

Sue Jeffers is a legal consultant to the League. You may contact her at sjeffers@mml.org.

Ordinance permitting demolition of unsafe structure is constitutional

FACTS:

The city of Brighton demolished three unoccupied residential structures in accordance with provisions of a city ordinance. The ordinance stated that if a structure is determined unsafe as defined under certain standards and if the cost of repairs would exceed 100 percent of the true cash value of the structure before it was deemed unsafe, the repairs are presumed unreasonable and the structure is presumed to be a public nuisance that may be ordered demolished without providing the owner an option to repair it. Notice was provided to the owners of the structures of the determinations made by the city, ordering them to demolish the structures. The owners appealed. The city council concluded the structures were unsafe and ordered demolition. The owners then sued in circuit court claiming that their due process rights—procedural and substantive—were violated primarily on the basis that no opportunity to repair had been provided.



QUESTION 1:

Was the unreasonable-to-repair presumption a violation of the owners' substantive due process rights?

A: Answer according to the trial court, court of appeals and supreme court:

The trial court found that the owners' substantive due process rights had been violated since no option had been given to repair the structures. The court of appeals affirmed on the basis that unreasonable-to-repair standard was arbitrary and unreasonable. The Michigan Supreme Court reversed, noting that the touchstone of substantive due process is to protect against arbitrary exercise of governmental power. Applying the applicable standard, the Supreme Court found that the unreasonable-to-repair presumption was not arbitrary and had a reasonable relationship to the city's legitimate governmental interest of protecting its citizens from unsafe and dangerous structures.

QUESTION 2:

Does the ordinance in question violate the property owners' procedural due process rights?

A: Answer according to the court of appeals and supreme court:

Although the trial court did not rule on the issue, the court of appeals found that the property owners' procedural due process rights had been violated since they had not been given the right to repair. The Michigan Supreme Court reversed on the basis that the property owners had been given the right to an appeal before the city council, and the right to appeal the council's decision to the circuit court.

Bonner v City of Brighton, No. 146520 (April 24, 2014)

The Michigan Municipal League participated as an amicus curiae in the case.

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.