

*This opinion is nonprecedential except as provided by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
A21-0684**

1103 4th St SE, LLC, a Minnesota limited liability company,
Relator,

vs.

City of Minneapolis, a Minnesota municipal corporation,
Respondent.

**Filed April 4, 2022
Affirmed
Smith, John, Judge ***

City of Minneapolis

Stuart T. Alger, Faegre Drinker Biddle & Reath LLP, Minneapolis, Minnesota (for relator)

James R. Rowader, Jr., Minneapolis City Attorney, Mark Enslin, Assistant City Attorney,
Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Cochran, Judge; and Smith,
John, Judge.

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the City of Minneapolis’s decision to designate three properties owned by relator as “historic” because the designations were not arbitrary, capricious, or unsupported by substantial evidence.

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

FACTS

The three properties (the homes) at issue in this case were built in 1901 in Minneapolis's Marcy-Holmes neighborhood. The homes were designed for Mary Lochren by master architect William M. Kenyon, who also designed three other homes on neighboring parcels although they are not part of this litigation. Relator bought these three homes, seeking to demolish them and construct a 65-unit apartment building.

In February 2019, relator submitted a preliminary land-use application to respondent City of Minneapolis. The city's planning staff reviewed the application and requested that relator apply for historical review of the homes because the homes may qualify for historic preservation. Relator engaged a development consultation firm which produced a determination of eligibility study on the homes in June 2019. The study suggested that the homes met the historic preservation criteria as "a small group of speculatively-built houses designed by Kenyon." Relator then submitted a demolition-of-historic-resource application for the homes.

The Minneapolis Department of Community Planning and Economic Development (CPED), however, also conducted a study and concluded that the homes were not eligible for historic preservation. The CPED study recommended that the city approve relator's application.

Two weeks after the CPED study was issued, the Minneapolis Heritage Preservation Commission (HPC) denied relator's application "[n]otwithstanding staff recommendation" to approve it. The HPC concluded that demolition was not appropriate because there were "reasonable alternatives to demolition"; "[d]emolition is not required to correct an unsafe

condition”; and the homes’ relationship to each other might merit designating them as an example of century-old “non-high style residence[s] designed by William Kenyon.” The HPC established interim protection of the homes and directed community planning staff to prepare a historical designation study.

Relator appealed the HPC’s decision to deny its application to the Minneapolis City Council. The council approved the HPC’s decision to deny relator’s application and the Mayor of Minneapolis endorsed the council’s approval.

Seven months later, the Minneapolis City Planner submitted the historical designation study to the State Historic Preservation Office (SHPO) for comment. The historical designation study extensively analyzed the history of the homes and neighborhood. It recommended that the city designate the three homes as a historic district, concluding that they met historical preservation criteria. The SHPO reviewed the study and concurred that the homes are “a good candidate for local designation” under three historical preservation criteria.

In March 2021, the HPC held a public meeting on whether the homes should be approved as a historic district. At the meeting, HPC received several letters from community groups, the historical designation study, a report from the city planner recommending approval, as well as commentary from relator, his attorney, two community groups, and several members of the public. The committee voted to approve the historic district designation of the homes and in April 2021, the city council approved designating the homes as the “Mary Lochren Student Rooming Homes Historic District.”

Relator appeals the designation on a petition for a writ of certiorari to this court.

DECISION

Relator challenges the city's designation of the homes as a historic district.

As a threshold issue, the parties disagree on this court's standard of review of the city's historical preservation designation. 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 reasonableness standard of review. We conclude that under either proposed standard, the city's designation was both reasonable and neither arbitrary, capricious, nor unsupported by substantial evidence.

The parties agree that the city's historical preservation designation is a quasi-judicial determination. 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)); *see also Big Lake Ass'n v. St. Louis Cnty. Plan. Comm'n*, 761 N.W.2d 487, 491 (Minn. 2009). When an appellate court reviews a quasi-judicial decision, separation of powers principles impose a deferential standard of review. *Big Lake Ass'n*, 761 N.W.2d at 491.

