

*This opinion is nonprecedential except as provided by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
A22-1230**

Resolution Ordering Abatement on the Property Located at
10100 Lake Drive, Circle Pines, Minnesota.

**Filed March 6, 2023
Reversed
Bjorkman, Judge**

City of Circle Pines
Resolution No. 2022-11

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(for relators Thomas E. Pawlik and Timothy J. Pawlik)

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Pines)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Relators challenge respondent-city's resolution to abate a nuisance on their property, arguing that (1) the city denied them due process, (2) the city's decision is not supported by substantial evidence, and (3) the city's decision is arbitrary and capricious. Because the city's decision lacks substantial evidentiary support, we reverse.

FACTS

Relators Thomas and Timothy Pawlik, who are brothers, own property at 10100 Lake Drive in Circle Pines. The property is the site of a former bar, and the Pawliks sought to redevelop the property with a new bar. They approached respondent City of Circle Pines regarding redevelopment in 2011. After demolishing the existing building in 2018, they covered the remaining basement with plywood and erected snow fencing around the property. It remained that way for several years.

On June 15, 2022, the city sent a letter to Thomas Pawlik regarding “Nuisance Abatement” on the property.¹ The letter directed him to “obtain a demolition permit and ensure the property is cleared of all remnants of the structure that previously was located on the premises,” including “demolition of the basement, removal of all concrete, rebar, wood, brick, block, steel, beams, and any other structural elements along with the snow fencing.” The letter included 14 photographs of the property. The letter also stated that the site “must be fully restored with vegetation and maintained in a manner to ensure it is kept free from debris and weeds until you move forward with plans for redevelopment of the property.” It explained that Pawlik had until July 16 to “correct this violation,” after which the city council would “consider abatement of the nuisance” at its July 26 public meeting. The city sent the letter by U.S. Mail and posted a copy on the property. A week later it sent a copy of the letter to the Pawliks’ attorney.

¹ The city sent this letter only to Thomas Pawlik because apparently he is listed as the sole owner on the “Anoka County property data system.”

On July 22, the city sent a second letter directed to both Pawliks, enclosing the June 15 letter. The second letter said that they had not complied with the earlier letter's directive or communicated with the city. And it explained that, unless they secured a demolition permit and made "a good faith effort to commence work," the city would hold a hearing on August 10 to determine whether to order abatement of the nuisance. The city sent the letter by certified mail and U.S. Mail and posted a copy on the property.

During the July 26 meeting, the city council considered whether to declare the property a public nuisance. The Pawliks did not attend. After discussing the property's history, the two letters sent to the Pawliks, and the Pawliks' lack of response, the city council passed a resolution declaring the property a public nuisance.

On August 10, the city council conducted a public hearing at which it addressed whether to order abatement of the nuisance at the property. Timothy Pawlik attended the hearing with counsel for the Pawliks. The Pawliks asserted that they received insufficient notice of the nuisance and abatement proceedings because the first letter was not sent by certified mail as required by city ordinance. *See* Circle Pines, Minn., Code of Ordinances (CPCO) § 700.06. But they acknowledged that they both received the letters by July 25. They presented testimony from a mason who inspected the basement the day of the hearing and concluded it was in good condition. And the Pawliks provided photographs showing two- to three-foot high concrete barriers that they had installed around part of the basement in response to the city's abatement request.

The city council also received input from the city building inspector and members of the public, who all expressed concern that the property is unsafe, particularly the unsecured plywood over the basement and incomplete barriers around the basement. After emphasizing the unanimous view that a nuisance condition existed at the property, the city council discussed options for abatement and “direct[ed] staff and [the] city attorney to draft a resolution to authorize the abatement of this nuisance and bring it back” at the next council meeting on August 23.

The day of the meeting, the Pawliks submitted a letter to the city stating they had undertaken further corrective action at the property: “fully encircl[ing]” the basement with concrete barriers, erecting additional chain-link fencing on top of the barriers, and replacing and bolting down the plywood covering the basement openings. They also submitted photographs depicting these changes. The city council acknowledged receipt of the information. But the city attorney opined, and the council accepted, that the information was not “materially different” from what the Pawliks presented on August 10. The city council voted to order abatement, directing its staff to “take all actions necessary to enter onto the Property for purposes of abating the public nuisance” and “assess all costs for abatement against the Property.” The Pawliks appeal by writ of certiorari.

DECISION

A city’s quasi-judicial decision to abate a nuisance is subject to limited judicial review by certiorari. *See Rostamkhani v. City of St. Paul*, 645 N.W.2d 479, 483 (Minn. App. 2002). Our review is “deferential,” *Big Lake Ass’n v. St. Louis Cnty. Plan. Comm’n*, 761 N.W.2d 487, 491 (Minn. 2009), and the city’s decision is “presumed to be correct,”

Rostamkhani, 645 N.W.2d at 483. But we will reverse if the city’s decision “lacked substantial evidence in view of the entire record submitted.” *In re Khan*, 804 N.W.2d 132, 136 (Minn. App. 2011). Substantial evidence is: “(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; and (5) evidence considered in its entirety.” *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 310 (Minn. App. 2007) (quotation omitted).

The Pawliks contend that the August 23 abatement order cannot survive even this deferential review because the record lacks substantial evidence to support the city’s findings that they “took no action in response to [the city’s letters]” and that “[t]he conditions on the Property continue to constitute a public nuisance in violation of [CPCO] §§ 700.01 and 700.04.” We agree in both respects.

First, the record reflects that the Pawliks did take action once they received the city’s letters. The three sets of photographs in the record—those sent to the Pawliks with the nuisance letters, those the Pawliks submitted on August 10, and those the Pawliks submitted on August 23—reflect that they took two rounds of corrective action. The city council recognized and discussed the sufficiency of the first round at the August 10 hearing.

Second, and more important, the record as submitted on August 23 belies the operative finding that a nuisance continued as of that date. The city defines as a nuisance “[m]aintain[ing] or permit[ting] a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort or repose of any considerable number of members of the public.” CPCO § 700.01. The city also specifically identifies various types

of “nuisances affecting public peace and safety,” including uncovered holes and “other conditions or things, which are likely to cause injury to the person or property of anyone.” CPCO § 700.04. By grounding its nuisance decision in these two sections, the city found that the property poses a risk to public safety. Indeed, the city now acknowledges that, despite occasional references to concerns that the property is unsightly, the nuisance determination in the abatement order rests on safety concerns.

Those concerns may have been well founded when the city sent the nuisance-abatement letters, since the attached pictures show dilapidated plywood over the basement openings and nothing more than partial, flimsy snow fencing and a “No Trespassing” sign to keep passersby from wandering over it. Safety concerns may have reasonably continued on August 10, since the Pawliks had merely replaced the snow fencing with short concrete barriers that only partially surrounded the basement. But the record does not support the finding that such a risk continued as of August 23.

The photographs the Pawliks submitted that day confirm what they represented to the city council: They had restored and bolted down the plywood coverings over the basement openings and surrounded the entire basement—the only part of the property identified as a safety concern—with concrete barriers topped by chain-link fencing. A covered and completely enclosed basement would not pose a risk to any member of the public unless they disregarded the “No Trespassing” sign, climbed over the fence, and removed the plywood. Such a risk is unlikely and beyond the scope of what the nuisance ordinance proscribes. Because the record demonstrates that the Pawliks corrected the only

identified safety concerns, substantial evidence does not support the finding of a continued nuisance.²

Reversed.

² Because we reverse the abatement order based on the lack of substantial evidentiary support, we need not address the Pawliks' other arguments for reversal.