

*This opinion is nonprecedential except as provided by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
A23-1870**

Hiebert Greenhouses of Minnesota, Inc., et al.,
Relators,

vs.

City of Mountain Lake,
Respondent.

**Filed July 15, 2024
Affirmed; motion granted
Reilly, Judge***

City of Mountain Lake
File No. Resolution #29-23

Joseph A. Gangi, Farrish Johnson Law Office, Mankato, Minnesota (for relators)

Maryellen Suhrhoff, Muske, Muske & Suhrhoff, Ltd., Windom, Minnesota (for
respondent)

Considered and decided by Johnson, Presiding Judge; Harris, Judge; and Reilly,
Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this certiorari appeal from a city's nuisance abatement decision, relators raise a
number of statutory, constitutional, and evidentiary issues with the city's decision to

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

declare their property a public nuisance. They contend that: (1) the property cannot be a nuisance because it is an agricultural operation; (2) they are not required to register the vehicles on the property because they are implements of husbandry, or in the alternative, because the ordinance regulating unregistered and inoperable vehicles is overbroad and arbitrary; (3) the procedure employed by the city was constitutionally deficient; and (4) the evidence does not support the city's nuisance finding.

We affirm.

FACTS

This is a case about an eleven-acre, rural property (“the greenhouse property”) owned by relators Paul Christianson and Hiebert Greenhouses of Minnesota, Inc. that respondent City of Mountain Lake has deemed a public nuisance. In 1991, before the property's 2001 annexation into respondent City of Mountain Lake, the Cottonwood County Board of Adjustment granted a variance to Hiebert Greenhouses, affording a reduction in the front-yard setback requirements provided that Hiebert Greenhouses “[c]reate a gravel parking area for trucks and/or cars on the south side.” The variance also required that the remaining areas “visible to passerby traffic should be seeded with grass and maintained on a regular basis similar to residential property.” In 2015, the Minnesota Secretary of State administratively dissolved Hiebert Greenhouses of Minnesota, Inc., and the secretary of state's certified records show that the business is inactive.

By April 2019 the greenhouse property had fallen, in the eyes of the city, into a state of disrepair. *See City of Mountain Lake v. Hiebert Greenhouses of Minnesota, Inc.*, No. A19-2002, 2020 WL 4432629, at *1 (Minn. App. Aug. 3, 2020) (*Hiebert I*). Certain

buildings on the property, according to the city, had become dilapidated and seedling trees had begun to grow inside the buildings. *Id.* The city passed a resolution pursuant to the hazardous-building statutes, Minn. Stat. §§ 463.15-.261 (2018), requiring that the buildings either be razed or repaired. *Id.* We reversed the city’s resolution on appeal based on its failure to specifically identify repairs as required by the hazardous building statutes. *Id.* at *2 (citing Minn. Stat. § 463.17, subd. 1).

On September 15, 2023, the city again reached out to relators to address problems with the greenhouse property. The Mountain Lake Chief of Police sent Christianson a letter explaining that the city’s police department had discovered “various [c]ity [c]ode violations” that were a “concern for public health and safety.” The letter specified:

City Code states that all vehicles on properties within the city limits shall be currently licensed and in running order (operable condition). Each vehicle stored on the property needs to be parked on a pad consisting of gravel, cement, or tar. Vehicles cannot be parked on the grass or in the yard. These items cannot be relocated on the property or covered with tarps or blankets, but must be disposed of properly. In addition, there is rank growth of weeds and other vegetation—trees and shrubs growing wild and through the buildings and not being maintained.

The letter then explained that Christianson was entitled to request a hearing before the Mountain Lake Nuisance Board if he disagreed with the violation. And it notified Christianson that he had ten days from the date of service to comply by “removing the items, licensing all motor vehicles and ensuring the vehicles are in operable condition, or removing those vehicles from the property,” or “to request a hearing before the Mountain

Lake Nuisance Board.” Attached to the letter was evidence collected as a result of the investigation including vehicle registrations and images taken at the subject property.

Relators, through counsel, timely requested a hearing before the Mountain Lake Nuisance Board. The city acknowledged its receipt of the hearing request and informed Christianson that he may appear for the hearing at City Hall on October 16, 2023. Christianson did not attend the hearing, and so the city continued the hearing for November 6.

