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STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF ISANTI **TENTH JUDICIAL DISTRICT**

County of Isanti,

Plaintiff,

v.

Keith Allen Kiefer,

Defendant and Third Party Plaintiff,

v.

City of Ramsey, and City Administrator Kurtis Ulrich, in his official capacity and individually,

Third Party Defendants.

Case Type: Civil

Court File No. 30-CV-11-589

SUMMONS

THE STATE OF MINNESOTA TO THE ABOVE-NAMED THIRD PARTY DEFENDANTS CITY OF RAMSEY, AND CITY ADMINISTRATOR KURTIS ULRICH, IN HIS OFFICIAL CAPACITY AND INDIVIDUALLY:

You are hereby summoned and required to Answer the Third Party Complaint in this action, a copy of which is attached hereto, and to serve a copy of your Answer on Third Party Plaintiff's counsel within twenty (20) days of the date this Summons is served upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Pursuant to Minn. Stat. § 543.22 you are further notified that under the Minnesota General Rules of Practice, all civil cases are subject to Alternative Dispute Resolution (ADR) processes, except for those actions enumerated in Minn. Stat. § 484.76 and Minnesota General Rules of Practice 111.01 and 310.01. The Court Administrator of the above-captioned Court can provide you with information about available ADR processes and neutrals.

MOHRMAN & KAARDAL, P.A.

Dated: February 20, 2012

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Attorneys for Defendant and Third Party Plaintiff Keith Kiefer

STATE OF MINNESOTA **DISTRICT COURT**

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ANSWER AND THIRD PARTY COMPLAINT

Keith Allen Kiefer, Defendant and Third Party Plaintiff, files through Counsel this pleading as his Answer and Third Party Complaint.

ANSWER

Keith Allen Kiefer for his answer to the Complaint alleges as follows:

1. Denies the allegations in paragraph 1 except as to Isanti County being a duly authorized political subdivision of the State of Minnesota.

2. Admits the allegations in paragraph 2.

3. Denies the allegations in paragraph 3 only to the extent that the statutes referenced authorize this action.

4. Denies the allegations in paragraph 4 because the City of Ramsey, not Defendant, caused the purported violative conditions on the property. Specifically, on and about October 25, 2007, the City of Ramsey as part of a wrongful abatement of Defendant's Ramsey property

transferred and dumped Defendant's personal property from Defendants Ramsey Property to his Isanti County property: including a small building and its contents, which included an engine stand, an engine, a transmission bell housing and an automatic transmission for an engine, three vehicles (licensed and operational 1964 Volkswagen bus, a licensed and operation 1970 Chevrolet recreational vehicle and an unlicensed but operational 1984 Dodge Colt Vista) and a tractor (used for snow plowing), wood items, metal items, two operational motorcycles (1968 Honda and Kawasaki 500), equipment, six operational lawn mowers, barbecue grill and smoker unit, two operational snowmobiles, several shovels and rakes, operational wood chipper, four operational bicycles and one operational tricycle, a snow sled used by Kiefer's granddaughter, three rain barrels and several tarps. The Anoka County District Court on June 17, 2011 in the Court's Findings of Fact, Conclusions of Law and Order for Judgment held that the abatement violated law:

> 33. The Court finds that the September 13, 2007 notice from the City to Appellant lack the required specificity described in Ramsey City Code Section 5.12.03, subd. 4(b)...
> 34. The Court finds that many items of Appellant's personal property taken from the Property and transported to Princeton were not covered by the City's September 13, 2007 notice...
> 35. The City removed a licensed 1964 Volkswagen bus, a licensed 1970 Chevrolet recreational vehicle, an unlicensed 1984 Dodge Colt Vista and 1950's tractor from the property. Appellant testified that they were all of these vehicles were operational. However, the City, in contravention of Ramsey City Code Section 5.08.02, did not give Appellant a chance to demonstrate that the vehicles were operational in their condition at the time of abatement...
> 37... The Court finds that the City acted with the intent to clean up Appellant's property of all items without providing a specific, detailed notice as to the conditions constituting a violation of the city code and corrective measures to come into compliance. The City's September 13, 2007 "blanket notice" was not sufficient under its own city code.

See Attachment A which is a true and correct copy of the Anoka County District Court Findings of Fact, Conclusions of Law and Order for Judgment dated June 17, 2011.

5. Denies the allegations in paragraph 5 in light of the Anoka County District Court Findings of Fact, Conclusions of Law and Order for Judgment dated June 17, 2011 being decided after the Defendant was found guilty in Court File No. 30-CR-08-1290 for violating Isanti County Zoning Ordinance. Kiefer admits he was found guilty but denies he stored solid waste on his Isanti property since the stored items were personal property.

6. Denies the allegations in paragraph 6 in light of the Anoka County District Court Findings of Fact, Conclusions of Law and Order for Judgment dated June 17, 2011 being decided after the Defendant on November 18, 2009 admitted that he had not fully complied with the Isanti County court order resulting in a probation violation. Kiefer denies any inference that he stored solid waste on his Isanti property since the items were personal property.

7. Denies the allegations in paragraph 7 in light of the Anoka County District Court Findings of Fact, Conclusions of Law and Order for Judgment dated June 17, 2011 being decided after the Defendant on October 6, 2010 admitted that he had not fully complied with the Isanti court order resulting in a probation violation. Kiefer denies any inference that he stored solid waste on his Isanti property since the items were personal property.

8. Kiefer is without sufficient information or knowledge regarding the allegations asserted in paragraph 8 to admit or deny, therefore denies.

9. Does not have sufficient knowledge to admit or deny the allegations of paragraph 9.

AFFIRMATIVE DEFENSES

Defendant Kiefer asserts the following affirmative defenses.

1. Isanti County's Complaint fails to state a claim upon which relief can be granted.

2. Isanti County as a political subdivision, under the estoppels and other legal doctrines, cannot bring this Complaint against Defendant when another political subdivision City of Ramsey has caused the violative conditions on Defendant's property.

3. Isanti County's complaint propounds an illegality in light of the prior conviction of Defendant for conditions wrongfully caused on the property by the City of Ramsey.

4. Isanti County's complaint is barred by res judicata and collateral estoppel consequences of the Anoka County District Court Findings of Fact, Conclusions of Law and Order for Judgment filed June 17, 2011.

5. The City of Ramsey contributed to the violative condition of Defendant's property legally excusing Defendant's purported violations.

6. Isanti County's complaint must be dismissed for lack of joining the City of Ramsey as a necessary party.

7. Any judgment entered against Kiefer in favor of Isanti County should be adjudged against the City of Ramsey and its City Administrator so that Kiefer owes nothing.

THIRD PARTY COMPLAINT

The Keith Kiefer for his Third Party Complaint alleges as follows:

Third Party Plaintiff.

1. Third Party Plaintiff Keith Kiefer owns the property at 559 McKnight Road South, Saint Paul, Minnesota, 55119.

Third Party Defendants.

2. Third Party Defendant City of Ramsey, Minnesota is a municipality in Minnesota.

3. Third Party Defendant Kurtis Ulrich is the City Administrator for the City of Ramsey, Minnesota.

Factual Background

4. The City of Ramsey started two civil proceedings against Plaintiff without the City of Ramsey's proceedings being grounded in law and fact.

5. Both of the lawsuits were eventually dismissed.

6. In the beginning, the City of Ramsey cited Keith Kiefer for nuisance on August 25, 2005 under its City Code § 5.12.01, a misdemeanor offense. The City alleged that Kiefer had "junk vehicles" on his property.

7. Under § 5.12.01a, the definition of "junk automobiles" is specific:

> [T]he term "junk automobiles" shall include any motor vehicle, part of a motor vehicle or former motor vehicle, stored in the open, that is either:
>
> 1. unusable or inoperable because of lack of, or defects in, component parts; or
>
> 2. unusable or inoperable because of damage from collision, deterioration, or having been cannibalized; or
>
> 3. beyond repair and, therefore, not intended for future use as a motor vehicle; or
>
> 4. being retained on the property for possible use of salvageable parts.

8. The City of Ramsey Code states under § 5.01.02 that "[a]ny violation of this Chapter [5] is a misdemeanor...."

9. In addition, under City Code § 5.01.01, it specifically lists Minn. Stat. § 609.745:

> "Whoever having control of real property permits it to be used to maintain a public nuisance or lets the same knowing it will be used is guilty of a misdemeanor." (Emphasis added).

