



City of Woodland

Meeting Agenda - Final

Planning Commission

City of Woodland Planning
Commission
c/o Community
Development Department
300 First Street
Woodland, CA 95695

530-661-5820

Thursday, December 15, 2016

6:30 PM

Council Chambers

Please Note: The numerical order of items on this agenda is for convenience of reference; items may be taken out of order. No new items shall begin after 10:30 pm unless unanimous consent exists to continue.

A. Call to Order

B. Roll Call

C. Pledge of Allegiance

D. Staff and Commissioner Comments

This is an opportunity for the Planning Commission members and staff to make comments and announcements to express concerns, or to request Commission's consideration of any items a Commission member would like to have discussed at a future Commission meeting..

E. Subcommittee Reports

F. Communications from the Public

This is an opportunity for the public to speak to the Commission on any item other than those listed for public hearing on the agenda. Speakers are requested to use the microphone in front of the Commission and to begin by stating their name, whether they reside in Woodland and the name of the organization they represent if any. The Commission may impose a time limit on any speaker depending on the number of people wanting to speak and time available for the rest of the agenda. In the event comments are related to an item scheduled on the agenda, speakers may be required to wait to make their comments until that item is considered.

G. Approval of Minutes

H. Public Hearing

[16-861](#)

SUBJECT: Appeal of Zoning Interpretation for 352 and 360 West Kentucky Avenue

DATE: December 15, 2016

INTRODUCTION

The purpose of this item is to consider an appeal of a Zoning Interpretation issued by the Zoning Administrator (Community

Development Director) for the property located at 352 and 350 West Kentucky Avenue (the "Property"). On September 20, 2016, the Zoning Administrator issued an interpretation regarding the Property, which was subsequently appealed to the Planning Commission by Lewis and Nicole Dennis. The Zoning Interpretation concerned the then-current use of the Property by 4Z Welding. Since the time Mr. and Mr. Dennis filed the appeal, 4Z Welding decided not to renew its lease with the Property owner, and the Property now appears to be vacant. It is staff's position that due to the current status of the Property and the highly fact-specific nature of nonconforming use provisions (as explained further below), the Zoning Interpretation issued by the Zoning Administrator is moot. As of this time, it is unknown how the owner may desire to use the Property, but a new proposed nonconforming use would be separately evaluated by City staff.

Attachments: [1 - Zoning Interpretation](#)

[2 - 352 W Kentucky - Appeal](#)

[3 - 4z Welding Business License Approval 2012](#)

[4 – Letters of Support of Appeal](#)

[5 - Letter From 4Z Welding](#)

[6 - North Park Unit No. 6 Subdivision](#)

[7 - Mun. Code Section 25-21-55, Nonconforming Uses](#)

[8 - Resolution](#)

I. Business Items

Items for Planning Commission discussion and/or action that do not require public hearing.

J. Staff or Commissioner Comments

Continued as needed.

Receive Absence Requests.

K. Adjournment

The Planning Commission of the City of Woodland encourages all parties interested in a matter scheduled to be reviewed, discussed and acted on at a meeting, to participate in the public discourse, which may include the submission of written comments and materials. The Planning Commission notifies the public that those materials received less than 24 hours before a meeting date and time may not be able to be considered completely. Further, the Planning Commission encourages interested parties to attend the meeting to discuss any matter of concern and to explain their comments more fully.



Legislation Details (With Text)

File #: 16-861 **Version:** 1 **Name:**
Type: Public Hearing Item **Status:** Agenda Ready
File created: 12/6/2016 **In control:** Planning Commission
On agenda: 12/15/2016 **Final action:**
Title: SUBJECT: Appeal of Zoning Interpretation for 352 and 360 West Kentucky Avenue

DATE: December 15, 2016

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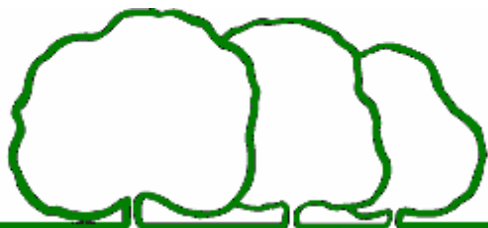
Sponsors:

Indexes:

Code sections:

Attachments: [1 - Zoning Interpretation](#)
[2 - 352 W Kentucky - Appeal](#)
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Date	Ver.	Action By	Action	Result
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City of Woodland

MEMORANDUM

TO: Members of the Woodland Planning Commission

FROM: Jeff Ballantine, Associate Planner

SUBJECT: Appeal of Zoning Interpretation for 352 and 360 West Kentucky Avenue

DATE: December 15, 2016

INTRODUCTION

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BACKGROUND

The City annexed the Property on April 16, 1991. At the time of annexation, the Property was pre-zoned as Single Family Residential (R-1), and there was an existing industrial use operating on the Property. Based on a review of the LAFCO staff report for this annexation, the owner’s intention was for this Property, along with adjacent properties, to be developed with single family residences. Annexation and the resultant R-1 zoning resulted in the industrial use becoming a legal non-conforming use. Prior to annexation, the Property was zoned Light Industrial (M-1) in Yolo County. The Property currently has a Medium Density General Plan land use designation.

Since the City annexed the Property in 1991, numerous industrial businesses have occupied and used the Property. The Property has never been used for a single-family residential use, and it is immediately adjacent to other industrial and commercial uses on West Kentucky Avenue. Due to the legal non-conforming nature of the Property, any new nonconforming use of a building may be changed to another nonconforming use if the zoning administrator determines that the use is of the same or of a more restrictive nature (Sec. 25-21-55(c)(2) of the Woodland Municipal Code). Over the years, the City has placed certain restrictions on some of these businesses and has not allowed other businesses to locate at this Property, due to the legal nonconforming nature of the Property.

