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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1618**

KSR Investment, LLC, et al.,
Relators,

vs.

The City of Columbia Heights,
Respondent.

**Filed August 12, 2024
Affirmed
Bjorkman, Judge**

City of Columbia Heights
Resolution No. 2023-35

Miles John Ringsred, Trautmann Martin Law, Minneapolis, Minnesota (for relators)

Paul Donald Reuvers, Andrew A. Wolf, Iverson Reuvers, Bloomington, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Bjorkman, Judge;
and Slieter, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Relators KSR Investment LLC and Penrod Lane LLC own residential rental property in Columbia Heights. On appeal, they challenge the decision of respondent City of Columbia Heights (city) to revoke the occupancy license for KSR's property, arguing the decision reflects procedural error and is arbitrary and capricious. Relators also argue

that the city erred in applying a two-strike ordinance provision to revoke the occupancy licenses for both of their properties for a period of five years. We affirm.

FACTS

This appeal involves two rental properties. The first is a duplex located at 966 & 968 44 1/2 Avenue NE, Columbia Heights (the duplex) and owned by Penrod. The second, a 17-unit apartment building, is located at 1000 Peters Place NE, Columbia Heights (Peters Place) and owned by KSR. At all relevant times, both properties were managed by Hussain Khan.

In October 2021, the occupancy license for the duplex was revoked by a unanimous vote of the Columbia Heights City Council based on Penrod's failure to submit an occupancy-license renewal application along with the proper fees, and failure to schedule the requisite property inspection. The city reinstated the license about two months later, after Penrod remedied these deficiencies.

After receiving numerous tenant complaints, the city inspected Peters Place in August 2022. The inspection revealed ten violations of the city's property maintenance code including: faulty electrical outlets; malfunctioning carbon monoxide detectors; interior and exterior doors that did not close or latch; missing light fixtures; missing and expired smoke detectors; broken and missing baseboards; rodent infestation; mold, water damage, and unsafe drywall in one unit's kitchen and bathroom; an improperly installed shower; and broken window latches and handles. During the next year, the city conducted almost monthly follow-up inspections, finding continued violations including rodent infestation, lack of a proper fire door, and broken and crumbling concrete blocks along the

patio area. And tenants continued to complain about the living conditions. During a June 2023 city-wide tenant meeting, tenants approached city council members who were in attendance to report significant ongoing issues, including rodent infestation throughout the building, frustration with how KSR and Khan treated them, and Khan's lack of urgency in responding to maintenance requests.

In July 2023, the city council unanimously voted to revoke Peters Place's occupancy license after finding that the code violations had not been corrected. In its formal resolution, the city council also ordered that "[a]ny person or owner who has had an interest in two or more licenses revoked pursuant to City Code shall be ineligible to hold or have an interest in any occupancy license for a period of five years from the date of this Order." Accordingly, the occupancy license for the duplex was also revoked because of Khan's shared managerial interests in the duplex and Peters Place.

KSR and Penrod challenged the city's decision in an appeal to the city's "board of appeals," arguing that KSR properly addressed the code violations, the tenants had a duty to give timely written notice to Khan of any maintenance requests and had failed to do so, and the city council's decision to revoke both occupancy licenses was "prejudic[ed]." The board of appeals, which was made up of the same city council members who made the revocation decision, unanimously denied the appeal. KSR and Penrod appeal to this court by writ of certiorari.

DECISION

As a general rule, we afford a presumption of correctness to the decisions of administrative agencies and cities, and will reverse them "only when they reflect an error

of law or where the findings are arbitrary, capricious, or unsupported by substantial evidence.” *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 562 (Minn. App. 2001), *rev. denied* (Minn. Nov. 13, 2001). This is so because an appellate court’s “authority to interfere in the management of municipal affairs is, and should be, limited and sparingly invoked.” *White Bear Docking & Storage, Inc. v. City of White Bear Lake*, 324 N.W.2d 174, 175 (Minn. 1982); *see Big Lake Ass’n v. St. Louis Cnty. Planning Comm’n*, 761 N.W.2d 487, 491 (Minn. 2009) (“Our limited and deferential review of a quasi-judicial decision is rooted in separation of powers principles.”). It is not our role to “retry facts or make credibility determinations, and we will uphold the decision if the lower tribunal furnished any legal and substantial basis for the action taken.” *Staehele v. City of St. Paul*, 732 N.W.2d 298, 303 (Minn. App. 2007) (quotation omitted).

The city established a property maintenance code for the purpose of “correct[ing] and prevent[ing] conditions that adversely affect or are likely to adversely affect the life, safety, general welfare, and health” of people in the city. Columbia Heights, Minn., Code of Ordinances (CHCO) § 5A.101(C) (2007). The code requires an occupancy license for all premises that are “rented, leased, let, or used for any type of occupancy in the city” except for owner-occupied single-family homes. CHCO § 5A.401 (2007). Occupancy licenses are granted and renewed annually upon demonstration that the premises complies with minimum standards for safe living as enforced through inspections by the “City Manager and his designated agents.” CHCO §§ 5A.201-.212, .301-.303, .401-.407 (2007). The city may revoke or suspend an occupancy license upon a finding of “noncompliance” with these standards, after which a new license may be issued “in the manner provided for

obtaining an initial license.” CHCO § 5A.408(A) (2007). The code further provides that “[a]ny person or owner who has had an interest in two or more licenses revoked pursuant to this code shall be ineligible to hold or have an interest in an occupancy license for a period of five years.” CHCO § 5A.408(E) (2007).

