STATE OF MINNESOTA
IN COURT OF APPEALS
A10-721

Robert E. Schilling,
Relator,

vs.

City of Saint Paul,
Respondent.

Filed April 26, 2011
Affirmed
Stauber, Judge

City of Saint Paul
File No. 10-367

John R. Shoemaker, Paul F. Shoemaker, Bloomington, Minnesota (for relator)

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

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Stauber, Judge.

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

STAUBER, Judge

On appeal from respondent-city's decision to demolish relator's building, relator argues that the decision is unsupported by substantial evidence and arbitrary and capricious. We affirm.

FACTS

Relator Robert E. Schilling is the owner of a commercial building located at 781-783 University Avenue West in Saint Paul. The building is a two-story wood-frame commercial building that was built in 1911. The fee owner of the property is listed as Yong Sun Park, but relator is listed as the tax owner and responsible party for the certificate of occupancy. Relator is reportedly the fee owner because he purchased the property by contract for deed; however, he has never recorded the deed. The building has been designated vacant since August 2002. Relator also owns adjacent property at 785 University Avenue, which is the subject of a related appeal.

In 2004, the city inspected the building and issued a report listing more than 60 code deficiencies. Although the city ordered relator to correct the deficiencies immediately, the record does not show any remedial action taken by relator or any further action taken by the city to follow up on the inspection.

On December 1, 2009, the city inspected the building once again and noted a number of deficiencies constituting a nuisance condition. The city issued an order to abate the nuisance on January 12, 2010, which stated that the building was deemed "to comprise a nuisance condition in violation of the Saint Paul Legislative Code, Chapter 45.02, and subject to demolition under authority of Chapter 45.11." The order was posted on the building and sent to relator and other parties having a possible interest in the building. It stated that if the deficiencies were not corrected by February 10, 2010, substantial abatement process would begin. Although the order noted 63 specific deficiencies, it stated that the list was not comprehensive and directed relator to obtain a

code compliance inspection from the city in order to "identify specific defects, necessary repairs and legal requirements to correct this nuisance condition."

Relator took no action in response to the order to abate, and on February 12, 2010, the city notified him that public hearings would be held in order to consider a resolution ordering the repair or removal of the building. The notice indicated that the city had re-inspected the building on February 10, 2010 and found that the nuisance conditions remained unabated.

Relator met with Legislative Hearing Officer Marcia Moermond on March 9, 2010, to address the nuisance problems. He told Moermond that he was the fee owner of the property but had never recorded his deed because he could not find it. Relator said that the property was in poor condition because he had been in the process of rehabbing another property and ran into serious financial difficulties. He asked Moermond for an additional six months to remedy the deficiencies.

Moermond questioned relator about why he had not applied for a code compliance inspection and relator stated that he had not fully read the order to abate and did not know one was required. Moermond also noted that relator owed over $6,000 in delinquent property taxes for the building. Relator acknowledged that he did not have the means to pay the taxes and had not attempted a workout plan with the county. Moermond also informed relator at this meeting that city inspectors had estimated that the cost of repairs to correct the deficiencies would be $150,000.

Moermond continued the hearing to March 23, 2010, and informed relator that he would need to take several steps to demonstrate that he could successfully correct the

nuisance condition of the building and allow her to recommend to the city council that he receive additional time. Relator was asked to: (1) register the deed to the property; (2) post a $5,000 performance bond; (3) pay the delinquent property taxes; (4) apply for a code compliance inspection; (5) submit a work plan; (6) provide financing information showing that he can meet the cost of repairs; (7) submit contractor bids or sworn construction statements; (8) maintain the property.

Relator met with Moermond again on March 23, 2010, this time appearing with an attorney. This hearing concerned both the 781-783 University Avenue property as well as the adjacent property at 785 University Avenue. Relator acknowledged that he had not completed any of the tasks that were asked of him. Relator told Moermond that he had a contractor in mind who would visit the building that week and submit a bid. He also identified subcontractors that he planned to use for plumbing and electrical work. Relator stated that the building was not subject to a mortgage and he believed he could obtain a loan using the equity he had in the building. Moermond told relator that in order for her to recommend to the city council that relator be given additional time to correct the deficiencies, relator would need to record the deed, pay the $5,000 performance bond, pay the property taxes, and apply for the code compliance inspection.

