

Landfill/Nonconforming Use: Minnesota Appellate Court Addresses Ability of Purchaser to Continue Operation



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The Court of Appeals of Minnesota (“Court”) addressed in a March 4th opinion a landowner’s ability to continue a prior nonconforming use limited to the uses allowed under the terms of the land-use permit in effect at the time of the land-use permit transfer. See *AIM Dev. (USA), LLC v. City of Sartell*, 2019 WL 1006800.

The use at issue was the operation of a landfill.

The Court interpreted the relevant city and state zoning ordinances to hold that a landowner seeking to continue a prior permitted nonconforming use of property is bound by the uses allowed under the terms of the land-use permit in effect at the time of the property transfer to the landowner.

AIM Development (USA) LLC (“AIM”) purchased property in Sartell, Minnesota. It was previously utilized by Champion International Corp. as a paper mill. Champion had obtained a state permit for disposal of nonhazardous industrial waste on 70 acres of the property.

In 1989, the City of Sartell amended its zoning ordinance to prohibit industrial waste disposal within city limits. The landfill acquired renewed permits and continued operations as a legal nonconforming use subject to limitations on disposal to certain types of waste from the paper mill. The mill suffered significant fire damage in 2012. AIM purchased the property to salvage the buildings and flip the property for resale.

The Minnesota Pollution Control Agency (“MPCA”) reissued the land-use permit in June 2013, authorizing transfer of ownership to AIM. AIM subsequently submitted an application to the MPCA seeking authority to deposit waste generated from operations other than the paper mill into the landfill.

Sartell objected to AIM’s application. The company argued AIM never applied for or received local approvals and licenses for operation of the landfill. It further stated AIM’s proposal to deposit non-approved waste materials from outside sources constituted a dramatic change to the nature and source of waste and an expansion of the landfill area.

The MPCA released a public notice of intent to deny AIM’s permit application. AIM responded by filing suit against Sartell for a declaratory judgment requesting a determination it could use the landfill for other purposes.

The Stearns County District Court granted summary judgment in favor of Sartell. AIM appealed.

The question before the Court was whether AIM could accept waste from outside sources for disposal at the landfill. That practice fell outside the scope of the 2013 land-use permit but was permitted by the original 1984 permit.

In conducting its analysis, the Court first noted that a property use in existence at the time of an adverse zoning change may continue to exist unless removed or discontinued. Although the Court acknowledged that nonconforming uses run with the land, AIM failed to prove that its predecessors used the landfill as a commercial enterprise accepting both public and private waste. The Court held that AIM's proposal to accept waste from other waste sources constituted an impermissible expansion of the prior nonconforming use. It further recognized the public policy consideration that "nonconforming uses are to be restricted in a way which will be conducive to their ultimately being phased out."

A copy of the opinion can be found [here](#).