STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0143

In re: A resolution of the North Mankato City Council in the matter of a nuisance property located at 229 Allan Avenue, North Mankato owned by Edward R. Borchardt and Ann M. Borchardt.

Filed October 4, 2021
Reversed
Reilly, Judge

City of North Mankato
File No. Resolution 98-20

Karl O. Friedrichs, Friedrichs Law Office, P.A., Mankato, Minnesota (for relator Edward R. Borchardt)

Christopher M. Kennedy, Michael H. Kennedy, Kennedy & Kennedy, Mankato, Minnesota (for respondent City of North Mankato)

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

NONPRECEDENTIAL OPINION

REILLY, Judge

In this certiorari appeal, relator challenges a city resolution declaring his property a public nuisance and ordering him to abate the nuisance. Because the evidence before the city council did not adequately support its determination that relator's property constituted a nuisance, we reverse the resolution.

FACTS

This case centers on property owned by relator Edward Borchardt and located at 229 Allan Avenue in North Mankato. Borchardt and his wife took an unconventional approach to lawn care, allowing trees, shrubs, and vegetation to grow freely in their yard. Respondent City of North Mankato (the city) determined that Borchardt's property constituted a nuisance in violation of city ordinances because it contained a "rank growth of vegetation that unreasonably annoyed a considerable number of members of the public." This appeal is taken from the city's resolution declaring the property a nuisance and ordering Borchardt to abate the nuisance.

Borchardt's neighbors had complained about the state of his property for years. The city notified Borchardt as early as 2005 to address an issue with the outdoor storage of materials. In response to further complaints, the city directed Borchardt to address various conditions on his property in 2011, 2016, 2019, and 2020. At the time of this matter, Borchardt had resolved the other issues, but the city remained concerned about the growth of vegetation on the property. The city set the matter for a public hearing before the city council to determine whether the property constituted a nuisance.

The city council held the public hearing in December 2020. Some members of the public provided comments to the city council by email before the hearing. A neighbor who lived across the street from Borchardt said that, while the property used to be in poor condition, it had "improved immensely" and was "not nearly as overgrown as it once was." The neighbor disputed reports that the property was frequented by large numbers of animals and even rats, commenting that he had never seen a rat near the Borchardt property

and that animals were common on other properties in the neighborhood too. Other citizens commented that Borchardt's property looked like pollinator plots, which were permissible in the city. Some citizens also complained that the language of the proposed resolution was "highly subjective."

At the hearing, several members of the public spoke in opposition to the proposed nuisance resolution. One citizen commented that Borchardt had been cooperative with the efforts of the city and the neighborhood to help him with his property, and that Borchardt simply did not want to change the way his property looked. Another citizen said that she passed by the property at least once or twice a month and had seen "a tremendous amount of work" that had been done on the property, even though it still looked different from the other properties on the street. Some members of the public also criticized the proposed resolution as vague and subjective.

Other members of the public spoke in favor of the proposed nuisance resolution. One neighbor commented that the property had "been an eyesore" for more than 30 years. She said that the city had sent letters to Borchardt multiple times over the years explaining the improvements that needed to be made, and that despite the progress that Borchardt had made over the past year, the property was still not in good enough condition. Another neighbor told the city council that in the past "you couldn't even see through the vegetation" on Borchardt's property, although it was now possible to see the house. The neighbor complained, "Just try to keep it neat and orderly . . . for your neighbors. Because when we walk down the street we see this, and it's like, it pulls at your heart."

Next, the community development director detailed the history of complaints that the city had received from citizens about the Borchardt property over the years. The director said that there were concerns that the vegetation on the property would attract animals. He explained that, at a previous council hearing, there was testimony about reports of "raccoons, woodchucks, mice, [and] feral cats . . . located around or in the property." The director also said that city staff had offered to come to the property and help Borchardt address the vegetation concerns without charge.

