

IN THE IOWA DISTRICT COURT FOR CERRO GORDO COUNTY

PHILLIP A. FLINCHUM,)	
)	
Plaintiff,)	Case No. CVCV069025
)	
vs.)	ORDER
)	
CITY OF MASON CITY;)	
MASON CITY COUNCIL,)	
)	
Defendants.)	

On the 28th day of May, 2015, the above-captioned matter came before the court on a Petition for Certiorari filed on behalf of the plaintiff, Phillip A. Flinchum. The plaintiff appeared personally with his attorney, Michael Byrne. The defendants were represented by Attorney Randall Nielsen.

LEGAL PRINCIPLES

A certiorari action may be brought in district court when a party asserts that a city council has exceeded its jurisdiction or otherwise acted illegally in executing judicial functions. *I.R.C.P. 1.1401; Meyer v. Jones*, 696 N.W.2d 611, 614 (Iowa 2005). A city council commits an illegality if the decision violates a statute, is not supported by substantial evidence, or is unreasonable, arbitrary, or capricious. *Bowman v. City of Des Moines Mun. Housing Agency*, 805 N.W.2d 790, 796 (Iowa 2011). Evidence is substantial when a reasonable mind could accept it as adequate to reach the same findings. *City of Cedar Rapids v. Mun. Fire & Police Ret. Sys.*, 526 N.W.2d 284, 287 (Iowa 1995). If the district court’s findings of fact lead the reasonableness of the council’s action open to a fair difference of opinion, the court may not substitute its

decision for that of the council. *Helmke v. Bd. of Adjustment*, 418 N.W.2d 346, 347 (Iowa 1988).

Iowa Rules of Civil Procedure provide that unless otherwise specially provided by statute, the judgment on certiorari shall be limited to sustaining the proceedings below, or annulling the same wholly or in part, to the extent that they were illegal or in excess of jurisdiction. *I.R.C.P. 1.1411*. Illegality exists within the meaning of the Rule when the findings upon which the council's conclusions are based do not have evidentiary support or when the council has incorrectly applied the proper rule of law. *Fisher v. Chickasaw County*, 553 N.W.2d 331, 334 (Iowa 1996). There is a presumption that the council properly performed under the law unless clear evidence to the contrary appears. *Peterson v. Harrison Cnty. Bd. of Supervisors*, 580 N.W.2d 790, 793 (Iowa 1998). The burden of showing illegality rests upon the asserting party. *Id.*

RELEVANT FACTS

1. Phillip A. Flinchum (hereafter "Flinchum") has been the owner of the house located at 32 Sixth Street NW, Mason City, Iowa, since 1977. The property has been the subject of numerous complaints from neighbors. There has been no water service to the property for over 13 years and the electricity has been shut off since 2013.
2. Jim Sberal is the Code Enforcement Officer for the City of Mason City. On March 25, 2014, he issued a "Notice of Intent to Commence Proceedings to Cause the Repair, Vacation or Demolition of a Building" to Flinchum regarding the property in question. The notice contains the following allegation:

"Certain conditions on or about the above property has been brought to the attention of this Division, which if found to exist, may constitute a violation of the Uniform Code for the Abatement of Dangerous Buildings and 2009 Edition of the International Building Code as adopted by the City of Mason City, Iowa. Specifically, those conditions

are: The structure is unsuitable for its intended use and is a public nuisance.

3. Pursuant to the terms of the notice a meeting was held on April 10 at City Hall. Flinchum informed city officials that he intended to clean up the property and then sell it. City officials agreed that Flinchum could have 60 days to complete the process but the condemnation process would continue during that time.
4. On April 29, 2014, the City issued a Notice and Order declaring the structure to be a “dangerous building,” as defined in Section 302 of the Uniform Code for the Abatement of Dangerous Buildings. The notice makes no reference to specific problems. Rather, it cites subsections 9 and 17 of Section 302 of the UCADB.
5. The order gave Flinchum a 60-day period in which to complete demolition of the house. The notice further informed Flinchum that he had a 10-day period in which to file a Notice of Appeal. No appeal was filed after the April 29th Notice and Order was issued.
6. On July 15, 2014, the City Council met for its regular meeting. A resolution calling for the demolition of Flinchum’s property was on the agenda. The council voted to postpone taking action on the matter for 30 days.
7. On August 19, 2014, Patricia Otto, who is the Neighborhood Services and Transit Manager for Mason City, sent a letter to City Administrator Brent Trout. The letter outlines the existing issues at the Flinchum property as observed by Code Enforcement Officer Kyle Peterson and Housing Inspector Ray Quayle. The letter lists the concerns as follows:
 - (1) Soffets and fascia are rotten and need to be repaired or replaced;
 - (2) Limestone foundation needs to be tuck pointed in a few places;
 - (3) Rear steps are falling away from the house and need to be repaired or replaced;
 - (4) Electrical wiring to the garage is exposed and wiring does not meet code;
 - (5) Window frames on many of the windows appear to be damaged and/or rotten;

- (6) Tree overgrowth is doing damage to house and garage;
- (7) Porch support is rotten and needs to be repaired or replaced.
8. On August 19, 2014, the City Council met in its regular session. On the agenda was the resolution calling for the demolition of the Flinchum property. The resolution passed on a five to one vote.
9. The resolution was signed by the mayor on the same date. It states, among other things, “. . . as a result of said inspection, there was noted structural defects constituting violations of ordinances of the City of Mason City . . .” It further states “That there is hereby found and declared to exist the structural defects and violations of ordinances in the structure situated upon the real estate referred to in the preamble hereof, *and as itemized in the notice served upon the owner of said property, . . .*” (emphasis added by the Court). It also states “That the structure situated upon the real estate hereinabove described, is hereby found and declared to be structurally unsafe, unsanitary and beyond repair, and to constitute an unsafe building within the terms and provisions of the Uniform Code for the Abatement of Dangerous Buildings of the City of Mason City, Iowa, and said structure is hereby found and declared to constitute a public nuisance.” Thereafter, the resolution authorizes the demolition of the structure.
10. Flinchum filed his Petition for Certiorari on September 11, 2014. Demolition of the property has been stayed pending the outcome of this case.