The matter came before the city council on April 7, 2010, at which time Moermond recommended that the council order the building's demolition because relator had not met the deadlines she imposed for him. Appearing with his attorney, relator informed the council that he wanted to repair the building and did not want it to be demolished. Relator submitted a packet of information to the city council that included

signed contracts for the repair work and a copy of a $5,000 cashier's check to be used for the performance bond. The contracts listed a total cost of $14,200 to correct all the deficiencies within 90 days.

Relator informed the city council that he partially filled out the application for code compliance inspection that afternoon, but had been unable to complete the application because a city official was gone for the day. Relator also informed the council that he had been unable to record the deed. Because he lost the deed, relator explained that he would have to bring a quiet title action, which he estimated would take six months. Relator told the council that he was unable to pay the delinquent property taxes because he could not borrow money from a bank until he recorded the deed.

When questioned about how he intended to pay his contractors, relator stated that the contractors would start the work without payment because he had a relationship with them, and he would be able to barter with the contractors once work began. The council also questioned relator about the large difference between the city's estimate of $150,000 to correct the deficiencies and the contractor's bid of $14,200. Relator acknowledged that this was a large difference, but he assured the council that the contractor had visited the property and believed the work could be done for $14,200.

The city council voted unanimously to adopt a resolution ordering the demolition of the building within fifteen days. In reaching their decision, members of the city council stated that, given the low bid by relator's contractor and the fact that it was uncertain whether the contractors would be paid, the council believed that relator would not successfully correct the building's deficiencies. This certiorari appeal followed.

D E C I S I O N

A municipality's decision to order the demolition of a building is quasi-judicial in nature and is therefore subject to certiorari review by this court. *See Pierce v. Otter Tail Cnty.*, 524 N.W.2d 308, 309 (Minn. App. 1994), *review denied* (Minn. Feb. 3, 1995). Certiorari review is limited "to questions affecting the jurisdiction of the [decision-making body], 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 Cnty.*, 487 N.W.2d 237, 239 (Minn. 1992) (quotation omitted). This court's review "is confined to the record before the city council at the time it made its decision." *Montella v. City of Ottertail*, 633 N.W.2d 86, 88 (Minn. App. 2001) (quotation omitted). We do not "retry the facts or make credibility determinations," and we will uphold the decision if the city "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).

The city has authority under Minnesota Statutes and the Saint Paul Legislative Code to abate nuisances by ordering the demolition of nuisance buildings. *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 §§ 45.08-.14 (2010) (granting the city authority to abate nuisances, including by demolition of buildings, and defining procedure for nuisance-abatement actions). Section 45.02 of the Saint Paul Legislative Code defines a nuisance building as:

> A vacant building or portion of a vacant building as defined in section 43.02 which has multiple housing code or building code violations or has been ordered vacated by the city and which has conditions constituting material endangerment as defined in [section] 34.23(g), or which has a documented and confirmed history as a blighting influence on the community.

St. Paul, Minn., Legislative Code § 45.02 (2010).

I. Substantial Evidence

Review of an administrative agency's decision "is limited to the evidence in the record, and the decision is upheld if the administrative action has a legal basis demonstrated by substantial evidence." *Rostamkhani v. City of St. Paul*, 645 N.W.2d 479, 483 (Minn. App. 2002). 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).

The record reflects that the building has been vacant since August 2002. The city inspected relator's building on December 1, 2009 and noted 63 separate code deficiencies. Relator did not contest any of the code violations at the city council hearing, but instead argued that he should be given additional time to correct them. On appeal, relator does not challenge the city's finding that the building had multiple code violations. Rather, he argues that substantial evidence does not support the city's decision because the city did not allow him additional time to repair the building. While this argument may support the conclusion that the city acted unfairly, it does not

demonstrate how the city's decision lacked substantial evidence. Given the building's multiple code violations and its vacancy status, the building qualifies as a nuisance building under the city code and the city was authorized to order its demolition. Therefore, there is substantial evidence to support the city's decision.

