STATE OF MINNESOTA
IN COURT OF APPEALS
A10-909

Robert E. Schilling,
Relator,

vs.

City of Saint Paul,
Respondent.

Filed May 3, 2011
Affirmed
Stauber, Judge

City of Saint Paul
File No. 10-413

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 the building situated on relator's property, relator argues that the city's decision is unsupported by substantial evidence and arbitrary and capricious. We affirm.

FACTS

This appeal concerns property located at 785 University Avenue West in Saint Paul ("the property"). In 1986, Roger Griffis conveyed the property to Gerald Schilling, who then conveyed it to relator Robert Schilling in 1992. Relator, however, never recorded the deed. A one-story vacant commercial building (the building) is located on the property. The building has been vacant existed August 2002. Relator is also the owner of an adjacent property located at 781–783 University Avenue. The adjacent property is similarly vacant and is the subject of a related appeal that was heard on the same date as this appeal.

On January 22, 2010, respondent City of Saint Paul (the city) posted an order to abate the nuisance building on the property. The city also mailed the order to Griffis and Gerald Schilling as "owner, agent, or responsible part[ies]." The order explained that because the building was "filled with clutter and all previous permits being expired, [the city] will use the 2004 Certificate of Occupancy Inspection . . . in place of a building deficiency inspection." The order also advised that the first remedial action was to obtain a code compliance report from the Department of Safety and Inspections. The order further advised that the deadline for correcting all deficiencies was February 22, 2010.

A public hearing before the legislative hearing officer was held on March 23, 2010. At the hearing, relator admitted that he was the owner of the property, but claimed that he had not yet recorded his deed. Relator also acknowledged that no work on the property had been done because he could not afford to post a bond at the time. Relator further claimed that the property had no mortgages or liens, "other than the taxes that are

due and the vacant building fees that are overdue." Relator believed that there was enough equity in the property to be able to obtain a loan if necessary, however, he believed a loan would not be necessary because his contractor would be willing to write a contract that allowed him to pay as the work was completed. Relator requested two weeks to come back with contracts and estimates.

The hearing officer concluded that in order for her to recommend to the city council that they grant additional time to abate the nuisance, respondent had to satisfy nine conditions. The nine conditions included: (1) recording the deed with Ramsey County; (2) posting the $5,000 performance bond; (3) paying the delinquent property taxes; (4) applying for a Code Compliance Inspection; (5) providing a work plan, including timelines, which must be done in accordance with the Inspection report; (6) submitting contractor bids or a sworn construction statement; (7) submitting financial documentation indicating financing in the amount of $50,000, which was the city's estimate for rehabilitation; (8) providing a copy of the contract between relator and any partner for city approval; and (9) maintain the property. The hearing officer gave relator three weeks to satisfy the conditions, and noted that the public hearing before the city council was scheduled for April 21, 2010, a week after the conditions were required to be satisfied.

By the April 21 public hearing, relator had not satisfied any of the conditions imposed by the legislative hearing officer. As a result, the hearing officer recommended to the city council that the building be demolished. Relator opposed the recommendation and presented the city council with a packet of information that included a two-page

printout from the Better Business Bureau website showing that relator's business, Appliance City, had an "A-" rating, and that relator had been in business for 26 years. The packet also included a cashier's check for the $5,000 performance bond, dated April 6, 2010, which had not yet been posted. Relator further provided three one-page agreements with local contractors that purported to cover all the work necessary to rehabilitate the property. The agreements estimated that $5,000 would cover the necessary rehabilitation projects. Finally, the packet included the two deeds needed to establish ownership of the property.

After relator presented the packet to the city council, relator was questioned about whether the deeds had been recorded. Relator explained that he had just found the deeds the day before the hearing, and that he did not record the deeds because he did not have the money available to pay the $5,000 in "back taxes" still owed on the property. Relator also explained that although he had the $5,000 check available to post the performance bond needed to rehabilitate the property, he did not want to post the bond if the building was ordered to be "torn down." Relator indicated that he has equity in the property which would allow him to obtain a loan to fund the necessary improvements.

The city council agreed to provide relator with a "two-week layover" to allow him time to (1) have the deed recorded; (2) have the performance deposit posted; (3) pay the property taxes; and (4) apply for a code compliance inspection. Two weeks later, on May 5, 2010, another hearing was held before the city council. At the hearing, the hearing officer presented the code compliance inspection applied for by relator, as well as photographs of the property. The inspection showed 15 remaining plumbing, electrical,

mechanical, fire, and building-code violations. In addition, the deeds were not yet registered, the taxes were not paid, and the performance bond had just been posted that afternoon. Thus, because the "fundamental nuisance condition" of the property remained, the hearing officer recommended that the building be demolished. The city council then unanimously voted to adopt the hearing officer's recommendation to remove the building within 15 days without further opportunity to repair. This certiorari appeal followed.

D E C I S I O N

A city's decision to demolish a building through its nuisance-abatement process is quasi-judicial and subject to review by writ of certiorari to this court. *City of Minneapolis v. Meldahl*, 607 N.W.2d 168, 171 (Minn. App. 2000). 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). The reviewing court does 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 city council has authority under the 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). The Saint Paul City 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

When a city makes a quasi-judicial decision, this court applies the substantial evidence test. *In re N. States Power Co.*, 416 N.W.2d 719, 723 (Minn. 1987). 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). This court will not disturb an agency's decision if it is supported by substantial evidence. *In re Grand Rapids Pub. Utils. Comm'n*, 731 N.W.2d 866, 871 (Minn. App. 2007).