In September 1998, the City Council approved a single-family subdivision located immediately to the east of the Property, referred to as North Park Unit 6. North Park Unit 6 was constructed, and residential properties now immediately abut the Property and other industrial properties along West Kentucky Avenue. As far as City staff can determine, a residential project has never been proposed for the Property.

ADJACENT LAND USES AND ZONING

<u>DIRECTION</u>	<u>EXISTING USE</u>	<u>ZONING</u>
North	Kentucky Avenue and Industrial	R-1/P-D
South	Single Family Residences	R-1

East
West

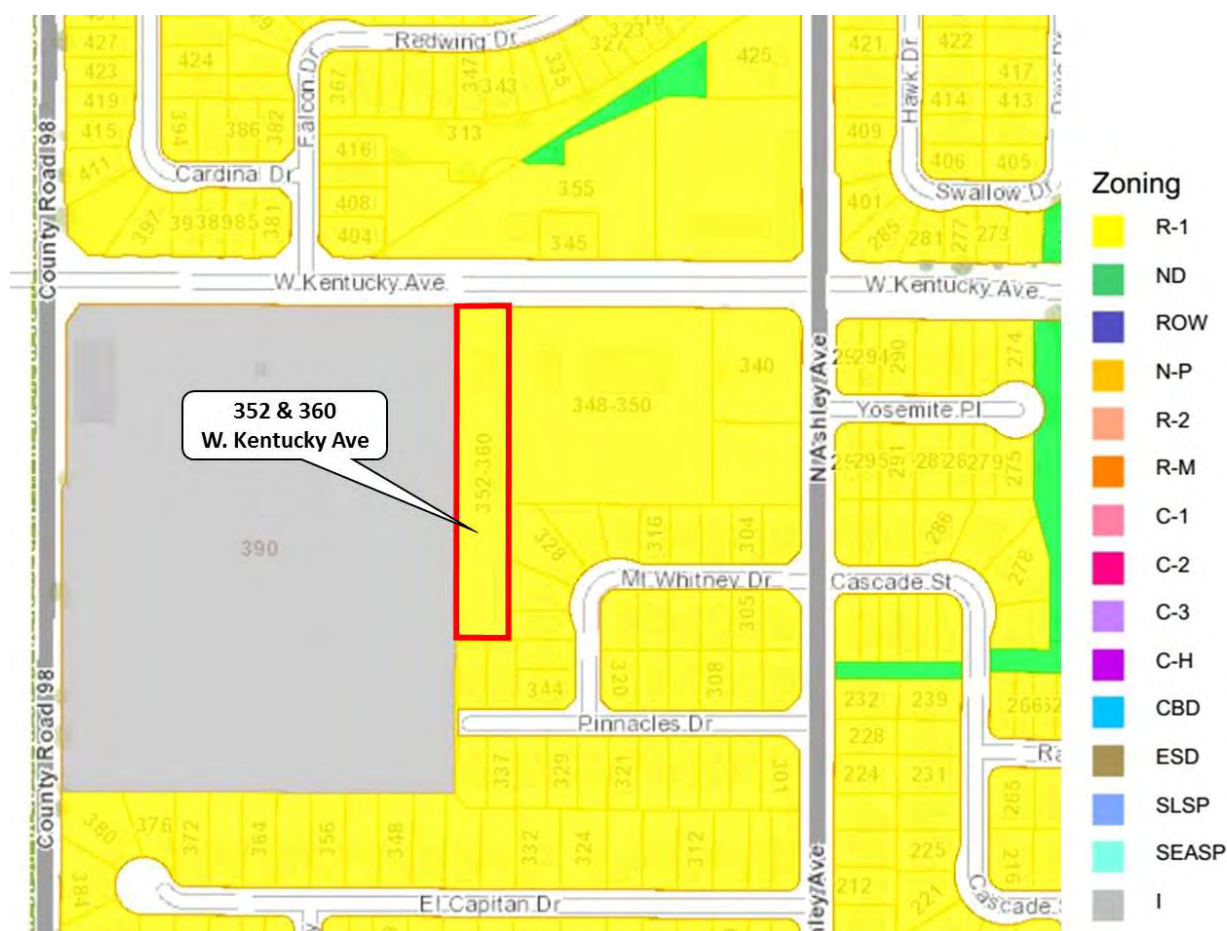
Auto Repair and Welding Shops
Vacant

R-1
I/P-D

Aerial Map



Zoning Map



Nonconforming Uses

A legal nonconforming use is one that was valid when originally brought into existence but became nonconforming by subsequent regulation. In other words, when a use complies with the existing zoning code but the zoning for the property changes, the use becomes a “legal nonconforming” use as it no longer complies with the zoning for that property. Here, the industrial use originally complied with the County’s zoning, but upon annexation the Property’s zoning changed to residential. The industrial use in existence at the time no longer complied with the City’s zoning, rendering it a legal nonconforming use. See Woodland Mun. Code § 25-21-55(a).

A city’s zoning code may not compel the immediate discontinuance of an otherwise lawfully established use or business. A zoning code usually provides for a period of time to eliminate nonconforming uses. Additionally, expanding or enlarging a nonconforming use is generally prohibited. However, the guiding document when addressing nonconforming uses is the Zoning Code as nonconforming uses are not addressed in state statutes.

