STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0802

Raven Financial, LLC,
Relator,

vs.

City of St. Paul,
Respondent.

Filed May 19, 2014
Affirmed
Hooten, Judge

City of St. Paul
File No. RLH RR 13-10

John R. Shoemaker, Paul F. Shoemaker, Shoemaker & Shoemaker, PLLC, 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 Bjorkman, Presiding Judge; Ross, Judge; and Hooten, Judge.

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

HOOTEN, Judge

Relator property owner appeals from respondent city council's decision to demolish its building, arguing that the city's decision is not supported by substantial evidence and is arbitrary, capricious, unreasonable, and oppressive. We affirm.

FACTS

This appeal concerns a duplex located in St. Paul. Midwest Investments LLC previously owned the duplex, and relator Raven Financial, LLC, acquired it in the summer of 2011. Kevin and Katie Riley, who are husband and wife, own Raven. At the time that Raven purchased the duplex, it was a Category II building—an unoccupied building with multiple housing or building-code violations. *See* St. Paul, Minn., Legislative Code (LC) § 43.02 (7)e (Aug. 12, 2009) (defining Category II building).[1]

Respondent City of St. Paul's Department of Safety and Inspections (DSI) completed a code compliance report on the duplex in October 2011 (October 2011 report). DSI listed over 40 building, electrical, plumbing, and heating deficiencies that required correction before the sale or reoccupation of the duplex.

After another inspection on December 5, 2012, DSI sent an "Order to Abate Nuisance Building(s)" (December 2012 order) to Raven on December 7, 2012. The December 2012 order declares that the duplex is a nuisance under LC section 45.02 and subject to demolition under LC section 45.11. The December 2012 order lists the same deficiencies as those in the October 2011 report and states that the "Deficiency List is excerpted from the October . . . 2011 Code Compliance Report." The December 2012 order states that if the conditions are not corrected by January 6, 2013, DSI will commence abatement proceedings to demolish the duplex. The record includes photographs of the duplex dated December 6, 2012.

[1] The St. Paul Legislative Code was last amended in 1985. It has since been supplemented twice. We therefore cite to the date of the most recent supplement for each section.

On February 12, 2013, a legislative hearing officer (LHO) presided over a public hearing to determine whether the city should demolish the duplex. Steve Magner, manager of code enforcement, and Mary Kaye, a Raven representative, participated. Magner explained that the duplex is a nuisance building because it has been vacant since 2007 and has multiple code deficiencies. Magner added that since 2007, there have been nine summary abatements and three work orders for garbage, rubbish, grass, and weeds. Magner estimated that repairing the duplex to come into code compliance would cost $45,000.

Kaye responded that Raven wanted to renovate the duplex so that it could be used as transitional housing for battered women. She noted that Raven paid the vacant building fees and for a new code compliance report. She represented that she had met with a contractor and a city inspector and that they estimated that the duplex required only $6,000 to $8,000 worth of work. Magner clarified that "apparently there was a bunch of work done to this building" and that some of it was done under a permit. According to Kaye, Midwest Investments had one permit and performed some work on the duplex but did not finish.

The LHO ordered new permits to be pulled on the duplex, but first required Raven to (1) post a $5,000 performance deposit; (2) submit a construction work plan with timelines for work completion; (3) submit an affidavit indicating that Raven has funds dedicated to rehabilitating the duplex; (4) submit financial documentation showing sufficient funds to complete the project; and (5) maintain the property.

The LHO clarified that she would consider work plans for less than the city's $45,000 estimate but wanted to see "substantiation that the project was actually costing less." The LHO explained, "One of the things that happens when I see dollar amounts come in less is that it's a Band-Aid. . . . And I don't want to see that in this case, so I would want to see that this is a real rehab coming in at the lower price." The LHO asked Raven to comply with the conditions by February 26, 2013. She added that "it's great what you're doing, fantastic," "you guys are so close," and "I think we're going to get this one taken care of."

After the hearing, the city completed the code compliance report (February 2013 report). It lists over 50 building, electrical, plumbing, and heating deficiencies. The report includes information explaining the appeals process, but Raven did not appeal.

Raven submitted to the LHO an affidavit from Kevin Riley indicating that Raven wanted to rehabilitate the duplex and a bank statement showing $15,188.33 in dedicated funds. Raven also submitted two contractor estimates. One was for $16,000 but did not include an estimate for the plumbing work that needed to be done. The other estimate was for $16,450 but did not include a timeline for completion.

The city council convened on March 6, 2013. The LHO reported that Raven had not posted the performance deposit and that Raven's bids did not constitute work plans because they lacked sufficient details. The LHO indicated that property maintenance "ha[d] been spotty" during the time that she had been assigned to the case. She noted that the city recently issued a summary abatement order for removal of snow and ice. The LHO recommended the removal of the property with no option for rehabilitation.