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. Grp.*, 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.” *Tischer v. Hous. & Redevelopment Auth. of Cambridge*, 693 N.W.2d 426, 431 (Minn. 2005).

“The functions of factfinding, 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) (quotation omitted). Without 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). A city’s historical designation is unreasonable, arbitrary, or capricious only if the city (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) it is so implausible that it could not 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).

The HPC's planning director reviews all applications for building demolitions to determine whether the property is a "historic resource." Minneapolis, Minn., Code of Ordinances (MCO) § 599.460 (2014). A "historic resource" is a property that has "historical, cultural, architectural, archaeological or engineering significance" and meets one of the historical designation criteria. MCO § 599.110 (2021). If the HPC concludes that a property is a historic resource, it must deny the demolition permit and direct the planning director to prepare a historical designation study, unless the applicant shows that demolition is necessary to correct an unsafe condition on the property or there are no reasonable alternatives to demolition. MCO § 599.480 (2016).

The historical designation study then evaluates seven criteria to determine whether a property should be designated a historic district:

- (1) The property is associated with significant events or with periods that exemplify broad patterns of cultural, political, economic or social history.
- (2) The property is associated with the lives of significant persons or groups.
- (3) The property contains or is associated with distinctive elements of city or neighborhood identity.
- (4) The property embodies the distinctive characteristics of an architectural or engineering type or style, or method of construction.
- (5) The property exemplifies a landscape design or development pattern distinguished by innovation, rarity, uniqueness or quality of design or detail.
- (6) The property exemplifies works of master builders, engineers, designers, artists, craftsmen or architects.
- (7) The property has yielded, or may be likely to yield, information important in prehistory or history.

MCO § 599.210 (2009).

Once the historical designation study is published and the SHPO reviews and comments on it, the HPC must hold a public hearing to consider the proposed designation. MCO § 599.270 (2014). The HPC will then make findings and a recommendation on the designation, which it submits to the city council for approval. MCO §§ 599.280-.290 (2014).

In this case, the HPC denied relator's application to demolish the three homes, determining that the properties are historic resources and that relator failed to show that demolition was necessary or that no reasonable alternatives to demolition exist. The HPC ordered a historical designation study to be prepared. The resulting study extensively analyzed the history of the homes and the neighborhood and recommended designating the homes as a historic district. In making its recommendation, the study reviewed relator's application materials, the development consultation firm's eligibility study, newspaper archives, Minneapolis city directories, Minneapolis permit indexes and records, historical maps, and prior nearby historical district surveys. The study also discussed the homes' historical significance, describing Kenyon and his architectural impact, the Lochren family, the development of the University of Minnesota and surrounding student rooming homes, and Dinkytown's neighborhood identity.

The study then explained its rationale for the proposed historical designation, referencing the seven criteria from section 599.210 and concluding that the homes meet three criteria: (1) the homes are "among the best identified grouping of dwellings that retain their original architectural identity and historic integrity"; (2) the homes "are significant for neighborhood identity as collectively among the best examples of late nineteenth and

early twentieth century dwellings that have served as student rooming homes”; and (3) the homes “are among the best examples of a collection of dwellings that retain cohesive identity to communicate Kenyon’s skill” as a master architect. MCO § 599.210, subds. 1, 3, 6.

Relator argues, however, that the city’s decision was arbitrary and capricious because it did not apply the historical designation criteria to three other properties designed by Kenyon that are on parcels neighboring the homes. While relator is correct that “[d]isparate treatment of two similarly situated property owners may be an indication that the local government is acting unreasonably or arbitrarily,” *Billy Graham*, 667 N.W.2d at 126, here, only relator submitted a demolition application and thus only relator’s homes were subject to a historical designation evaluation based on the seven criteria. The city did not treat the two Kenyon-home owners differently because it only needed to consider relator’s application in its historical designation decision.

