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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1598**

Gregory Mailand, et al.,
Relators,

vs.

City of West St. Paul,
Respondent.

**Filed June 4, 2018
Reversed and remanded
Kirk, Judge**

City of West St. Paul
Resolution No. 17-80

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Minnesota (for relators)

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respondent)

Considered and decided by Kirk, Presiding Judge; Hooten, Judge; and Stauber,
Judge.*

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

UNPUBLISHED OPINION

KIRK, Judge

Relators, the owner and management company of an apartment building, challenge respondent city's revocation of their rental-dwelling license, arguing that there was not substantial evidence in the record to establish that relators' conduct led to or failed to prevent a repeat number of police calls to the property. Relators also raise preemption and constitutional issues on appeal. Because the city council's revocation decision is not supported by substantial evidence, we reverse and remand.

FACTS

Relator Gregory Mailand (Mailand) has held a rental-dwelling license for 1492 Charlton Street (the property), a 30-unit apartment building in the City of West Saint Paul (the city), since 2008. Mailand owns and manages the property on behalf of his company, relator Mailand Management Corporation (Mailand Management). The rental-dwelling license was last renewed through November 2017.

In August 2017, the city sent Mailand a warning letter for repeat nuisance service calls to the property. Soon thereafter, the city notified Mailand of a hearing to consider revocation of Mailand's rental-dwelling license based on an "excess number of police calls" to the property. A hearing was held on September 25, and the city recommended revocation. Prior to the hearing, the city provided Mailand a memorandum explaining its basis for recommending revocation and attached supporting documentation, including a chart outlining 27 police calls to the property from August 2016 to August 2017. The city

submitted the memorandum and supporting documentation at the hearing for the city council's review.

Mailand appeared with an attorney at the hearing and also submitted written argument and documentation, which the city council reviewed briefly before proceeding. Several city council members spoke about the city's past and ongoing discussions with Mailand regarding complaints at the property and concerns about Mailand Management. One councilmember noted that the license for the property was already "provisional," but the record is unclear whether the license was provisional at the time.¹ After hearing arguments from both sides, the city council voted unanimously to revoke Mailand's rental-dwelling license under West St. Paul, Minn., Code of Ordinances (WSPO) § 110.12(B)(6) and (19) (2017), ordered tenants to vacate no later than December 31, 2017, and issued a written resolution accordingly. The city sent revocation notices with the move-out date to Mailand and the property's tenants.

On October 23, tenants and community members appeared at a city council meeting to challenge the council's revocation decision. They stressed the hardship caused by the revocation and the lack of notice provided to the tenants. Several tenants also argued that they had had no problems while living at the property and asked the council to reconsider its decision. The council again voiced its ongoing concerns regarding the property, and

¹ At oral argument, counsel for relators represented that the property's license was not provisional at the time of the September 25, 2017 revocation hearing. But the transcripts of the September 25 and October 23, 2017 hearings indicate that the city council was under the impression that it was. On this record, the factual basis for any provisional status is unclear.

Mailand's management thereof, and upheld the revocation. However, the council did vote to extend the move-out date to July 1, 2018.

This appeal follows.

DECISION

We review a quasi-judicial decision rendered by a city under a limited and nonintrusive standard of review. Under that standard, we may not substitute our own findings of fact for those of a city, or engage in a de novo review of conflicting evidence. Instead, we must uphold a city's decision if the city has explained how it derived its conclusion and [the city's] conclusion is reasonable on the basis of the record.

Sawh v. City of Lino Lakes, 823 N.W.2d 627, 635 (Minn. 2012) (alteration in original) (citations and quotations omitted); *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 303 (Minn. App. 2007) (noting that a reviewing court "will not retry facts or make credibility determinations").

We may reverse or modify a city council's decision "if the city . . . made its decision based on unlawful procedure, acted arbitrarily or capriciously, made an error of law, or lacked substantial evidence in view of the entire record submitted. . . . The party seeking reversal has the burden of demonstrating error." *In re Khan*, 804 N.W.2d 132, 136 (Minn. App. 2011) (first alteration in original) (quoting *Montella v. City of Ottertail*, 633 N.W.2d 86, 88 (Minn. App. 2001)).