The City’s Zoning Code concerning nonconforming use is sparse on detail and could and should be updated to clarify terms and provide more structure concerning abandonment of uses and expansion of uses and possibly provide for the amortization of nonconforming uses. Section 25-21-55 concerning nonconforming uses is attached to this report as Attachment 7 and is very brief. Section 25-21-55 contains four subparagraphs, only two of which are applicable here, subdivisions (a) and (d). Subdivision (a) provides that unless otherwise provided, any use of land, a building, or a structure lawfully existing at the time of the adoption of the Zoning Code may be continued even though the use may not conform to the Zoning Code or the zone in which it is located. Section 25-21-55(b) discusses the regulation of nonconforming buildings and structures and provides

that no building or structure that is nonconforming may be added to or enlarged unless the building or structure is made to conform to the applicable zoning regulations. It further provides that a nonconforming building may not be moved to any other lot or any other portion of the lot unless the move will result in conformance with the Zoning Code. This section also allows for the restoration of damaged buildings in certain scenarios. Section 25-21-55(c) concerns nonconforming use of buildings but not of land or the actual use.

Finally, subdivision (d), entitled “Vacancy,” states the following:

Any nonconforming use of land and/or building or structure which becomes vacant and remains unoccupied for a continuous period of one year shall not thereafter be occupied except by a use which conforms to the use regulations of the zone in which it is located.

The Zoning Code regulates the use and development of property within City boundaries and includes a list of uses that are permitted or conditionally permitted in identified zoning land use categories. The Code also sets forth performance standards that provide general guidance to minimize health and safety and nuisance concerns. A use that was lawfully existing at the time of the adoption of new Zoning Regulations may continue, but does have additional limitations on the use of that property, consistent with Section 25-21-55.

The City, however, does not have a specific process set forth in the Zoning Code for evaluating a change in a nonconforming use because a permit is not required. The only means that the City has had to evaluate a changed use is when a business owner submits a business license to the City. The City is permitted to issue a business license for every kind of business transacted in the City that is consistent with state and federal law, and the City may require a tax or fee for issuance of the license. However, a business license is not a land use permit. *See generally* Woodland Mun. Code Ch. 13, Art. 1.

Historic Use of the Property

Since the Property was annexed into the City, several industrial businesses have used the Property, and other properties on West Kentucky have similarly remained in industrial uses. City staff has reviewed its records and also consulted with the Property owner concerning the history and use of the Property since annexation. The City understands that the Property has been almost continually leased since February of 1992 for an industrial use of some kind. The history of the Property as best as City staff has been able to discern it is as follows:

- **February 26, 1992-March 28, 2004:** The Property owner entered into a lease with Wahl’s Trucking, Inc. Wahl’s Trucking operated its trucking and trucking repair business from the Property during this time.

July 27, 1995. The City issued a building permit to Wahl’s Trucking to construct a 50’ by 75’ carport structure on the Property. The City has no records indicating one way or another whether the nonconforming status of the Property was evaluated or even considered.

- **June 1, 2004- May 31, 2010:** The Property owner entered into a lease with 4Z Welding.

January 18, 2005. 4Z Welding entered into a sublease with Bill’s Repair Service. The City did not grant Bill’s Repair Service a business license because the proposed truck repair service use was not the same as the immediately prior use as a trucking company use.

May 25, 2006 - June 30, 2007: 4Z Welding entered into a sublease with La Tourangelle,

which used the Property for the warehousing of supplies such as corrugate, tin cans, and caps used at a production facility located off-site. La Tourangelle also used the Property for storing and shipping finished goods, with approximately 5 to 7 trucks per week accessing the Property. The Community Development Department placed the following conditions on the business license: no storage outdoors, no retail sales on site, and hours shall be limited from 8 am to 5 pm.

August 13, 2008 - September 30, 2009: 4Z Welding entered into a sublease with D&S Ventures, a trucking business that intended to use the shop to store trucks and equipment.

July 20, 2009: 4Z Welding entered into a sublease with Welltec for Welltec to use the two existing buildings and to install a temporary trailer as an office. The City placed the following conditions on Welltec via its business license: low volume traffic and no receipt of materials that require a semi-truck to deliver; no outdoor storage; gravel the lot; no idling in back half of property; no storage over 6 feet in height.

- **June 1, 2010:** The Property owner entered into a lease with Tick Tack Towing. The City informed Tick Tack Towing that its proposed business would not be allowed because it would not be able to store U-Haul trailers in the rear half of the Property.
- **November 1, 2010 - October 31, 2016:** The Property Owner entered into a new lease with 4Z Welding Services, Inc. in 2010. Uses for the Property included warehouse storage, big rig and equipment parking, storage of finished goods, and parking in the rear building.

October 4, 2012: 4Z Welding Services applied for a business license, and City staff placed the following restrictions on the Property (see Attachment 3):

- No outside storage of materials will be allowed beyond the second building closest to the residential neighborhood (360 W. Kentucky Ave.).
- A layer of gravel shall be applied to vehicle travel and parking areas, as well as exposed dirt areas.
- Vehicles shall not be allowed to idle in the back half of the property beyond the second building closest to the residential neighborhood (360 W. Kentucky Ave.).
- Vehicles shall not be stored or parked within 10 feet of the masonry wall.
- 4Z Welding Services will need to update its current business license with the new addresses.
- Contact the Building and Fire Departments prior to using the buildings for code compliance and possible inspections.
- Failure to comply with these requirements could be grounds to terminate the use of the property.

October 27, 2015: 4Z Welding submitted a new building license application to the City and described the business use as welding, repair, and fabrication. City staff placed an additional restriction on the Property that, to the extent possible, large truck access, loading, off-loading, and turn around shall occur on the front half of the Property. While there were discussions between the tenant and City, there are no records of 4Z Welding actually obtaining a business license. 4Z Welding has decided not to renew its lease with the Property owner, citing pressure it and its employees have received from an adjacent residential neighbor regarding working in the rear of the Property and business operation hours (see Attachment 5). As of October 31,

2016, 4Z Welding is no longer leasing the Property, and the Property appears to be vacant.