The police chief spoke next, telling the city council about his involvement with helping Borchardt address the issues with the property. He said that he had visited the property in July 2020 and identified problem areas. According to the police chief, the backyard was "significantly overgrown" with sapling trees and other wooded vegetation. The police chief explained that Borchardt had willingly agreed to trim the vegetation and that he had observed Borchardt doing so in July. In September 2020, the police chief again visited the property, and he saw that Borchardt had "trimmed and removed some areas of vegetation, [and] showed some progress." At that point, Borchardt believed that his property was then in compliance with the city's requests, and he told the police chief that he would not do any more work on the property. The police chief disagreed. He said that if he were a neighbor, he "probably would have taken issue with the overgrowth as well." The police chief forwarded the matter to the appropriate authority.

After hearing from the community members, the city council voted to pass the nuisance resolution. The resolution found that Borchardt's property was "maintained in a manner that permits a rank growth of vegetation." The resolution contained findings that

the rank growth of vegetation "offer[ed] a habitat for rodents and other animals," was "unsightly," and was "a public health concern." Based on these findings, the resolution determined that the property contained a rank growth of vegetation that "unreasonably annoys a considerable number of members of the public," in violation of city ordinances. The resolution therefore ordered Borchardt to "abate the rank growth of vegetation and bring the property into compliance with" city ordinances by June 1, 2021.

This certiorari appeal follows.

DECISION

Borchardt challenges the city's nuisance resolution. He raises several arguments on appeal, including that the city ordinances on which the resolution was based are unconstitutionally vague, that the city's procedures at the public hearing denied him due process, and that there is insufficient evidence to support the nuisance resolution. We agree with Borchardt that insufficient evidence was presented to the city council to support the resolution. Because we reverse the resolution on that basis, we need not address Borchardt's constitutional arguments. *See Kimberly-Clark Corp. & Subsidiaries v. Comm'r of Revenue*, 880 N.W.2d 844, 849 (Minn. 2016) (recognizing that appellate courts do not reach constitutional issues if appeal can be resolved on other grounds).

In a certiorari appeal, our 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." *Khan v. Minneapolis City Council*, 792 N.W.2d 463, 466 (Minn.

App. 2010) (quoting *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992)) (applying this principle to an appeal of a city council's nuisance-abatement decision). We may review only the record before the city council when it made its decision. *Id.* When we interpret city ordinances, our review is de novo. *RDNT, LLC v. City of Bloomington*, 861 N.W.2d 71, 75 (Minn. 2015).

We first address the city's argument that this appeal is not properly before this court. The state contends that this court lacks jurisdiction over this matter because an action is also pending in district court. According to the parties,[1] after the city council passed the nuisance resolution, Borchardt originally sued in district court challenging the resolution. The city moved to dismiss the district court action for lack of jurisdiction. Borchardt then petitioned for a writ of certiorari with this court. But the district court has not yet dismissed the case. The district court judge instead chose to keep the district court file open, in case this court determines that the district court is the proper venue for the appeal. The city argues that the district court and the court of appeals cannot have concurrent jurisdiction over this matter and so this court cannot hear the appeal. We disagree.

Without any statute providing for judicial review, this court may review quasi-judicial administrative decisions only by certiorari. *Pierce v. Otter Tail County*, 524 N.W.2d 308, 309 (Minn. App. 1994), *rev. denied* (Minn. Feb. 3, 1995). The act of a public board is quasi-judicial "if it is the product or result of discretionary investigation, consideration, and evaluation of evidentiary facts." *Id.*; *see also Minn. Ctr. for Env't*

[1] We rely solely on the parties' representations in their briefs and at oral arguments about the matter before the district court.

Advoc. v. Metro. Council, 587 N.W.2d 838, 842 (Minn. 1999) (holding that the three indicia of quasi-judicial acts are (1) investigating a disputed claim and weighing evidentiary facts, (2) applying those facts to a prescribed standard, and (3) making a binding decision regarding the disputed claim).

Here, the city council's resolution followed a hearing at which various members of the public spoke and the council considered evidence. The city council then applied that evidence to the standard provided in the nuisance ordinances and adopted a binding nuisance resolution. Thus, the city council's act was quasi-judicial. In fact, the city agrees that jurisdiction is proper in this court and not in the district court. But the city maintains that this court cannot have concurrent jurisdiction with the district court because there is no final judgment in the district court case. The argument is unpersuasive. This is not an appeal from the *district court's* decision; this court independently granted certiorari over the city council's resolution. We add that, based on the district court judge's comments, we are satisfied that the district court will dismiss the action pending before it when we issue our opinion. We may properly exercise jurisdiction over this appeal.