"The substantial-evidence standard addresses the reasonableness of what the agency did on the basis of the evidence before it." *In re A.D.*, 883 N.W.2d 251, 259 (Minn. 2016) (quotation omitted). "Substantial evidence is defined as: (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.” *Cannon v. Minneapolis Police Dep’t*, 783 N.W.2d 182, 189 (Minn. App. 2010) (quotation omitted). “[A] relator must show that the evidence, considered in its entirety, and drawing inferences in favor of the decision, is not substantial, and, therefore, does not adequately support respondent’s finding that good cause existed to take adverse action against his . . . license[.]” *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 563 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001).

The West Saint Paul Code of Ordinances provides that “[a] licensee is responsible for the conduct of his or her place of business and the conditions of order in it.” WSPO § 110.04 (2017). Specifically, the licensee is “responsible for the acts or omissions of their managers as it pertains to the rental dwelling.” WSPO § 150.039 (2017). In turn, rental owners and managers must take the “reasonable steps” necessary to ensure that tenants and nearby properties are able to “pursue the quiet enjoyment of the normal activities of life in surroundings that are safe, secure, and sanitary, free from noise, nuisances and annoyances, and free from unreasonable fears about safety of persons and property.” WSPO § 150.035 (2017).

The city council may revoke a rental-dwelling license when the licensee (here, Mailand, on behalf of Mailand Management) has conducted the licensed activity (here, the ownership and management of the property) “in such a manner as to constitute a breach of the peace, a menace to the health, safety and welfare of the public, or a disturbance of the peace or comfort of the residents of the city.” WSPO § 110.12(B)(6). Further, the council may revoke for “[o]ther good cause” under WSPO § 110.12(B)(19).

In interpreting a law, “courts generally strive to construe a term according to its plain and ordinary meaning.” *Frank’s Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980). Under the plain language of WSPO sections 110.04, 150.035, and 150.039, Mailand, on behalf of Mailand Management, as the licensee, owner, and manager of the property, was required to take the “reasonable steps” necessary to ensure the peace, safety, and security of the residents and the public in and around the property.

Thus, as a preliminary matter, Mailand’s argument that his tenants violated the WSPO, not the relators, and that he is not liable for his tenants’ actions, is without merit. *See Khan*, 804 N.W.2d at 141-42 (rejecting a landlord’s argument that he was not accountable for tenants’ violations of the code, after noting that a landlord must adhere to the code, and it would be “absurd” for a landlord to plead ignorance and therefore avoid responsibility for the tenants’ violations under the code). Here, the plain language of the WSPO required Mailand to take the “reasonable steps” necessary to ensure the peace, safety, and security of the residents and the public in and around the property. As such, the question before this court is whether substantial evidence in the record supports the city council’s decision that Mailand failed to meet this obligation under the WSPO.

In issuing its written resolution unanimously revoking Mailand’s rental-dwelling license, the city council relied on, and incorporated, the city’s memorandum recommending revocation that the city attorney prepared. The memorandum noted that there had been over 327 calls to the property in a five-year period, including over 76 public-service calls between August 2016 and August 2017. Of these calls, the city’s request for

revocation was based on 27 police calls to the property for nuisance and criminal complaints between August 2016 and August 2017.

The city council accepted and incorporated the memorandum's assessment that Mailand was not proactively preventing nuisance issues at the property, and that the length of time it took for Mailand to respond to the issues had led to an unnecessary and excessive use of police resources, and posed a continued health, safety, and welfare concern to the public in and around the property. The city council found that police had "responded to numerous calls . . . for noise, robbery, indecent exposure, disturbing the peace, assault with weapons, intoxicated persons, and drug offenses" at the property over the last 12 months, and concluded that Mailand conducted the licensed activity in a manner that constituted a breach of, or a disturbance to, the peace and comfort of city residents, as well as a menace to the public's health, safety, and welfare under WSPO § 110.12(B)(6). The city council also found that the burden on city staff and the limited resources of the police department constituted "other good cause" under WSPO § 110.12(B)(19) to support revocation.

