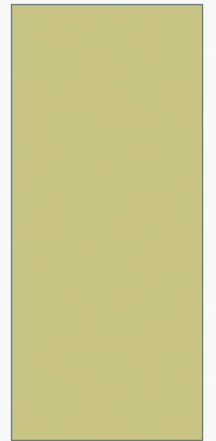


LEGAL NONCONFORMING USES

JASON J. KUBOUSHEK | IVERSON REUVERS
952.548.7206 | JASONK@IVERSONLAW.COM



NONCONFORMING USES

- Definitions
- Statutory Authority
- How Established
- How Extinguished and Limitations
- Equitable Estoppel

WHAT IS A NONCONFORMING USE?

- “A nonconforming use is a use of land that is prohibited under a current zoning ordinance but nonetheless is permitted to continue because the use lawfully existed before the ordinance took effect.”

STATUTORY LANGUAGE

- Minn. Stat. § 394.36, subd. 1 states “any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an official control under this chapter, may be continued, although the use or occupation does not conform to the official control. If the nonconformity or occupancy is discontinued for a period of more than one year, or any nonconforming building or structure is destroyed by fire or other peril to the extent of 50 percent of its estimated market value, any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy.”
- Minn. Stat. § 394.36, subd. 4, for residential and recreational property in counties, contains similar language.

PURPOSE

- The public policy behind that doctrine is to increase the likelihood that such uses will in time be eliminated due to obsolescence, exhaustion, or destruction. This in turn will lead to a uniform use of the land consistent with the overall comprehensive zoning plan.
- *Freeborn Cty. v. Claussen*, 295 Minn. 96, 99, 203 N.W.2d 323, 325 (1972)

2004 LEGISLATIVE CHANGES

- Subd. 1e. [NONCONFORMITIES.] Any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair ~~or~~, replacement, restoration, maintenance, but if or improvement, but not including expansion, unless:

PRIOR USE MUST BE LAWFUL

- Burden to prove lawfulness falls on the property owner.
 - “The party seeking to continue a nonconforming use bears the burden of proving that an exception is warranted.” *Northgate Homes, Inc. v. City of Dayton*, 126 F.3d 1095, 1100 (8th Cir. 1997)
- Passage of time does not matter.
 - A “mere lapse in time does not diminish a town’s ability to enforce its zoning ordinances.” *Stillwater Twp. v. Rivard*, 547 N.W.2d 906, 910 (Minn. App. 1996).

State v. Reinke, 702 N.W.2D 308 (MINN. APP. 2005)

- Landowner operated a dog breeding business prior to a township zoning ordinance prohibiting 3 or more dogs on the premises.
- “Under the nonconforming use exception, the use of real property must be ‘lawfully existing’ at the time of the zoning change.”



*AIM DEV. (USA), LLC V. CITY OF SARTELL, 946 N.W.2D
330 (MINN. 2020)*

- Legal nonconforming landfill received all its waste from a paper mill, which burned down.
- Supreme Court allowed it under a theory of replacement.
- Court relied on the dictionary's definition of replacement:
 - “to take the place of or fill the role of or to provide a substitute for.”

Paper Mill



EXPANSION OR REPLACEMENT?

Old Camper



New Park Model



WAIVER?

- The Court of Appeals held “a landowner does not surrender the right to continue a nonconforming use by obtaining a conditional-use permit unless the landowner validly waives that right.”
- Waiver requires: 1) knowledge of the right, and 2) intent to waive the right.

White v. City of Elk River, 840 N.W.2d 43 (Minn. 2013).

ABANDONMENT/DISCONTINUED

- A legal nonconforming use loses its protected status if the use is discontinued for more than a year, but it is a rebuttable presumption.

Meleyco P'ship No. 2 v. City of W. St. Paul, 74 N.W.2d 440, 442
(Minn. App. 2016)



DESTRUCTION

- A legal nonconforming use can lose its status if:
 - Destroyed by fire or other peril to the extent greater than 50% of its estimated market value, and
 - No building permit has been applied for within 180 days of when the property is damaged.

Minn. Stat. § 394.36, subd. 4.

NUISANCE & EMINENT DOMAIN

Nuisance

- Municipalities may abate public nuisances.

Eminent Domain

- A municipality may eliminate a nonconforming use with eminent domain.

EQUITABLE ESTOPPEL

- To prevail in an estoppel action against the government, the plaintiff “has a heavy burden of proof.” *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 292 (Minn. 1980).
- A plaintiff must establish
 1. there must be “wrongful conduct” on the part of an authorized government agent.
 2. the party seeking equitable relief must reasonably rely on the wrongful conduct.
 3. the party must incur a unique expenditure in reliance on the wrongful conduct.
 4. balance of the equities must weigh in favor of estoppel.

City of N. Oaks v. Sarpal, 797 N.W.2d 18, 25 (Minn. 2011).

OTHER CODE PROVISIONS

- Fire Code / Building Code



QUESTIONS?