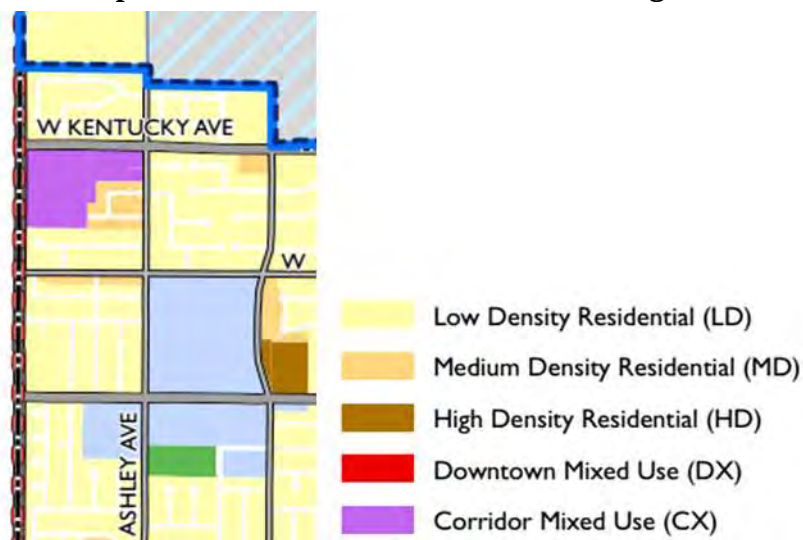
History of Adjacent Residential Development

The residential subdivision to the south and east of the Property, called North Park Unit No. 6 (Subdivision Map No. 4332), consists of 37 single family residential lots. The City Council approved the Final Subdivision Map on September 1, 1998. One of the Conditions of Approval (Condition #9, see Attachment 6) for this subdivision required a “masonry wall along lots adjacent to industrial property to north and west.” This condition specifically references the Property (352 and 360 West Kentucky Avenue) and requires that a masonry wall be built on the property line that separates the proposed residential lots and the Property. This masonry wall was constructed and remains in place still.

Future General Plan Land Use Designation

The City is currently in the process of updating the General Plan, and the Draft 2035 General Plan (http://cityofwoodland.org/gov/depts/cd/woodland_general_plan_2035/default.asp) has been prepared. The proposed Land Use Diagram (Page LU 2-23) proposes that the Property, along with adjacent properties along the southern edge of West Kentucky Avenue, have a Corridor Mixed Use (CX) land use designation (see figure below). The Corridor Mixed Use designation, particularly along Kentucky Avenue, is intended to allow a range of uses, including commercial service, light industrial, and agricultural industrial. If the City Council approves the Draft 2035 General Plan and this land use designation for the Property remains as Corridor Mixed Use, the City Council will be required to amend the Zoning Ordinance to specify which uses are allowed within this zone, conditionally allowed, or not allowed. Thus, it is theoretically possible for the zoning of the Property to change to permit the types of uses that have existed on the Property as legal nonconforming uses.

Proposed 2035 General Plan Land Use Diagram



ZONING ADMINISTRATOR INTERPRETATION:

Over the past year or so, the City began receiving complaints from the adjacent residents, Lewis and Nicole Dennis, regarding activities on the back portion of the Property. Mr. and Mrs. Dennis complained about dust and noise from the Property. City staff initially contacted the current tenant, 4Z Welding, and then engaged the Property owners in the discussion. During the course of the discussion, the Property owners included in these discussions an individual who is interested in purchasing the Property. Due to questions raised and the

complexity of the issues involved, City staff devoted a significant amount of time and effort to researching the use of the Property as well as the history of it. Upon reaching a determination of the land use issues, City staff discussed the best way to inform all interested parties of that determination. Ultimately, City staff determined that rendering a Zoning Interpretation was the fairest way to provide all interested parties (Property owner, neighbors, and interested parties) notice of the City's interpretation, as it would provide all interested parties a determination in writing as well as an opportunity to appeal.

On September 20, 2016, Ken Hiatt, the City's Community Development Director, acting as the Zoning Administrator, made a zoning interpretation regarding the legal nonconforming industrial use of 352 and 360 West Kentucky Avenue. Mr. Hiatt made that interpretation in writing and sent a letter to the current Property owner, with copies mailed to the adjacent property owners notifying them of this interpretation (see Attachment 1, Zoning Interpretation).

The Zoning Administrator in the Zoning Interpretation reached the following conclusions:

1. The then-existing industrial use was a legal nonconforming use in the Single Family Residential Zone.
2. Both the existing buildings and the land can be used for industrial uses, in their entirety, as long as such use is consistent with or less intense than the existing industrial use, and such use complies with all City requirements and polices, including all Industrial Performance Standards and nonconforming use requirements.
3. The City's Zoning Code includes performance standards for industrial uses requiring fencing and landscaping to be adequate to screen development from adjacent residential zones along the rear and side property lines.
4. Because the Property was being used for industrial purposes and the zoning is R-1, both the industrial buildings and industrial use of the Property are considered legal non-conforming. Thus, neither new structures nor the physical expansion of existing structures for industrial use are permitted on the Property. Reuse of the building(s) must be similar to the use in existence at the time the Property was rezoned to R-1.
5. If the use on the Property changes, the use would be allowed so long as the Zoning Administrator finds that the new use is of the same or of a more restrictive nature than the previous use. However, the evaluation of whether a new or modified industrial use satisfies both the performance standards and non-conforming use criteria requires a fact-specific determination to be made on an individual basis.

