STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0518

Randy J. Krongard,
Relator,

vs.

City of Minneapolis,
Respondent.

Filed April 15, 2008
Affirmed
Willis, Judge

Minneapolis City Council
File No. 3712 28th Ave S

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Considered and decided by Willis, Presiding Judge; Wright, Judge; and Poritsky, Judge.*

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

WILLIS, Judge

By writ of certiorari, relator challenges respondent city's decision to raze condemned buildings on his property, arguing that the city deprived him of due process

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

by not giving him (1) notice, (2) an opportunity to be heard, or (3) an opportunity to repair the buildings after it ordered them to be razed and that the city erred by not applying the procedures of an amended version of the city's code of ordinances. Because the city's decision did not violate relator's due-process rights and because the city was not required to apply the amended ordinance, we affirm.

FACTS

This case involves the decision of respondent City of Minneapolis to raze a house and garage owned by relator Randy J. Krongard. Krongard purchased the property in the fall of 2005; for at least the preceding three years, it had been the subject of frequent police calls and citations for housing-code violations. Krongard concedes that, at least by late 2005, he was aware that the city had condemned the house and garage. In the fall of 2006, as a result of these violations and the fact that the house and garage had been boarded up since early 2004, the city's inspections division requested that the Public Safety and Regulatory Services Committee of the Minneapolis City Council schedule a public hearing on September 27, 2006, to determine whether to order rehabilitation or razing of the buildings.

As required by ordinance, the city sent notices of the public hearing to Krongard and two prior owners who may have had an interest in the property. Additionally, the city published the notice in *Finance & Commerce* and posted a notice on the property. The notice provides that the property "constitutes a nuisance condition under Chapter 249 of the Minneapolis Code of Ordinances" and contains information regarding (1) the time and place of the public hearing, (2) the fact that the committee will order either

rehabilitation or razing of the buildings, and (3) the rights of parties with an interest in the property at the hearing. The city mailed notice of the hearing by certified mail to Krongard's post-office box in Lakeland, Minnesota. But after unsuccessful attempts at delivery on September 8, 11, and 19, the post office returned the envelope to the city as unclaimed. In accordance with the Minneapolis Code of Ordinances, the city also mailed neighborhood-impact statements to all residents of property within 350 feet of Krongard's property.

Krongard did not attend the September 27, 2006 public hearing. He claims that he did not physically receive the notice because he was working "out of state for only a few weeks and had so notified the post office." At the hearing, city staff summarized the recommendations of both the inspections division and the Minneapolis Community Development Agency to raze the buildings. Evidence was presented showing that (1) the costs of rehabilitation substantially outweighed the property's post-rehabilitation value, (2) the house had lost its historic significance, and (3) neighbors reported that the buildings were covered with "gang markings" and opined that they were "too far gone to be rehabilitated." At the conclusion of the hearing, the committee, which consisted of city-council members, voted to recommend to the full city council that the buildings be demolished. On October 6, 2006, the city council adopted the committee's findings of fact, conclusion, and recommendation at a regularly scheduled council meeting. The city council's action became effective on October 14, 2006, after the mayor signed the order and the city published it in *Finance & Commerce*. The city razed the buildings in early 2007, and Krongard filed this certiorari petition in March 2007.

D E C I S I O N

Certiorari is an "extraordinary remedy only available to review judicial or quasi-judicial proceedings and actions." *Minn. Ctr. for Envtl. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999) (quotation omitted). Here, it is undisputed that the city's decision to order the demolition of the buildings was quasi-judicial.

Review by certiorari is confined to (1) questions affecting jurisdiction; (2) the regularity of proceedings; and (3) whether the order in question was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it. *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992). This court will not retry facts or make independent credibility determinations and will uphold the decision if the government entity "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 record in a certiorari appeal includes the papers, exhibits, and transcripts of any testimony considered by the government entity whose actions are under review. *See* Minn. R. Civ. App. P. 115.04, subd. 1 (providing that rule 110 of the rules of civil appellate procedure should apply to certiorari proceedings "[t]o the extent possible").

I. Krongard received due process of law.

We consider first Krongard's argument that the city denied him due process of law in violation of the Minnesota Constitution when it decided to raze the buildings on his property. The Minnesota Constitution provides that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." Minn. Const. art. I, § 7. The due-process protection provided under the Minnesota Constitution is "identical to the due

process guaranteed under the Constitution of the United States." *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988). The Minnesota Constitution also provides that "[p]rivate property shall not be taken, destroyed or damaged for public use without just compensation therefore, first paid or secured." Minn. Const. art. I, § 13.

