

Nonconforming Uses

Packet Synopsis

Nonconformities can be lot size, structures and/or buildings or land use or a combination of any or all of these. They occur when new standards for land use are adopted or past standards modified which establish new criteria/standards for land use and development and are codified by the community - county, city, or township - as now applicable ordinance and which are overlaid upon past development.

A search of the literature on **nonconforming** land uses has been made. The following are included in this packet because they show that it is not just a Minnesota issue but also show how other communities are dealing with the issue.

Guide to Community Planning in Wisconsin, 4.4 Nonconformities and 4.4.6 approaches to Nonconformities, Brian W. Ohm, Department of Urban and Regional Planning, University of Wisconsin, Madison, WI, 1999 – Is written for a Wisconsin audience but gives good descriptions of nonconformities and suggests approaches for eliminating nonconformities. The author does point out that in the present planning concept of mixed use development, nonconformities can be desirable community land uses and that care must be exercised in approaching nonconformities.

Amortization provisions in zoning ordinances, Freedomcounts, www.freedomcounts.homestead.com – Is a description of the practices that the noted states follow for eliminating **nonconformities**. It specifically notes that Minnesota has eliminated “amortization” as a permitted method but does allow for purchase. The paper also cites some case law on the use of amortization, and it presents a model ordinance for dealing with **nonconformities**. Interestingly, *Freedomcounts* is a property rights group.

Section 110-195. Nonconforming uses of Structures or of Structures and premises in combination, City of Cape Canaveral, FL – Is an example of an actual city code and can also serve as a model ordinance in addressing **nonconformities**. The reader will note that it has been very carefully drawn or written.

Nonconforming Rights, Planning Department, City of Anchorage Alaska – Is a publication by the noted planning department for public education that defines various **nonconformities**, comments on popular misconceptions or misperceptions regarding “grandfathered” **nonconformities** and that “grandfathered” **nonconformities** are vested rights that “run with the property” and not with the ownership.

In addressing **nonconformities** and the management of the same, the thrust of the literature is that care and thought must be invested in the construction of ordinances and in planning the long term solutions. Be careful to not allow “loop holes”.

LEGAL NOTES

The authority of local governmental units to adopt zoning regulations is judicially well established and in Minnesota is legislatively authorized. The Minnesota Statutes granting counties the authority to zone is MS § 394.21 and for cities and townships is MS § 462.353. The respective statute sections permitting nonconformities to continue their existence is MS § 462.357 Subd. 1e. for cities and townships and MS § 394.22 Subd. 8. for counties.

Recognizing that the owners of **nonconforming** properties might wish to build upon or modify existing use, the Legislature provided for the granting of “variance” from the community’s existing ordinances via a formal process. For counties, MS § 394.22 Subd. 10. defines the meaning of “variance” and MS § 394.27 establishes the criteria and procedure for the granting of “variances” via a *board of adjustment*. For cities and townships, MS § 462.37 Subd. 6. defines and provides for the criteria and procedures for granting “variances” via a *board of appeals and adjustments*.

Recognizing that the local governmental units (LGU) may also desire to eliminate existing **nonconformities**, the Legislature provided several remedies to local governments for eliminating/discontinuing nonconformities. These were:

- Change of use by the property owner.
- Abandonment of use for one year or longer.
- Destruction by fire or other peril of at least 50% of value.
- Amortization or allowing the nonconforming use to continue for a period of time that would permit recovering the established or assessed value of or investment in the property by the owner.
- Purchase by the community.

Amortization was permitted under Minnesota statutes and frequently used by local governmental units especially to eliminate outdoor advertising devices when adopting ordinances controlling signage. It was also used by local governmental units to eliminate nonconforming land use(s) where they were in the way of the LGU’s implementation of its adopted land use plan and/or development or redevelopment plan.

The use of amortization by a LGU to implement its comprehensive plan was affirmed by the Minnesota Court of Appeals in C7-98-516, AVR, Inc., Appellant v. City of St Louis Park, Respondent. However in 1999, the Legislature prohibited the use by counties of amortization in its Session Laws of 1999, Chapter 96, Sections 1 and 2 (MS § 394.21) and for municipalities in Section 3 (MS § 462.357). *However, amortizations in place or in an official process on or before January 1, 1999 continued to be valid.*

In its 2001 Session Laws Chapter 174, the Legislature extended to municipalities and townships two new options for eliminating nonconformities that had been available previously only to counties. These are the options noted in MS § 462.357 Subd. 1e.:

- Abandonment of use for one year or longer.
- Destruction by fire or other peril of at least 50% of value.

Thus the current powers granted by Minnesota Statutes available to local units of government – county, municipality and township - to control or abate **nonconformities** are:

- Abandonment of use for one year or longer.
- Destruction by fire or other peril of at least 50% of value.
- Change of use by the property owner.
- Purchase by the community.