The Zoning Interpretation also encouraged the Property owner and any future owner or tenant to work with the adjacent residential neighbors on ways to reduce dust, fumes, glare, noise, vibration, aesthetic, and/or other potential impacts. The letter also provides that any person dissatisfied with the decision may appeal the decision to the Planning Commission within ten days of the decision and that the appeal will be conducted pursuant to Section 25-28-40 of the City's Municipal Code.

The City sent the Zoning Interpretation to both the Property owner and immediately adjacent property owners of the Property informing the owners of the Zoning Interpretation, enclosing the Zoning Interpretation, and informing them of their ability to appeal.

NATURE OF APPEAL

On September 26, 2016, Lewis and Nicole Dennis, who own a single family house with a backyard abutting the

Property, filed an appeal of the Zoning Administrator's interpretation (see Attachment 2, Appeal). Per Section 25-28-40 of the City's Zoning Ordinance, Mr. and Mrs. Dennis appealed within ten days of the action. Mr. and Mrs. Dennis appealed the Zoning Administrator's Interpretation on the following grounds:

1. No notification of public hearing or Zoning Interpretation;
2. Existing nonconforming use has not been consistent; and since it has been vacant for more than 12 months, it should have lost its nonconforming status;
3. The use was allowed to expand by building an additional new structure, and an existing nonconforming use cannot be intensified; and
4. Restrictions placed on the Property on October 4, 2012 for the re-use of the Property should be adhered to and followed.

The Municipal Code provides that if an appeal is filed, the Planning Commission shall, at its next regular meeting after the filing of an appeal, set a date for a public hearing for the appeal. To allow time to put the necessary materials together for a public hearing, the Planning Commission during its October 6, 2016 meeting set the public hearing for November 17, 2016.

On November 7, 2016, the City received a voluminous amount of material from Mr. Dennis on behalf of him and his wife (see Attachment 2). Because of the voluminous amount of material submitted and the specific arguments raised in the materials, the Planning Commission opened the public hearing on November 17, 2016 and continued the public hearing to December 15, 2016. Each of the arguments set forth in the November 7, 2016 transmittal from the appellants is set forth below.

1. "The zoning interpretation reverses a long held policy of the Community Development Department and the City of Woodland that a nonconforming use which once reduced to a use with a lesser intensity or impact on the neighborhood cannot then be reverted back to the pre-existing more intensive use at a later date. Re-establishing and making more permanent a nonconforming use which by the nature of a nonconforming use(s) should be brought into compliance with the current zoning as quickly as possible." Also, the Zoning Interpretation's conclusion that "the existing buildings and land (at 352 West Kentucky) can be used for industrial uses in their entirety" and "the yard may be used as long as required industrial performance standards are met" is incorrect.

Response. The City agrees that a nonconforming use may be replaced with a lesser intense use. The appellants do not cite the Zoning Interpretation's sentence in its entirety. The Zoning Interpretation states that "the existing buildings and land can be used for industrial uses in their entirety as long as such use is consistent with or less intense than the existing industrial use and such use complies with all city requirements, including all Industrial Performance Standards (Section 25-18-50) and nonconforming use requirements (Section 25-21-55)." Currently, the Property is not being used as the tenant decided not to renew its lease. Therefore, any proposed new use that is industrial in nature will be evaluated to determine the intensity of its use. There is nothing in the Zoning Code requiring that a nonconforming use be the exact same use, and the courts have permitted changes to nonconforming uses, even if the city's zoning code is silent on the issue. *Endara v. City of Culver City*, 140 Cal. App. 2d 33, 38 (1956).

Concerning, the impact on the neighborhood, having an impact on the neighborhood is not a criterion in the City's Zoning Code concerning nonconforming uses. With respect to this Property, the appellants

have filed complaints with the City regarding the former tenant's use of the Property, primarily concerning noise and dust from trucks and other vehicles that drive through the back portion and turn around on the Property. Whether the Property will have a new industrial use and whether operation of a new use will affect the appellants are both unknown at this time.

The appellants may be obliquely referring to the City's past practice of imposing land use conditions on the Property via issuance of a business license. As stated above, the City does not have land use authority to place conditions on properties via the business license. Also as stated above, staff has concluded as a result of this process that an update to the Zoning Code is needed in order to better address and assess nonconforming uses in the City.

2. The Zoning Interpretation, if it remains, "will negatively impact the adjacent residential neighborhood in multiple ways that the zoning code and general plan are intended to protect." Additionally, the Interpretation will also have impacts on other areas around the City that are also adjacent to existing nonconforming uses.

Response: As explained above, the specific impacts to the adjacent neighbors is not a criterion for determining whether to permit a nonconforming use to be allowed on a piece of property. The appellants do not further explain why or what type of impacts will be caused by this particular Zoning Interpretation, which concerns only the Property.

3. The Property should have lost all rights to continue as a nonconforming use because it was vacant for more than one year. The appellants state that Wahl's Trucking stopped operating in 2004 following the owner's passing. A new use did not begin on the Property until May 26, 2006, when La Tourangelle, Inc. began its warehouse business. The Property should have lost all of its rights concerning a nonconforming use because the Property was vacant for more than one year. Additionally, La Tourangelle, Inc. ceased operation on October 19, 2006, and a new use did not begin until September 30, 2008.

Response: The City's Zoning Code provides, "Any nonconforming use of land and/or building or structure which becomes vacant and remains unoccupied for a continuous period of one year shall not thereafter be occupied except by a use which conforms to the use regulations of the zone in which it is located." Woodland Mun. Code § 25-21-55(d). This provision is in the Municipal Code because immediately compelling the discontinuance of nonconforming uses imposes a hardship and is of doubtful constitutionality. *City of Los Angeles v. A.I. Gage*, 127 Cal. App. 2d 442, 454 (1954). The City, however, does not have any records indicating that the Property was not being used during the gaps in time cited by the appellants. As discussed above, the lease history of the Property indicates that there was not a gap in time of one year or longer.