To comply with due-process requirements in a nuisance-abatement proceeding, a government entity must give the property owner notice and the opportunity to be heard. *Village of Zumbrota v. Johnson*, 280 Minn. 390, 395-96, 161 N.W.2d 626, 630 (1968); *City of Minneapolis v. Fisher*, 504 N.W.2d 520, 525 (Minn. App. 1993), *review denied* (Minn. Sept. 30, 1993). The destruction of property by a government entity without due process of law constitutes a taking, and the property owner has a cause of action for inverse condemnation. *See City of Minneapolis v. Meldahl*, 607 N.W.2d 168, 172 (Minn. App. 2000); *see also Alevizos v. Metro. Airports Comm'n*, 298 Minn. 471, 477, 216 N.W.2d 651, 657 (1974); *DePalma v. Rosen*, 294 Minn. 11, 17, 199 N.W.2d 517, 520 (1972). To succeed on such a claim, a property owner must also show that he was prejudiced by the alleged due-process violations. *See Hous. & Redevelopment Auth. of City of St. Paul v. Greenman*, 255 Minn. 396, 408, 96 N.W.2d 673, 682 (1959). But if a government entity "properly uses its police powers to abate a nuisance by destroying property, no taking occurs and the landowner is not entitled to compensation." *Meldahl*, 607 N.W.2d at 172 (citing *State Fire Marshal v. Sherman*, 201 Minn. 594, 599, 277 N.W. 249, 251 (1938)).

Krongard claims that the city denied him due process of law because (1) it did not provide him with notice of the hearing at which a committee of the city council voted to

raze his property, (2) he did not have an opportunity to be heard because the city did not allow him to present his case directly to the decision-maker, and (3) he was not given an opportunity to repair the buildings after the city council voted to raze them but before they had actually been destroyed. We address each argument in turn.

A. The city provided adequate notice to Krongard of its decision to order the razing of the buildings on his property.

Krongard claims that the city did not provide him with adequate notice of the public hearing at which the Public Safety and Regulatory Services Committee decided whether to recommend that the full council order the rehabilitation or razing of the buildings on Krongard's property. We disagree.

To comply with the notice component of procedural due-process, a government entity must provide notice "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *O'Sell v. Peterson*, 595 N.W.2d 870, 872 (Minn. App. 1999) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657 (1950)).

Several weeks before the committee hearing, the city sent notice of the hearing by certified mail to Krongard and to two former owners of the property, in accordance with the Minneapolis Code of Ordinances, which requires the city to notify all persons "shown to have an interest in the [property]." Minneapolis, Minn., Code of Ordinances § 249.40(2) (2004). After three unsuccessful attempts to deliver the notice to Krongard, the postal service returned the envelope containing the notice to the city as unclaimed.

Krongard contends that the city's use of certified mail to provide notice was "merely a gesture." But such use of certified mail satisfied its due-process obligation to notify him of the hearing. *See Eischen Cabinet Co. v. Hildebrandt*, 683 N.W.2d 813, 817 n.4 (Minn. 2004) ("The use of certified mail fills the function of insuring receipt by a person of suitable age or discretion at the person's last known address and is thus reasonably calculated to provide notice to the affected person.") (quotation omitted); *Meadowbrook Manor, Inc. v. City of St. Louis Park*, 258 Minn. 266, 273, 104 N.W.2d 540, 545 (1960) ("While mailed notice may not be effective in reaching every person who has an interest in property, nevertheless, such notice is 'reasonably calculated' to reach the party to be informed, and that is all that due process requires.").

To the extent that Krongard contends that due process requires that he physically receive the notice, his argument is unavailing. We have stated that actual notice "may be found where the certified mailing is properly directed to the intended recipient, even though not actually received by them." *Har-Ned Lumber Co. v. Amagineers, Inc.*, 436 N.W.2d 811, 815 (Minn. App. 1989); *see also Eischen*, 683 N.W.2d at 817 n.4. Finally, it appears from the record that the address used by the city was current because Krongard acknowledged that he received other notices from the city at that address, including assessments mailed both before and after the hearing. The city satisfied its due-process obligation to provide Krongard with notice.

