STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2349

Aurelia Tessmer,
Relator,

vs.

City of Saint Paul, Minnesota,
Respondent.

Filed December 16, 2008
Affirmed
Connolly, Judge

City of St. Paul
Council File No. 07-944

Jane L. Prince, 1004 Burns Avenue, St. Paul, MN 55106 (for relator)

John J. Choi, St. Paul City Attorney, Virginia D. Palmer, Assistant City Attorney, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102 (for respondent)

Considered and decided by Minge, Presiding Judge; Connolly, Judge; and Bjorkman, Judge.

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

CONNOLLY, Judge

Relator argues that this court does not have jurisdiction to hear this appeal, and yet still requests that this court reverse the order of the Saint Paul City Council to demolish her property as being arbitrary and capricious. Because this court has jurisdiction to hear

this appeal, and because the order to demolish was not arbitrary and capricious, we affirm.

FACTS

Relator Aurelia Tessmer is the owner of property located at 332 St. Clair Avenue in Saint Paul. The structure at issue is a two-story duplex on a 6,534 square foot lot (the property). An inspection was conducted on the property on August 6, 2004. The Division of Code Enforcement for the City of Saint Paul determined that there were numerous code violations in need of attention and sent relator a correction notice advising her of the problems. The violations included deteriorating eaves and soffits, flaking paint on the exterior walls and/or trim, stairs and windows in need of repair, and missing window and/or door screens. The notice advised relator that the property would be reinspected on or about August 20, 2004, and that she had the right to appeal. No appeal was taken from this notice.

On October 11, 2004, the city condemned the property. In addition to the deficiencies listed in the correction notice, notice was given that the foundation, roof, and exterior walls of the house were in disrepair.[1] Relator was again notified that she could appeal this notice, but no appeal was taken.

On May 4, 2005, an order to abate nuisance building was sent to relator, indicating that the property was a nuisance in violation of the Saint Paul Legislative Code, section 45.02 and subject to demolition under the authority of section 45.11. Twelve specific

[1] The missing window and/or door screens were not mentioned in the condemnation notice.

code violations on the exterior of the house were noted. The order went on to notify relator that the deficiencies needed to be corrected by June 3, 2005. A code compliance inspection report was provided to relator detailing extensive interior and exterior building code violations and electrical, plumbing, and heating deficiencies.

A legislative hearing was held on July 5, 2005. At that hearing, a staff member testified that the property's condition remained unchanged and that the only steps taken to fix the deficiencies were the completion of the code compliance inspection report and the posting of a $2,000 bond. Relator was present at that hearing and indicated a desire to repair the property. The legislative hearing officer informed relator that she would need to put together a plan for repairs with a general timeframe for completion and information on her financial ability to complete the repairs, or she would need to provide information on her plans to sell the property with the buyer providing proof of his or her financial ability to complete the repairs. The aforementioned information and proof that delinquent taxes had been paid needed to be provided within two weeks to the city council.

A city council public hearing was held on July 20, 2005. The legislative hearing officer recommended that relator be given 15 days to remove or repair the property because, although the taxes had been paid, no work plan or financial information had been received. After hearing the recommendation, the matter was laid over for two weeks.

Another city council meeting was held two weeks later. Because no additional information had been forthcoming in the elapsed time, the legislative hearing officer

recommended that a 30-day remove or repair order be issued. The council adopted this recommendation unanimously and issued the order with written findings. Subsequent to that order, the property sat vacant, and was neither repaired nor demolished. During this time, the city tried to work with relator to avoid demolition.

The case was back before the city council one year later. At that time, an indefinite stay was placed on the remove or repair order, with a progress report to be given in six months.

The six-month progress report occurred on February 7, 2007. It was determined that there had been no change in the status of the property and the stay was continued indefinitely.

On August 8, 2007, another council meeting was held where the property was discussed. Other than an emergency abatement on the porch, the status of the property had not changed. As a last avenue for saving the property, the matter was referred to the Heritage Preservation Commission to determine if the building had historic significance. The matter was laid over for four weeks to give the commission time to evaluate the property. The commission did not recommend that the property be considered a historic resource.

On October 3, 2007, Mr. Weseth was identified as the new owner of the property. Because Weseth had been involved with the property previously, the legislative hearing officer did not believe that the property had been obtained in an arm's-length transaction. The matter was continued for one week because the council member from the ward where the property was located was not present.

On October 9, 2007, a legislative hearing was held regarding the property. The legislative hearing officer informed Weseth that he had until noon the following day to produce title to the property, a work plan, a financing plan, and a performance bond.

The next day, the legislative hearing officer reported to the city council that none of the documents requested had been received, and she recommended that the stay be vacated and that the council adopt the resolution ordering demolition of the building. The city council voted unanimously to vacate the stay of the demolition order and to allow commencement of the demolition proceedings. The resolution was signed by the mayor of Saint Paul. A notice to proceed with demolition was issued by the Division of Code Enforcement on November 7, 2007. This appeal follows.

D E C I S I O N

I. This court has jurisdiction to hear an appeal of the city council's order to demolish a house.

"A city or town may enact and enforce ordinances to address the problem of hazardous buildings." *City of Minneapolis v. Meldahl*, 607 N.W.2d 168, 171 (Minn. App. 2000) (citing Minn. Stat. § 463.26 (1998)). "Unless there is statutory authority for a different proceeding, a party may obtain review of a quasi-judicial decision by an executive body that does not have statewide jurisdiction only by writ of certiorari" to this court. *Id.*

Relator argues that appeals from a city order to remove or repair are properly taken to the district court, not to the court of appeals. Relator attempts to distinguish *Meldahl*, arguing that Saint Paul city ordinances provide authority for a different

proceeding. "The interpretation and application of a city ordinance is a question of law, which we review de novo." *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 307 (Minn. App. 2007).

