

*This opinion is nonprecedential except as provided by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
A24-1550**

City of Brooklyn Park, a Municipal Corporation,
Respondent,

vs.

Michael G. Doleman,
Relator.

**Filed August 4, 2025
Affirmed
Wheelock, Judge**

City of Brooklyn Park Administrative Enforcement Program
File No. 2024-00001098, Citation 2024-155

James J. Thomson, Cristina Cruz-Jennings, Kennedy & Graven, Chartered, Minneapolis,
Minnesota (for respondent)

Michael G. Doleman, Brooklyn Park, Minnesota (pro se relator)

Considered and decided by Ross, Presiding Judge; Wheelock, Judge; and Jesson,
Judge.*

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Relator homeowner challenges a citation and fine for storing firewood in a manner
that did not comply with city code, arguing that respondent city violated his constitutional

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

rights by encroaching upon the curtilage of his home and that the hearing officer's upholding of the citation and fine was not based on substantial evidence in the record. We affirm.

FACTS

Respondent City of Brooklyn Park occasionally inspects residential properties to “educate new and existing residents on the most common [city code] violations.” In May 2024, a Brooklyn Park Environmental Health Apprentice was conducting one of these inspections. When the apprentice arrived at relator Michael G. Doleman's property, he noticed some city code violations.

The apprentice documented these violations by taking photographs and then prepared to depart. Because the apprentice could not identify which door was the resident's front door, he left a doorhanger card in the window of a car parked in the driveway. A note on the card requested that Doleman give the apprentice “a call when [he was] available to talk.” The apprentice visited the property again on June 5, but Doleman did not answer. He again photographed the persisting code violations. The apprentice returned to the property on June 14, again attempting to contact Doleman. On this date, he noticed that the manner in which Doleman was storing his firewood violated the city code and left another doorhanger specifically noting this violation. On June 17, having received no response from Doleman, the apprentice sent a “Correction Order” to the property by U.S. Mail.

On June 25, the apprentice visited the property again. He left another note explaining that Doleman's firewood was not stacked according to city code. The

apprentice visited Doleman's property for the final time on July 12, leaving written notice of the code violation that stated that "a citation and updated correction order will be mailed." On July 15, the city issued Doleman an administrative citation and fined him \$200. Upon Doleman's request, the city held a hearing at which Doleman and the apprentice were present.

Doleman opposed the city's citation and fine, arguing that the city had violated his Fourth Amendment rights because the apprentice had encroached upon the curtilage of his residence. Doleman acknowledged that some of the photos the apprentice took were of areas of his property that could be seen from the public street. Specifically, he agreed that one of his firewood stacks could be seen from the street. However, Doleman maintained that, because "there are numerous pictures that show [the apprentice] was definitely up on my property, up in places that are not in plain view, and taking pictures that are on my curtilage and not accessible from any other place other than being on my property," the city violated his Fourth Amendment rights.

Photographs in the record show that some of the apprentice's photos were taken from areas around Doleman's driveway and yard rather than from the public street. However, the apprentice testified that he observed at least one of the improperly stored firewood stacks from one of the public streets adjacent to Doleman's property.

The hearing officer concluded that, because one of the stacks of firewood was in plain view of the street, Doleman could not assert a Fourth Amendment violation. He also determined that, because the city submitted photographs of the firewood being improperly

stored and “Doleman offered no evidence other than his testimony that the firewood was stored properly,” the city’s citation and fine should be upheld.

Doleman appeals.

DECISION

I. The city did not violate Doleman’s Fourth Amendment rights.

Doleman argues that the city violated his Fourth Amendment rights by encroaching upon his curtilage. The city argues that it did not violate the Fourth Amendment because much of Doleman’s improperly stored firewood was in plain view from a public street.

“The Fourth Amendment to the United States Constitution and Article I, Section 10, of the Minnesota Constitution protect individuals from unreasonable searches and seizures by the government.” *State v. Voss*, 683 N.W.2d 846, 849 (Minn. App. 2004). Warrantless searches and seizures are per se unreasonable. *Katz v. United States*, 389 U.S. 347, 357 (1967); *State v. Sargent*, 968 N.W.2d 32, 37 (Minn. 2021). Generally, government agents must obtain a warrant before searching a home. *State v. Bunce*, 669 N.W.2d 394, 398 (Minn. App. 2003), *rev. denied* (Minn. Dec. 16, 2003). A search occurs “when an expectation of privacy that society is prepared to consider reasonable is infringed.” *State v. Eichers*, 853 N.W.2d 114, 124 (Minn. 2014) (quotation omitted). These constitutional protections can shield citizens from municipal action as well as state and federal government action. *See City of Golden Valley v. Wiebesick (In re Admin. Search Warrant)*, 899 N.W.2d 152, 167-68 (Minn. 2017).

To decide whether the apprentice “searched” Doleman’s property, we must determine whether the apprentice intruded upon the curtilage of Doleman’s property when

he viewed and took photographs of Doleman's improperly stored firewood from the public street.¹ "The land immediately surrounding and associated with the home, the curtilage, is part of the home itself for Fourth Amendment purposes." *State v. Chute*, 908 N.W.2d 578, 583 (Minn. 2018) (quotations omitted). If the apprentice intruded upon Doleman's curtilage when he viewed the firewood stack, his actions must comply with the Fourth Amendment. *See id.* at 583-84. But if the apprentice did not intrude upon Doleman's curtilage to view the firewood stack, the Fourth Amendment does not limit his actions. *See id.*

To determine if an area is "curtilage," Minnesota courts apply four factors that the United States Supreme Court announced in *United States v. Dunn*, 480 U.S. 294 (1987): (1) "the proximity of the area claimed to be curtilage to the home," (2) "whether the area is included within an enclosure surrounding the home," (3) "the nature of the uses to which the area is put," and (4) "the steps taken by the resident to protect the area from observation by people passing by." *Chute*, 908 N.W.2d at 584-85 (quoting *Dunn*, 480 U.S. at 301) (applying factors). We thus consider each factor as applied to the apprentice's actions.