I. The city’s decision to revoke the occupancy license for Peters Place does not reflect an error of law and is not arbitrary and capricious.

KSR does not contend that the city council’s findings of fact lack evidentiary support. But it argues that the city violated its right to due process and its revocation decision is arbitrary and capricious. We address each argument in turn.

First, KSR asserts that the city violated its due-process rights by revoking its license based on information tenants provided to council members at the June 2023 city-wide tenant meeting of which KSR was not given notice. This argument is unavailing. “Sufficient due process generally requires reasonable notice and a hearing.” *CUP Foods*, 633 N.W.2d at 563. The record persuades us that both aspects of due process were satisfied here. The June 2023 meeting was a general tenant meeting that was open to the public. Tenants of Peters Place and other rental premises received fliers by mail that contained information about in-person and remote attendance. Information about the meeting was also posted on the city’s website. Khan or another representative of KSR could have attended this meeting and chose not to do so.

It is undisputed that KSR received notice of the city council meeting at which revocation of Peters Place’s occupancy license would be decided. Khan attended the meeting as KSR’s representative and responded to the reported tenant concerns and other

evidence of ongoing code violations. Moreover, as described below, the city council's decision was based on an extensive record including testimony from the fire chief who conducted almost monthly inspections; inspection reports describing the code violations; and photographs taken during the inspections that depict the violations. This evidence alone supports revocation of Peters Place's occupancy license. To the extent certain city council members may have considered concerns tenants expressed to them outside of the city council meeting, the record as a whole convinces us that any error in such considerations is harmless. *See Schwardt v. County of Watonwan*, 656 N.W.2d 383, 388 (Minn. 2003) (stating that "in quasi-judicial hearings the quality of evidence and testimony does not have to meet full judicial standards").

Second, KSR asserts that the city's decision to revoke the occupancy license for Peters Place is arbitrary and capricious because the city ignored evidence that the code violations had been substantially corrected. The record defeats this assertion. As noted in the findings of fact portion of the city council's resolution, code violations that existed at the time of the city council meeting include the lack of a fire door in the first-floor front stairwell, crumbling concrete blocks along the front patio, and rodent-infestation and other pest-control issues throughout the building. These and other violations are documented in the fire chief's inspection reports from August 2022 to June 2023 and in the numerous photographs taken in connection with the inspections. Several city council members acknowledged that KSR had taken steps to remedy the violations. But they concluded those steps were not sufficient because significant code violations remained. We give great

deference to the city council's factual and credibility determinations so long as they engaged in reasoned decision-making. We are persuaded that the city council did so.¹

II. The city council properly applied CHCO § 5A.408(E).

Following its revocation of the occupancy license for Peters Place, the city also revoked the occupancy license for the duplex pursuant to CHCO § 5A.408(E). This ordinance provides that “[a]ny person or owner who has had an interest in two or more licenses revoked pursuant to this code shall be ineligible to hold or have an interest in an occupancy license for a period of five years.”² For purposes of this ordinance, “person” is defined as “[a]n individual, heirs, executors, administrators or assigns, and also includes a firm, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid.” CHCO § 5A.103 (2007).

On appeal, the city clarified that this ordinance only prohibits *Khan* from holding or having an interest in an occupancy license in the city for five years. The parties agree that an occupancy license covers physical property; persons hold or have interests in such licenses. Here, it is undisputed that Khan, as the manager of both the duplex and Peters

¹ KSR also argues that the board of appeals erred by affirming the city council's revocation decision, and that its determination is “marred by the same procedural errors and biases that tainted the original [r]evocation [h]earing.” This argument is unavailing. CHCO § 5A.307(A) (2007) provides for an appeal “on the original violation notice.” That is not the situation here, and the code does not otherwise provide for the appeal KSR presented to the city. But because we discern no basis to disturb the city's revocation decision, we need not address KSR's challenge to the board of appeal's decision to affirm it.

² Relators contend that this ordinance is unconstitutionally void for vagueness. Because the city clarified that this ordinance does not apply to relators, we need not address the constitutional challenge.

Place, had interests in the properties' respective occupancy licenses at the time each were revoked. Accordingly, CHCO § 5A.408(E) bars him from holding or having an interest in an occupancy license in the city for the next five years. This five-year prohibition does not extend to Penrod and KSR so long as Khan does not work for or have any other interest in the companies or their rental properties. In other words, if Khan no longer manages and has no other interest in the duplex, Penrod may reapply for an occupancy license because the interest that created the five-year license revocation would no longer be attached to the property. And if Khan no longer manages or has an interest in Peters Place, KSR may reapply for an occupancy license after it remedies the existing code violations. On this record, we see no error in the city's application of the ordinance.

Affirmed.