B. The city gave Krongard an opportunity to be heard.

We next analyze Krongard's argument that he was denied due process because there was not a public hearing regarding his property before the full city council. The

city council has delegated the responsibility of conducting public hearings relating to vacant buildings and nuisance properties to one of its committees, consisting of members of the council. *See* Minneapolis, Minn., Code of Ordinances §§ 249.10-.90 (2004). The ordinance provides for a public hearing, at which the committee considers evidence offered by city staff, the property owner, and the public. *Id*., § 249.40(3). At the conclusion of the hearing, the committee votes to recommend a specific disposition, such as ordering the rehabilitation or razing of the property, to the full city council. *Id*., § 249.50. The full council then votes to accept or reject the recommendation of the committee. *Id.*

Krongard claims that even if the city provided adequate notice of the hearing, he was denied an opportunity to be heard because the city conducted the public hearing regarding his property before a committee of the city council, not the full council. Krongard contends that by delegating public-hearing responsibilities to the committee, "the city [did] not allow [him] to present his case to the decision-maker."

Although Krongard is correct that the city's procedure does not allow a public hearing before the full city council, his argument that the council cannot delegate public-hearing responsibilities to a committee of its members is without merit. He cites no authority that supports that contention; the authority that he does cite does not prohibit a city from delegating the functions of conducting a public hearing, gathering evidence, evaluating credibility, and weighing policy considerations to a committee of the city council. *See United States v. James Daniel Good Real Property*, 510 U.S. 43, 62, 114 S. Ct. 492, 505 (1993) (stating only that due process requires "the Government to afford

notice and a meaningful opportunity to be heard before seizing real property"); *Juster Bros., Inc. v. Christgau*, 214 Minn. 108, 119-20, 7 N.W.2d 501, 508 (1943) ("Notice and an opportunity to be heard are universally recognized as essential to due process."). Here, the city's delegation of public-hearing responsibilities did not prevent Krongard from presenting evidence and questioning witnesses before a decision-maker.

C. Krongard was not entitled to a post-decision opportunity to repair the buildings.

Krongard asserts next that a "third requirement of due process" obligated the city to allow him "an opportunity to repair the house after the city council decided to destroy it but before it was destroyed." But Krongard cites no authority that establishes such a requirement. And Minnesota courts have emphasized that due-process rights in a quasi-judicial proceeding, such as the nuisance-abatement action here, "are simply reasonable notice of a hearing and a reasonable opportunity to be heard." *In re North Metro Homes, Inc.*, 711 N.W.2d 129, 136 (Minn. App. 2006) (citing *Barton Contracting Co., Inc. v. City of Afton*, 268 N.W.2d 712, 716 (Minn. 1978)), *review denied* (Minn. June 20, 2006). There is no requirement that the city, after giving Krongard notice and an opportunity to be heard, had to provide him with yet another opportunity to bring the buildings into compliance with the applicable city ordinances after the city decided to raze them.

II. The city was not required to apply the amended ordinance that went into effect after the public hearing but before the city council's final action.

Krongard argues finally that the city should have used the procedures described in an amended version of chapter 249 of the Minneapolis Code of Ordinances in determining whether to order rehabilitation or razing of the buildings on his property,

instead of the version of the ordinance in effect at the time of the public hearing. We disagree.

In May 2006, the city council amended the ordinances governing the procedure in nuisance-abatement proceedings. The new ordinance was effective October 1, 2006, and changed the process by creating a panel to which a property owner may appeal before the matter goes to the Public Safety and Regulatory Services Committee or the full council. Minneapolis, Minn., Code of Ordinances § 249.45 (2006). The amendments do not significantly change the prehearing-notice requirement or the content of that notice. And the amended ordinance does not provide that its procedures apply to cases pending on its effective date.

Krongard cites no authority in support of his argument that the city should have applied the procedures of the amended ordinance. He concedes as much, admitting that he was unable to find authority "directly on point to resolve the issue." And our review of Minnesota law reveals no authority that would have compelled the city to apply the nuisance-abatement procedure of the amended ordinance to a proceeding that began before its effective date. Finally, we note that even if the city should have used the procedure described in the amended ordinance, it is unclear how application of the earlier ordinance prejudiced Krongard. *See Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that to prevail on appeal, a party must show both error and that the error caused prejudice). Even if the city had applied the amended ordinance, it would have been sufficient for the city to provide Krongard with notice of the hearing by certified mail and by publication. *See* Minneapolis, Minn., Code

of Ordinances § 249.40(3) (2006). And under the amended ordinance, there still would not have been a public hearing regarding Krongard's property before the full council. *See id*., §§ 249.45(b), .50(b) (2006).

Affirmed.