10. City Code § 5.01.01 states in particular that in citing Minn. Stat. § 609.745, one of numerous criminal sections of Minnesota statutory law, the City has "adopted by reference and shall be in full and effect in the City as if set out here in full."

11. The City commenced a criminal proceeding in Anoka County District Court, "State of Minnesota vs. Keith Allen Kiefer," file number T6-05-25374.

12. In December 2006, the parties to the criminal proceeding reached an agreement, with court approval, to stay the criminal proceedings for 18 months. The order specifically stated the clean up would occur in three month increments as worked out between the parties. Kiefer, in accordance with the court ordered stay and agreement, the parties engaged in efforts to resolve the underlying citation issue, at least for a time in 2007. During the same discussions, the City sought to include other matters, referencing their concerns as further nuisances. Although there is some dispute between the parties as to whom was to contact whom and when, the evidence is sufficient to show the parties were engaged in negotiations and were attempting to negotiate a resolution within the required criminal court order time period of 18 months.

13. From the time of the criminal court order staying the proceeding for 18 months, that period would have ended in or about June of 2008.

14. There is nothing in the criminal court record brought that the parties sought to dissolve the stay until the City of Ramsey's dismissal of the action in November 2007.

15. The City of Ramsey has in its Code a subsection, 5.08 titled "Public Nuisance."

16. Under Ramsey City Code § 5.12.03, it states:

> The City Council of the City of Ramsey has determined that the health, safety, good order, general welfare, and convenience of the public is

threatened by certain public nuisances or City Code violations within the City limits." (Emphasis added).

17. The Ramsey City Council in July 2007, but effective August 13, 2007, the City of Ramsey amended its City Code under § 5.12.03 governing abatements the following language: "It is declared to be the intention of the Council to abate these nuisances and violations, and this subsection is enacted for that purpose."

18. The City of Ramsey, through its counsel, admits that the City sought to prosecute Kiefer under Ramsey City Code §5.08.

19. The City of Ramsey, through its counsel, admits that the City sought to prosecute Kiefer through its civil abatement procedure under Ramsey City Code § 5.20.

20. In September 2007 but effective October 15, 2007 the Ramsey City Council adopted an ordinance that repealed City Code § 5.08, and replaced it with a significantly revised subsection, including a new definition governing abandoned vehicles found under § 5.08.02:

> Any motor vehicle which is determined by the Zoning Administrator, Chief of Police, or their assigns, to be an inoperable vehicle ....

21. In the same September ordinance, again effective on October 15, 2007, the Ramsey City Council adopted an entirely new subsection to the Chapter 5 Code, § 5.20 titled "Enforcement." Subdivision 1 of the enforcement code states that:

> The City Council of Ramsey has determined that the health, safety, good order, general welfare, and convenience of the public is threatened by certain public nuisances or City Code violations on property within the City limits and finds the need for alternative methods of enforcing City Code. (sic) While criminal fines and penalties have been the most frequent enforcement mechanism, there are certain negative consequences for both the city and the accused. The delay inherent in that system does not ensure prompt resolution. Accordingly, the City Council finds that the use of abatement, administrative citationing, and administrative hearings is an addition to any other legal remedy that may be pursued.... (Emphasis added).

22. Under Ramsey City Code § 5.20, the section describes the abatement process, including the requirement that notification of the affected property owner state the nuisance or Code violation be abated within 14 days, must state with "specificity the nature of the nuisance," and that the within that 14 day period the property owner may request a hearing before a hearing examiner.

23. On September 13, 2007 the City of Ramsey's Community Service Officer of the Ramsey Police Department sent Kiefer a letter indicating a violation of City Code Chapters 5 and 9. Chapter 9 governs the prohibition of parking vehicles on certain types of areas.

24. The September 13, 2007 letter stated the Ramsey Code violation as:

> Any and all conditions constituting a nuisance including, but not limited to, inoperable and/or unlicensed vehicles, construction materials, appliances, junk, rubbish and debris.
>
> Vehicles parked on unimproved surfaces.

25. The September 13, 2007 letter did provide that Kiefer was to correct "[a]ll violations ...within fourteen (14) days from the date of service of the letter..." and that Kiefer could request a hearing before a hearing examiner by contacting the Chief of Police. The letter does not give the reason for requesting a hearing.

26. The September 13, 2007 letter does not cite any specific City Code.

27. Kiefer did receive the September 13, 2007 letter.

28. Kiefer did not request a hearing before a hearing examiner.

29. Kiefer challenged at all times the allegations of the City through a Writ of Prohibition in the criminal action, including a written notice that the City was acting outside its authority noting the continued existence of the criminal proceeding, and asserting a number of other constitutional infirmities he believed associated to the City's actions.

30. The City of Ramsey, through the City Administrator, did send Kiefer a letter dated October 12, 2007, referencing the Police Department's letter of September 13, 2007 that the September letter "ORDERED" Kiefer to correct the City Code violations. The letter further stated that since he did not correct the violations within the required time period of fourteen days, or request a hearing, the City would enter his property on October 25, 2007 to "correct the City Code violations...."

31. The City of Ramsey did wrongfully enter Kiefer's property on October 25, 2007.

32. The City through its agents and representatives wrongfully entered Kiefer's property, "trimmed and cut trees to gain access to the property ... removed a Colt Vista wagon, Tractor, Pickup with camper top ....and small 'building'..." including personal property such as snowmobiles and other items.

33. Over Kiefer's objection, the City of Ramsey wrongfully moved Kiefer's personal property to the Isanti County property causing a public nuisance on Kiefer's Isanti County property.

34. The total charge amounted to $13,536.41 excluding interest and penalties.

35. Kiefer refused to pay the charge.

36. After the removal of Kiefer's property to the Kiefer's Isanti County property including the so-called "junk vehicles" the City dismissed the criminal proceeding in November 2007.

37. The City in September 2008 notified Kiefer that they would seek an assessment on his property for the outstanding amount due related to the abatement of the alleged violations.

38. Kiefer immediately challenged the assessment and asserted a number of constitutional and legal grounds for his objections. The City Council disregarded the objections.

Furthermore, although the City knew of the on-going criminal proceeding, the Council did not act on Kiefer's specific procedural objections.

39. The Ramsey City Counsel affirmed the actions of the City and the special assessment.

40. Kiefer then appealed the special assessment to this Court and prevailed in Anoka County District Court.

41. Specifically, on and about October 25, 2007, the City of Ramsey as part of a wrongful abatement of Defendant's Ramsey property transferred and dumped Defendant's personal property from Defendants Ramsey Property to his Isanti County property: including a small building and its contents, which included an engine stand, an engine, a transmission bell housing and an automatic transmission for an engine, three vehicles (licensed and operational 1964 Volkswagen bus, a licensed and operation 1970 Chevrolet recreational vehicle and an unlicensed but operational 1984 Dodge Colt Vista) and a tractor (used for snow plowing), wood items, metal items, two operational motorcycles (1968 Honda and Kawasaki 500), equipment, six operational lawn mowers, barbecue grill and smoker unit, two operational snowmobiles, several shovels and rakes, operational wood chipper, four operational bicycles and one operational tricycle, a snow sled used by Kiefer's granddaughter, three rain barrels and several tarps.

42. The Anoka County District Court on June 17, 2011 in the Court's Findings of Fact, Conclusions of Law and Order for Judgment held that the abatement violated law:

> 33. The Court finds that the September 13, 2007 notice from the City to Appellant lack the required specificity described in Ramsey City Code Section 5.12.03, subd. 4(b)...
> 34. The Court finds that many items of Appellant's personal property taken from the Property and transported to Princeton were not covered by the City's September 13, 2007 notice...

> 35. The City removed a licensed 1964 Volkswagen bus, a licensed 1970 Chevrolet recreational vehicle, an unlicensed 1984 Dodge Colt Vista and 1950's tractor from the property. Appellant testified that they were all of these vehicles were operational. However, the City, in contravention of Ramsey City Code Section 5.08.02, did not give Appellant a chance to demonstrate that the vehicles were operational in their condition at the time of abatement...
> 37... The Court finds that the City acted with the intent to clean up Appellant's property of all items without providing a specific, detailed notice as to the conditions constituting a violation of the city code and corrective measures to come into compliance. The City's September 13, 2007 "blanket notice" was not sufficient under its own city code.