The city attorney sent Christianson a letter by certified mail on October 18, 2023, notifying him that the hearing had been continued until November 6, 2023, and specifying the provisions of the city code the greenhouse property was alleged to be in violation of. The post office notified Christianson on October 20 and 25 that he had been sent a certified letter and again on November 4. Christianson received the notices from the post office, but he did not go to the post office to retrieve the certified letter.

On November 6, 2023, the city council held the hearing and Christianson attended. When Christianson arrived at the hearing, he told the council that he was unprepared as he had not been notified about the hearing. Christianson asked whether the hearing would be continued or whether he should try to muddle through. The hearing went forward.

At the hearing, the city council heard testimony from the police chief about the vehicles and the rank growth, and the city council reviewed the same images provided to Hiebert’s attorney in a September 6 letter. The city also explored whether the greenhouse was in operation. After the hearing, the city council adopted Resolution #29-23, finding relators’ property a public nuisance. The city council found that the last time the property

was used “for [the] production of plants for commerce was 2014.” As to the vehicles, the city council found that the photos and vehicle records showed that the vehicles were either unregistered or inoperable. And it found that rank growth filled the property. The city council specifically referenced the photos and documents collected by law enforcement, as well as the evidence of trespasser calls and of an animal trap on the property.

Relators now appeal by writ of certiorari.

DECISION

Relators appeal from City of Mountain Lake Resolution #29-23, which requires relators to bring their property into compliance by abating certain public nuisances by removing rank growth and by removing or registering inoperable and unregistered vehicles on the property. Since this is an appeal of a quasi-judicial decision, this court’s review is inherently limited, and the decision enjoys a presumption of correctness. *See Rostamkhani v. City of St. Paul*, 645 N.W.2d 479, 483 (Minn. App. 2002). Statute provides the grounds for reversal or modification, allowing such remedies,

if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Minn. Stat. § 14.69 (2022). Relator raises a number of statutory, evidentiary, and constitutional arguments. We address each category of argument in turn.

I. No statute or ordinance exempts relators from complying with the city’s resolution.

a. The greenhouse is not an agricultural operation exempt from nuisance laws under Minn. Stat. § 561.19 (2022).

Relators argue that because their greenhouse on the property is an agricultural operation, it is exempt from nuisance laws. “Agricultural operation[s]” are definitionally not a public nuisance, nor may they become public nuisances after two years from their established date of operation, so long as the operation is “located in an agriculturally zoned area, complies with the provisions of all applicable federal, state, or county laws, regulations, rules, and ordinances” and permits, and operated consistently with “generally accepted agricultural practices.” Minn. Stat. § 561.19, subd. 2(a). The threshold determination is therefore whether Hiebert Greenhouses runs an agricultural operation covered by this statute. The city concluded that it was not, and if that determination is supported by the entire record, its determination must stand. *See Cannon v. Minneapolis Police Dep’t*, 783 N.W.2d 182, 189 (Minn. App. 2010).

The statute defines an “agricultural operation” as “a facility and its appurtenances for the production of crops, livestock, poultry, dairy products or poultry products, but not a facility primarily engaged in processing agricultural products.” Minn. Stat. § 561.19, subd. 1(a). The record supports the conclusion that relators’ property falls outside this definition. Hiebert’s certified business records show that the greenhouse operation was dissolved in June 2015. Christianson and the city council discussed the expense of “get[ting] the business going again” at the hearing, but Christianson offered no solutions or timeframe. The only record evidence that the greenhouse property was producing crops

comes from Christianson’s statements at the hearing that he had registered a crop of mulberry trees with the Department of Agriculture and that he hoped to harvest them. He did not plant these trees, and he had only recently happened upon them and begun propagating them. He had sold no trees at the time of the hearing. Given that our standard of review requires that we defer to the city’s decisions “regarding conflicts in testimony” and the “inferences to be drawn from testimony,” *Cannon*, 783 N.W.2d at 189, we must assume this testimony was discredited.

Relators nonetheless contend that the property has maintained its nuisance immunity even though it has not produced crops or otherwise acted as an agricultural business since 2015 because the cropping activities were only *paused* rather than *terminated*. The statute defines “[e]stablished date of operation” as “the date on which the agricultural operation commenced,” Minn. Stat. § 561.19, subd. 1(b), and provides that “[i]f the agricultural operation is . . . significantly altered, the established date of operation for each . . . alteration is deemed to be the date of commencement of the . . . altered operation.” *Id.* The statute clarifies that “[s]ignificantly altered” does not mean a “temporary cessation or interruption of cropping activities.” *Id.*, subd. 1(b)(2).