The order to abate nuisance building, dated May, 4, 2005, was the triggering event for the demolition process. This order stated that the property comprised a nuisance in violation of the Saint Paul Legislative Code, section 45.02, and was subject to demolition under the authority of section 45.11. Under that provision of the code, the involvement of the legislative hearing officer is discretionary. "Prior to the hearing, the legislative hearing officer appointed by the council president shall provide the appellant with an opportunity to meet and informally discuss the matter. The legislative hearing office *may* submit to the council a recommendation based on the information obtained at such a meeting." St. Paul, Minn., Legislative Code § 45.11(4a) (2006) (emphasis added). The parties seem to agree that chapter 45 of the code does not provide for an appellate process to the district court. Therefore, based on *Meldahl*, a writ of certiorari to this court would be the proper remedy.

Relator, however, argues that chapter 18 of the St. Paul Legislative Code actually applies to this case. Chapter 18 states:

> The legislative hearing officer shall have the authority to hear appeals to orders, decisions or determinations of the enforcement officers or others and make recommendations to the city council . . . . All matters, orders, decisions and determinations of the hearing officer shall be forwarded to the city council in resolution form within ten (10) days of the hearing officer's actions. The city council shall have the authority to approve, modify, reverse, revoke, wholly or partly, the hearing officer's orders, decisions or

> determinations and shall make such order, decision or determination as ought to be made.

St. Paul, Minn., Legislative Code § 18.01 (2006). The chapter goes on to say that "[a]ny person aggrieved by the final decision of the legislative hearing officer may obtain judicial review by timely filing of an action seeking review of such decision as provided by law in district court." St. Paul, Minn., Legislative Code § 18.03 (2006). Relator argues that the legislative hearing officer's decision was effectively the final decision ordering demolition because the city council must always consider the hearing officer's decision. According to relator, if the hearing officer's decision could never be considered to be the final decision because all "orders, decisions and determinations" must be forwarded to the city council, any right to appeal the hearing officer's decision to the district court would be read out of the code entirely.

But relator misses the point in that the applicable provision of the code to this case is chapter 45, not chapter 18. Chapter 18 refers to the city council's ability to address "orders, decisions, or determinations." Under chapter 45, the hearing officer's role is limited to an informal one, and issuance of a recommendation is not mandatory. In this case, the legislative hearing officer merely chose to make a recommendation to the city council. Because this was a nuisance-abatement proceeding and the legislative hearing officer did not make the final decision, chapter 45 applies, and there is no need to harmonize the provisions of these different chapters of the code.

Relator further argues that because a full hearing was held before the legislative hearing officer, rather than just an informal meeting, chapter 18 must apply. Relator was

given more procedural safe-guards than required under chapter 45. But that does not change the fact that the legislative hearing officer only made a recommendation to the city council, and chapter 45 is the applicable provision to a nuisance-abatement proceeding. Chapter 45 does not provide statutory authority for an appellate proceeding, thereby requiring that any appeal be taken by a writ of certiorari to this court. *See Meldahl*, 607 N.W.2d at 171 ("Unless there is statutory authority for a different proceeding, a party may obtain review of a quasi-judicial decision by an executive body that does not have statewide jurisdiction only by writ of certiorari.").

II. The city council's order to demolish relator's house was not arbitrary and capricious.

A municipality's decision to demolish a building is quasi-judicial. *Meldahl*, 607 N.W.2d at 171. "[W]hen examining quasi-judicial municipal proceedings, we review the evidence only to determine whether it supports the findings of fact or the conclusions of law, and whether the municipality's decision was arbitrary or capricious." *In re Dakota Telecomm. Group*, 590 N.W.2d 644, 646 (Minn. App. 1999).

The decision to demolish the property was supported by substantial evidence in the record. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Wagner v. Minneapolis Pub. Sch., Special Sch. Dist. No. 1*, 569 N.W.2d 529, 532 (Minn. 1997) (quotation omitted).

Relator was made aware of the numerous code violations on the property in August 2004. She was given many opportunities over a period of years to detail her plans to fix the problems but none was forthcoming. The record indicates that the city

council was reluctant to go through with the demolition because "[i]t is a good house and. . . they can come out ahead if they [find] an owner for it or a buyer." The council even stated that they wanted to keep trying to help relator. They waited to proceed with the demolition for two years after notice of the code violations was first sent to relator. The city is not required to extend endless leniency when dealing with nuisance buildings. *See Ukkonen v. City of Minneapolis*, 280 Minn. 494, 500, 160 N.W.2d 249, 253 (1968) ("Greater leniency than here evinced might well frustrate an important public interest.").

Furthermore, despite relator's argument to the contrary, the property does not need to be considered a dangerous structure to be ordered demolished under St. Paul Legislative Code, Chapter 45. There is an emergency abatement procedure set out in section 45.12 to deal with structures that will endanger the health or safety of the public. This nuisance abatement was brought under section 45.11.

In conclusion, there is nothing in the record to indicate relator, or a new owner, was in a position to abate the nuisance. The city council gave relator multiple opportunities to save the property and she did nothing. The decision to demolish the property was not arbitrary or capricious.

Affirmed.