See Attachment A which is a true and correct copy of the Anoka County District Court Findings of Fact, Conclusions of Law and Order for Judgment dated June 17, 2011.

43. Meanwhile, Isanti County criminally prosecuted Kiefer for violating the county's solid waste ordinance for a situation created on his property by the City of Ramsey.

44. Kiefer was criminally convicted for the public nuisance the City of Ramsey created on Kiefer's Isanti County property.

45. An additional proceeding against Kiefer was started by the City of Ramsey in December 2007 for parking his cars on his gravel driveway.

46. The City of Ramsey's legal proceeding against Kiefer was not grounded in law or fact.

47. The Minnesota Court of Appeals held in its August 25, 2009 opinion:

> The city's current argument is contrary to its adoption of the hearing examiner's findings of fact. The city now asks this court to credit the testimony of Assistant Community Development Director Sylvia Frolik, who oversees the administration of chapter 9 of the Ramsey City Code, as evidence that the van is not parked on a driveway. Frolik, when asked to opine "[f]rom ... observation of the testimony and ... significant experience in interpreting the City's ordinances" whether the van is parked on a driveway, stated: "[t]he driveway, in accordance with the definition of a driveway in the MUSA, is bituminous or concrete, and the existing driveway falls short of where that van is parked." Frolik acknowledged, however that the most direct route to an "outbuilding" (previously

> identified by witnesses as a garage) shown on a photograph in evidence, "would be where there's this clearing in the trees, but there's nothing that shows me that it's a driveway." Despite Frolik's opinion, which misstates the city's definition of a driveway, the substantial evidence in the record supports only a finding that the van is parked on a driveway as defined in the city code. We reject as without merit the city's new theory of the case, asserted for the first time on appeal, that the evidence demonstrates that the van is not parked on a driveway.
>
> The evidence supports only a finding that the van is parked on a driveway. And the city implicitly concedes that it would be an error of law to interpret the city code to require that a vehicle must be on a bituminous or cement surface even if it is parked on a driveway in a side or rear yard. Therefore, we reverse the decision that Kiefer violated City Code § 9.11 as unsupported by evidence and based on an error of law.

See Attachment B which is a true and correct copy of the Court of Appeals Opinion dated August 25, 2009.

48. Kiefer has been damaged by the City of Ramsey's tortious and violative misconduct toward him.

COUNT I
ABUSE OF PROCESS

49. Paragraphs 1 through 49 above are incorporated herein by reference.

50. Kiefer alleges the City of Ramsey has abused process by filing and prosecuted the claim based on the gravel driveway parking violation and the special assessment proceeding based on the wrongful abatement.

51. The City of Ramsey's legal proceedings against Kiefer were not supported by the law or evidence as noted by the Anoka County District Court and Court of Appeals, respectively.

52. The City of Ramsey's legal proceedings were presented for an improper purpose contradictory to the rule of law.

53. The City of Ramsey's claims and other legal contentions in their dismissed actions were not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

54. The City of Ramsey's allegations and other factual contentions had no evidentiary support and would have been known not to have evidentiary support if a proper investigation had been concluded prior to filing the claims. But, the City of Ramsey conducted no proper investigation before conducting its legal proceedings.

55. Kiefer has been damaged by City of Ramsey's dismissed legal proceedings.

COUNT II
TORT – TRESPASS

56. Paragraphs 1 through 55 are incorporated herein by reference.

57. Under the Minnesota Torts Claims Act, Minn. Stat. § 3.736, Minnesota has made a limited waiver of sovereign immunity from tort claims including trespass.

58. Kiefer owned the real estate in Isanti County where the City of Ramsey dumped the personal property from Kiefer's Isanti County property.

59. Plaintiff never invited the City of Ramsey or any of its agents or representatives onto his property.

60. For the City of Ramsey through its agents to lawfully enter Kiefer's property, the City of Ramsey has certain legal obligations to follow including providing proper and specific notice to the property owners of both the City of Ramsey property and the Isanti County property – Kiefer.

61. The City of Ramsey violated its legal obligations thereby illegally entering the City of Ramsey property and the Isanti County property because it failed to give adequate, specific legal notice to Kiefer regarding the intended abatement.

62. As part of its illegal entry, the City of Ramsey, through its agents and representative, took and destroyed personal property valued in an amount in excess of $50,000 as part of the abatement.

63. As a direct result of the Defendants trespass upon Kiefer's property, the Plaintiffs have been damaged in an amount exceeding $50,000.

64. Plaintiffs seek all other relief this Court finds just, including attorney fees and costs.

COUNT III
TORT – CONVERSION OF PERSONAL PROPERTY

65. Paragraphs 1 through 64 are incorporated herein by reference.

66. Under the Minnesota Torts Claims Act, Minn. Stat. § 3.736, Minnesota has made a limited waiver of sovereign immunity from tort claims including conversion.

67. Kiefer owned personal property which was taken by the City of Ramsey through its agents during the October 2007 abatement and either destroyed the property or transported to the Isanti County property.

68. Kiefer never asked nor requested the City of Ramsey or its agents to take their personal property from the Kiefer property.

69. Before the City of Ramsey or its agents can lawfully take the personal property, the City of Ramsey has certain legal obligations including providing proper notice to the property owners.

70. The City of Ramsey failed to provide timely, specific notice upon Kiefer regarding the abatement, the scope of abatement, and corrective measures that could be taken to avoid abatement.

71. The City of Ramsey and its agents violated their respective legal duties thereby illegally converting Kiefer's personal property.

72. As part of its illegal entry, the City of Ramsey and its agent converted personal property in an amount of value exceeding $50,000 as part of the abatement.

73. As a direct result of the Defendants conversion of Kiefer's personal property, Kiefer has been damaged in the amount exceeding $50,000.

74. Kiefer also seeks all other relief this Court finds just, including attorney fees and costs.

COUNT IV
STATE CONSTITUTIONAL CLAIM – TAKING OF PROPERTY WITHOUT COMPENSATION

75. Paragraphs 1 through 74 are incorporated herein by reference.

76. Minnesota Constitution, Art. I, section 13 states:

> Sec. 13. **PRIVATE PROPERTY FOR PUBLIC USE.** Private property shall not be taken, destroyed or damaged for public use without just compensation therefore, first paid or secured.

77. The Plaintiffs owned the personal property which was taken by the City of Ramsey and its agent during the October 2007 abatement.

78. The Plaintiffs' private property is protected by Minnesota Constitution, Art. I, section 13.

79. The City of Ramsey and its agents took, destroyed and damaged Plaintiffs' private property in the abatement.

80. The City of Ramsey violated notice legal requirements in conducting the abatement.

81. Defendant Kurtis Ulrich, as City Administrator, failed to ensure the City of Ramsey provided Kiefer timely specific notice prior to the October 2007 abatement.

82. The Defendants have failed and refuse to compensate Kiefer for property taken from him.

83. Because of the failure of the Defendants to lawfully conduct its abatement, its failure to pay compensation to Kiefer constitutes a violation of Minnesota Constitution, Art. I, section 13.

84. Kiefer has been damaged due to the City of Ramsey's violation of Minnesota Constitution, Art. I, section 13.

85. As part of its illegal entry, the Defendants and its agents took personal property in an amount exceeding $50,000 in value as part of the abatement causing damages to Kiefer.

86. Kiefer also seeks all other relief this Court finds just, including attorney fees and costs.

COUNT V
STATE CONSTITUTIONAL CLAIM –
UNREASONABLE SEIZURE OF PROPERTY

87. Paragraphs 1 through 86 are incorporated herein by reference.

88. Minnesota Constitution, Art. I, section 10 states:

> Sec. 10. **UNREASONABLE SEARCHES AND SEIZURES PROHIBITED.** The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated...

89. The Plaintiffs owned the personal property which was taken by the City of Ramsey and its agent during the October 2007 abatement.

90. The Plaintiffs' private property is protected by Minnesota Constitution, Art. I, section 10.

91. The City of Ramsey and its agents unreasonably took, destroyed and damaged Plaintiffs' private property in the abatement.

