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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0230**

Tom Borchardt, et al.,
Relators,

vs.

City of North Branch,
Respondent,

North Branch Municipal Water and Light Commission,
Respondent.

**Filed July 16, 2018
Affirmed
Cleary, Chief Judge**

City of North Branch
Resolution No. 117-17-CC

Kevin K. Shoeberg, Kevin K. Shoeberg, P.A., Woodbury, Minnesota (for relators)

Vincent Stevens, Miller & Stevens, P.A., Forest Lake, Minnesota (for respondents)

Considered and decided by Kirk, Presiding Judge; Cleary, Chief Judge; and Jesson, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

Relators, property owners, challenge a resolution by respondent city and its water commission authorizing the certification of water-meter-installation charges to the county auditor for collection with relators' property taxes. Relators argue that the

certification must be reversed because it is not authorized by law or supported by substantial evidence. We affirm.

FACTS

Oakwood Court is a manufactured home park located on property owned by relators Tom and Joyce Borchardt in the City of North Branch. Oakwood Court is operated by Oakwood Court Park, LLC (OCP), which is also owned by the Borchardts. Prior to February 2016, respondent North Branch Water and Light Commission (NBWL) billed for water usage at Oakwood Court based on estimated, rather than actual, use. In 2016, NBWL informed the Borchardts that they were required to meter their main water lines. That year, NBWL and OCP entered into a cost-payment agreement to construct and install the required main water meter.

In 2017, NBWL sent the Borchardts current and past-due invoices for construction costs. After receiving no payment, NBWL sent the Borchardts two notices of tax certification for \$19,887.50 to recover the charges.

The Borchardts challenged the certification and submitted written objections. NBWL heard the Borchardts' objections on December 7, 2017 and elected to proceed with the certification. The Borchardts sent additional written objections for the city council's review. On December 12, 2017, respondent City of North Branch passed a resolution certifying \$19,887.50 to the Borchardts' property taxes. The Borchardts petitioned for a writ of certiorari and this appeal follows.

DECISION

A quasi-judicial decision by a municipality is reviewable by a writ of certiorari. *County of Washington v. City of Oak Park Heights*, 818 N.W.2d 533, 545-46 (Minn. 2012).

Certiorari review is limited to questions affecting the jurisdiction of the board, the regularity of its proceedings, and, as to the 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.

Staehele v. City of St. Paul, 732 N.W.2d 298, 303 (Minn. App. 2007) (quotation omitted).

“As a reviewing court, we will not retry facts or make credibility determinations, and we will uphold the decision if the lower tribunal furnished any legal and substantial basis for the action taken.” *Id.* (quotation omitted). “The party seeking reversal has the burden of demonstrating error.” *Montella v. City of Ottertail*, 633 N.W.2d 86, 88 (Minn. App. 2001).

The Borcharchts argue that the certification should be reversed because NBWL acted contrary to law. We disagree.

I. NBWL did not act contrary to law.

The Borcharchts argue that only charges for nonpayment of water usage may be certified and that NBWL’s authority to charge for water usage does not include the authority to charge for construction costs. Minn. Stat. § 444.075, subd. 1a (2016) provides that a municipality may “build, construct, reconstruct, repair, enlarge, improve, or in any other manner obtain facilities.” “Facilities” includes “waterworks systems,”

which includes mains. *Id.*, subd. 1(c), (f) (2016). “*To pay for the construction, reconstruction, repair, enlargement, improvement, or other obtainment, . . . the governing body of a municipality . . . may impose just and equitable charges for the use and for the availability of the facilities.*” *Id.*, subd. 3(a) (2016) (emphasis added). “The governing body . . . may provide and covenant *for certifying unpaid charges* to the county auditor with taxes.” *Id.*, subd. 3e (emphasis added). Statutory law expressly authorizes NBWL to certify the unpaid construction charges against the Borchardts’ property taxes. NBWL’s actions did not violate state law.

The Borchardts also contend that NBWL denied them due process by failing to provide notice to OCP, the contracting party, and only providing notice to the Borchardts. Section 444.075 authorizes NBWL to certify charges against the Borchardts’ property taxes as property owners: a municipality may charge “the owner, lessee, occupant, or all of them.” Minn. Stat. § 444.075, subd. 3e. Although the Borchardts dispute which entity operates Oakwood Court, the parties do not dispute that the Borchardts own the real property located at Oakwood Court. The Borchardts received proper notice as owners.

The Borchardts also argue that they were denied a meaningful hearing because members of NBWL and the city council had conflicts of interest. “An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below.” *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). The record here is devoid of factual support for the Borchardts’ claim; accordingly, we decline to review it.

II. The certification is supported by substantial evidence.

The Borchardts also argue that the certification is not supported by substantial evidence because NBWL did not investigate the disputed claim, weigh evidentiary facts, or issue any written decisions or findings of fact. In Minnesota:

A decision is supported by substantial evidence when it is supported by (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 Env'tl. Advocacy v. Minn. Pollution Control Agency, 644 N.W.2d 457, 464 (Minn. 2002).

After five invoices, including two past-due notices and an additional notice, went unpaid, NBWL notified the Borchardts of its intent to certify the unpaid amount to their property taxes. At the time it made its decision to certify the charges, NBWL had three letters from the Borchardts objecting to the certification, a letter from NBWL responding to the Borchardts' objections, and oral argument from the Borchardts' attorney at its special session. Likewise, at the time the city passed its resolution, it had before it an additional letter from the Borchardts' attorney objecting to the certification. The record shows that NBWL had "more than some evidence" to certify the unpaid construction costs to the Borchardts' property taxes.

III. NBWL did not discriminate against the Borchardts.

The Borchardts also argue that NBWL discriminated against them by refusing to allow for individual metering in their manufactured home park. NBWL policies allow

park owners to individually meter their trailers, but the cost is the owner's responsibility. North Branch Water & Light Utility Admin. Policy No. 300.0-21.0. NBWL informed the Borchardts that they could individually meter Oakwood Court, but that their plan would not conform to NBWL's rules unless it also included "metering at the main." NBWL did not categorically prohibit the Borchardts from individually metering Oakwood Court.

IV. There are no grounds to rescind the cost-payment agreement.

Finally, the Borchardts argue that the cost-payment agreement should be rescinded because the parties entered into it based on a mutual mistake of fact. The Borchardts assert that a functional water meter already existed on the property, which neither party was aware of. We need not determine the validity of the cost-payment agreement to evaluate the arguments on certification. Nevertheless, the nature, appearance, and location of the found meter is disputed and neither party provided record support for its arguments. We therefore cannot conclude that both parties made a mistake of fact.

Affirmed.