

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1633**

Mary Jo Kattar, et al.,
Relators,

vs.

City of St. Paul,
Respondent.

**Filed December 6, 2021
Affirmed
Jesson, Judge**

City of St. Paul
File No. RLH RR 19-30

Steve Anderson, Anderson Law Group PLLC, St. Paul, Minnesota (for relators)

Lyndsey M. Olson, St. Paul City Attorney, Therese A. Skarda, Assistant City Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and
Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Relators Mary and John Kattar contest respondent City of St. Paul's order requiring them to demolish their house, which was so filled with property that a code-compliance inspection was deemed impossible. The Kattars contend that the city failed to consider certain important aspects of the situation, including the disruption caused by COVID-19

and the difficulties posed by Mary Kattar's hoarding condition, and as a result claim the city's decision was arbitrary and capricious. We affirm.

FACTS

The city originally condemned the Kattar's house as unfit for human habitation in 2007. Among other factors, the city declared that the home was a "material endangerment" to the public because it was so full of property that it posed a fire hazard. The house was and continued to be full of property, in large part, because of Mary Kattar's hoarding condition. The Kattars vacated the home in April 2007 and never returned, although they continued to pay taxes on it. For twelve years, the city took no further action concerning the home.

Then, in September 2019, the city notified the Kattars that the home was a nuisance property and could be subject to demolition if its code violations were not remedied. A public hearing concerning the house was set for November 2019, at which the Kattars appeared. There, a legislative hearing officer explained that the Kattars had two options: they could rehabilitate the home or demolish it. When the Kattars indicated that they intended to rehabilitate the house, the hearing officer explained that they had six months to remedy all the code violations that led the city to declare the house a nuisance. The hearing officer told the Kattars that the first step of the rehabilitation process was a code-compliance inspection by the city. But the home was currently so full of property that no inspection was possible.

To assist them in cleaning out the house enough for a code-compliance inspection to occur, the hearing officer then encouraged the Kattars to reach out to a county program

that could offer services. The Kattars also received information about a professional organization that specialized in helping people with hoarding conditions at the same meeting. But by the next legislative hearing, the home was still not clean enough for an inspection.

The Kattars did not make much progress. In January 2020, the legislative hearing officer gave the Kattars one more month to clean the home so that the city could inspect it. But by February 2020, the house was still not clean. The Kattars had enlisted the assistance of the county program, but a worker from that program testified that the house was still very full, and that a bid to clean the house was rejected by the Kattars. The hearing officer then gave the Kattars until the end of March 2020 to secure a contract to clean the house.

But in March 2020, the COVID-19 pandemic complicated the Kattars' efforts to get a contract in place. They retained counsel, who obtained an additional extension because both Kattars had underlying health conditions that made them particularly vulnerable to the virus. But at the continued hearing, while some cleaning had been done, the Kattars still had not entered into a contract to have the house cleaned.

Throughout the summer of 2020, Mary Kattar continued some cleaning efforts. In a letter, she stated that she had made a lot of progress and requested more time to finish cleaning the house. She hired a project manager and started working with a different service that also specialized in helping people with hoarding conditions. On the basis of Kattar's representations of her cleaning efforts, the legislative hearing officer gave the Kattars an extension until the middle of August 2020, provided that they could bring pictures documenting their progress.

But the August hearing revealed little progress. At the hearing, a city employee who reviewed the Kattar's progress pictures testified that the house was still so full of property that no inspection was possible. Counsel maintained that progress was being made, although he acknowledged that "the pace may be slower than what . . . would be officially desired." The legislative hearing officer granted the Kattars one final extension to get the house clean enough for an inspection.

Ultimately, the Kattars never cleaned the house to a point where a code compliance inspection could occur. Counsel admitted at the final hearing that the Kattars did not "stay on plan," and that "the house is still not cleaned out." The legislative hearing officer recommended that the city council order the demolition of the home because it still posed a fire hazard. The city council unanimously voted to amend its September 2019 order, removing the option to rehabilitate and instead requiring the Kattars to demolish the property within 15 days, or else the city would demolish the home itself.

