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Ronald R. Carpenter
Clerk

No. 92715-4

(Court of Appeals No. 32604-7-III)

SUPREME COURT OF THE STATE
OF WASHINGTON

CITY OF WALLA WALLA,

Respondent,

v.

TERRY KNAPP,

Petitioner.

Received
Washington State Supreme Court

DEC 23 2015

Ronald R. Carpenter
Clerk

ANSWER TO PETITION FOR REVIEW

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3. Identity of respondent

The City of Walla Walla (Walla Walla) is a non-chartered code city organized under RCW Title 35A.

4. Counter-statement of the case

The property located at 712 Whitman St. in the City of Walla Walla has been the site of continuing health and safety violations for over a decade. CP 314-780. The City tried every means imaginable to get the property owner to remedy substandard conditions and maintain the property. CP 314-15, CP 323-30; CP 331-37; CP 400-07; CP 773-78 (notices and orders); CP 317-21 (requests for voluntary compliance); CP 347-49 (administrative orders); CP 419-20; CP 423; CP 427 (criminal citations); CP 430-45 (probation conditions). Nothing worked. Problems with the property persisted and became so bad that the surrounding residents filed complaints with the City in the summer of 2013 detailing the deplorable condition of the property and its negative impact on their neighborhood. CP 751-67.

One neighbor reported on June 9, 2013 that the "yard is strewn with all manner of shanty shacks, decommissioned cars, outhouses, beehives, and who knows what else." CP 767. Another confirmed on June 13, 2013 that the "[b]ack yard of property is wall to wall with shanty style structures filled with lumber and junk and possibly some old cars. The grass is dry and there

is little vegetation." CP 762. Another on June 14, 2013 reported an "unfinished tree house towering close to the fence line. . . ." CP 766. Another explained that his family had lived in the neighborhood for sixteen years and the residence at 712 Whitman St. "has always been an eyesore and for most of the time that we've resided here, there has been a large amount of questionable activity there as well." CP 751.

The Walla Walla City Manager made findings detailing the property's repeated and continuing violation of public health, safety, and welfare codes and determined on September 3, 2013 that the property, dwelling, and other structures at 712 Whitman St. constitute a threat to public health, safety, and welfare pursuant to RCW 35.80A.010. CP 970-73. Notice was given to the property owner, and the matter was referred to the Walla Walla City Council to consider at its September 11, 2013 meeting. CP 968-69.

The property owner appeared before the City Council on September 11, 2013, and the Council reviewed the matter. CP 981-82. It made findings that the property at 712 Whitman St. had not been lawfully occupied for many years. CP 975-76, § 1(B). The City Council additionally confirmed and incorporated the City Manager's determination regarding the threat that the property posed to public health, safety, and welfare, CP 975, § 1(A), and it declared the property to be a blight on the surrounding neighborhood. CP

976, § 2.

The City unsuccessfully attempted to acquire 712 Whitman St. from the property owner, and the City Council therefore condemned the property on February 12, 2014. CP 986-88. The Superior Court reviewed the extensive record supporting the determinations made by the Walla Walla City Manager and City Council and entered an order of public use and necessity on June 16, 2014. CP 1055-60. The property owner appealed, and the Court of Appeals affirmed the Superior Court by an unpublished opinion filed September 10, 2015. *See City of Walla Walla v. Terry Knapp*, No. 32604-7-III (Sept. 10, 2015) (a copy of which is attached to the Petition for Review).

5. Argument

A. RAP 13.4(b) review criteria

Mr. Knapp mentions RAP 13.4(b) in passing and claims that every subsection of the rule governing acceptance of review applies. Petition for Review, p. 5. He does not however explain how any of those criteria are satisfied. The City respectfully submits that they are not.

This case involves condemnation under a statute in which the Legislature declares a public use. Chapter 35.80A RCW authorizes condemnation of property to eliminate a blight on a surrounding

neighborhood. RCW 35.80A.010 provides in pertinent part that: "Condemnation of property, dwellings, buildings, and structures for the purposes described in this chapter is declared to be for a public use." The Court of Appeals held in this case that "[t]he legislature's declaration that a use is a 'public use' is not dispositive although it will be accorded great weight." *City of Walla Walla v. Terry Knapp*, No. 32604-7-III, at 6 (Sept. 10, 2015). This does not conflict with any decision of this Court or the other divisions of the Court of Appeals.