For that reason, we are unpersuaded by relator’s argument that *Northwestern College v. City of Arden Hills*, 281 N.W.2d 865 (Minn. 1979), supports its position. That case is inapposite. There, Northwestern sought a special-use permit to build a fine arts center on its campus, which the city council denied. *Id.* at 866-67. Bethel, a similarly situated private college, also applied for a special-use permit to build an addition to its fine arts center, which the city council approved. *Id.* at 867. The city council did not provide reasons for treating these two colleges’ applications differently. *Id.* at 869. The supreme court held the city’s disparate treatment of the colleges was arbitrary and capricious. *Id.* at 868. Here, on the other hand, the city considered only whether relator’s homes were subject

to historical designation because relator's application was the only one it received. The city need not evaluate all homes designed by Kenyon if there are no applications triggering the historical designation evaluation process and the property owners are not on notice of the potential historical designation of their homes. We therefore conclude that the city's decision was not arbitrary and capricious.

Relator next challenges the city's determination that the homes meet historical designation criteria 1, 3, and 6. We address each challenge in turn.

We group criteria 1 and 3 together, as the parties do. The historical designation study found that the homes met criteria 1 and 3 because the homes are linked to significant events exemplifying broad patterns of cultural or social history and distinctive elements of neighborhood identity. The study found that the homes are

among the best identified grouping of dwellings that retain their original architectural identity and historic integrity to fully communicate their significance as late nineteenth to early twentieth century student rooming homes—a type and use of building emblematic of residential Dinkytown and the University of Minnesota area. The collection and location of the dwellings and their shared development and residential history is strongly tied to the growth of the University of Minnesota and Dinkytown in the beginning of the twentieth century. The dwellings have retained their historic use as student rooming homes for over 100 years.

....

The properties retain original Kenyon-designed architectural detail, use and location which directly associate them to the residential identity of Dinkytown, a recognizable and storied sub-section of the Marcy-Holmes neighborhood. The properties do not retain identity solely representative of the city of Minneapolis.

Relator argues that the designation of the homes as emblematic of Dinkytown is unsupported by substantial evidence because “Dinkytown is an unofficial neighborhood with no clearly defined boundaries.” Relator contends that the city’s failure to define Dinkytown’s boundaries shows that “there is no substantial basis to identify” the homes as “emblematic of the Dinkytown residential district.” We disagree. The historical designation study extensively detailed the history of Dinkytown, its relationship to the University of Minnesota, and explained how the neighborhood exemplified student housing in the area. The study found that the homes were two blocks from the four-block heart of Dinkytown and further that “[s]tudent rooming homes have been historically most synonymous with this area of the City and remain as a residential type of building more ubiquitous and recognized in the area including and surrounding Dinkytown than other areas of Minneapolis.” While it may be true that there is no clear boundary defining Dinkytown, the city’s reliance on historical records supports its determination. We conclude that the city’s determination is therefore supported by substantial evidence.

Relator also argues that the city’s reasoning is arbitrary and capricious because there is no “independent basis for identification of the period of significance—late 19th Century and early 20th Century student rooming homes.” The argument is unpersuasive. The study explained that the concept of student homes was not fully actualized until 1900. The University of Minnesota did not construct a dormitory until 1910 and from 1900 to 1910 student enrollment increased by more than 65%. The study then detailed the homes’ tenants, which included individual students as early as 1902, and later, a fraternity and a sorority. The study also specifically identified the period of significance as 1901-1944.

During that time the homes were owned by Mary Lochren in her individual capacity. The study noted that it was unusual for a woman to be the owner of property and that women's roles in property ownership have long been underrepresented in locally designated properties. Thus, Mary Lochren's ownership of the homes, the homes' novel use as student rooming homes, and the homes' student occupants provide the basis for the period of significance. And in any event, the city's decision is neither arbitrary nor capricious because it is based on the ordinance's factors. We turn next to criteria 6.