Kaye responded that Raven did not have $5,000 for the performance deposit but insisted that Raven had money to pay contractors to complete the work. She requested a waiver of the bond. She added that she shoveled the property earlier that day.

A city council member stated, "To me, it looks like something that simply has been lingering and nothing is going to get done. And if we can't put up the performance bond, how in the world are we going to put up the necessary funds to do this?" The city found that DSI had complied with the procedural requirements of the Legislative Code, that the duplex is a nuisance, and that Raven failed to present an acceptable plan to repair and correct the deficiencies listed in the December 2012 order. The city council unanimously adopted the LHO's recommendation and ordered Raven to raze and remove the duplex within 15 days.

After the city council hearing, Kaye noticed that the city council's record did not include some of the materials that she had submitted. The LHO requested that the city council reexamine the case and reopen the public record. The city council agreed and a second hearing was scheduled. Before the hearing, Raven submitted a third estimate of $16,000, but it did not include a timeline for completion.

At the second city council hearing, the LHO reported that someone had attempted to post the performance bond after claiming that he owned the duplex. The LHO explained, "Because . . . there was an attempt to post the bond by somebody who was not the owner of record at the time the Order to Abate a Nuisance Building went out, it was not accepted." She added that three bids had been submitted but they do not constitute work plans, the available funds to rehabilitate the duplex are "a little bit less than

$15,000," and the abatement order to remove snow and ice indicated that Raven was not taking the process seriously.

Kaye responded that a contractor representing Raven had attempted to post the performance bond but the clerk rejected payment because the duplex was scheduled for demolition. She noted that Raven submitted contractor bids and claimed that the duplex needed only between $5,000 to $16,000 worth of work to come into compliance with the February 2013 report. She added that Raven submitted financial documentation and now had more than $20,000 dedicated to rehabilitation. Kaye also submitted an inspection conducted by Donald Hedquist, whom she claimed is a retired building inspector, and asserted that his report proves that the duplex is not a nuisance. She added that Hedquist estimated that the building needed only $5,000 worth of work. But Kaye did not submit a formal estimate or timeline of completion from Hedquist.

Kaye also disputed that DSI inspected the duplex in December 2012. Kaye argued that there could not have been an inspection because the duplex was secured. She claimed that the photographs associated with the inspection were actually taken in 2011 and manufactured to appear as though they were taken in 2012.

The LHO responded that she had spoken with the two inspectors who conducted the December 5 inspection. They gained entry into the duplex because it was not secured. The LHO also explained the date on the photographs. She stated that the photographs were taken on December 5, the date of the inspection, but uploaded on December 6. She confirmed her recommendation to raze or remove the duplex. The city

council unanimously agreed and ordered the demolition of the duplex. This appeal follows.

D E C I S I O N

The city "shall have power by ordinance to define nuisances and provide for their prevention or abatement." Minn. Stat. § 412.221, subd. 23 (2012). The St. Paul Legislative Code authorizes the abatement of nuisances by demolition and sets forth the procedure to abate nuisances. LC § 45.08–.12 (Sept. 1, 2004).

A city's decision to abate a nuisance is quasi-judicial and reviewable by writ of certiorari. *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 board, 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). Decisions made by cities enjoy a presumption of correctness. *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 562 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001). "The reviewing court is not to retry the facts or make credibility determinations." *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996). The decision will be upheld if the city furnished any legal and substantial basis for the action taken. *Id.*

I.

When an administrative body engages in a quasi-judicial function, we review the decision by applying 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; and (5) evidence considered in its entirety." *CUP Foods*, 633 N.W.2d at 563.

The city's decision to demolish the duplex is supported by substantial evidence. A "nuisance building" is a vacant building with multiple housing or building-code violations. LC § 45.02 (Mar. 28, 2007). The parties do not dispute that the duplex has been vacant since 2007. At the time Raven purchased the duplex, it understood the duplex to be a Category II building, which, by definition, is vacant and has multiple housing and building-code violations. The December 2012 order lists over 40 building, electrical, plumbing, and heating deficiencies. And Magner testified at the legislative hearing that the duplex continued to be a nuisance.

Raven questions the validity of the December 5 inspection and whether it actually occurred, arguing that the city based its decision on the October 2011 report. But Magner reported to the LHO that DSI performed the inspection on December 5, 2012, and the record contains the order drafted after the inspection along with associated photographs. And the city council heard Kaye's and the LHO's competing theories on the matter. The city council made a credibility determination against Kaye. We do not reevaluate the city's credibility determinations; nor do we address the weight accorded to the submitted evidence. *Senior*, 547 N.W.2d at 416. Moreover, the February 2013 report, which Raven did not appeal, lists many of the same deficiencies that are in the December 2012 order.

Raven contends that the city's decision is not supported by substantial evidence because its "expert"—Hedquist—determined that many of the deficiencies in the December 2012 order and February 2013 report were not actually present. But Hedquist's comparison report lists several of the same deficiencies as the December 2012 order. And Hedquist's report does not address all of the deficiencies found by DSI. Because the duplex has been vacant and has multiple code violations, the city is authorized to order its demolition.