This Court recognized in *Anderson v. Superior Court*, 119 Wash. 406, 410, 205 P. 1051 (1922) that the Legislature may declare in the first instance that a purpose is public, and its declaration will be disregarded only if the courts find it to be unfounded. *See also Hallauer v. Spectrum Props.*, 143 Wn.2d 126, 138-40, 18 P.3d 540 (2001). This Court has also already ruled that elimination of blight is a public use. *Miller v. Tacoma*, 61 Wn.2d 374, 382-88, 378 P.2d 464 (1963).

A property may be condemned under Chapter 35.80A RCW as a "blight on the surrounding neighborhood" if it meets any two of the following factors:

- (1) If a dwelling, building, or structure exists on the property, the dwelling, building, or structure has not been lawfully occupied for a period of one year or more;
- (2) the property, dwelling, building, or

structure constitutes a threat to the public health, safety, or welfare as determined by the executive authority of the county, city, or town, or the designee of the executive authority; or (3) the property, dwelling, building, or structure is or has been associated with illegal drug activity during the previous twelve months.

RCW 35.80A.010. The Court of Appeals correctly recognized that the City relied on the first two factors when determining that 712 Whitman St. is a blight on the surrounding neighborhood. *City of Walla Walla v. Terry Knapp*, No. 32604-7-III, at 9-11 (Sept. 10, 2015).

Mr. Knapp did not challenge the validity of the statute. *See* CP 1048-52 (Mr. Knapp's response in the trial court). The issue in this case therefore involves only whether the statute is satisfied. It presents only a question regarding application of the statute in this particular case and does not involve any general issue of substantial public interest that needs determination by this court.

B. The Superior Court conducted an authentic judicial inquiry

Mr. Knapp's primary complaint is that a trial was not conducted to resolve allegedly contested facts. Petition for Review, at 9-11. However, he never asked for one. At no time did he argue in the Superior Court that he was entitled to the trial type hearing he now claims on appeal should have been provided. CP 1048-52. As the Court of Appeals rightly noted: "Absent

a request for an evidentiary hearing, there is no basis for finding that the court failed to exercise discretion in denying one." *City of Walla Walla v. Terry Knapp*, No. 32604-7-III, at 8 (Sept. 10, 2015); see *Bellevue School Dist. v. Lee*, 70 Wn.2d 947, 950, 425 P.2d 902 (1967) ("The trial court must have an opportunity to consider and rule upon a litigant's theory of the case before this court can consider it on appeal."); *Estates of Foster*, 165 Wn.App. 33, 54 ¶47, 268 P.3d 945 (2011) (a party cannot complain about lack of a testimonial hearing after failing to request one in the trial court), *review denied* 173 Wn.2d 1032 (2012); *State v. Hartley*, 51 Wn.App. 442, 449, 754 P.2d 131 (1988) (same).

In addition, Mr. Knapp failed to present any evidence necessitating a trial. Under the statute, the only relevant issues were (1) whether or not the dwelling on the property had been "lawfully occupied" in the preceding year; and (2) whether the executive authority of the city had determined that the "property, dwelling, building, or structure constitutes a threat to the public health, safety, or welfare." RCW 35.80A.010(1) & (2). The Court of Appeals properly concluded that Mr. Knapp failed to factually contest either. *City of Walla Walla v. Terry Knapp*, No. 32604-7-III, at 6-8 (Sept. 10, 2015).

Criterion 1: 712 Whitman St. was not lawfully occupied for over 8 years prior to its condemnation for two alternative reasons. A dangerous

building cannot be lawfully occupied. CP 44, ¶ E (Walla Walla ordinance adopting dangerous building code); CP 55, § 203, CP 59, § 404, CP 63, § 701.3 (provisions of the dangerous building code prohibiting occupancy). The City submitted proof that the dwelling at 712 Whitman St. had been declared dangerous in 2005. CP 331-37 (dangerous building declaration). It also presented evidence confirming that the dangerous building declaration remains in effect and that no certificate of occupancy has been issued for the buildings or structures at 712 Whitman St. CP 1053-54.

In addition, a dwelling cannot be lawfully occupied unless it has running water. CP 89, ¶ J, CP 172, ¶ J, and CP 239, ¶ J (local ordinances adopting the property maintenance code); CP 116, §§ 501.2, 502.1 and 505.1, CP 199, §§ 501.2, 502.1 and 505.1, CP 284, § 501.2 and 502.1, and CP 286, § 505.1 (provisions of the property maintenance code prohibiting occupancy of a house unless its plumbing fixtures are connected to water). The City submitted multiple sworn declarations establishing that the house at 712 Whitman St. had been disconnected from public water service in 2005 and continues to have no water service. CP 872-73; CP 876-77, CP 878-79; CP 1038-39.