Relators’ contention fails because the cessation of cropping activities at relators’ property has not been “temporary.” This court interprets statutes de novo. *See 500, LLC v. City of Minneapolis*, 837 N.W.2d 287, 290 (Minn. 2013). In doing so, we construe terms “according to their common and approved usage.” Minn. Stat. § 645.08(1) (2022). And “temporary” ordinarily means “lasting for a limited time.” *The Merriam-Webster Dictionary* (2014 ed.) (defining “temporary”). Here, given that the business dissolved in

2015 and that Christianson could not identify what it would take to begin business operations anew, the city could reasonably find that the cessation was not temporary but indefinite. Relators are therefore not entitled to statutory immunity as an agricultural operation.

b. The vehicles are not implements of husbandry exempt from state registration requirements under Minn. Stat. § 168A.01, subd. 8 (2022).

The well-supported finding of the city that relators are not engaged in agriculture also dispenses with the contention that the 19 unregistered, inoperable vehicles on the property are “implements of husbandry” exempted from the registration requirement. “Implements of husbandry” are exempt from the state’s vehicle-registration statutes under Minn. Stat. § 168.012, subd. 2 (2022). That subdivision provides:

Implements of husbandry, as defined in section 168A.01, subdivision 8, and tractors used solely for agricultural purposes or tractors, together with trailers or wagons thereto attached, occasionally hauling agricultural products or necessary commodities used on the farm from said farm to and from the usual marketplace of the owner, tractors for drawing threshing machinery and implements of husbandry temporarily moved upon the highway, shall not be taxed as motor vehicles using the public streets and highways and shall be exempt from the provisions of this chapter

Minn. Stat. § 168.012, subd. 2. “Implements of husbandry” are defined as “every vehicle . . . designed or adapted exclusively for agricultural, horticultural, or livestock raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highways.” Minn. Stat. § 168A.01, subd. 8.

Here the city’s findings, and the record as a whole, establish that the vehicles are not being “used” for agricultural purposes. *See* Minn. Stat. § 168.012, subd. 2. The

vehicles the city identified are presently not in use at all, much less in use as implements of agriculture. They are therefore not exempt from state registration laws.

c. Relators' overbreadth argument fails.

Relators also contend that the city code is overbroad as it relates to vehicles because it “forbids something expressly allowed by statute—unregistered vehicles—and essentially eliminates a defense to registration specifically allowed by statute.” While cities have broad power to legislate for the benefit of the municipality, “[c]ities have no power to regulate in a manner that conflicts with state law or invades subjects that have been preempted by state law.” *Jennissen v. City of Bloomington*, 913 N.W.2d 456, 459 (Minn. 2018). We review de novo whether an ordinance unlawfully conflicts with state law. *Graco, Inc. v. City of Minneapolis*, 925 N.W.2d 262, 267 (Minn. App. 2019), *aff'd*, 937 N.W.2d 756 (Minn. 2020).

We cannot perform our de novo review here because relators failed to identify a statute in conflict with the city code. In determining whether state law conflicts with, and therefore renders invalid, a municipal ordinance we are guided by four principles.

First, [a]s a general rule, conflicts which would render an ordinance invalid exist only when both the ordinance and the statute contain express or implied terms that are irreconcilable with each other. Second, it has been said that conflict exists where the ordinance permits what the statute forbids. Third, a conflict exists where the ordinance forbids what the statute *expressly* permits. And finally, [i]t is generally said that no conflict exists where the ordinance, though different, is merely additional and complementary to or in aid and furtherance of the statute.

Id. at 267-68 (citations omitted). These four principles are all guided by the language of the state statute at issue, and relators identify no language in Chapter 168 that they believe conflicts with the city’s ordinance requiring that unregistered vehicles be stored within a lawfully erected building. *See* Mountain Lake, Minn., Mun. Code (MLMC) § 8.01, subd. 3 (2022). And it is not obvious to us, on mere inspection of Chapter 168 and the city code, that any conflict exists. We must therefore conclude that the argument is forfeited for lack of adequate briefing. *See Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017) (“An assignment of error on mere assertion, unsupported by argument or authority, is forfeited and need not be considered unless prejudicial error is obvious on mere inspection.”), *rev. denied* (Minn. Apr. 26, 2017).

d. Hiebert is no longer entitled to the protection of the 1991 Cottonwood County variance.