92. The City of Ramsey violated notice legal requirements in conducting the abatement.

93. Defendant Kurtis Ulrich, as City Administrator, failed to ensure the City of Ramsey provided Kiefer timely specific notice prior to the October 2007 abatement.

94. The Defendants have failed and refuse to compensate Kiefer for the damages caused to him.

95. Because of the failure of the Defendants to lawfully conduct its abatement, its failure to pay compensation to Kiefer constitutes a violation of Minnesota Constitution, Art. I, section 10.

96. Kiefer has been damaged due to the City of Ramsey's violation of Minnesota Constitution, Art. I, section 10.

97. As part of its illegal entry, the Defendants and its agents took personal property in an amount exceeding $50,000 in value as part of the abatement causing damages to Kiefer.

98. Kiefer also seeks all other relief this Court finds just, including attorney fees and costs.

COUNT VI
42 U.S.C. § 1983 CIVIL RIGHTS CLAIM – EQUAL PROTECTION

99. Paragraphs 1 through 98 are incorporated herein by reference.

100. The United States Constitution, Amend. XIV, guarantees all persons the equal protection of the laws.

101. Federal law, under 42 U.S.C. § 1983, provides remedies for violations of civil rights.

102. Kiefer owned the personal property which was taken by the City of Ramsey and its agent during the October 2007 abatement.

103. Kiefer and his private property fall within the protection of the Equal Protection Clause.

104. The City of Ramsey and its agents took, destroyed and damaged Plaintiffs' private property in the abatement violating Kiefer's equal protection rights.

105. Other similarly situated people within the City of Ramsey have not had their property rights and property violated like Kiefer.

106. The City of Ramsey violated notice legal requirements in conducting the abatement.

107. Defendant Kurtis Ulrich, as City Administrator, failed to ensure the City of Ramsey provided equal protection of the laws to Kiefer by failing to provide timely specific notice prior to the October 2007 abatement.

108. The Defendants have failed and refuse to compensate Kiefer for property taken from him.

109. Because of the failure of the Defendants to lawfully conduct its abatement, in violation of the Equal Protection Clause, Kiefer has been damaged in an amount exceeding $50,000.

110. Kiefer has been damaged due to the City of Ramsey's violation of federal Constitution's Equal Protection Clause.

111. Kiefer also requests all remedies available under 42 U.S.C. § 1983 including damages and attorney's fees and all other relief the court deems just.

COUNT VII
42 U.S.C. § 1983 CIVIL RIGHTS CLAIM – DUE PROCESS

112. Paragraphs 1 through 111 are restated by reference.

113. The United States Constitution, Amend. XIV, guarantees all persons the right to not have their property deprived by the state without due process of law.

114. Federal law under 42 U.S.C. § 1983 provides remedies for violations of civil rights.

115. Kiefer owned the personal property which was taken by the City of Ramsey and its agent during the October 2007 abatement.

116. Kiefer and his private property fall within the protection of the Due Process Clause.

117. The City of Ramsey and its agents took, destroyed and damaged Plaintiffs' private property in the abatement violating Kiefer's due process rights.

118. Kiefer was constitutionally entitled to adequate specific notice from the City of Ramsey which he did not receive – violating the federal Due Process Clause.

119. The City of Ramsey violated notice legal requirements in conducting the abatement.

120. Defendant Kurtis Ulrich, as City Administrator, failed to ensure the City of Ramsey provided due process to Kiefer by failing to provide timely specific notice prior to the October 2007 abatement.

121. The Defendants have failed and refuse to compensate Kiefer for property taken from him.

122. Because of the failure of the Defendants to lawfully conduct its abatement, in violation of the Due Process Clause, Kiefer has been damaged in an amount exceeding $50,000.

123. Kiefer has been damaged due to the City of Ramsey's violation of federal Constitution's Due Process Clause.

124. Kiefer also request all remedies available under 42 U.S.C. § 1983 including damages and attorney's fees and all other relief the court deems just.

COUNT VIII
42 U.S.C. § 1983 CIVIL RIGHTS CLAIM –
UNCOMPENSATED TAKING OF PERSONAL AND COMMERCIAL PROPERTY

125. Paragraphs 1 through 124 are restated by reference.

126. The United States Constitution, Amend. V, guarantees all persons the right to just compensation if their private property is taken by the government.

127. Federal law, under 42 U.S.C. § 1983, provides remedies for violations of civil rights.

128. Kiefer owned the personal property which was taken by the City of Ramsey and its agent during the October 2007 abatement.

129. Kiefer and his private property fall within the protection of the Just Compensation Clause.

130. The City of Ramsey and its agents took, destroyed and damaged Plaintiffs' private property in the abatement, without offering compensation, violating Kiefer's Just Compensation Clause rights.

131. Kiefer was constitutionally entitled to adequate compensation from the City of Ramsey which he did not receive – violating the federal Just Compensation Clause.

132. The City of Ramsey violated notice legal requirements in conducting the abatement.

133. Defendant Kurtis Ulrich, as City Administrator, failed to ensure the City of Ramsey provided due process to Kiefer by failing to provide timely specific notice prior to the October 2007 abatement.

134. The Defendants have failed and refuse to compensate Kiefer for property destroyed or taken from him.

135. Because of the failure of the Defendants to lawfully conduct its abatement, in violation of the Just Compensation Clause, Kiefer has been damaged in an amount exceeding $50,000.

136. Kiefer has been damaged due to the City of Ramsey's violation of federal Constitution's Just Compensation Clause.

137. Kiefer also request all remedies available under 42 U.S.C. § 1983 including damages and attorney's fees and all other relief the court deems just.

PRAYER FOR RELIEF

Wherefore, the Keith Kiefer prays for judgment from this Court against the City of Ramsey as follows:

1. For a judgment finding abuse of process and with damages in excess of $50,000 plus sanctions, reasonable attorney's fees and costs and any other remedies provided for in Minn. Stat. § 549.211.

2. For a judgment against the Defendants that their actions constitute tortious misconduct including trespass and awarding appropriate damages;

3. For a judgment against the Defendants that their actions constitute tortious misconduct including conversion and awarding appropriate damages;

4. For a judgment finding the Defendants violated the Plaintiff's constitutional rights to due process and awarding appropriate damages for violating that right;

5. For a judgment finding the Defendants violated the Plaintiff's constitutional rights to equal protection and awarding appropriate damages for violating that right;

6. For a judgment finding the Defendants violated the Plaintiff's constitutional rights of taking their property without just compensation and awarding appropriate damages for violating that right;

7. For a judgment finding the Defendants violated the Plaintiff's constitutional rights protecting the Plaintiffs from unreasonable searches and seizures and awarding appropriate damages for violating that right;

8. For damages in an amount exceeding $50,000;

9. Any judgment entered against Kiefer in favor of Isanti County should be adjudged against the City of Ramsey and its City Administrator so that Kiefer owes nothing;

10. For reasonable attorney's fees, litigation costs, costs, expenses, and expert witness fees allowed by law including under 42 USC section 1988 and/or Minn. Stat. Ch. 117; and

11. For such other and further relief as this Court deems just and equitable.

MOHRMAN & KAARDAL, P.A.

Dated: February 20, 2012

Erick G. Kaardal, Attorney 229647
33 South Sixth Street, Suite 4100
Minneapolis, Minnesota 55402
Telephone: (612) 341-1074

Attorneys for Defendant and Third Party Plaintiff Keith Kiefer

ACKNOWLEDGEMENT

The undersigned, hereby acknowledges that pursuant to Minn. Stat. § 549.21(1), costs, disbursements, and reasonable attorney fees and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the course of the proceedings; or committed fraud upon the Court.

MOHRMAN & KAARDAL, P.A.

Dated: February 20, 2012

Erick G. Kaardal, Attorney No. 229647
33 South Sixth Street, Suite 4100
Minneapolis, Minnesota 55402
Telephone: (612) 341-1074

Attorneys for Defendant and Third Party Plaintiff Keith Kiefer

State of Minnesota
Anoka County

District Court
Tenth Judicial District
Court File Number: **02-CV-08-8487**
Case Type: Assessment Appeal

Notice of Filing of Order

ERICK GREGG KAARDAL
MOHRMAN & KAARDAL
33 SOUTH SIXTH STREET
SUITE 4100
MINNEAPOLIS MN 55402

Keith Kiefer vs. City of Ramsey, a Municipality of Anoka County

You are notified that an order was filed on this date.