We now turn to the merits of Borchardt's argument that there is insufficient evidence to support the city council's adoption of the nuisance resolution. On review of a certiorari appeal, we do not retry facts or make credibility determinations. *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996). We will uphold the decision if there is "any legal and substantial basis for the action taken." *Id.*

The nuisance resolution was based on the determination that Borchardt's property contained a "rank growth of vegetation" that "unreasonably annoys a considerable number

of members of the public." The resolution concluded that Borchardt's conduct violated two city ordinances. One ordinance declares that public nuisances include "[a]ll noxious weeds and other rank growths of vegetation upon public or private property." North Mankato, Minn., Code of Ordinances § 92.16(H) (2011). The other ordinance provides that a person maintains a public nuisance if he "[m]aintains or permits a condition which unreasonably annoys, injures, or endangers the safety, health, morals, comfort or repose of any considerable number of members of the public." North Mankato, Minn., Code of Ordinances § 90.095(A) (1991). When interpreting ordinances, we construe words and phrases that are not defined according to their plain and ordinary meaning. *Reetz v. City of St. Paul*, 956 N.W.2d 238, 245 (Minn. 2021); *Cannon v. Minneapolis Police Dep't*, 783 N.W.2d 182, 192-93 (Minn. App. 2010) (providing that rules of statutory interpretation also apply to interpretation of ordinances). We may consider dictionary definitions to determine the plain and ordinary meaning of a word or phrase. *Reetz*, 956 N.W.2d at 245. We also interpret words according to their context within the ordinance. *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 177 (Minn. 2020) (explaining this principle in context of statutory interpretation).

We first note that some findings in the resolution are not supported by the record. The resolution states that the vegetation on Borchardt's property is "a public health concern." But no evidence about adverse health effects was presented at the hearing.[2] The

[2] In its brief, the city suggested that the vegetation may pose a fire or other safety hazard. The city did not make this argument to the city council, nor was any evidence presented showing that Borchardt's property might constitute a fire hazard. This therefore does not support the finding that the vegetation on Borchardt's property is a public health concern.

resolution also found that the vegetation "offers a habitat for rodents and other animals." The only evidence to support this finding is the testimony of the community development director that, at some undefined point in the past, someone reported seeing raccoons, woodchucks, mice, and feral cats around or on the property. But it was undisputed that Borchardt had made substantial improvements to his property earlier in the year. The director's testimony does not make clear *when* the reports of animals occurred and whether they happened after Borchardt had improved the property. In other words, the record does not support the finding that rodents or animals remained a problem when the city council passed the resolution.

The only finding in the resolution about the property's harm to the neighborhood that is supported by the record is that the vegetation is "unsightly." One neighbor testified that the property had been an "eyesore" for decades and that people often complained about it. Another neighbor said that the property was "a little bit of a mess" and that looking at it "pulls at your heart."

Based on the evidence presented, we conclude that the record does not adequately support the city council's determination that Borchardt's property contained a rank growth of vegetation. The ordinance does not define "rank growth." Nor does the ordinance provide that vegetation meets the definition of a rank growth if it grows above a particular height.[3] One definition of "rank," when referring to vegetation, is "[g]rowing profusely or

[3] A separate ordinance provides that, if the grass or weeds grow more than six inches tall, this is considered "prima facie evidence of the failure of the owner and occupant to comply with" the requirement to cut and control grass and weeds. North Mankato, Minn., Code of Ordinances § 90.111(A) (2007). The city council did not find that Borchardt violated

with excessive vigor." *The American Heritage Dictionary of the English Language* 1457 (5th ed. 2018). The ordinance declares rank growths of vegetation to be "nuisances affecting health." North Mankato, Minn., Code of Ordinances § 92.16(H). And the term "rank growths of vegetation" is listed alongside the term "noxious weeds." *Id.* While the statute does not define "noxious weeds" either, one definition of "noxious" is "[h]armful to living things; injurious to health." *American Heritage*, *supra*, at 1207. In the context of surrounding provisions, we interpret "rank growths of vegetation" to mean vegetation that grows excessively in a way harmful to public health.

