walls, flooring [and] sub-flooring, buckled floors[,] and missing heating and plumbing systems." Hanauer acknowledged that Khan had submitted a rehabilitation plan and had placed a temporary roof on the property. But Hanauer also emphasized that the cost of repairs greatly exceeded the market value of the

property. He recommended demolition but suggested delaying it until October 31 to give interested persons the opportunity to preserve the building.

Khan's contractor, Tom Belting, explained the repair delays. He said that Khan owned 26 properties damaged by the tornado and had repaired 22 of them. Belting also told the commission that Khan had agreed to settle his insurance claim for \$500,000. He stated that Khan had started repairs, claimed that the building was structurally fine, and reported that subcontractors had bid on various projects. But, according to Belting, Khan would not continue repairs while the demolition order existed. Khan also testified. He explained that he had to wait to start repairs until he received a permit in March 2012. He said that, at that point, he put on a new roof and began brick work. He estimated that restoring the building would take about six months and that its costs were within his budget.

The commission pressed Jones on her reasons for wanting to demolish the building despite Khan's preliminary steps and his desire to repair it. She responded that Khan's and Belting's testimony included new information never given to her. The preservation commission agreed to the demolition order, but it stayed the order until December 31 to give interested parties the opportunity to work out a rehabilitation agreement.

The case returned to the nuisance review panel in August with a goal to determine how the new evidence and the preservation commission's findings would affect the review panel's prior demolition decision. Jones repeated her concern that the cost of rehabilitation would substantially exceed the property's projected post-repair market

value. She also expressed concern that the repairs would not be completed on schedule and that Khan's cost projections lacked sufficient detail. Khan explained that he had already invested in the property and that his consultant estimated the total cost of rehabilitation was within his budget. The panel again recommended demolition, subject to the preservation commission's stay.

Khan made no repairs after the August 2012 hearing. He sought financing for repairs and met with representatives from NorthStar bank, the mortgage holder on the property, during late 2012. The bank, the department of regulatory services, and Khan discussed rehabilitating the property. But in January 2013, the bank refused to finance the project. Khan offered no other financing source, and he and the city could not reach a restoration agreement.

The case again came to the nuisance review panel on January 10, 2013, after the preservation commission's stay expired. Jones reported to the panel the financing failure and the lack of any restoration agreement. She also stated that some of the second- and third-floor windows had remained open "pretty much since the . . . tornado." Khan claimed that the only reason he had been unable to do any work was the lack of permits from the city. The panel voted to demolish the building. It documented its findings, concluding that demolition was appropriate because the building would likely continue to be a nuisance.

The city's regulatory, energy and environmental committee met to consider demolition. That committee held a hearing in March 2013, hearing from Khan and Jones. They essentially repeated the arguments made at the various prior hearings. Khan, for the

first time, revealed that two banks had invited him to apply for a loan for the rehabilitation. The committee adopted the nuisance review panel's findings of fact and recommendations and its members voted to demolish, but the committee stayed the decision for six months subject to a qualified entity purchasing the property or Khan arranging to finance its rehabilitation.

The matter reached the full city council one month later, on April 26. Council member Don Samuels moved to strike the stay of demolition but otherwise adopt the regulatory, energy and environmental committee's recommendations. He represented that he had talked with some developers earlier that month who told him that rehabilitating the building was economically infeasible and that Khan was asking an unreasonable amount for the property's sale. Samuels opined that there would "be no possible way" for Khan to rehabilitate or sell the property during the six-month stay. The council members voted unanimously to demolish the building immediately, overruling the stay.

Khan appeals the city council's decision by writ of certiorari.

D E C I S I O N

Khan challenges the Minneapolis City Council's decision to order his building demolished. He asserts that the decision was arbitrary, oppressive, and unreasonable and also that he was not provided due process before the decision. On certiorari appeal, our review is limited to inspecting the record to determine if the municipality's decision was "arbitrary, oppressive, unreasonable . . . or without any evidence to support it." *Dietz v. Dodge Cnty.*, 487 N.W.2d 237, 239 (Minn. 1992) (quotation omitted). We give deference to municipal decisions and presume they are correct. *Rostamkhani v. City of St. Paul*, 645

N.W.2d 479, 483 (Minn. App. 2002). We will affirm if there is “any legal and substantial basis” to do so. *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996) (quotation omitted).

I

Khan maintains that the city council’s decision to demolish the building was arbitrary and unreasonable. If a city bases its decision on factors not contemplated by ordinance, does not consider all key issues, or explains its decision in a way that conflicts with the evidence, the decision may be arbitrary and capricious. *Rostamkhani*, 645 N.W.2d at 484. We see no lack of reason here.

Khan contends that the city failed to consider key issues. He argues that because Samuels never mentioned that Khan had been discouraged from working on the building due to the demolition order, that the property had been vandalized, and that Khan had insurance problems, the council failed to consider all the issues. The argument does not persuade us. The nuisance review panel heard Khan’s excuses multiple times and expressly included the circumstances in its recommendation, which the council members were considering. The regulatory, energy and environmental committee also heard Khan’s circumstances, expressly adopted the nuisance review panel’s findings and recommendation, and included information about Khan’s circumstances. The full council, in turn, adopted the regulatory, energy and environmental committee’s recommendation. That Samuels in particular did not restate the details at the council meeting does not demonstrate that the council failed to consider them.