Dated: June 17, 2011

Jane F. Morrow
Court Administrator
Anoka County District Court
325 East Main Street
Anoka MN 55303-2489
763-422-7350

cc: WILLIAM K GOODRICH

A true and correct copy of this notice has been served by mail upon the parties herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF ANOKA | TENTH JUDICIAL DISTRICT

Keith Kiefer,

Appellant,

vs.

Respondent.

08-8487

Court File No. 02-CV-~~11-410~~

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT

The above entitled matter came on for trial before the Honorable Sean C. Gibbs, Judge of District Court, Anoka County, on February 23, 2011 at 9:00 a.m. at the Anoka County Courthouse, 325 East Main Street, Anoka, Minnesota 55303. Erick Kaardal, Esq., appeared on behalf of Appellant Keith Kiefer, who was present. Mary D. Tietjen, Esq., and William K. Goodrich, Esq., appeared on behalf of Respondent.

The parties were before the Court pursuant to Appellant's Notice of Special Assessment Appeal, dated October 31, 2008. After pretrial hearings on July 27, 2009, November 20, 2009, and August 18, 2010, the Court narrowed the issues for trial to two, namely:

- Did the City of Ramsey property follow its civil abatement process as applied to Appellant's property?
- Did Appellant receive proper notice of the special assessment proceedings under Minn. Stat. § 429.061?

The following persons testified at trial, in the following order:

- Timothy Gladhill, Associate Planner for the City of Ramsey
- Carey Schiferli, Community Service Officer for the City of Ramsey
- Kurtis Ulirch, City Administrator for the City of Ramsey

- Colin McGlone, Owner of Remove-All, a waste removal company
- Diana Lund, Finance Director for the City of Ramsey
- Captain Timothy Dwyer, police officer for the City of Ramsey Police Department
- Keith Kiefer, Appellant

NOW, THEREFORE, based upon all of the files, records and proceedings and upon the Court being fully advised in the premises, the Court makes the following:

FINDINGS OF FACT

Pre-Abatement

1. Appellant Keith Kiefer ("Appellant") is the contract-for-deed vendee of property located in the City of Ramsey, Minnesota, with a property identification number of 35-32-25-31-0018. The street address of the property is 6203 Rivlyn Avenue N.W. ("the Property").
2. Respondent City of Ramsey ("the City") is a municipal corporation organized and existing under the laws of the State of Minnesota.
3. In September 2007, Carey Schiferli, Community Service Officer for the City, investigated Appellant's property after the City received complaints relative to the condition of the property's exterior. From observing Appellant's property from the street, Officer Schiferli observed vehicles parked on the driveway and in the backyard. Some of the vehicles had expired tabs or flat tires and appeared inoperable. He also observed auto parts, engines, household appliances, scrap metal, and piles of wood on the property. Officer Schiferli determined that these conditions constituted a violation of the City's ordinances regarding off-street parking and blight conditions.
4. As a result of his investigation, Officer Schiferli prepared a letter advising Appellant of the violations and what was needed to bring the property into compliance with City ordinances. The letter was dated September 13, 2007 and sent to Appellant by certified mail. Appellant indicated receipt of the letter by signing and dating a certified mail receipt which he dated

September 24, 2007. Appellant also testified that he received the letter. The letter states the property is in violation of Ramsey City Code Chapters 5 and 9 and goes on to state that the nature of the violations were "Any and all conditions constituting a nuisance including, but not limited to, inoperable and/or unlicensed vehicles, construction materials, appliances, junk, rubbish, and debris" as well as "Vehicles parked on unimproved surfaces." The letter also states that:

> **THE FOLLOWING CORRECTIVE MEASURES ARE REQUIRED:**
>
> Removal of any and all conditions constituting a nuisance including, but not limited to inoperable and/or unlicensed vehicles, construction materials, appliances, junk, rubbish and debris.
>
> All inoperable vehicles stored outside the property must be stored indoors, repaired and/or licensed to meet City Code, or removed from the property. Operable and licensed vehicles stored outside must be on the driveway or in the side or rear yard on a surface of at least bituminous pavement or concrete (prepared gravel may be used in residential areas located outside the Metropolitan Urban Service Area). One (1) unlicensed vehicle may be stored outdoors on the property, on a prepared surface.

5. The September 13, 2007 also advised Appellant that he had fourteen days from the date the letter was served to correct the violations. It also advised Appellant that he could request a hearing before a hearing examiner within fourteen days of service of the letter by calling the Ramsey Police Department. Appellant was further advised that "Failure to abate the violations or request a hearing within the applicable time period will result in abatement procedures" and that "The cost of the abatement will be billed to the property owner."
6. Appellant testified that he attempted to bring the Property into compliance with the City's September 13, 2007 letter notice by removing the vehicles that were inoperable or unlicensed. He also testified that there were six two by fours and plywood sheets he uses when he works on vehicles, ten bricks, and no appliances on the Property. Appellant was

also storing lawn mowers, a snowblower, and snowmobiles on the Property. Appellant testified that there was no rubbish, junk, or debris on the Property, and therefore it was his opinion that he complied with the September 13, 2007 letter. Appellant did not contact the City for more information or detail as to what was expected of him regarding the conditions for compliance. In Appellant's opinion, the September 13, 2007 letter notice was extremely vague as to what was required of him and "nothing identifying specifically what needs to be done to come into compliance."

7. The City's conclusion was that Appellant had not complied with the September 13, 2007 letter. On October 12, 2007, City Administrator Kurtis Ulrich sent Appellant a letter which stated the following:

> The September 13, 2007 letter ORDERED you to correct the violations within fourteen (14) days of the date of service of the said letter OR request a hearing before a Hearing Examiner. You have failed to either correct the violation or request a hearing within the time allotted.
>
> Therefore, this letter is to advise you that at 9:00 a.m. on October 25, 2007, the City will come onto the Property and abate the nuisances in order to correct the City Code violations as described in the September 13, 2007 Order.
>
> Please contact me if you have questions regarding this matter.

Appellant testified that he received the September 13, 2007 letter and also indicated receipt of the letter by signing a certified mail receipt dated October 13, 2007.

8. As stated, Appellant did not contact the City following receipt of the September 13, 2007 letter, nor did he request a hearing with a hearing examiner as provided in the letter. Instead, Appellant filed a document titled "Emergency Petition for Wirt of Prohibition or Other Appropriate Writ, Motion for Expedited Review" in Anoka County District Court on October 17, 2007. The document sought to restrain the City from performing the abatement process on the Property.

The Abatement

9. On October 25, 2007, employees of Remove-All, a waste removal company that had previously contracted with the City, appeared on the Property to begin the abatement process. Accompanying the Remove-All employees were Captain Timothy Dwyer and Sergeant Palpham of the Ramsey Police Department. Either Captain Dwyer or Sergeant Palpham were on hand for the duration of the abatement. Captain Dwyer took numerous photos of the Property during the entire abatement process, all of which were admitted into evidence.

10. Captain Dwyer testified that he was present during the abatement in order to ensure that it went smoothly and to mediate any disputes that could possibly occur between Appellant and employees of Remove-All.

11. Appellant or his wife were present for the entire abatement process. In addition, Appellant's wife videotaped portions of the abatement.

12. Mr. Colin McGlone, owner of Remove-All, was present for the entire abatement, which lasted three days, twelve to fourteen hours each day. Mr. McGlone testified that the abatement turned into a "sort, salvage, and move operation" which led to higher labor costs and more time consumed by his company. He testified that eight employees worked on the abatement project, including temporary and subcontract labor. Captain Dwyer also testified that the abatement process turned into a sort and salvage operation and that he consulted with Appellant regarding Appellant's desires as to where many items of property were to go and how they were to be sorted.

13. On October 25, 2007, two vehicles and a tractor were removed from the Property and transported to Appellant's property in Princeton, Minnesota. In addition, other items were sorted and placed into different containers. Wood items were placed in one container, junk

into another container, and metal items in another container. Mowers, motorcycles, and other equipment were placed in another container. Three dumpsters of items were transported to Princeton on October 25, 2007, in addition to the vehicles and tractor. Items and dumpsters were also removed an October 26, 2007 and October 29, 2007.

