STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1124

Andrew Ellis,
Appellant,

vs.

City of Minneapolis,
Respondent.

Filed April 21, 2009
Reversed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CV-07-26487

Dennis Schertz, Schertz Law Office, 530 Helen Street North, Hudson, WI 54016 (for appellant)

Susan L. Segal, Minneapolis City Attorney, Lee C. Wolf, Assistant City Attorney, 300 Metropolitan Centre, 333 South 7th Street, Minneapolis, MN 55402 (for respondent)

Considered and decided by Shumaker, Presiding Judge; Bjorkman, Judge; and Collins, Judge.*

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

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

BJORKMAN, Judge

Appellant Andrew Ellis challenges the district court's decision upholding a special assessment respondent City of Minneapolis (the city) imposed for the costs the city incurred in bringing a demolition crew to his property after a fire. Appellant argues that the district court incorrectly applied the city ordinance that authorizes the fire inspector "to employ a contractor to tear down such walls or other parts of the [unsafe] building or to put them in a safe condition," and permits the city to assess the costs of doing so. Minneapolis, Minn., Code of Ordinances § 87.110 (1994). Because we conclude the district court erred in applying the city ordinance, we reverse.

FACTS

On January 10, 2006, a four-unit apartment building owned by Ellis was badly damaged by a fire. The fire department contacted Allan Olson, manager of construction code services for the city, to help assess the damage to the building. According to Olson, "the fire department . . . would not call [him] unless they've already made an evaluation on the building and determined that the building, under their strict guidelines, would need to be removed." Olson further stated that in cases such as this,

> [s]tandard operating procedures would dictate . . . that [he] would first make the evaluation, attempt to assist the fire department in whatever their needs are, . . . attempt to contact the owner of the property, . . . and then . . . call a licensed contractor to assist in whatever [he] need[s] them to do and the fire department would need them to do to complete the task.

Olson believed the building needed to be put in a "safe condition," through the assistance of the contractor, because the roof had collapsed and the structural soundness of the remaining walls was unknown.

By the time Ellis arrived at the building, the demolition contractor was on site and ready to demolish the building. Ellis previously worked as a city housing inspector and had a good relationship with Olson. Ellis told Olson that he "wanted to make an effort to repair [the building]," rather than tear it down. Olson agreed he would wait to tear down the building if Ellis was able to meet certain conditions, including "immediately hir[ing] a licensed engineer of his own choosing" and providing an "engineer's report before the end of the day." Olson also informed Ellis that he would keep the demolition crew on standby at the site in the event that Ellis was unable to meet these conditions.

Ellis submitted an engineer's report on January 11, and Olson gave Ellis until January 16 to begin the stabilization efforts outlined in the report. Otherwise, Olson warned that the building would be "wrecked per sections 87.100 and 87.110 of the Minneapolis Code of Ordinances on January 17, 2006." Despite Ellis's initial efforts to stabilize the building and the assent of another structural engineer that "much of the building is salvageable and can be safely cleaned up and rebuilt in compliance with the structural requirements of the building code," the building was ultimately demolished in June 2006.

Based on Ellis's compliance with the conditions, Olson allowed the contractor to remove its demolition equipment from the property "a day or so" after the fire.[1] The city later received a bill from the contractor for its mobilization efforts. On November 15, 2006, the city assessed this charge—$2,750 plus a $75 administrative fee—to Ellis. The assessment notice stated that the charge was for "EMERGENCY WRECK AND REMOVE-DWELLING" on January 10. The city council adopted the special assessment on November 16, 2007, and Ellis appealed the decision to the district court. Following a hearing, the district court denied Ellis's appeal and upheld the special assessment. This appeal follows.

D E C I S I O N

In reviewing the validity of a special assessment, this court carefully examines the record "to ascertain whether the evidence as a whole fairly supports the findings of the district court and whether these in turn support its conclusions of law and judgment." *Carlson-Lang Realty Co. v. City of Windom*, 307 Minn. 368, 373, 240 N.W.2d 517, 521 (1976). "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).

Ellis argues that the district court incorrectly applied section 87.110 of the Minneapolis Code of Ordinances to support the special assessment because the

[1] There is no record evidence as to what the demolition crew actually did during the standby period.

demolition crew called to the building on the day of the fire did not do anything to "put any part of [the] building in a 'safe condition.'" In relevant part, the ordinance provides:

> If the chief of the fire department reports that it is impossible for the fire department to so put the walls or other parts of the building in a safe condition, then the director of inspections is authorized to employ a contractor to tear down such walls or other parts of the building or to put them in a safe condition. The cost of tearing down the walls or other parts of the building, or of putting them in a safe condition, when done by a contractor employed by the director of inspections, shall be paid by special assessment on the land on which the same stand, said assessment to be collected the same as special assessments made for other purposes under Section 227.100 of the Minneapolis Code of Ordinances.

Minneapolis, Minn., Code of Ordinances § 87.110.

The district court determined that section 87.110 applies in this case and found Olson's testimony regarding the procedures the city followed in responding to the fire to be "clear and compelling." The court reasoned that "[t]he fact that [Olson] gave [Ellis] an opportunity to try to save the building, an attempt that ultimately proved futile, does not in any [way] call into question the procedures followed." And, accordingly, the court concluded that Ellis should bear the costs associated with the demolition crew.

Ellis argues that, under the plain language of the ordinance, a city may impose a special assessment only when a contractor has actually performed services to put a fire-damaged building into a safe condition. We agree. The city's argument that the demolition crew's mere presence at the building put it in a safe condition is not supported by the facts or consistent with the terms of the ordinance. There is no record evidence as

to the actions the demolition contractor performed or whether such actions made the building safer.

Moreover, section 87.110 expressly permits assessment of the "cost of tearing down the walls or other parts of the building, or of putting them in a safe condition." Nothing in the ordinance permits the city to assess monitoring or standby expenses. Absent any record evidence that the demolition contractor performed demolition work or services that affirmatively made the building safer, no assessment is appropriate. This is true even if the costs the city seeks to assess were incurred pursuant to standard procedures.

By our decision, we do not intend to discourage the city from following its fire-response procedures or to suggest that a homeowner would never be responsible for the costs associated with mobilizing a contractor to the site of a fire-damaged property. Such assessment must, however, be supported by record evidence that the contractor actually "[tore] down the walls or other parts of the building, or . . . put[] them in a safe condition."

Reversed.