The city council found that "relators fostered an environment where repeat police calls and police presence were the norm," and that Mailand's failure to check the conduct of his tenants justified the city council's reasonable decision to revoke Mailand's rental-dwelling license. But a review of the record leads us to the conclusion that there is not substantial evidence to support the city council's decision.

Of the 27 calls that the city used to support its request for revocation, 11 involved reports of suspected controlled-substance use or intoxication, and 10 involved loud-noise complaints. Many of the calls involved disorderly conduct or some form of disturbance,

including fights and harassment. The police investigated these calls and provided assistance or warnings, but nearly every call resulted in no police report. None of the calls about controlled-substance use or intoxication resulted in criminal charges or further police action, and several calls about the “odor of marijuana” were said to be “unfounded.”

The record does not indicate that charges were filed for a report of indecent exposure by a non-tenant in the property’s parking lot or for a domestic dispute in the parking lot. The record only indicates that criminal charges or citations were filed in relation to three of the 27 calls. Two non-tenants were cited for disorderly conduct for a fight in the parking lot in June 2017. As a result, Mailand issued a trespass notice to one of the involved parties, which precluded him from being at the property. A tenant’s guest was arrested on a separate and outstanding arrest warrant in the property’s parking lot after a noise-complaint call in June 2017. Most significantly, one call from June 2017, resulted in aggravated robbery and assault charges against an ex-boyfriend of the same tenant after an altercation between the ex-boyfriend and the current boyfriend of the tenant. No criminal charges were ever filed, nor was legal action ever taken, against any of the property’s tenants as a result of any of the 27 calls.

Of the 27 calls, 20 calls involved the tenants in three units, and three calls involved conduct by one other unit or its guest. But the record and the law support Mailand’s argument that eviction actions against these “problem tenants” would not have been successful where the allegations were largely unsubstantiated or did not rise to a level of a proven material violation of the lease. *See* Minn. Stat. §§ 504B.285, .291 (2016) (allowing a landlord to bring an eviction action for nonpayment of rent, for holding over on the

property, for failing to vacate upon notice, or for failing to vacate after breaking the terms of the rental agreement).

Further, the record supports that Mailand did take reasonable steps within the bounds of the law to remove these tenants. The tenants in two problem units received repeat nuisance service call letters from the city. In turn, Mailand asked one of those tenants to vacate, and she agreed to do so without an eviction. The other tenant, who was involved in an ongoing dispute with another tenant, also moved out voluntarily at the end of July 2017. In addition, Mailand and Mailand Management conducted background checks of prospective residents. Mailand also posted notice to tenants of their obligations under the Crime-Free/Drug-Free Housing addendum, although it was on September 22, 2017, three days before the license-revocation hearing. In addition, he sent a letter reminding tenants to refrain from loud or disruptive behavior and to only call the police for emergencies. At the revocation hearing, Mailand voiced his willingness to hire a new management company.

The city disputes Mailand's commitment to addressing issues at the property and questions the steps that Mailand took on behalf of Mailand Management to actually resolve the issues. Nonetheless, a review of the record in its entirety, shows that the city failed to provide substantial evidence that Mailand or the property's management was negligent or deficient under the WSPO, that the property's management fostered an environment necessitating repeat police calls, or that the law allowed Mailand to do anything differently so as to avoid the ongoing burden on limited police and city resources. On this record, we

conclude that there was not substantial evidence to support the city council's decision to revoke Mailand's rental-dwelling license under WSPO § 110.12(B)(6), (19).

Because Mailand has met his burden of proof to show that the city council's decision is not supported by substantial evidence, we reverse and remand to the city council to reinstate Mailand's rental-dwelling license for the property. Given our resolution of this issue, we need not review the remaining issues raised by relators.

Reversed and remanded.