¹ The record contains photographs of Doleman's property that the apprentice took on at least five different dates, some of which Doleman asserts were taken from within the curtilage of his home and some of which the apprentice testified were taken from a public street. During the hearing, the apprentice testified that he observed improperly stored firewood in "plain view" from a public street. Doleman also testified that some of the firewood could be observed from the public street. Because the hearing officer credited the apprentice's testimony and found that the firewood stack upon which the citation and fine were based was in plain view of the street, he concluded that there was no constitutional violation. Here, we review Doleman's Fourth Amendment argument *de novo* because the facts are not in dispute. *See State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008).

The apprentice viewed Doleman's home, including the firewood stack, from the public street. All four factors demonstrate that the apprentice did not conduct a warrantless search of Doleman's property. First, the public street is not proximate to Doleman's home because his yard lies between his home and the public street. Second, the firewood stack is in an open area and not within an enclosure surrounding Doleman's home. Third, public streets are intended for public use and the apprentice viewed the firewood stack from a public street. Fourth, Doleman took no steps to shield this stack of firewood from the view of the public street. Because none of the *Dunn* factors weigh in favor of concluding that the apprentice intruded upon Doleman's curtilage, we conclude that the apprentice did not intrude upon Doleman's curtilage when he viewed the firewood stack.

Because we conclude that the apprentice did not intrude upon Doleman's curtilage, the constitutional protections against warrantless searches did not apply.

II. Substantial evidence supports the hearing officer's decision to uphold the city's citation and fine for Doleman's improper storage of firewood in violation of the city code.

Doleman argues that the hearing officer's findings were not supported by substantial evidence. The city argues that the hearing officer's decision should be affirmed because the evidence in the record supports a conclusion that Doleman stored his firewood in a manner that did not comply with the city's code. The hearing officer upheld Doleman's \$200 fine, determining that the way he stored firewood violated the city's code.

Upon certiorari review, this court considers "whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Dietz v. Dodge County*, 487 N.W.2d

237, 239 (Minn. 1992) (quotation omitted). 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 also Big Lake Ass’n v. St. Louis Cnty. Plan. 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.”). The party challenging an agency decision “bears the burden of establishing that the agency findings are not supported by the evidence in the record.” *In re Rev. of 2005 Ann. Automatic Adjustment*, 768 N.W.2d 112, 118 (Minn. 2009).

“The substantial-evidence standard addresses the reasonableness of what the agency did on the basis of the evidence before it.” *In re Expulsion of A.D.*, 883 N.W.2d 251, 259 (Minn. 2016) (quotation omitted). “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 v. Minneapolis Police Dep’t*, 783 N.W.2d 182, 189 (Minn. App. 2010) (quotation omitted).² We defer to the hearing officer’s determinations “regarding conflicts in testimony, the weight given to expert testimony, and the inferences to be drawn from testimony.” *Cannon*, 783 N.W.2d at 189.

² Although *Cannon* applied the Minnesota Administrative Procedure Act, *id.* at 188, this court has applied the same “substantial evidence” definition to quasi-judicial decisionmaking, *see, e.g., Am. Fed’n of State, Cnty. & Mun. Emps., Council No. 14 v. County of Ramsey*, 513 N.W.2d 257, 259 (Minn. App. 1994).

The city has specific requirements regarding outdoor firewood storage. Brooklyn Park, Minn., Code of Ordinances (BPCO) § 152.901(F)(3) (July 29, 2024).³ “Firewood must be stacked on an impervious surface or be elevated at least three and a half inches off the ground and may not include more than two cords of wood per property.” BPCO § 152.901(F)(3)(a). “Unrestrained stacks [of firewood] may not exceed six feet in height.” BPCO § 152.901(F)(3)(b). “Firewood stacks located next to structures and supported by restraints, may not exceed ten feet in height and may be so contained as not to constitute a safety hazard, as determined by City Manager.” BPCO § 152.901(F)(3)(c). “Firewood storage must comply with accessory structure setbacks in § 152.1000(A)(2).” BPCO § 152.901(F)(3)(d).

Although Doleman testified at the hearing that his firewood was stacked “on two pieces of wood that are spread out from the ground, and you cannot see them in the pictures [the apprentice] took,” he provided no evidence that the wood was stacked on an impermeable surface or was elevated three and a half inches off the ground. Doleman contended that the city “has not proved that [the stacks are not] three and a half inches off the ground.” In contrast, the apprentice testified that “they’re not off [the ground] three and a half inches.” In his order, the hearing officer credited the apprentice’s testimony and found that the apprentice “submitted pictures that agreed with [the apprentice’s] testimony”

³ The city cited Doleman with violation of an earlier version of the city’s firewood ordinance. We cite the most recent version of the ordinance because it has not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm’rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, “appellate courts apply the law as it exists at the time they rule on a case”).

that the firewood stack was not stored in compliance with the code. The record evidence supports the hearing officer's decision.

“As a reviewing court, we will not 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.” *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 303 (Minn. App. 2007) (quotation omitted). Because evidence in the record supports the hearing officer's determination that Doleman was not storing his firewood properly, *see Cannon*, 783 N.W.2d at 189, we conclude that the hearing officer's decision to uphold the city's citation and fine were based on substantial evidence.

Affirmed.