

*This opinion is nonprecedential except as provided by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
A21-0489**

In re: Demolition of First Church of Christ Scientist, 614 15th Street East (PLAN10644).

**Filed January 3, 2022
Reversed
Smith, John, Judge***

Minneapolis City Council
File Nos. 2021A-0005, 2021-00023

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Considered and decided by Worke, Presiding Judge; Florey, Judge; and Smith, John, Judge.

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We reverse the City of Minneapolis’s decision to deny the relator’s application for a certificate of appropriateness to permit demolition of a vacant church building because the denial was unreasonable, arbitrary, capricious, and not supported by substantial evidence.

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

FACTS

The First Church of Christ Scientist (the building) was built in 1897 in south downtown Minneapolis. In the 1980s, the Minneapolis Heritage Preservation Commission (HPC) locally designated the building and nominated it to the National Register. The building was historically significant because it was the first church of its denomination in Minnesota, as well as “a scaled down version of Beaux-Art Classicism and Renaissance Revival styles featuring the Doric order.”

In 2001, the building was rented and used by a theater company for offices and teaching space. An architectural firm prepared an existing conditions report on the property, evaluating it “for compliance with current building codes and zoning requirements” and including a proposed plan to show how to bring the building into compliance and turn the building into a performing arts center. The firm developed two rehabilitation options—one option was to perform maintenance and preservation of the building, particularly the exterior, was estimated to cost approximately \$822,000; and the other option, which would transform the building into a performing arts center, was estimated to cost approximately \$3,200,000.

From 2006 to 2015, the building was left vacant. In 2015, relator bought the building after developing the property directly east of the building. In December 2018, relator proposed to install temporary interior shoring to stabilize the building in anticipation of snow loading. Minneapolis Department of Community Planning and Economic Development (CPED) staff conditioned a certificate of no change approval to require a rehabilitation plan for the building within six months. In August 2019, relator submitted a

mothballing plan with the intent to mothball and stabilize the building for up to ten years while a plan for further rehabilitation was developed.

In 2019, a retaining wall within the building collapsed. In February 2020, relator applied for a certificate of appropriateness to permit demolition of the building. Relator's application was considered complete in November 2020. CPED staff reviewed the application and recommended in December 2020 to deny the application.

That same month, the HPC held a public hearing on the application and voted to deny it, adopting the CPED staff's findings. Relator appealed the decision to the Minneapolis Business, Inspections, Housing & Zoning Committee. That committee heard the appeal in January 2021 and similarly denied the appeal. The Minneapolis City Council affirmed the denial.

Relator appealed the decision on a petition for a writ of certiorari to this court.

DECISION

Relator challenges the city's denial of its application for a certificate of appropriateness.

As a threshold issue, the parties disagree on this court's standard of review of denial of relator's application for a certificate of appropriateness. Relator argues that this court must determine whether the denial was arbitrary, capricious, and unsupported by substantial evidence. The city argues that this court should use a rational-basis standard of review. We conclude that under either proposed standard, the decision to deny the demolition was unreasonable, arbitrary, capricious, and not supported by substantial evidence.

The parties agree that the decision to deny a certificate of appropriateness is a quasi-judicial determination. And the city acknowledges that this court reviews a municipality's land-use decision under the Municipal Heritage Preservation Act to determine whether the municipality acted arbitrarily or capriciously. When a municipality conducts a quasi-judicial proceeding before rendering its decision, this court determines whether the municipality's decision was unreasonable, arbitrary, or capricious. *See Handicraft Block Ltd. P'ship v. City of Minneapolis*, 611 N.W.2d 16, 20 (Minn. 2000) (“[T]he three indicia of quasi-judicial actions can be summarized as follows: (1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim.”) (citation omitted). When an appellate court reviews a quasi-judicial decision, separation of powers principles impose a deferential standard of review. *Big Lake Ass'n v. St. Louis Cty. Plan. Comm'n*, 761 N.W.2d 487, 491 (Minn. 2009). However, the standard of review for all zoning matters is whether the zoning authority's action was reasonable. *See Honn v. City of Coon Rapids*, 313 N.W.2d 409, 416-17 (Minn. 1981) (explaining that reasonableness can be determined by asking whether the decision was unreasonable, arbitrary, or capricious).

On certiorari review, this court reviews the evidence “only to determine whether it supports the findings of fact or the conclusions of law, and whether the municipality's decision was arbitrary or capricious.” *In re Application of Dakota Telecomm. Group*, 590 N.W.2d 644, 646 (Minn. App. 1999). This court exercises judicial restraint to avoid substituting its judgment for that of an administrative body. *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001). Decisions of

administrative bodies are reviewed for “substantial evidence” which 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).

“The functions of fact[-]finding, resolving conflicts in the testimony, and determining the weight to be given to it and the inferences to be drawn therefrom rest with the administrative board.” *Quinn Distrib. Co. Inc. v. Quast Transfer, Inc.*, 181 N.W.2d 696, 700 (Minn. 1970) (citation and quotation omitted). Absent manifest injustice, inferences drawn from the evidence by an administrative body must be accepted by a reviewing court “even though it may appear that contrary inferences would be better supported or that the reviewing court would be inclined to reach a different result were it the trier of fact.” *Ellis v. Minneapolis Comm’n on Civ. Rts.*, 295 N.W.2d 523, 525 (Minn. 1980). When an administrative body contemporaneously states reasons for its decision, the burden is on the challenger to show that the decision was unreasonable, arbitrary, or capricious. *Billy Graham Evangelistic Ass’n. v. City of Minneapolis*, 667 N.W.2d 117, 123 (Minn. 2003).