Lawful occupancy has therefore not been possible since 2005. Mr. Knapp did not contest this. Mr. Knapp's declaration in opposition to a public

use determination admits that the house at 712 Whitman St. is not connected to water. CP 1042, ¶ 5. In addition, Mr. Knapp confirmed that he knew that "the residence cannot be lived in prior to final inspection approval" and affirmatively asserted that "I am not living at the property." CP 1042, ¶ 4.

Criterion 2: 712 Whitman St. was determined by the executive authority of the City to constitute a threat to the public health, safety, or welfare. The City submitted not only proof that the City Manager had made such a determination, CP 970-73, but also the extensive evidence of repeated, continuous, and current code violations upon which the determination was based. CP 309-966. Mr. Knapp did not contest any of those underlying facts. He actually confirmed that the house on the property had failed a recent building inspection. CP 1042, ¶ 3. He instead made only conclusory assertions that the current building violations were insignificant and that "[m]y house is not a danger to anybody." CP 1042, ¶ 3. These do not create a factual dispute that requires a trial to resolve. "A fact is an event, an occurrence, or something that exists in reality. . . . It is what took place, an act, an incident, a reality as distinguished from supposition or opinion." *Grimwood v. University of Puget Sd.*, 110 Wn.2d 355, 359-60, 753 P.2d 517 (1988) (citation omitted). In addition, Mr. Knapp did not deny or even address the various other blight conditions at his property that negatively

impact his neighbors, such as the presence of outhouses, bee hives, junk vehicles, shanty shacks, and debris, CP 751-67.

Mr. Knapp failed to raise a disputed factual issue requiring a trial. As the Court of Appeals observed: "Although Mr. Knapp presented evidence that he was trying to bring the building up to code and that no one was living there, these facts do not present factual conflicts requiring testimony to resolve them. . . . [T]hat information did not contradict any of the City's evidence and, thus, did not require the judge to conduct a testimonial hearing." *City of Walla Walla v. Terry Knapp*, No. 32604-7-III, at 7 (Sept. 10, 2015). The Court of Appeals determination that the Superior Court properly decided the question of public use on the basis of an extensive record is entirely in accord (and does not conflict) with decisions made by the other divisions of the Court of Appeals in similar situations. *See City of Blaine v. Feldstein*, 129 Wn.App. 73, 76, 117 P.3d 1169 (2005) ("The trial court has the discretion to determine whether there are factual and credibility issues that require a testimonial hearing.").

The Court of Appeals decision in this case is also fully consistent with Washington State Supreme Court authority. Ch. 35.80A RCW charges cities with the responsibility and authority to determine whether a property constitutes a neighborhood blight. Ch. 35.81 RCW similarly charges cities

with the responsibility and authority for determining whether areas in a city constitute a community blight. This Court recognized in *Apostle v. Seattle*, 77 Wn.2d 59, 63, 459 P.2d 792 (1969) with respect to the function of a court when reviewing governmental determinations made regarding that analogous legislatively declared and defined public use:

[F]ortunately or unfortunately, the judiciary does not have the responsibility of passing on the credibility of the witnesses, or of weighing the evidence with reference to blight in such a proceeding. . . . [T]he legislature has made the local governing body (the city council in this instance) the tribunal which makes the factual determination of blight. The province of the court is only to determine whether the factual determination of blight is supported by sufficient evidence to prevent the city council's determinations from being arbitrary and capricious. The trial court may not overrule the city council's determination of blight merely because it believes that the area is not blighted.

Mr. Knapp did not challenge Ch. 35.80A RCW, and he failed to raise a disputed factual issue that is relevant under the statutes. 712 Whitman St. was not lawfully occupied for over a year, and it was properly declared a threat to public health, safety, and welfare by the Walla Walla City Manager. CP 1058-59, ¶¶ 2.9-2.10. The Court of Appeals considered the sufficiency of the evidence in this case and found that it supported the City's blight determination. *City of Walla Walla v. Terry Knapp*, No. 32604-7-III, at 8-11 (Sept. 10, 2015). Both the Superior Court and the Court of Appeals fully satisfied their responsibilities and conducted an authentic judicial inquiry to

decide whether the Ch. 35.80A RCW criteria were met and that the use in this case is "a public use." RCW 35.80A.010 (legislative declaration that elimination of blight under that chapter is a public use); *Miller*, 61 Wn.2d at 382-88 (holding that elimination of blight in accordance with legislative guidelines is a public use).