Khan also maintains that the council acted arbitrarily and capriciously by considering factors that the ordinance did not intend—evidence that was not part of the administrative record. To determine whether to demolish or rehabilitate a nuisance property, the city council should look at “the evidence and record of the appeal hearing.” Minneapolis, Minn., Code of Ordinances § 249.50(b) (2006). Khan is correct that Samuels brought up evidence outside the administrative record by revealing his interaction with developers who purportedly opined to Samuels about the property. Khan’s complaint about the apparent ex parte communication and the sua sponte report during the council meeting is not without merit. But this does not require us to reverse. We can affirm a municipality’s decision on “any legal and substantial basis.” *Senior*, 547 N.W.2d at 416 (quotation omitted).

The record indicates that the council would have acted reasonably by demolishing the building immediately, without imposing a stay, regardless of the complained-of hearsay report by Samuels. It also knew of the repeated stays and Khan’s failure to take even minor steps to protect the property from ongoing damage, like securing open windows. It knew of his failure to obtain financing or to present a detailed repair plan. Although the regulatory, energy and environmental committee had recommended a stay of demolition, the council never approved that recommendation. And it is the council that “ha[s] . . . final authority to determine whether the building . . . should be rehabilitated or razed.” Minneapolis, Minn., Code of Ordinances § 249.45(j) (2006). The council also has the authority to “impose any and all conditions it deems appropriate” with respect to a demolition. *Id.*, § 249.50(b). This includes imposing no conditions and rejecting

recommended conditions. The council approved the recommendation of the nuisance review panel and rejected the recommendation of the regulatory, energy and environmental committee. Although it was improper to consider evidence outside of the record, the council's decision was warranted by the admissible facts. Khan's argument that the city had a reasonable ground to stay the demolition is not without merit. But on appeal, we will not substitute our judgment for the city council's. Because we give municipal decisions great deference and the city had a substantial factual and legal basis to demolish the building immediately, we cannot hold that its decision was arbitrary or capricious.

II

Khan argues that when Commissioner Samuels provided information outside of the record, the comments violated his right to due process. Before depriving a person of a property interest, a government entity must provide the person a means to challenge the state's action. *See Humenansky v. Minn. Bd. of Med. Examiners*, 525 N.W.2d 559, 565 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995). This right, rooted in the federal and state constitutions, generally includes the right to a hearing, an impartial decision-maker, and "the right to a reasonable decision based solely on the record." *Id.* But due process is a flexible concept, *see id.*, and quasi-judicial proceedings do not receive the same level of due process protection as civil or criminal proceedings, *Barton Contracting Co. v. City of Afton*, 268 N.W.2d 712, 716 (Minn. 1978). We review a due process challenge de novo. *Staheli v. City of St. Paul*, 732 N.W.2d 298, 304 (Minn. App. 2007).

To determine whether a person's right to due process was met we weigh interests to determine what process was due. *Mathews v. Eldridge*, 424 U.S. 319, 334, 96 S. Ct. 893, 902 (1976). And to determine whether the process was constitutionally sufficient, we balance three factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 335, 96 S. Ct. at 903; *see Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988) (explaining Minnesota and federal due process rights are the same).

We are satisfied that Khan had adequate process to make his case for a stay of demolition and to defend the recommendation for a stay, despite Samuels's comments. He received the process afforded by the city code. Generally, after an inspector determines that a building is a nuisance and that demolition is the proper remedy, the property owner is informed of the determination. *See* Minneapolis, Minn., Code of Ordinances § 249.40(3) (2006). Khan does not dispute that he was afforded this process. The owner is given 21 days to appeal. *Id.*, §§ 249.40(4), 249.45(c). Khan received this process as well. A nuisance review panel then holds a hearing to determine whether demolition is appropriate. *Id.*, § 249.45(h). Again, Khan was given this process. The owner can present evidence and argument and question witnesses. *Id.* (e). Khan had this opportunity. The city council then makes the final determination. *Id.* (j).

The process was adequate to decide whether to demolish the property immediately or to afford Khan another six months to sell or rehabilitate it. We have previously held that “[t]here is no legal support for the argument that, after giving a landowner the hearings guaranteed to him under the city code, a city must proactively cooperate with a landowner before it ultimately decides to remedy a nuisance property.” *Rostamkhani*, 645 N.W.2d at 485. Khan went before the nuisance review panel four times, the preservation commission once, the regulatory, energy and environmental committee once, and the city council once. Despite numerous opportunities to present convincing evidence that the building should not be demolished because he had arranged a buyer or financed a plan to rehabilitate it, he never convinced any of the relevant bodies that the building should survive. Khan failed to reach a restoration agreement with the city or to demonstrate that he had adequate financing to rehabilitate it. And despite his legitimate complaint that the city should not have considered the hearsay report that his asking price was unreasonably high, he never provided any evidence that a suitable buyer existed. Khan does not specify what, if any, additional procedural components would have prevented the city’s decision, and, given the record, we cannot conceive how additional process would have avoided the demolition decision. The city has a legitimate health and welfare interest in demolishing the building sooner rather than later. By the time it ultimately decided the issue the building had already been open to the elements and thieves for more than two years. And during that time, despite Khan’s pecuniary interest as owner to restore the building to habitable condition and his recurring insistence that he would, it sat empty, without a rehabilitation plan suitable to the city or adequate financing to achieve one.

The council did not violate Khan's due process rights by rejecting the regulatory, energy and environmental committee's recommendation to stay demolition.

Affirmed.