14. Mr. McGlone testified that items were sorted and placed into different piles or into different containers after consultation with Appellant. Multiple trips were made each day to transport property to Appellant's Princeton property. Appellant accompanied Mr. McGlone or Captain Dwyer on many of the trips from the Property to Princeton.

15. Appellant testified that during the abatement process many trees on the Property were cut or damaged so that Remove-All's trucks and other equipment could enter and maneuver about the Property. Appellant testified that eighteen trees were removed from his property and limbs of other trees were cut back. He did not receive any notice from the City that Remove-All would be cutting or removing trees. In addition, Appellant testified that Remove-All removed fence sections without putting them back up and also removed a clothes line from the Property.

16. On the contrary, Mr. McGlone testified that it was his opinion that his rapport with Appellant during the abatement was "excellent" and that Remove-All treated the Property and personal property with respect and care. Captain Dwyer wrote in his report regarding the abatement that he believed "the crew respected Kiefers property the best they could under the circumstances and time constraints."

17. Appellant testified that the following items of personal property were taken from the Property:

- Six operational lawn mowers, stored either under a tarp or under the parties' RV.
- Barbecue grill and smoker unit.

- Two operational motorcycles, a 1968 Honda and a Kawasaki 500.
- Two operational snowmobiles.[1]
- Several shovels and rakes all in useable condition.
- Operational wood chipper.
- Four operational bicycles and one operational tricycle.
- A snow sled used by Appellant's granddaughter.
- Three rain barrels.
- Several tarps.
- A small building[2] and its contents, which included an engine stand, an engine, a transmission bell housing and an automatic transmission for the engine.

18. Appellant testified that, in addition to the items already mentioned, three vehicles were taken from the Property. These included a licensed and operational 1964 Volkswagen Bus, a licensed and operational 1970 Chevrolet recreational vehicle, and an unlicensed but operational 1984 Dodge Colt Vista. Appellant testified that all three vehicles were parked in the driveway. In addition to the automobiles, Appellant testified that an operational 1950's tractor was taken from the Property. Appellant testified that he used the tractor to plow snow out of the driveway.

19. Appellant did not offer to prove to the police officers or Remove-All employees that any of the items mentioned above were operational, nor was he asked by anyone, including Captain Dwyer and Sergreant Palpham, if the items were operational prior to their removal.[3]

20. Appellant testified that Remove-All damaged a number of his items of personal property during the abatement process, including a smoker unit, a grill, the skis on a snowmobile, and

---

[1] Appellant testified that both snowmobiles were operational, even though a small tree was growing up through the front cowling of one of them. Appellant considered this snowmobile operational because the bumper could be removed, freeing the snowmobile from the tree so it could be used.

[2] Appellant classified this as a "building," but it is evident from the photographs in evidence that it is a shell of an old shed or porch in poor condition. There are no windows enclosing the structure.

[3] There is some dispute as to whether any of the vehicles, motorcycles, or snowmobiles were in fact operational. Small trees were growing through the bumper of a snowmobile as well as through the fender of the 1964 Volkswagen Bus, indicating that they had not been moved for a number of years. Appellant testified that they were operational but was not given the chance to prove this to anyone on hand. The caption under many of Captain Dwyer's photographs state that the vehicles were not operational.

a motorcycle. Appellant testified that Remove-All damaged property by dumping it on other property and that they were not careful about preserving the condition of the property.

The Assessment

21. For the three-day abatement of the Property, Remove-All charged the City $11,186.41. The City paid Remove-All this amount and its check cleared.

22. The City sent Appellant an invoice on November 29, 2007 which was in the amount of $13,536.41. This included the $11,186.41 invoice from Remove-All, a $750.00 Abatement Administration Fee, and $1,600 for police time.[4]

23. On September 5, 2008, the City sent Appellant a notice that the November 29, 2007 invoice was past due. It informed Appellant that the entire past-due amount would be assessed against the Property and be included in his property taxes payable in 2009, along with an administrative charge of $40.00 and interest at 6.0%. This notice went on to state that an assessment hearing would be held on September 23, 2008, and that he could object in writing prior to the hearing or orally at the hearing. The notice also informed Appellant of his rights to appeal the assessment in district court.

24. Notice of the September 23, 2008 public assessment hearing was also published in the Anoka County Union, the City's legal newspaper, on September 12, 2008.

25. Appellant appeared at the September 23, 2008 assessment hearing and addressed the Ramsey City Council orally as well as in writing. Appellant objected to the special assessment against the Property as repugnant to the United States Constitution as well as the City of Ramsey Charter.

[4] The City charged Appellant for Captain Dwyer and Sergeant Palpham's presence during the abatement. The total was $1,600, broken down at twenty hours at $80.00 per hour.

26. The Ramsey City Council adopted Resolution #08-09-184 as a result of the September 23, 2008 assessment hearing. This approved a $14,609.89 assessment against the Property for certification to the Anoka County Auditor. This amount includes the $40.00 administrative fee as well as 6% interest calculated from September 28, 2008 to December 31, 2009.

27. Appellant filed the instant Notice of Special Assessment Appeal and Amended Notice of Special Assessment Appeal on October 31, 2008.

28. As of the date of trial, the total outstanding amount of the assessment that was certified to Appellant's property taxes payable in 2009 was $18,019.91, which includes penalties and interest applied by Anoka County as well as a delinquent $34.05 solid waste charge.

The City Code

29. The following provisions of the Ramsey City Code, found in Section 5.12.03 and pertaining to the abatement process, were applicable from the inception of the abatement on the Property:

Subd. 4 Abatement Procedure.

a. Abatement Procedure. Upon a determination by the City Administrator or his/her designee that a public nuisance or violation of City Code exists on any public or private property within the City, the City Administrator or his/her designee shall order the public nuisance or violation to be abated in a manner consistent with the City Code.

b. Procedure for Removal of Public Nuisances. Whenever the City Administrator or his/her designee finds within reasonable certainty that a public nuisance or violation exists on any public or private property in the City of Ramsey, they shall notify the affected property owner by personal service or by certified mail that the nuisance or violation must be abated within fourteen (14) days from the date of service of the notice. Service by certified mail shall be deemed complete upon mailing. The order shall state with specificity the nature of the nuisance or violations and the requirements for compliance. The order shall also state that the property owner may, within fourteen (14) days of the date of the order, request a hearing before the Hearing Examiner and shall set out the procedure by which that hearing may be requested. The order shall also state that

failure to abate the nuisance or violation, or request a hearing within the applicable time periods will result in abatement procedures, and that the cost of abatement will be billed to the property owner. Upon expiration of the time required by the notice, the City Administrator or his/her designee shall notify the property owner of the date on which the nuisance or violation will be abated and proceed with the abatement, unless a request for a hearing has been timely filed.

f. Certification of Unpaid Abatement Costs to County Auditor. On or before September 1 of each year, the Finance Officer shall list the total unpaid charge for each abatement against each separate lot or parcel to which they are attributable under this Ordinance. After notice and hearing as provided in Minnesota Statutes Section 429.061, the Council may then spread the charges against property benefited as a special assessment under Minnesota Statues, Section 429.101 and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year, or in annual installments, not exceeding ten, as the Council may determine in each case.

29. At the time of the abatement's inception, the term "Public Nuisance" was not specifically defined in the Ramsey City Code.[5] However, Section 5.08.01 of the Ramsey City Code stated that the purpose of the section was to "prevent the establishment of activities that maintain or permit a condition which unreasonably annoys, injures or endangers the health, morals, decency, safety, or public peace so that such activities do not affect the comfortable enjoyment of life or property." In effect at the same time, City Code Section 5.12 ("Conditions of Premises") described four conditions that were a cause of "blight" and stated that "No person shall maintain or permit to be maintained any of these causes of blight or blighting factors upon any property in the City owned, leased, rented, or occupied by such person."[6]

[5] The City provided a definition for "Public Nuisance" when it passed Ordinance # 7-14, but this ordinance did not become effective until October 15, 2007, after Appellant received the September 13, 2007 notice from the City.

[6] The conditions constituting "blight" or "blighting factors" included prohibitions on storage of junk automobiles, junk, trash, rubbish, and refuse. It also prohibited vacant buildings or structures not suitable as a dwelling or permanently enclosed by windows or boards. The term "junk" was deemed to include machinery or motor vehicle parts, unused stoves or appliances, decayed or broken construction materials, and other metal or "cast-off" materials.