The Kattars, by writ of certiorari, seek review of the city's decision.

DECISION

The Kattars argue that the city's decision to order the demolition of their home was arbitrary and capricious. We defer to a city's decision and will reverse only if the decision was arbitrary and capricious. *Rostamkhani v. City of St. Paul*, 645 N.W.2d 479, 483 (Minn. App. 2002). A city's decision is arbitrary and capricious if: (1) the city relied on factors not intended by the ordinance, (2) the city failed to consider an important aspect of the issue, (3) the decision conflicts with the evidence, or (4) the decision is so implausible that it does not reflect a simple difference in judgment. *Id.* at 484.

With this standard in mind, we turn to the city’s decision. Based on the accumulation of property making the Kattar’s home a fire hazard, the city determined that the house posed a “material endangerment.” A “material endangerment” exists when the condition of a building violates a city code, and the violation is hazardous to the public. St. Paul, MN, Legislative Code (SPLC) § 34.23(7) (2021). A dwelling that is a fire hazard poses a material endangerment. *Id.* (7)(b). Yet, the city worked with the Kattars for almost a year, and extended the original rehabilitation deadline four times, in an attempt to get the house cleaned out enough so that it did not pose a material endangerment. Those efforts failed. Finally, the city ordered that the Kattars demolish the property within 15 days, or else the city would demolish the house itself. This action is in accord with a city’s authority to take emergency abatement procedures when a nuisance property poses an immediate danger to the public, including the “demolition of dangerous structures.” SPLC §§ 45.08, .12 (2021). Because the city relied on the factors intended by the ordinances in concluding that the house must be demolished to abate the endangerment to the public, the city’s decision was logical and based on the evidence, and thus was not arbitrary and capricious. *Rostamkhani*, 645 N.W.2d at 484.

Still, the Kattars point us toward indications that the city’s decision to remove their property *was*, in their view, arbitrary and capricious. They allege that these indications demonstrate that the city failed to consider important aspects of the issue. *See id.* (recognizing that a city’s decision may be arbitrary and capricious if the city failed to consider an important aspect of the issue). First, the Kattars contend that the city ignored Mary’s hoarding condition because the order itself does not reference hoarding. Second,

they argue the city failed to consider the extent to which COVID-19 prevented them from cleaning the property. Third, the Kattars assert that the city ignored all the progress that they made in cleaning out the property.¹ Taken together, they argue that these factors suggest that the city failed to consider important aspects of the problem, and thus its decision was arbitrary and capricious.

The record refutes the Kattar's claim. First, that the order itself does not reference hoarding does not mean that the city did not consider Mary Kattar's hoarding condition. Not only was hoarding discussed extensively at the legislative hearings and council meeting, but the city encouraged the Kattars to seek services that specialized in assisting people with hoarding conditions to clean their homes. Second, the Kattars fail to acknowledge that the city gave them the benefit of multiple extensions because of the COVID-19 pandemic. And the legislative hearing officer testified at the council meeting that the Kattars' failure to make significant progress was due to their inability to delegate work, not the pandemic. Third, rather than ignoring the progress that the Kattars made, the city found that progress inadequate. And the record supports this determination. The hearing officer informed the Kattars at the first hearing that the first step of the rehabilitation process was a code-compliance inspection. The hearing officer originally gave the Kattars six months to rehabilitate the property. But after almost a year of broken

¹ Additionally, the Kattars argue that the city held them accountable for its own inaction between 2007—when the city originally condemned the property—and the declaration that the house was a nuisance property in 2019. But the Kattars could have corrected the deficiencies in order to remove the condemnation order and failed to do so. They do not explain what further action the city was required to take, or why this alleged failure justifies their inability to clean the house over a period of more than 12 years.

deadlines and extensions, the Kattars never completed the first rehabilitation step because the house was still too full for an inspection to occur. Accordingly, the Kattars have not established an important aspect of the problem that the city failed to consider, and thus the city's decision was not arbitrary or capricious.

Affirmed.