4. The City issued a building permit on August 29, 1995, for a new 50' by 75' structure in violation of the Woodland Municipal Code.

Response: The City issued a building permit in 1995, after the Property had already been zoned R-1. The City does not have any records indicating one way or another whether City staff at the time considered whether the use was conforming or not. The City also does not know whether the building permit was issued as an accessory to an existing non-conforming use or whether the structure intensified the then-existing use. Now that the issue has brought to the City's attention, City staff is determining how to treat the structure. However, the fact that the building permit was issued does not change the

City's interpretation regarding the overall use of the Property.

5. In the appellants' initial appeal, they complained about not receiving notice of a public hearing or the filed Zoning Interpretation. They do not appear to have addressed that issue in the documents submitted to the City on November 7, 2016.

Response: Assuming that the appellants continue to raise this issue, the City promptly provided notice upon issuance of the Zoning Interpretation. The appellants obviously received notice because they filed this appeal. Accordingly, by appealing the Zoning Interpretation and receiving notice of the public hearing, this issue has been waived.

Additionally, Mr. and Mrs. Dennis submitted a number of excerpts from land use treatises and other sources.

ANALYSIS OF FUTURE USES

As explained above, the prior tenant decided not to renew its lease, effective October 31, 2016. Thus, the Property is currently not being used for an industrial use. The City does not know how the current Property owner or potential future owner may desire to use the Property. However, any industrial use would be required to comply with the City's Zoning Code concerning both performance standards and nonconforming use provisions.

The City's Zoning Code allows the storage of RV, boat, Truck and trailer storage as a permitted use. However, the Property owner or lessee would be required to apply for and receive a conditional use permit for the storage of building materials, heavy equipment storage, service and repair yard, or a contractor storage yard.

The following are some of the City's Zoning Code performance standards for industrial uses that are applicable to the Property:

- Fencing and landscaping adequate to screen development from adjacent residential zones along rear and side property lines.
- Outside storage of solid wastes and containers for solid waste, containers, merchandise, or other items or goods awaiting pickup, sale, or other disposition shall be prohibited except when screened to the satisfaction of the planning commission or the zoning administrator.
- Additional landscaping may be required in order to provide an aesthetically pleasing entrance to the city, if appropriate.
- Front landscaping area shall extend to the valley gutter.
- A conditional use permit shall be required for assembly, fabricating, manufacturing, processing or storage of goods, materials or products in buildings or enclosed yards which may create dust, fumes, noise, odors, smoke or vibration in volumes to be offensive or objectionable beyond the premises or for any use which put a significant demand on city services (e.g., water, sewer, etc.)
- Light sources shall be directed and shielded so as to not illuminate neighboring residential areas.
- Additional requirements in the City's Municipal Code and General Plan, such as those pertaining to nuisances (Chapter 14A of the Municipal Code) and to noise (General Plan).

Additionally, the Zoning Code provides that a nonconforming use of a building may be changed to another nonconforming use, which, in the opinion, of the zoning administrator, is of the same or of a more restrictive nature. The Zoning Code, however, does not have similar language concerning a nonconforming use of land. It is reasonable to assume, however, that the same standard would apply.

ENVIRONMENTAL ASSESSMENT STATUS

The appeal, as well as the Zoning Administrator Interpretation, are exempt from the requirements of CEQA because neither are considered a “Project” as described in section 15378 of the CEQA Guidelines since neither has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

PUBLIC NOTIFICATION

Public notice advertising for the public hearing on this project was prepared by the Community Development Department in accordance with notification procedures set forth in the City of Woodland’s Municipal Code and State Planning Law. Two methods of public notice were used:

- Legal notice was published in the Woodland Daily Democrat on or before Saturday, November 5, 2016.
- Notices were mailed to all property owners within 300 feet of the project site on Wednesday, November 2, 2016.

Copies of the factual staff report for the proposed project have been on file at City Hall since December 9, 2016.

RECOMMENDED ACTION AND NEXT STEPS

Staff recommends approval of the Zoning Administrator interpretation by making an affirmative motion as follows:

Motion: Move that the Planning Commission adopt Resolution No. PC 16-_____ denying the appeal of a Zoning Interpretation made by the Zoning Administrator on September 20 2016 regarding the allowed industrial use on 1.213 acres at 352 and 360 West Kentucky Avenue (APN 064-010-002).

As an alternative, the Planning Commission may affirm the appeal and overturn the Zoning Interpretation, in which case City staff will return to the Planning Commission on a later date for adoption of a resolution affirming the appeal.

As an additional alternative, the Planning Commission may deem the appeal moot in light of the changed circumstances regarding use of the Property, in which case the City would also return to the Planning Commission at a later date for adoption of a resolution determining such.

Any decision of the Planning Commission may be appealed to the City Council within 14 days, pursuant to Section 25-31-45 of the Woodland Municipal Code.