30. At the time of the abatement, City Code Section 5.08.02 defined "Inoperable Vehicle" as "Any motor vehicle which cannot be driven or propelled under its own power upon demand in its existing condition; or which cannot be driven or propelled under its own power in a safe manner because of its wrecked, junked, or partially dismantled condition at the time of inspection and/or abatement; or which does not have attached to it current license plates, tabs, or proof of liability insurance, as required by State law."[7]

31. At the time of the abatement, City Code Sections 5.08.04 – 5.08.07 contained a list of thirty-five items that the City declared to be a nuisance.[8]

32. At the time of the abatement, City Code Section 5.08 ("Public Nuisance") did not contain a definition of the terms "construction material," "appliance," "rubbish," or "debris," all of which were contained in the September 13, 2007 notice sent from the City to Appellant.

Summary

33. The Court finds that the September 13, 2007 notice from the City to Appellant lacked the required specificity described in Ramsey City Code Section 5.12.03, subd. 4(b). The letter states that the nature of the violation is "Any and all conditions constituting a nuisance, including, but not limited to, inoperable and/or unlicensed vehicles, construction materials, appliances, junk, rubbish, and debris." The term "nuisance" is not defined in the notice, nor are any of the other terms mentioned in the notice. Corrective measures were described as removal of said conditions. The Court realizes that Officer Schiferli did not have complete access to the Property when he observed it prior to writing the notice. However, the City could have been much more specific in its notice. The City could have referenced the

[7] The portion of the definition related to the vehicle having current license plates, tabs, or proof of liability insurance was added to the definition during the abatement and did not become effective until October 15, 2007, after Appellant received the September 13, 2007 notice.

[8] The nuisances were grouped into four categories: nuisances affecting health, nuisances affected public morals and decency, nuisances affecting public safety, and nuisances affecting public peace.

specific sections of the City Code which it found Appellant to have violated, including Section 5.08.04 – 5.08.07 or Section 5.12.01. Appellant and Captain Dwyer each testified that the notice was vague and did not provide concrete direction as to the required corrective measures. The Court finds that the September 13, 2007 notice was lacking in specificity in violation of Ramsey City Code Section 5.12.03, subd. 4.

34. The Court finds that many items of Appellant's personal property taken from the Property and transported to Princeton were not covered by the City's September 13, 2007 notice. The Court finds that a barbecue grill, a smoker unit, wood chipper, bicycles, a sled, and several rakes and shovels do not constitute "conditions constituting a nuisance" and cannot be considered "construction materials, appliances, junk, rubbish, and debris." While the City may have considered these items to be junk or rubbish, the Court finds that the above-mentioned items were taken from the Property by the City without prior notice.

35. The City removed a licensed 1964 Volkswagen Bus, a licensed 1970 Chevrolet recreational vehicle, an unlicensed 1984 Dodge Colt Vista, and 1950's tractor from the Property. Appellant testified that all of these vehicles were operational. However, the City, in contravention of Ramsey City Code Section 5.08.02, did not give Appellant a chance to demonstrate that the vehicles were operational in their condition at the time of the abatement.

36. The City's published notice in the Anoka County Union on September 12, 2008, did not technically comply with the two-week notice requirement as required by Minn. Stat. § 429.061. The Court finds that Appellant waived his right to assert defective notice because he appeared at the September 23, 2008 assessment hearing and presented oral and written objections to the assessment at the meeting. He also filed the instant appeal under Minn. Stat. § 429.081. The Court notes that the fact that the City published notice three days later

than required by statute only adds to the insufficient manner in which the abatement and assessment were conducted.

37. The Court finds that once the City gained access to the Property on October 25, 2007, the City could have removed items it considered to be covered by the September 13, 2007 letter notice. However, the City could have stopped the abatement and initiated a new abatement process as to the items like lawnmowers, snowmobiles, bicycles, rakes, shovels, and other personal property. This would have give Appellant a chance to correct the conditions himself. The Court finds that the City acted with the intent to clean up Appellant's property of all items without providing a specific, detailed notice as to the conditions constituting a violation of the city code and corrective measures required to come into compliance. The City's September 13, 2007 "blanket notice" was not sufficient under its own city code.

CONCLUSIONS OF LAW

1. When an appeal is taken from a special assessment pursuant to Minn. Stat. § 429.081, the court may affirm the assessment or set aside the assessment and order reassessment as provided in Minn. Stat. § 429.071, subd. 2. Minn. Stat. § 429.081.
2. The City has the authority under state law and its city charter to define nuisances and provide for their prevention or abatement. Minn. Stat. § 412.221, subd. 23; Ramsey City Charter § 1.2.
3. The City has the authority, under state statute, city charter, and city code, to assess the cost of city services to private property. Minn. Stat. § 429.101; Ramsey City Charter § 8.3; Ramsey City Code § 4.60.14.
4. Ramsey City Code sections 5.12.03 and 5.20 provide that after notice and a hearing as provided in Minn. Stat. § 429.061, the City Council may spread unpaid abatement charges

against property as a special assessment under Minn. Stat. § 429.101 for certification to the County Auditor along with current taxes.

5. Minn. Stat. § 429.061 requires notice of the special assessment hearing to be mailed to the affected property owner and published in a legal newspaper at least two weeks prior to the special assessment hearing. The notice must state the following:

   - The date, time, and place of such meeting;
   - The general nature of the improvement;
   - The area proposed to be assessed;
   - The total amount of the proposed assessment;
   - That the proposed assessment roll is on file with the clerk; and
   - That written or oral objections to the assessment by any property owner will be considered at the hearing.

   In addition, the notice mailed to the owner must state in clear language the following:

   - The amount to be specially assessed against that particular lot, piece, or parcel of land;
   - Adoption by the council of the proposed assessment may be taken at the hearing;
   - The property owner has a right to prepay the entire assessment and the person to whom prepayment must be made;
   - Whether partial prepayment of the assessment has been authorized by ordinance;
   - The time within which prepayment may be made without the assessment of interest; and
   - The rate of interest to be accrued if the assessment is not prepaid within the required time period.

6. Strict compliance with the notice provisions of Minn. Stat. § 429.061 is a jurisdictional prerequisite to the adoption of a special assessment. Klemperer v. Town of Center, 346 N.W.2d 133, 136 (Minn. 1984). However, where a property owner engages in an overt act that is inconsistent with the right to proper notice, coupled with knowledge of the right to object, the right to object to defective notice is waived. Id. at 136-37.

ORDER FOR JUDGMENT

1. The outstanding special assessment against Appellant Keith Kiefer's property, in the amount of $17,985.86[9], is hereby **SET ASIDE** pursuant to Minn. Stat. § 429.081. The City of Ramsey may reassess the property pursuant to Minn. Stat. § 429.071, should it desire to do so.

BY THE COURT:

Dated: 6/17, 2011

Sean C. Gibbs
Judge of Anoka County District Court
Tenth Judicial District

[9] This amount represents the entire delinquent property tax amount of $18,019.91, less the $34.05 solid waste charge added to Appellant's property taxes by Anoka County.

RELATED TOPICS

Automobiles

Injuries from Operation, or Use of Highway

Time of Accident

City of Ramsey v. Kiefer
Court of Appeals of Minnesota. August 25, 2009 2009 WL 2595890 Not Reported in N.W.2d
Only the Westlaw citation is currently available.

Return to list 1 of 20 results Search term

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.

In the Matter of CITY OF RAMSEY, Anoka County, Minnesota,
Respondent,
v.
Keith Allen **KIEFER**, Relator.

No. A08-1714. Aug. 25, 2009.

West KeySummary

Change View

1 **Zoning and Planning** Garages and parking
A vehicle parked on an owner's property was not in violation of a city ordinance. The property was zoned residential and ordinances required vehicles to be parked on the driveway or a prepared surface. However,the evidence supported only a finding that the vehicle was parked on a driveway. The city code did not require that a vehicle be on a bituminous or cement surface even if it was parked on a driveway in a side or rear yard.

City of Ramsey, File No. 07-302265.

Attorneys and Law Firms

James J. Thomson, Mary D. Tietjen, Sarah J. Sonsalla, Kennedy & Graven, Chtd., Minneapolis, MN, for respondent.