II.

"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). A decision is arbitrary and capricious if it (1) relies on factors not intended by the ordinance; (2) entirely fails to consider an important aspect of the issue; (3) offers an explanation that conflicts with the evidence; or (4) is so implausible that it cannot be explained as a difference in view or the result of the city's expertise. *Rostamkhani v. City of St. Paul*, 645 N.W.2d 479, 484 (Minn. App. 2002). 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).

Raven contends that the city's decision is arbitrary and capricious because it required Raven to show that it could fund a $45,000 rehabilitation project when rehabilitation would cost only between $5,000 and $16,450. The LHO told Kaye that it

would consider lower bids if accompanied by a work plan. Kaye participated at the March 6 hearing where the LHO stated that the two submitted bids did not include sufficient details to constitute a work plan and was aware that the city council reopened the public hearing. And between March 6 and April 3, Kaye orally represented that Hedquist estimated that the duplex required only $5,000 worth of work but did not include a timeline. Similarly, Kaye's claims that rehabilitation would cost between $5,000 and $8,000 were never documented and only supported by her oral representations to the LHO and the city council. And Raven's formal estimates, each totaling $16,000 or more, exceeded the $15,188.33 that it had dedicated in the bank account.

Raven contends that the city's decision is arbitrary and capricious because it failed to consider its substantial compliance with the LHO's conditions and timely progress to rehabilitate the home. Raven presents no authority that substantial compliance with an LHO's conditions defeats a city's decision to demolish a building. And Raven does not contend that the city failed to abide by the substantial-abatement procedure outlined in section 45.11 of the legislative code. Moreover,

> [t]here is no legal support for the argument that, after giving a landowner the hearings guaranteed to him under the city code, a city must proactively cooperate with a landowner before it ultimately decides to remedy a nuisance property. . . . [A] city has the power to enact and enforce ordinances that address the problem of hazardous buildings. Under the St. Paul City Code, the city council, after it determines that a property is a nuisance property, may take steps to abate the nuisance on its own if remedial action is not taken before any abatement deadline it sets. There is no section in the substantial abatement procedure section of the

> code requiring the city to consult further with the landowner about problems with the property before it decides to abate.

Rostamkhani, 645 N.W.2d at 485 (citations omitted). The city provided Raven with an order to abate the nuisance conditions, a compliance date, a legislative hearing, and two city council hearings—one to reopen and reexamine the record. Raven had ample time to submit work plans, pay the performance bond, and meet the other conditions of the LHO. The city's conduct shows willingness to work with Raven, rather than an arbitrary exercise of its will.

Raven contends that the city's decision is arbitrary and capricious because: (1) Raven, through a contractor-representative, attempted to post the performance bond but was prevented from doing so; (2) Raven submitted evidence of maintaining the property; (3) the city relied on outdated photographs of the duplex; and (4) the city failed to take into account its affirmative duty to further fair housing. Each of these arguments is without merit.

While the legislative code does not specify who may post a performance bond, there is no evidence that Raven posted the bond as was required by the LHO. The city could not accept Raven's attempted bond posting because the individual represented that he was the new owner and any sale of the duplex by Raven would be illegal. *See* LC §§ 33.03(f)(6) (Oct. 28, 2010), 43.02, 45.02, 45.03(11) (Mar. 28, 2007) (prohibiting the sale of a nuisance building unless certain conditions are met or exceptions apply). There was evidence of a continuing issue with inadequate maintenance of the property. Magner noted that since 2007, there have been nine summary abatements and three work orders

on the property. During the limited time that the LHO was assigned to the case, the city cited Raven for failing to remove snow and ice from the property. Despite the challenges advanced by Raven, the city council made a credibility determination and found that the photographs of the duplex were taken in conjunction with the inspection that occurred on December 5, and it is not our role to retry the facts or make credibility determinations. *Senior*, 547 N.W.2d at 416. Finally, Raven does not explain how the city's decision to demolish a nuisance building violates a duty to further fair housing or if a city's duty to further fair housing trumps its authority to abate nuisances.

In sum, the city's decision is not arbitrary or capricious. The duplex had been vacant for several years, has multiple housing and building-code violations, and Raven has not satisfied the legal requirements for avoiding its demolition. On this record, there is a rational connection between the facts and the city's decision to demolish the duplex.

III.

Raven contends that the city's decision is oppressive and unreasonable because the demolition of the duplex would cause it economic loss. But the record establishes that the city was more than willing to allow Raven to rehabilitate the duplex so long as Raven met certain conditions. Raven failed to meet those conditions. Any economic loss incurred by Raven is speculative and due to its own failure to comply with the city's reasonable conditions for rehabilitation. Under these circumstances, we conclude that the city's decision to demolish the duplex was neither unreasonable nor oppressive.

Affirmed.