ATTACHMENTS:

Attachment 1 - Zoning Interpretation

Attachment 2 - Appeal (including additional information submitted by appellants on November 7, 2016)

Attachment 3 - 4Z Welding Business License Approval

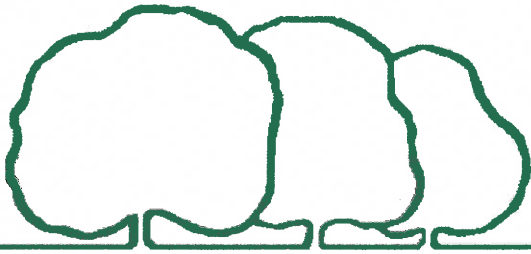
Attachment 4 - Letters of Support of Appeal

Attachment 5 - Letter from 4Z Welding

Attachment 6 - North Park Unit No. 6 Subdivision

Attachment 7 - Municipal Code Section 25-21-55, Nonconforming Uses

Attachment 8 - Resolution



City of Woodland

Community Development Department 300 First Street Woodland CA 95695 (530) 661-5820 (530) 406-0832 Fax

September 22, 2016

RE: 352 & 360 West Kentucky Avenue, Zoning Compliance

Dear Property Owner,

This letter is to inform you of a zoning interpretation that has been made pertaining to 352 and 360 West Kentucky Avenue. This zoning interpretation pertains to the legal nonconforming industrial use of this property. Please see the attached zoning interpretation letter addressed to the owner of these properties, for specifics regarding this interpretation.

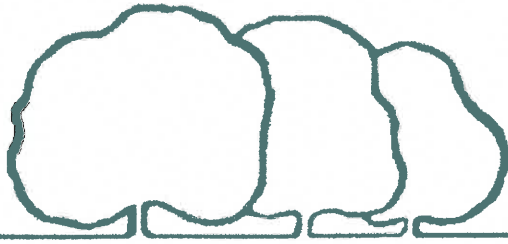
Pursuant to Section 25-28-40 of the City of Woodland Zoning Ordinance, zoning interpretations by the Zoning Administrator are subject to a 10-day appeal period. Appeals must be submitted in writing along with the filing fee to the City's Community Development Department, located at 300 First Street on or before September 7, 2017.

If you have any questions, please do not hesitate to contact myself at Ken.Hiatt@cityofwoodland.org or (530) 661-5820.

Sincerely,



Ken Hiatt
Community Development Director



City of Woodland

Community Development Department 300 First Street Woodland CA 95695 (530) 661-5820 (530) 406-0832 Fax

September 20, 2016

Brenda Siemering
352 West Kentucky Avenue
Woodland, CA 95695

RE: 352 & 360 West Kentucky Avenue, Zoning Compliance

Dear Ms. Siemering,

Per your request, this letter serves as an interpretation of the City of Woodland Zoning Code with regard to Non-Conforming Uses, Industrial Uses, and the Industrial Performance Standards for the property located at 352 and 360 West Kentucky Avenue (the "Property"). The City has reviewed the Zoning Code as well as the history and use of the Property and determined that the existing industrial use is a legal nonconforming use in the Single Family Residential Zone (R-1). At the time Yolo County LAFCO approved the annexation of the Property on April 16, 1991, an industrial use was in operation. However, the R-1 residential zone also applied upon annexation. Thus, an industrial use was operating in a residential zone when the Property was annexed to the City.

Based on our review of City records, we believe that the Property has been in continuous, or near continuous use, as an industrial use since its annexation to the City. Consequently, it is our conclusion that the existing buildings and land can be used for industrial uses in their entirety as long as such use is consistent with or less intense than the existing industrial use and such use complies with all City requirements and policies, including all Industrial Performance Standards (Section 25-18-50) and nonconforming use requirements (Section 25-21-55).

The City's performance standards for industrial uses includes, among other requirements, that fencing and landscaping must be adequate to screen development from adjacent residential zones along the rear and side property lines and that light sources shall be directed and shielded so as to not illuminate neighboring residential areas. A copy of Section 25-18-50 is enclosed with this letter.

As stated above, due to the industrial use and the R-1 zoning, the industrial buildings and industrial use of the Property are considered legal non-conforming. As such, pursuant to Section 25-21-55, new structures or the physical expansion of existing structures for industrial use is not allowed on the Property. Any reuse of the building(s) must be similar to the use in existence at the time the Property was rezoned to R-1. The yard area may be used as long as required industrial performance standards are met. A change of use may be permitted provided the Zoning Administrator can find that the new use is of the same or of a more restrictive nature (Sec. 25-21-

55(c)(2)). However, the evaluation of whether a new or modified industrial use satisfies both the performance standards and non-conforming use criteria requires a fact-specific determination that would be made on an individual, case by case basis.

Due to the Property's immediate adjacency to existing single-family residential uses, the City encourages you and any potential future owner or tenant of the Property to communicate with and work with the adjacent residential neighbors to implement measures to reduce dust, fumes, glare, noise, vibration, aesthetic, and/or other potential impacts.

This letter serves as an interpretation by the Zoning Administrator, consistent with Article 31 of the City's Zoning Code. Any person dissatisfied with any decision of the Zoning Administrator may appeal the decision to the Planning Commission at any time within ten days after the rendition of the decision by the Zoning Administrator. Said appeal shall be conducted pursuant to procedures set forth in Section 25-28-40 of the City's Municipal Code.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ken Hiatt', with a long horizontal line extending to the right.

Ken Hiatt
Community Development Director

Sec. 25-18-50. - Performance standards.

- (a) Front landscaping area shall extend to the valley gutter.
- (b) A conditional use permit shall be required for assembly, fabricating, manufacturing, processing or storage of goods, materials or products in buildings or enclosed yards which may create dust, fumes, noise, odors, smoke or vibration in volumes to be offensive or objectionable beyond the premises or for any use which put a significant demand on city services (e.g., water, sewer, etc.)
- (c) Fencing and landscaping adequate to screen development from adjacent residential zones along rear and side property lines.
- (d) Outside storage of solid wastes and containers for solid waste, containers, merchandise, or other items or goods awaiting pickup, sale, or other disposition shall be prohibited except when screened to the satisfaction of the planning commission or the zoning administrator.
- (e) Additional landscaping may be required in order to provide an aesthetically pleasing entrance to the city, if appropriate.
- (f) Light sources shall be directed and shielded so as to not illuminate neighboring residential areas.