When a landmark or building is protected by historical preservation, it cannot be altered or demolished without being authorized by a certificate of appropriateness approved by the HPC. Minneapolis, Minn., Code of Ordinances (MCO) § 599.320 (2001). Once the application for a certificate of appropriateness is complete, the HPC shall hold a hearing to approve, approve with conditions, or deny an application for certificate of

appropriateness. MCO § 599.340 (2001). Minneapolis's heritage preservation regulations dictate required findings for certificates of appropriateness:

The heritage preservation commission shall make each of the following findings before approving a certificate of appropriateness:

- (1) The alteration is compatible with the designation of the landmark or historic district, including the period and criteria of significance.
- (2) The alteration will ensure the continued integrity of the landmark or historic district.
- (3) The alteration is consistent with the applicable design guidelines adopted by the commission.
- (4) The alteration is consistent with the applicable recommendations contained in [the] Secretary of the Interior's Standards for the Treatment of Historic Properties.
- (5) The alteration is consistent with the spirit and intent of the preservation ordinance, the applicable policies of the comprehensive plan, and the applicable preservation policies in small area plans adopted by the city council.

MCO § 599.350(a) (2001). The regulations also contemplate the potential demolition of historical sites:

In addition to the findings above, before approving a certificate of appropriateness that involves the destruction, in whole or in part, of any landmark, property in a historic district or nominated property under interim protection, the commission shall make the following findings:

- (1) The destruction is necessary to correct an unsafe or dangerous condition on the property; or
- (2) That there are no reasonable alternatives to the destruction. In determining whether reasonable alternatives exist, the commission shall consider, but is not limited to:
 - a. The significance of the property;
 - b. The integrity of the property; and
 - c. The economic value or usefulness of the existing structure, including its current use, costs of renovation and feasible alternative uses.

MCO § 599.350(b) (2001).

In this case, the CPED staff made recommendations pertaining to both section 599.350(a) and (b). For the findings about demolition, CPED staff acknowledged that in 2019, a city official noted that the building was in imminent danger of collapse. However, CPED staff concluded that relator had not met its burden of showing that destruction was necessary to correct an unsafe or dangerous condition on the property because it was “unclear” whether the building was in imminent danger of collapse and because “the building is still standing today.” CPED staff also opined that there are reasonable alternatives to demolition because relator’s cost estimate for rehabilitation was to make the building office space, and that “[i]t is possible another use may be more suitable for this type of building with a large sanctuary space while still meeting the current and proposing zoning of the property, though CPED understands the difficulty in reusing historic churches.”

Relator argues that the city erred by denying the certificate of appropriateness because the city’s interpretation renders demolition impossible, that the city’s findings and decision were not supported by substantial evidence, were arbitrary, and were capricious. The city disputes that its interpretation renders demolition impossible and argues that the city’s decision had a rational basis.

The city argues that the “real factual issue” was whether rehabilitation of the building was so costly that there were no reasonable alternatives to demolition. Relator argues that the record did not contain substantial evidence to support the city’s conclusion that there were reasonable alternatives to demolition.

Considering the evidence as a whole, relator presented significant evidence of the deterioration and high cost of rehabilitating the building. The evidence presented to the contrary was based on conjecture and speculation about the use of the building, such as “[it] is possible another use may be more suitable.” CPED staff stated that it is “possible” that another use may be more suitable for this type of building, but does not acknowledge that alternative uses of the building other than office space “would cost nearly the same but returns significantly less revenue.” In its report, CPED staff stated how “[f]urther stabilization and rehabilitation efforts are possible as shown in the report from the historical consultant in consultation with a structural engineer,” but that these efforts “should be undertaken quickly as to prevent any further deterioration and the possibility of collapse.”

It is also clear from the record that the HPC members were concerned with what they referred to as “demolition-by-neglect,” and how previous owners should have repaired the building. At the hearing, the HPC chairperson stated,

“[T]his is seeming to me, sort of like, a demolition by neglect situation. If this building had been properly cared for when ownership was taken of it, I don’t think it would have reached the point of deterioration that is currently showing. . . . I am feeling like they have not sufficiently proven the question of immediate danger of collapse or that there aren’t viable alternatives.”

However, relator presented evidence that in 2018 relator installed shoring “to stabilize the building,” and the city conditioned this installation on relator submitting a plan to rehabilitate the building to prevent further deterioration, which relator did in August 2019. The 2019 rehabilitation plan acknowledges the deterioration of the building, stating that the plan will “prevent[] further structural deterioration or failure of the main structural

elements.” Further in 2019, a building official from the city determined that the building was “in imminent danger of collapse,” and determined that the “overall condition of this building has deteriorated to the point of conceivably collapsing and being unsafe to the public,” and required that relator add shoring “or safely demolish the building.”

For these reasons, we conclude that the decision to deny relator’s application for a certificate of appropriateness was unreasonable, arbitrary, capricious, and not supported by substantial evidence.

Reversed.