

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

ELIZABETH SKRYZMOSKI)	CASE NO: CV 09 684489
)	
Plaintiff-appellant)	JUDGE JOHN P. O'DONNELL
)	
- vs -)	
)	
CITY OF BROADVIEW HEIGHTS, et al.)	<u>JOURNAL ENTRY</u>
)	
Defendants-appellees)	

John P. O'Donnell, J.:

STATEMENT OF FACTS

Plaintiff-appellant Elizabeth Skryzmoski owns a commercial building at 8151 Broadview Road in Broadview Heights. On October 21, 2008, Skryzmoski was issued a notice of condemnation of the property from the city's building commissioner, defendant-appellee David A. Kaminski. The notice says, in part:

This structure is a public nuisance, vacant, unfit for human habitation and occupancy, is in a dangerous condition and has been condemned and its use has been prohibited by the building commissioner.

The notice was posted at the property, and the same language was included in a letter to appellant dated that same day. The letter informs the plaintiff that the property "has been inspected and has been determined to be a public nuisance, structurally unsafe, a fire hazard, and dangerous to human life." The letter further describes the property as an "unsafe structure" because of "inadequate maintenance, dilapidation, obsolescence or abandonment" and warns that it "shall be demolished immediately, but no later than Monday December 1, 2008."

Despite the building commissioner's assertion in the letter that the property "has been inspected" and "has been examined on October 21, 2008," all parties agree that no inside examination of the property was made before the condemnation. The only examination of the property was of its exterior.

Appellant appealed the building commissioner's order of demolition to the Broadview Heights board of zoning appeals. After a hearing on January 20, 2009, the BZA denied the appeal, thereby upholding the condemnation. This appeal followed and is now decided on the appellant's merit brief, the appellees' merit brief, the appellant's reply brief, the transcript of oral testimony at the BZA hearing, and the transcript of all hearing materials filed by the appellees on April 1, 2009.

STANDARD OF REVIEW

This appeal is brought under Chapter 2506 of the Ohio Revised Code. O.R.C. 2506.04 provides, in pertinent part:

If an appeal is taken in relation to a final order, adjudication, or decision . . . the court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court.

LAW AND ANALYSIS

Appellant raises five assignments of error. Assignments of Error I and III are dispositive. Those assignments are:

I. The board erred in ruling to demolish the building on appellant's property because notice was insufficient pursuant to Broadview Heights Ordinance Chapter 1338, as no examination was conducted, no specificity as to the violations was given, and no reasonable time period was given that would have allowed appellant to repair, rehabilitate and/or demolish the building.

III. The board erred in ruling in favor of demolition because it did not follow the procedures and statutes as outlined in the Broadview Heights Ordinance Code.

Pertinent sections of the Broadview Heights Codified Ordinances are as follows:

1338.01 UNSAFE STRUCTURES DEFINED; ABATEMENT:

All buildings and structures which are structurally unsafe, unsanitary or not provided with adequate safe egress, or which constitute a fire hazard, or which are otherwise dangerous to human life, or which, in relation to existing use, constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence or abandonment, are hereby declared to be unsafe structures. All such unsafe structures are hereby prohibited and shall be abated by repair, rehabilitation or demolition in accordance with the provisions of this chapter.

1338.02 EXAMINATION:

The Building Commissioner shall examine or cause to be examined every building or other structure reported to be unsafe or damaged and shall make a written record of such examination.

1338.03 NOTICE AND ORDER; SERVICE:

(a) Whenever the Building Commissioner finds any building or structure, or a portion thereof, to be an unsafe structure, he shall, in accordance with established procedure, give written notice to the owner, agent or person in control of such building or structure, which written notice shall state the defects thereof. This notice shall require the owner, within a stated time, either to complete specified repairs or improvements or to demolish and remove the building or structure, or a portion thereof, found to be unsafe.