Relator argues that the city's decision to demolish the building was not supported by substantial evidence. We disagree. The city code provides the city with the power to

abate nuisance buildings, which includes the authority to order the building demolished. St. Paul, Minn., Legislative Code § 45.08. The code also provides that a nuisance building is "a vacant building . . . which has multiple . . . building code violations." St. Paul, Minn., Legislative Code § 45.02.

Here, the record reflects that the building has been vacant since August 14, 2002. The record also reflects that the building has 15 plumbing, electric, mechanical, fire, and building code violations. Relator does not challenge the findings that the building is vacant or that the building has multiple building code violations. Rather, he argues that the city's decision is not supported by substantial evidence because he attempted to comply with the hearing officer's conditions, and was not provided enough time to rectify the building code violations. But although relator's claims provide him with an argument that the city's decision was unfair, the argument fails to establish that the city's decision is unsupported by substantial evidence. The building's prolonged vacancy and multiple building code violations qualify it as a nuisance under the Saint Paul Legislative Code. Therefore, the city's decision to demolish the building is supported by substantial evidence.

II. Arbitrary and capricious

A decision is arbitrary and capricious if the decision-making body (1) relied on factors not intended by the relevant legal authority; (2) entirely failed to consider an important aspect of the issue; (3) offered an explanation that conflicts with the evidence; or (4) made a decision that is so implausible that the decision could not be explained as a difference in view or the result of the decision-making body's expertise. *Rostamkhani v.*

City of St. Paul, 645 N.W.2d 479, 484 (Minn. App. 2002). "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), *aff'd*, 389 N.W.2d 507 (Minn. 1986). But an "agency's conclusions are not arbitrary and capricious so long as a rational connection between the facts found and the choice made has been articulated." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001) (quotation omitted).

Relator argues that the city's decision to demolish the building was arbitrary and capricious. To support his claim, relator contends that the city failed to consider several important factors when it decided to demolish the building. These factors included (1) the state of the economy and the financial hardship relator would suffer as a result of the building being demolished; (2) the outdated 2004 inspection used to support the January 22, 2010 order to abate; (3) the lack of opportunity provided by the city for relator to correct the deficiencies in the building; (4) the inflated estimate provided by the city to correct the building's deficiencies; and (5) relator's substantial compliance with the conditions set forth by the hearing officer in the March 2010 order.

It is well settled that an agency's decision is arbitrary and capricious if the decision represents the agency's will and not its judgment. *Hiawatha Aviation of Rochester*, 375 N.W.2d at 501. Here, the record presents strong indications that the city's decision was just that. A review of the record reveals that the January 22, 2010 order to abate nuisance building stated that "[d]ue to [the building] being filled with clutter and all previous permits being expired, [the city] will use the 2004 Certificate of Occupancy

Inspection . . . in place of a building deficiency inspection." The 2004 inspection listed 39 deficiencies associated with the building. Based on these deficiencies, the city estimated that the cost to correct the deficiencies would be about $50,000. In contrast, relator claimed that he corrected many of these deficiencies, and that any remaining deficiencies could be corrected for $5,000. This claim is supported by the May 2010 inspection that was conducted a few days before the May 5, 2010 city council meeting. The May 2010 inspection revealed only 15 deficiencies. The substantially fewer number of deficiencies supports relator's claim that the city's $50,000 estimate to repair the building's deficiencies is inflated. Yet, the city relied on the $50,000 estimate when it decided to demolish the building, concluding that relator lacked the financial ability to pay for a $50,000 renovation of the building. The city's reliance on the $50,000 estimate is troubling in light of the circumstances presented here.

We also acknowledge that relator made efforts to complete the conditions set forth by the hearing officer on March 23, 2010. Relator provided copies of the deed to the city council and was prepared to register the deed if necessary. Relator was also prepared to deposit $5,000 for a performance bond and provided copies of rehabilitation contracts that would enable him to correct the building's deficiencies. Although relator was unable to complete all the conditions in the short amount of time provided, relator did take steps to comply with the order. Nonetheless, the city decided to demolish the building roughly three months after the order to abate was posted on January 22, 2010. This decision seems rash, harsh, and pointed, leaving one to speculate about the underlying basis for the decision.

However, the fact that the record might support a decision to stay demolition of the building does not necessarily render the decision arbitrary and capricious. *See In re Review of 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 record reflects that the May 2010 inspection revealed many of the same deficiencies as the 2004 inspection despite the fact that relator had ample opportunity to correct the building's deficiencies. Moreover, the record reflects that the building has been vacant since 2002. The city focused on the seven years of vacancy as reflective of relator's demonstrated inability to correct the building's deficiencies. And, although the $50,000 rehabilitation estimate seems high, the city council determined the $50,000 estimate to be appropriate, and this court will not reevaluate the weight that the city council gives to comments or evidence presented at a hearing. *See Senior*, 547 N.W.2d at 416 (noting that this court does not retry facts or make credibility determinations on review). The record indicates that the city contemplated all aspects of the case and rendered a decision that is supported by the record. Therefore, in light of our standard of review, we cannot conclude that the decision was arbitrary and capricious.

Affirmed.