Relators argue that the vehicles cannot be declared a nuisance because of the 1991 Cottonwood County variance, which they maintain requires that the vehicles be parked outside. Under MLMC § 9.50, subd. 2(2) (2022), a property may continue its lawful non-conforming use so long as certain conditions are met. As relevant here, the code provides that “[i]f a lawful non-conforming use is discontinued for a period of one year, further use of the structures or property shall conform” to the city’s general zoning requirements. MLMC § 9.50, subd. 2(2)(b). The argument fails for two reasons.

First, nothing in the Cottonwood County variance can be read as *requiring* relators to park the vehicles outside. The relevant 1991 Cottonwood County variance afforded Hiebert Greenhouses a reduction in the front-yard setback requirements provided that

Hiebert “[c]reate a gravel parking area for trucks and/or cars on the south side. Remaining areas that are visible to passerby traffic should be seeded with grass and maintained on a regular basis similar to residential property.” It did not provide that cars *must* be parked outside. It instead details the requirements for a parking lot.

Second, relators’ current use of the vehicles falls outside the lawful bounds of the variance. Documentary evidence shows vehicles parked on the south side of the property on grass, on the northeast side of the property on grass, and on the northwest side of the property on grass. None of the cars are parked on the south side of the property in a gravel parking lot as contemplated by the variance. And the state of the vehicles, as acknowledged at the city council meeting, shows that they have not been moved within the past year. In other words, the variance no longer applies because its use has been discontinued for more than one year and cannot provide the basis for the relief relators seek. *See* MLMC § 9.50, subd. 2(2)(b).

II. Substantial evidence supports the city’s decisions relating to both the vehicles and the rank growth.

As stated previously, this court will reverse a quasi-judicial determination if the decision was not supported by substantial evidence. Minn. Stat. § 14.69. “Substantial evidence 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*, 783 N.W.2d at 189. The city’s determinations that relators violated the city codes relating to vehicles and rank growth are well supported.

a. Relators created a public nuisance by leaving unregistered and inoperable vehicles out in the open.

Mountain Lake's city code makes it unlawful for "any person to park or store any unlicensed, unregistered or inoperable motor vehicle . . . on any property, public or private, unless housed within a lawfully erected building." MLMC § 8.01, subd. 3(1). A violation of this provision is defined by the city as a public nuisance affecting health. MLMC § 8.03, subd. 3(3) (2022). Testimony at the hearing from the police chief established that out of 21 vehicles on the property, only two were registered and operable. This testimony is well supported by the images presented of the vehicles which show many vehicles sunken into the ground after nearly a decade of going unmoved.

b. Relators created a public nuisance by failing to maintain the vegetation on the property.

Mountain Lake's city code declares "[a]ll noxious weeds and other rank growths of vegetation upon public property" a public nuisance. MLMC § 8.03, subd. 3(7) (2022). And it provides that "[t]rees, shrubbery, flower beds, and garden areas that are not reasonably maintained shall be considered rank growth." *Id.* Substantial evidence supports the city council's determination that the greenhouse property violated this provision. Images presented to the city council showed grasses high enough to obscure the license plates on vehicles, trees causing a loading dock to lean, trees growing through the fence on the east side of the property, trees growing up through vehicles and through the roof of the greenhouse, and more. The city council reasonably determined that this was rank growth.

III. Relators' due-process rights were not violated.

a. Relators failed to establish that their procedural due-process rights were violated.

Whether a person's procedural due-process rights have been violated by a city government's action presents a question of law subject to this court's de novo review. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012). In reviewing whether the action violated an individual's procedural due-process rights, the court applies a two-step analysis, first determining whether the government has deprived the individual of a protected liberty interest and second examining "whether the procedures followed by the [government] were constitutionally sufficient." *Id.* (quotation omitted) (alteration in original). Because this is a nuisance abatement action, the first step of the analysis is satisfied. *See Village of Zumbrota v. Johnson*, 161 N.W.2d 626, 630 (Minn. 1968).

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *State v. Ness*, 819 N.W.2d 219, 226 (Minn. App. 2012) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965)), *aff'd*, 834 N.W.2d 177 (Minn. 2013). The degree of notice and the nature of the opportunity to be heard depend on the particular case. *See id.* at 226-27. Typically, we would determine the specifics of the required procedural safeguards by applying a three-factor balancing test that considers:

[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and

finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Sawh, 823 N.W.2d at 632 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

Relators contend that the initial notice, the hearing, and the final notice were constitutionally deficient. But they fail to identify what would be constitutionally required for this proceeding. And after our independent review of the record, we conclude that relators were afforded with notice and the opportunity to be heard.

