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Industrial Waste Landfill/Nonconforming Use: Minnesota Appellate Court Addresses Whether "Maintenance" Constitutes "Use"

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The Court of Appeals of Minnesota ("Court") in a December 7th Opinion addressed a zoning issue associated with an industrial waste landfill. See *AIM Development (USA), LLC v. City of Sartell*, 2020 WL 7134863.

The issue considered was whether the landowner discontinued its legal nonconforming use for more than one year.

AIM Development (USA), LLC ("AIM") began operating in 1984 a storage and disposal facility for nonhazardous, nontoxic industrial waste ("Landfill"). The Landfill was a permitted use at that time. However, in 1989 the City of Sartell ("Sartell") rezoned the property. Nevertheless, the Landfill continued operating as a legal nonconforming use from 1989 to 2012. The operation was considered a legal nonconforming use because it was collecting waste generated exclusively as part of the operation of an adjacent paper mill.

AIM bought the paper mill and Landfill properties in 2013. It sought authorization from the Minnesota Pollution Control Agency ("MPCA") to accept a wider variety of industrial in the Landfill. Further, it asked for the discontinuance of a limitation as to the source or nature of the waste.

Sartell opposed the request. It argued that such activity would alter the nature and source of waste. As a result, it was argued to be an unauthorized expansion of the legal nonconforming use.

AIM filed a Declaratory-Judgment against Sartell seeking a declaration that its proposed use of the landfill was within its legal nonconforming-use rights.

After resolving these issues, the Court on appeal addressed Sartell's argument that the legal nonconforming use had been discontinued.

AIM argued that it has continuously used the Landfill since purchasing the property in 2013. In the alternative, it argued that there are genuine issues of material fact precluding summary judgment.

Both the relevant Minnesota statutes and Sartell's ordinance were deemed by the Court to be drafted in terms of discontinued use rather than abandonment. The Court held that if the Minnesota Legislature and

Sartell intended to require a showing of abandonment (as opposed to discontinued use) they could have said so.

The Court held that they did not. As a result, it stated:

. . . The district court's conflation of a discontinued use and an abandoned use differs from the plain language of the statute and the ordinance, and is thus erroneous.

The Court reversed this portion of the District Court's Order.

Sartell had also argued that AIM discontinued using the property for more than one year. AIM responded that although it had not deposited waste in the Landfill since its purchase in 2013 it had:

. . . nevertheless "used" the Landfill by monitoring and maintaining it.

The Court notes that use and discontinuance are generally questions of fact. As a result, it held based on the record that it could not determine as a matter of law that AIM's maintenance-related activities constituted a continuation of its previous use. It held that genuine issues of material fact preclude summary judgment and affirmed the District Court.

A copy of the Opinion can be downloaded [here](#).