The record provides some support that the vegetation on Borchardt's property was growing profusely or with excessive vigor. Members of the public testified at the hearing that the property was "[u]nke[m]pt" and that Borchardt did not keep it "neat and orderly." And these descriptions are corroborated by the photos of the property submitted to the city council, which show that the property contains long grass and thick shrubs. But the record does not support a finding that the growth of vegetation on Borchardt's property may have harmed public health. As noted above, no evidence was introduced showing that the property posed any harm to the community. While there were some general references to animals being spotted on Borchardt's property, the limited evidence presented did not show that animals had been seen around the time of the hearing or in greater number than on surrounding properties. And while the evidence might support a finding that Borchardt's yard contained a rank growth at an earlier time, the record establishes that Borchardt made

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section 90.111(A), nor did it introduce evidence that Borchardt's grass exceeded a certain height.

significant improvements to the property in the summer of 2020 by trimming shrubs and removing vegetation. The record does not show that, when the city council passed the resolution, Borchardt's property contained a "rank growth" that threatened public health.

We likewise conclude that the record does not adequately support the determination that the rank growth of vegetation "unreasonably annoys" members of the public in violation of section 90.095(A). While the ordinance does not define what it means for a condition to "unreasonably annoy," we are guided by authorities governing public nuisances in general. Under the state nuisance statute, a condition is a nuisance if it "interfere[s] with the comfortable enjoyment of life or property." Minn. Stat. § 561.01 (2020). "For an interference with the enjoyment of life or property to constitute a nuisance, it must be material and substantial." *Citizens for a Safe Grant v. Lone Oak Sportsmen's Club, Inc.*, 624 N.W.2d 796, 803 (Minn. App. 2001) (citing *Jedneak v. Minneapolis Gen. Elec. Co.*, 4 N.W.2d 326, 329 (Minn. 1942)). And the degree of discomfort is measured based on "the standards of ordinary people in relation to the area where they reside." *Id.* Relying on these general principles of nuisance law, we interpret the city ordinance as requiring that, for a condition to "unreasonably annoy" members of the public, the condition must substantially affect other people's ability to enjoy life or property.

The evidence presented to the city council does not meet this standard. No evidence was introduced that the property harms public health or limits the neighbors' ability to enjoy their own properties. Instead, the neighbors' primary complaints about Borchardt's property were that they simply did not like looking at it. The city cites no caselaw, and we are aware of none, providing that a person's property may constitute a nuisance simply

because neighbors find it unsightly. While we recognize that the nuisance ordinances allow the city council to order the abatement of conditions that substantially interfere with neighbors' property rights, we do not interpret the ordinance so broadly as to allow the city to declare a nuisance based on little more than neighbors' displeasure with the property's appearance.

The record also lacks support for the city council's finding that a "considerable number of members of the public" were annoyed by the property. Of the community members who submitted comments to the city council or spoke at the public hearing, only two expressed their displeasure with the property. The police chief also told the city council that if he were living next to Borchardt, he also "probably would have taken issue" with it. The community development director testified that the city had received multiple complaints about the property over the years, but no specific evidence was submitted about the substance of those complaints, or the time frame when the city received the complaints. Moreover, the director's testimony suggests that citizens made the complaints before the summer of 2020, which was when Borchardt undisputedly began to make substantial improvements to the property.[4] Aside from the two neighbors and the police chief who spoke at the hearing, the record is silent about neighbors' complaints about the condition

[4] The city contends that it could not present more information about citizen complaints because it was "limited in what information that it can make public in regards to complaints" about real property. Because certain information is confidential under Minn. Stat. § 13.44 (2020), the city maintains that it could rely only on the investigations made by the city. But the statute protects only "[t]he identities of individuals" who make those complaints. Minn. Stat. § 13.44, subd. 1. The city was not prevented from presenting more detailed information about the complaints to the city council, as long as it did not disclose identifying information about the individuals who filed the complaints.

of the property as it existed at the time the resolution was adopted. While we need not define precisely what constitutes a "considerable" number, that number was not met here.

For these reasons, we conclude that the evidence presented to the city council does not support the city council's determination that the vegetation on Borchardt's property constituted a "rank growth" or that it unreasonably annoyed a considerable number of members of the public. We therefore reverse the resolution as unsupported by the record.

Reversed.