Appellees did not follow sections 1338.02 and 1338.03(a). Section 1338.02 requires an examination of the property as well as a written record of such examination. Appellees only inspected the exterior of the property, and only a portion of the outside at that, since in his testimony at the BZA hearing the building commissioner said he didn't assess the condition of the roof. Without a complete interior and exterior inspection, and a written record of the conditions found on inspection, the appellees have failed to comply with §1338.02.¹

Section 1338.03(a) requires the building commissioner to give the owner of a structure deemed unsafe a written notice which "shall state the defects thereof." Here, the notice issued to appellant did not state the property's defects; instead, it only generalized that the building was "a public nuisance, structurally unsafe, a fire hazard, and dangerous to human life" without naming the specific conditions that justified those conclusions. The notice does describe the inspectors' opinion that the building is unsafe because of "inadequate maintenance, dilapidation, obsolescence or abandonment." Not only do these broad categories of deficiencies not meet the statutory requirement that the city "shall state the defects thereof," but they are also listed in the alternative. A recitation in the alternative – inadequate maintenance or dilapidation or obsolescence or abandonment or all of them – confounds the recipient's ability to figure out and remedy the specific problems that make the property unsafe. Because appellees failed to list the property's specific defects, the appellant has not been adequately notified of the repairs and improvements needed to make the property safe.²

¹ The appellees claim that the appellant denied access to the inside of the building. That may be true and, moreover, this court assumes that a building may be condemnable by reason of conditions that may be observed only from an exterior inspection. Even still, the city did not do a complete outside inspection and it did not notify Skryzmoski of the particular conditions that made the structure unsafe.

² The court notes that evidence of some specific conditions was given at the BZA hearing. Too little too late to comply with the ordinance.

Section 1338.03(a) also provides that the notice must require the owner, within a stated time, either to complete specified repairs and improvements or to demolish and remove the unsafe structure. The notice here says only that the property “shall be demolished immediately, but no later than Monday December 1, 2008.” Demolition is the only option, thereby depriving Skryzmoski of the opportunity to repair the building so that it was not unsafe. If Skryzmoski intended to repair or rehabilitate the property, the notice failed to specify the repairs or improvements needed.

The city’s ordinances provide a specific procedure to be followed to condemn a building. The ordinances contemplate a complete inspection of the building resulting in a listing of the specific conditions that make it, in the opinion of the commissioner, condemnable. Where a thorough inspection was not done, and where some portion of the property was inspected but no particular defects were reported to the owner, the owner is left to guess why her building is being condemned and has effectively been deprived of due process because the city has given her no way to make the building safe and avoid demolition. That is the situation here. It may well be that the building is unsafe³ as defined in the city’s code, but Skryzmoski is entitled to know exactly why it’s unsafe and to have an opportunity to repair it to the satisfaction of the building commissioner.

³ Since the court has found the appeal to have merit because of the failure of the city to follow its own condemnation process there is no need to address the assignments of error related to whether the building is, in fact, unsafe.

CONCLUSION

The city of Broadview Heights did not abide by its code when it condemned the appellant’s building. In particular, it did not inspect the entire premises, it did not create a written record of the portion of the inspection that was performed, and it did not notify the appellant that she could avoid demolition of her building if she made repairs, nor did the city notify her of specific required repairs. Despite these failings, the board of zoning appeals affirmed the city’s decision to condemn. That decision was arbitrary and unreasonable. Therefore, this court reverses the January 20, 2009, decision⁴ of the Broadview Heights board of zoning appeals denying the plaintiff’s administrative appeal of the October 21, 2008, notice of condemnation and grants the appeal. The city is ordered not to proceed with condemnation under the October 21 notice.⁵

IT IS SO ORDERED:

Judge John P. O’Donnell

Date

⁴ The decision appears to be oral only. The only written evidence of the decision to deny the appeal is the notation “appeal denied” on page 8 of the January 20, 2009 meeting minutes of the BZA. Those minutes are signed and dated March 4, 2009, almost a month after the appeal in this court was filed.

⁵ Nothing in this order prevents the city from initiating a new condemnation in conformity with its ordinances. Should that happen, the plaintiff is ordered to provide building inspectors with access inside the building upon reasonable request.

SERVICE

A copy of this Journal Entry was sent by regular U.S. mail, this _____ day of February, 2010, to the following:

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Judge John P. O'Donnell