Erick G. Kaardal, Mohrman & Kaardal, P.A., Minneapolis, MN, for relator.

Considered and decided by BJORKMAN, Presiding Judge; STONEBURNER, Judge; and STAUBER, Judge.

Opinion

UNPUBLISHED OPINION

STONEBURNER, Judge.

*1 In this certiorari appeal, relator challenges respondent city's notice to relator to abate a nuisance based on its conclusion that a vehicle is parked on relator's property in violation of a city ordinance. Because the city's decision is not supported by evidence in the record and is based on an error of law, we reverse.

FACTS

Relator **Keith** A. **Kiefer** is one of the record owners of property located at 6203 Rivlyn Avenue Northwest in respondent City of Ramsey (city). The property is zoned R-1 Residential under the Ramsey Zoning Code. In December 2007, city issued a Notice of Violation to Kiefer that stated in relevant part: "Panel van parked in the rear yard. All vehicles must be parked on the driveway or a prepared surface. These Violations Must Be Corrected by: January 2, 2008."

EXHIBIT
tabbies
B

Kiefer requested a hearing. The notice of hearing stated that Kiefer, "on December 17, 2007 and thereafter parked a motor vehicle in the front yard of the Premises on a site which is not the driveway of the Premises." The notice cited Ramsey City Code § 9.11, permitting motor vehicles to be parked in the front yard only if on a driveway or in the side or rear yard provided that they are parked on a bituminous pavement or concrete surface. The notice also cited Ramsey City Code § 5.08, defining as a public nuisance "[a]ny violation of City Code, Section 9.11.08, relating to off-street parking regulations."

At the contested-case hearing, the city clarified that the van is parked in the side yard, contrary to allegations in the notice of violation and notice of hearing. Kiefer argued that the van is legally parked in the side yard because it is parked on a historically existing driveway that, under the city code, is not required to be a bituminous or concrete surface. The hearing examiner did not allow Kiefer to introduce evidence of the previous zoning of the property or a 1973 aerial photograph showing a driveway from the street to a garage at the back of the property. But the record contains substantial testimony and evidence that the van is parked on a dirt traffic lane or "drive lane" in Kiefer's side yard and the hearing examiner's findings of fact recite testimony about this fact. Emphasizing the provision in Ramsey City Code § 9.11 that requires vehicles parked in a side or rear yard to be "parked on a residential parking surface that consists of either bituminous pavement or concrete," the hearing examiner concluded that the city proved by a preponderance of the evidence that Kiefer violated section 9.11 specifically because the van is parked on a "dirt surface."

The city council considered the hearing examiner's recommendation that Kiefer be found in violation of the city code. Minutes of that meeting reflect that Kiefer argued to the city council that the van is parked on a driveway. The city attorney stated that the van is parked in the side yard and is clearly not parked on the driveway or a bituminous or concrete surface. The city council adopted verbatim the findings of fact, conclusions, and recommendations of the hearing examiner, determining that the van was parked in violation of the city code and ordered abatement of the nuisance created by the violation. This certiorari appeal followed.

DECISION

*2 The city's notice of hearing to Keifer stated that the hearing would be conducted under the Minnesota Administrative Procedure Act (MAPA) and the Rules of the Office of Administrative Hearings, Minnesota Rules, Section 1400.5100-.8400. Therefore our standard of review is governed by MAPA. *Hard Times Cafe v. City of Minneapolis,* 625 N.W.2d 165, 173 (Minn.App.2001) (applying MAPA standard of review to municipal decision based on case law and the city's election to conduct contested case hearings in accord with MAPA). Under MAPA, in relevant part:

> [This] court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are ... affected by [an] error of law; or ... unsupported by substantial evidence in view of the entire record as submitted....

Minn.Stat. § 14.69 (2008). "Review is limited to the record before the city council at the time it made its decision." *Hard Times,* 625 N.W.2d at 173 (quotation omitted).

In his appellate brief, Kiefer argues denial of due process by exclusion of his proffered evidence and denial of his opportunity to present a defense to the nuisance claim. He also argues that the city's provisions governing off-street parking and driveways are too vague to support a decision that a vehicle parked on a driveway in the side yard violates the code.

The city argues in its brief on appeal that (1) the evidence and law support the decision that Kiefer violated the city's off-street parking requirements because the van is not parked on Kiefer's driveway; (2) Kiefer's due-process rights were not violated; and (3) Kiefer could not raise the issue of vagueness on appeal because it was not raised below.

In his reply brief, Kiefer counters that the evidence does not support the decision, that he preserved his constitutional challenges, and that he was prejudiced by the exclusion of his evidence. We have carefully reviewed the record in this matter and conclude that the city's decision is unsupported by the substantial evidence in view of the entire record and is affected by error of law, therefore we do not address Kiefer's constitutional challenges.

At the evidentiary hearing, the city argued that the van is parked in violation of the code because it is not parked on a bituminous or concrete surface *regardless of whether or not it is parked on a driveway.* This is illustrated by the city's objection to Kiefer's attempts to prove that his long-existing driveway runs from the street in front of his house, through the side yard to a garage in the rear yard. Counsel for the city stated: "The issue isn't whether there's a driveway here or not, it's whether or not there's a vehicle parked on the correct surface." Later in the hearing, counsel for city, objecting to Kiefer's questioning witnesses about the existence of a driveway in the side yard, stated:

> *3 [T]he questioning as to whether or not there's a driveway or not a driveway is irrelevant for the purposes of this hearing. If we're talking about the particular surface that it's parked on, I think that would be relevant ... [b]ut as to whether or not there is a driveway or its existence at any point in time, I think that's irrelevant ... in the side or rear yard parking requires a bituminous pavement or concrete, residential parking surface ... [w]hether that's a driveway or not."

The hearing examiner asked: "So the issue of whether or not it's parked on a driveway is irrelevant. The issue is to [sic] the surface of the spot where the vehicle is parked?" Counsel responded: "That's correct your honor," after which the hearing examiner sustained counsel's objection to further inquiry about whether the van is parked on a driveway in Kiefer's side yard.

The city council adopted the hearing examiner's findings of fact including a finding implicitly crediting testimony that that the van is parked on a "drive lane" that runs between the street and a garage on Kiefer's property. And the city does not dispute that a "drive lane" is a driveway, defined in Ramsey City Code § 9.02 as "[a]n on-site traffic lane leading directly to a garage from the closest street access." Nor does the city dispute that the code does not require a particular surface on a driveway. Additionally, notwithstanding its position at the hearing, on appeal, the city concedes that "Kiefer could park on a driveway (paved or not) that extended into the side or rear yard." On appeal, the city has abandoned the argument that even if parked on a driveway in the side yard, the surface must be bituminous or cement to comply with the code and now argues that Kiefer's van was not parked on a driveway.

The city's current argument is contrary to its adoption of the hearing examiner's findings of fact. The city now asks this court to credit the testimony of Assistant Community Development Director Sylvia Frolik, who oversees the administration of chapter 9 of the Ramsey City Code, as evidence that the van is not parked on a driveway. Frolik, when asked to opine "[f]rom ... observation of the testimony and ... significant experience in interpreting the City's ordinances" whether the van is parked on a driveway, stated: "[t] he driveway, in accordance with the definition of a driveway in the MUSA, is bituminous or concrete, and the existing driveway falls short of where that van is parked." Frolik acknowledged, however that the most direct route to an "outbuilding" (previously identified by witnesses as a garage) shown on a photograph in evidence, "would be where there's this clearing in the trees, but there's nothing that shows me that it's a driveway." Despite Frolik's opinion, which misstates the city's definition of a driveway, the substantial evidence in the record supports only a finding that the van is parked on a driveway as defined in the city code. We reject as without merit the city's new theory of the case, asserted for the first time on appeal, that the evidence demonstrates that the van is not parked on a driveway.

*4 The evidence supports only a finding that the van is parked on a driveway. And the city implicitly concedes that it would be an error of law to interpret the city code to

require that a vehicle must be on a bituminous or cement surface even if it is parked on a driveway in a side or rear yard. Therefore, we reverse the decision that Kiefer violated City Code § 9.11 as unsupported by evidence and based on an error of law.[1]

Reversed.

Footnotes

1 Although we do not reach Kiefer's constitutional arguments, the city's confusion about how to interpret its code demonstrates that Kiefer's vagueness argument has merit.

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