In its initial notice to Christianson, the city council explained the substance of the city code provisions they believed him to be violating, explaining that the city code required that the vehicles be licensed and operable, that the vehicles not be parked on the grass, and that the vegetation be maintained. The notice also provided Christianson with some of the evidence collected as a result of the investigation, including vehicle registrations and images taken of the greenhouse property. This was sufficient to alert Hiebert as to the pendency of the action.

As for the hearing, relators cite no authority to support their contention that the city's failure to hold a hearing before the nonexistent Mountain Lake Nuisance Board, instead of before the city council, deprived them of their opportunity to be heard. It is true, as relators point out, that the city's initial notice provided that Christianson could request a hearing in front of the Mountain Lake Nuisance Board. But the city code provides that the council votes on nuisance abatement actions. MLMC § 8.03, subd. 6(1)(c) (2022) (stating that the city must provide "written notice of an opportunity for a hearing informing the responsible party that the *Council* may vote to abate such nuisance." (Emphasis added)). Christianson

was heard in front of the council, and the statement of proceedings reflects that at that hearing he presented arguments relating to the nuisance action and submitted photographic evidence. Relators were afforded an adequate opportunity to be heard.

As to the resolution, relators contend that it was constitutionally deficient because it does not specify “what vehicles are at issue, what vehicles were found in violation, what the violation for each vehicle actually is, and what Relators must do to abate the finding in each instance.” Relators also contend that the resolution failed to specifically identify the instances of rank growth. But the resolution expressly references the photographs and license plates of the problem vehicles. And those same images show the problematic rank growth. These photographs would put a reasonable person on notice as to what the specific nuisances are. In sum, we discern no procedural due-process violations in the procedures employed by the city.

b. Relators’ substantive due-process rights have not been violated because MLMC § 8.01, subd. 3, is rationally related to a public purpose.

Relators also contend that their substantive due-process rights were violated by the enforcement of section 8.01, subdivision 3, of the city code—the provision governing unregistered and inoperable vehicles. “The constitutionality of an ordinance presents a question of law, which we review de novo.” *Fletcher Props., Inc. v. City of Minneapolis*, 931 N.W.2d 410, 417 (Minn. App. 2019), *aff’d*, 947 N.W.2d 1 (Minn. 2020). And we presume that the ordinance is constitutional. *Id.* at 418. Relators face a “very heavy burden of demonstrating beyond a reasonable doubt that the legislation is unconstitutional.” *Id.*

(quotation omitted). Thus, to succeed, relators must show that “no set of circumstances exists under which the ordinance would be valid.” *Id.*

“Substantive due process protects individuals from certain arbitrary, wrongful government actions.” *In re Linehan*, 594 N.W.2d 867, 872 (Minn. 1999). When there is no fundamental right implicated, as relators concede is the case here, we apply the rational-basis standard. *Fletcher*, 931 N.W.2d at 418. An ordinance will survive rational-basis review if it (1) promotes a public purpose, (2) is not an unreasonable, arbitrary, or capricious interference with a private interest, and (3) is rationally related to the public purpose it serves. *Id.* at 420.

The ordinance here survives rational-basis review. The purpose of the ordinance, according to the city, is to prevent the development of salvage yards within the city, which can cause gas, oil, and other fluids to leak into the ground. By making it so that all unregistered and inoperable vehicles must be stored within a lawfully erected building, the city is able to eliminate its burden of checking each vehicle independently. The ordinance is rationally related to the purpose it serves.

IV. The Motion to Strike is Granted.

As part of its addendum, the city submitted transcripts from a prior court proceeding and police reports recounting instances of trespassing on the greenhouse property. Neither of these were presented to the city council at the hearing. Only documents submitted to the agency or considered by the agency in reaching its decision and the transcript of the proceedings, if any, are part of the record on a certiorari appeal. *See* Minn. R. Civ. App. P. 110.01, 115.04. This court will generally not base its decision on facts outside the record

on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). Because the transcript from a prior proceeding and the police reports of trespassers were not before the agency, we grant the motion to strike.

Affirmed; motion granted.