The study concluded that the homes met criteria 6 because they are among the best examples of a collection of homes retaining "cohesive identity" and exemplify Kenyon's work as a master architect. Relator argues that there is no evidence that the homes are the "best examples of Kenyon's architectural palette," pointing out that the study determined the homes were "more modest and practical interpretations" of Kenyon's work. It contends that, because there are other Kenyon buildings that have been previously identified as historic resources, without a comparative analysis to these other properties, there is no basis to conclude that the homes are the best examples of Kenyon's work.

But the study examined other Kenyon homes in Dinkytown, Mount Curve, and Lowry Hill. The study then stated why the homes were different than Kenyon's other work. It explained that "[i]t was unusual for Kenyon to construct neighboring properties that were directly adjacent" like the homes. It then stated that "there is no current record of an occurrence like this for Kenyon anywhere else in the city where six properties were completed within the span of five years in one location, let alone for a single owner, by the same builder." And, it explained, all the Kenyon buildings previously historically

designated by the city were different. None had the “more modest, common scale” that the homes exhibit. The study found, and the record supports, that the homes are unique given their historic use, location, and grouping as neighboring properties. The study’s conclusion is bolstered by relator’s eligibility study, which also found that the homes met the historic preservation criteria as “a small group of speculatively-built houses designed by Kenyon.” The city’s decision is supported by substantial evidence and is neither arbitrary nor capricious.

Relator’s final claim is that the city’s decision is arbitrary and capricious because it overlooked whether the homes’ historic designation is compatible with the city’s comprehensive plan under MCO § 599.260 (2001).

Under MCO, the City Planning Commission must consider these factors:

- (1) The relationship of the proposed designation to the city’s comprehensive plan.
- (2) The effect of the proposed designation on the surrounding area.
- (3) The consistency of the proposed designation with applicable development plans or development objectives adopted by the city council.

MCO § 599.260.

The designation study examines all three factors and its examination spans three full pages. The study determined that the proposed designation would comply with three policies from the Minneapolis 2040 plan. It examined the effect of the proposed designation on Dinkytown, concluding that preserving the homes “will serve as an example of high-quality housing preservation through sustainable practices” and that the designation will preserve a valuable piece of Dinkytown’s residential history. And finally,

it concluded that the proposed designation would align with the Marcy-Holmes Neighborhood Master Plan completed in 2014.

Relator contends the study's consideration of the first factor was inadequate because the only policies it identified in the Minneapolis 2040 Plan related to preservation. Relator argues that by focusing on preservation, the city ignored "other important 2040 Plan policies." Although the city did not explicitly consider the policies that relator points to, the record reflects that the city did consider the relationship between the proposed designation and the city's comprehensive plan. Because the city need not consider all the policies within the comprehensive plan, and the record supports that the city considered some policies, the city's decision is not arbitrary or capricious.

Relator also argues that the study's consideration of the second factor improperly concluded that the designation will positively affect Dinkytown. It argues this was an error because the buildings require significant renovations to maintain suitable use. It contends that preserving "poor-quality housing" neither benefits the neighborhood nor honors Dinkytown's history and character. The study, however, determined that the homes exhibit good integrity to the original Kenyon designs for the buildings. Relator's eligibility study corroborates this determination similarly finding that, although the homes' exteriors have somewhat deteriorated, the exteriors each retain fair to good integrity. Because the city is in the best position to weigh the evidence and the record reflects that the homes' exteriors retain good integrity and show historic architectural styles, the city's decision is not arbitrary and capricious. *See Quast Transfer, Inc.*, 181 N.W.2d at 700.

For these reasons, we conclude that the decision to deny relator's application for demolition was reasonable, supported by substantial evidence, and neither arbitrary nor capricious.

Affirmed.