ANALYSIS

There is little doubt that the condition of Mr. Flinchum’s property is such that very few, if any, people would want to live next door or even in the same neighborhood. Anyone who is adversely affected by the condition of the property has the right to be upset and to expect that something will be done to remedy the situation. However, everyone should be able to agree that before the government steps in to demolish privately owned property procedural safeguards should exist and be followed. The City

of Mason City has recognized this by adopting the UCADB which contains specific requirements designed to provide a fair process for all property owners in Mason City.

The City of Mason City has adopted the 1997 version of the Uniform Code for the Abatement of Dangerous Buildings (UCADB). This Code sets forth the procedures the City must utilize when seeking to abate a privately owned structure on account of its dilapidated or defective condition. In this case the pertinent provisions of the UCADB are:

- **102.1 Purpose.** It is the purpose of this code to provide a just, equitable and practicable method, to be cumulative with and in addition to any other remedy provided by the Building Code, Housing Code, or otherwise available by law, whereby buildings or structures which from any cause endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants may be required to be repaired, vacated or demolished.
- **Section 202 - Abatement of Dangerous Buildings** All buildings or portions thereof which are determined after inspection by the building official to be dangerous as defined in this code are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedure specified in Section 401 of this code. (Emphasis added).
- **Section 302 – Dangerous Building.** For the purpose of this code, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered.

9. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

17. Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.

- **401.2 Notice and Order.** The building official shall issue a notice and order directed to the record owner of the building. The notice and order shall contain: (Emphasis added).

2. A statement that the building official has found the building to be dangerous with a brief and concise description of the condition found to render the building dangerous under the provisions of Section 302 of this code. (Emphasis added).

The plaintiff's first contention is that the City failed to follow its own rules before adopting the resolution to demolish his property. One alleged procedural defect relates to the April 29, 2014 Notice and Order. It is argued that the notice does not contain the information required by Section 402 of the UCADB.

The Notice and Order contains the following relevant language:

YOU ARE HEREBY NOTIFIED pursuant to the provisions of the 2009 International Building Code and the 1997 Edition of the Uniform Code for the Abatement of Dangerous Buildings of the City of Mason City, Iowa, the Chief Building Official of the City of Mason City, Iowa, has inspected your building(s) . . . and found the same to be dangerous (unsafe) because of the conditions found upon the premises and described in the following sections from the Uniform Code for the Abatement of Dangerous Buildings.

DANGEROUS BUILDING

Section 302, for the purposes of this code, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered:

1. Whenever, for any reason, the building or structure or any portion thereof, is manifestly unsafe for the purpose in which it is being used.
2. Whenever any building or structure is in such a condition as to constitute a public nuisance known to common law or in equity jurisprudence.

Section 401.2 of the UCADB requires the City to issue a Notice and Order to begin the abatement process. It also sets forth the required contents of such an order. Among other things, the notice must contain “. . . a brief and concise **description of the condition** found to render the building dangerous . . .” (Emphasis added).

The Notice and Order issued by the City contains no specifics. Rather, it sets out two generic classifications of buildings that would qualify as a “dangerous building” under the UCADB. The notice simply recites UCADB provisions verbatim as allegations. The question before the Court is whether the UCADB requires more.

It is the opinion of the Court that the April 29 Notice and Order does not substantially comply with Section 401.2 of the UCADB because it does not contain a “description of the condition” qualifying Flinchum’s building as dangerous as that term is defined. This provision requires the City to specify the problems the landowner must fix to avoid demolition, such as those set forth in the letter sent by Patricia Otto to Brent Trout. The April 29 document contains no specifics relative to the Flinchum property. It contains only general language, i.e. “for any reason” and “in such a condition as to constitute a public nuisance.” The notice merely describes categories of property without identifying the “condition found to render the building dangerous” as required by the UCADB. Thus, the notice is inadequate.

The Court recognizes that Mr. Flinchum engaged in conversations with city officials throughout this process and he was aware of most, if not all, of what the City wanted done. Nonetheless, the fact remains that the required formal notice issued by the City does not comply with its own statutory requirements. Given the seriousness, and

finality, of the City's proposed course of action, Mr. Flinchum is entitled to full due process. Under the terms of the UCADB he must be given formal notification of the specific conditions causing the City to conclude his property constitutes a dangerous building. In light of the insufficiency of the April 29 notice, the proceedings below must be vacated.

ORDER

IT IS THEREFORE ORDERED that the proceedings below resulting in the adoption of Resolution No. 14-179 by the City Council of Mason City, Iowa, are hereby vacated and said resolution is nullified.

The costs of this action are taxed against the City of Mason City.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV069025
Case Title (JMD) PHILLIP A. FLINCHUM V. CITY OF MASON CITY,
MASON C

So Ordered

A handwritten signature in black ink, appearing to read "James M. Drew". The signature is written in a cursive style and is positioned above a horizontal line.

James M. Drew, District Court Judge,
Second Judicial District of Iowa