6. Conclusion

Mr. Knapp's petition derogatorily accuses the Court of Appeals of taking a "schizoid approach." Petition for Review, p. 15. He labels the trial court's order adjudicating public use as "would-be findings of fact." Petition for Review, p. 13. He calls the Court of Appeals decision "a superficial search for substantial evidence that supports certain factual findings of the trial court." Petition for Review, p. 9. Name calling abounds, but Mr. Knapp pays little attention to the RAP 13.4(b) criteria and makes only naked citation to them before launching his vitriolic attack on the work of the courts below.

The decision by the Court of Appeals in this case does not conflict with a decision of this Court or another decision by the Court of Appeals. *See* RAP 13.4(b)(1)&(2). It aligns with this Court's decision in *Apostle* 77 Wn.2d at 63 and Division One's decision in *City of Blaine*, 129 Wn.App. at 76. It involves only application of unchallenged statutes found at Ch. 35.80A RCW and raises no significant constitutional question. *See* RAP 13.4(b)(3).

It concerns only application of those statutes to a particular circumstance and not some broad issue of substantial public interest. (In addition, the Court of Appeals' decision is unpublished, and therefore affects only the parties in this case. GR 14.1.). *See* RAP 13.4(b)(4). Respondent therefore requests that this court deny discretionary review.

DATED December 18, 2015



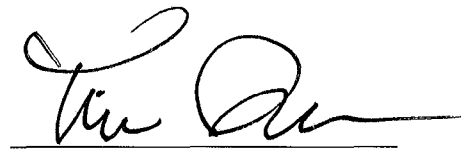
TIM DONALDSON, WSBA #17128
Walla Walla City Attorney

7. Certificate of Service

I mailed a true and correct copy of this ANSWER TO PETITION FOR REVIEW to petitioner's attorney Michael de Grasse, at the law offices of Michael de Grasse, 59 S. Palouse St., Walla Walla, Washington on the date stated below.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

December 18, 2015 Walla Walla, WA
(Date and Place)



(Signature)

8. Appendix

35.80A.010 Condemnation of blighted property. Every county, city, and town may acquire by condemnation, in accordance with the notice requirements and other procedures for condemnation provided in Title 8 RCW, any property, dwelling, building, or structure which constitutes a blight on the surrounding neighborhood. A "blight on the surrounding neighborhood" is any property, dwelling, building, or structure that meets any two of the following factors: (1) If a dwelling, building, or structure exists on the property, the dwelling, building, or structure has not been lawfully occupied for a period of one year or more; (2) the property, dwelling, building, or structure constitutes a threat to the public health, safety, or welfare as determined by the executive authority of the county, city, or town, or the designee of the executive authority; or (3) the property, dwelling, building, or structure is or has been associated with illegal drug activity during the previous twelve months. Prior to such condemnation, the local governing body shall adopt a resolution declaring that the acquisition of the real property described therein is necessary to eliminate neighborhood blight. Condemnation of property, dwellings, buildings, and structures for the purposes described in this chapter is declared to be for a public use.

35.80A.020 Transfer of blighted property acquired by condemnation. Counties, cities, and towns may sell, lease, or otherwise transfer real property acquired pursuant to this chapter for residential, recreational, commercial, industrial, or other uses or for public use, subject to such covenants, conditions, and restrictions, including covenants running with the land, as the county, city, or town deems to be necessary or desirable to rehabilitate and preserve the dwelling, building, or structure in a habitable condition. The purchasers or lessees and their successors and assigns shall be obligated to comply with such other requirements as the county, city, or town may determine to be in the public interest, including the obligation to begin, within a reasonable time, any improvements on such property required to make the dwelling, building, or structure habitable. Such real property or interest shall be sold, leased, or otherwise transferred, at not less than its fair market value. In determining the fair market value of real property for uses in accordance with this section, a municipality shall take into account and give consideration to, the restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee.

35.80A.030 Disposition of blighted property--Procedures. A county, city, or town may dispose of real property acquired pursuant to this section to private persons only under such reasonable, competitive procedures as it shall prescribe. The county, city, or town may accept such proposals as it deems to be in the public interest and in furtherance of the purposes of this chapter. Thereafter, the county, city, or town may execute and deliver contracts, deeds, leases, and other instruments of transfer.

35.80A.040 Authority to enter blighted buildings or property--Acceptance of financial assistance. Every county, city, or town may, in addition to any other authority granted by this chapter: (1) Enter upon any building or property found to constitute a blight on the surrounding neighborhood in order to make surveys and appraisals, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; and (2) borrow money, apply for, and accept, advances, loans, grants, contributions, and any other form of financial assistance from the federal government, the state, a county, or other public body, or from any sources, public or private, for the purposes of this chapter, and enter into and carry out contracts in connection herewith.