II. Arbitrary and capricious

A decision is 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) the decision is so implausible that it cannot not be explained as a difference in view or the result of the city's expertise. *Rostamkhani*, 645 N.W.2d at 484. "An agency's decision is arbitrary and capricious if it represents its will and not its judgment." *Hiawatha Aviation of Rochester Inc. v. Minn. Dep't of Health*, 375 N.W.2d 496, 501 (Minn. App. 1985) (citation omitted), *aff'd*, 389 N.W.2d 507 (Minn. 1986).

Relator first contends that the city relied on factors not intended by the ordinance because it based its decision on the property's title defects, the delinquent property taxes, and relator's ability to obtain financing for repair costs that were overinflated by the city.

On its face, the city ordinance defining a nuisance building makes no reference to delinquent property taxes or title issues. The only relevant factors are whether the building has multiple code violations, constitutes a material endangerment, or is a blighting influence on the community. *See* St. Paul, Minn., Legislative Code § 45.02. However, relator does not contest that the building constituted a nuisance at the time he went before the city council. Relator did not present the city council with any evidence

that the building's numerous code violations did not exist or had been corrected, but argued instead that he had the ability to correct the deficiencies and should be given additional time to do so.

The city council's decision therefore concerned only whether relator had a realistic plan to complete the repairs and bring the nuisance building up to code. The property's title issues, the delinquent taxes, and relator's estimate for repairs, all were relevant to this question. For example, relator expressed a desire to use his equity in the building to obtain a loan to pay for the repairs and the delinquent taxes, but he acknowledged that banks would not loan him money unless he had clear title to the property.

Further, the St. Paul Legislative Code does not require the city to provide a property owner with additional time to correct a nuisance. If a nuisance condition exists that has not been corrected by the owner and the city has provided the owner the proper notice and hearings guaranteed him by the city code, the council has the option to order the city to take immediate abatement action or to set another deadline for the property owner to perform the abatement. Section 45.11(5) provides:

> After the hearing, the city council shall adopt a resolution describing what abatement action, if any, the council deems appropriate. If the resolution calls for abatement action, the council may *either order the city to take the abatement action or* fix a time within which the nuisance must be abated . . . and provide that if corrective action is not taken within the specified time, the city shall abate the nuisance.

St. Paul, Minn., Legislative Code § 45.11(5) (emphasis added). Therefore, because the city had the authority to order immediate abatement or to give relator additional time, the city could properly consider whether providing additional time would be worthwhile.

The delinquent taxes, the property's title issues, and relator's financial ability, were all relevant.

Relator also argues that the city council's action is arbitrary and capricious because the city council failed to consider an important aspect of the issue. Specifically, relator argues that the council failed to consider evidence he presented showing that he had the desire and ability to immediately remedy the building's deficiencies. Relator points out that he provided the city council with signed contracts from three licensed contractors who were ready to begin work on the building. Relator cites *Rostamkhani*, where this court held that a city council's failure to consider a letter from a property owner which expressed the owner's intent to take remedial action amounted to an arbitrary and capricious act. 645 N.W.2d at 485–86.

In *Rostamkhani*, the property owner sent a letter to his city council member stating that he was prepared to take immediate action to correct a nuisance and described his plans to rehabilitate the property. *Id.* at 482. The council member failed to disclose this letter to the rest of the council prior to their unanimous vote to demolish the building, instead stating "that he knew of no evidence that indicated relator was willing to rehabilitate the property." *Id.* Relator's situation is not analogous to the property owner in *Rostamkhani*. Here, the city council accepted the evidence of the signed contracts that relator presented and heard his testimony that he would complete the repairs. The council discussed and considered this evidence, but ultimately was not satisfied that relator would be able to successfully correct the deficiencies even if given additional time.

Although we are sympathetic to relator's situation, the fact that we may have proceeded differently does not permit us to grant relator relief. *See In re Review of the 2005 Annual Automatic Adjustment of Charges for All Elec. & Gas Utils.*, 768 N.W.2d 112, 120 (Minn. 2009) (stating that "[i]f there is room for two opinions on a matter, the [agency's] decision is not arbitrary and capricious, even though the court may believe that an erroneous conclusion was reached"). The city acted in accordance with the city code after consideration of all the evidence, and its decision is supported by the record. On this record, we cannot conclude that the city's decision was arbitrary and capricious.

Affirmed.