(Amended during the March 2009 supplement.)

**Appeal of Zoning Interpretation by City Staff dated September 20, 2016
for 352 West Kentucky Avenue.**

We are appealing the Zoning Interpretation completed by City Staff on September 20, 2016 for the property at 352 West Kentucky Avenue.

This zoning interpretation reverses a long held policy of the Community Development Department and the City of Woodland that a nonconforming use which once reduced to a use with a lesser intensity or impact on the neighborhood cannot then be reverted back to the pre-existing more intensive use at a later date. Re-establishing and making more permanent a nonconforming use which by the nature of a nonconforming use(s) should be brought into compliance with the current zoning as quickly as possible.

Per the zoning interpretation letter City staff concluded "that the existing buildings and land (at 352 West Kentucky) can be used for industrial uses in their entirety" and "the yard area may be used as long as required industrial performance standards are met." We will show this determination is incorrect, goes against general planning guidelines and case law.

If this zoning interpretation is allowed to stand it will negatively impact the adjacent residential neighborhood in multiple ways that the zoning code and general plan are intended to protect. This interpretation will also have impacts on other areas around Woodland that are also adjacent to existing nonconforming uses.

History of Property/Uses/Violations

- Property annexed into the City of Woodland on April 16, 1991 and zoned as R-1 (Single Family Residential)
- In order to establish an existing nonconforming status, the business/use must have existed before the change of zoning was initiated and it must have been in full compliance with all land use regulations at the time of annexation. The burden of proof rests with the landowner. There are no records, proof or verification of the legality of the existing nonconforming status of this property as a trucking company at the time of annexation. Therefore it has not been proven that the existing nonconforming status is/was legal.

(Attachment 1)

Zoning News – American Planning Association (APA) – March 1997
Changing or Expanding Nonconforming Uses – By: Mark S. Dennison

Pg. 1

Establishment of Nonconforming Use

"What is required to establish a nonconforming use as lawful? The land use must meet two basic requirements:

- It must have existed before the prohibitory regulation was enacted.
- It must have been lawful when commenced.

The burden of proving the extent or existence of a nonconforming use rests on the landowner, who must establish both of the above points (*R.K. Kibblehouse Quarries v. Marlborough Township Zoning Hearing Board*, 630 A.2d 937 (Pa. Commw. 1993); *City of Peoria v. Danz* 585 N.E.2d 1207 (Ill. App. 1992); *Town of Ithaca v. Hill*, 571 N.Y.S2d 609 (App. Div. 1991))"

"The use in question must have been in full conformance with all applicable land-use regulations in effect when the activity began. (*City of Dublin v. Jinks*, 615 N.E. 2d 690 (Ohio App. 1992.))"

(Attachment 2)

Longtin's - California Land Use, 2nd edition, 1987

Pg. 376-377

3.81 ESTABLISHING THE NONCONFORMING USE

"3.81[1] Actual Vested Use Required. In order to establish a nonconforming use which may legally continue in nonconformance to later established zoning regulations, the use or structure must be "actual" or in existence, and must be established to the extent that the right to continue becomes "vested." 43 Ops. Cal. Atty. Gen. 144, 147 (1964)."

3.81[2] Lawful Use Required. In addition to the requirement that the use or structure be "actual" and established to the point that the right becomes "vested," the use or structure must also be "lawful" at the time of enactment of the subsequent ordinance rendering the use nonconforming. *Melton v. City of San Pablo* (1967) 252 CA2d 794, 804, 61 CR 29.

3.81[3] Burden of Proof. The party asserting a right to a nonconforming use has the burden of proof to establish the lawful and continuing existence of the use at the time of enactment of the ordinance. *Melton v. City of San Pablo* (1967) 252 CA2d 794, 804, 61 CR 29.

- Building permit issued on 08/29/95 for a new 50' x 75' structure. Expanding an existing nonconforming use in violation of the Woodland Municipal Code.

Section 25-21-55(b)- Nonconforming Buildings and Structures.
(2) Additions and Enlargements. No building or structure nonconforming as to use, lot area, or yard width or depth regulations, may be added to or enlarged unless such nonconforming building or structure and the additions and enlargements thereto and the use thereof are all made to conform to the regulations of the zone in which it is located.

- Wahl's Trucking ceased operation in 2004 (March 28, 2004) with the owner's passing and verified verbally in a meeting we had with the owner and City staff on October 26, 2016.
- Next use opened two years later on May 26, 2006. (La Tourangelle, Inc.). In violation of WMC Section:

25-21-55 (d) – Vacancy. Any nonconforming use of land and/or building or structure which becomes vacant and remains unoccupied for a continuous period of one year shall not thereafter be occupied except by a use which conforms to the use regulations of the zone in which it is located.

Property at 352 W. Kentucky should have lost all rights to existing nonconforming status due to being vacant for more than one year.

- La Tourangelle, Inc. – Business license applied for on 05/26/06 and issued on 06/12/06 for a less intensive use of warehousing of Gourmet Oil within the existent building. Conditions placed on business by Planning Department.
 1. Sign permit needed
 2. No storage outdoors
 3. No retail sales onsite
 4. Hours indicated on application 805
- 10/19/06- Business closed. Business relocated to new location (per notes on business license application).
- La Tourangelle, Inc. ceased operation on 10/19/2006 Next use opened more than a year later on 09/30/2008. In violation of WMC Section:

25-21-55 (d) – Vacancy. Any nonconforming use of land and/or building or structure which becomes vacant and remains unoccupied for a continuous period of one year shall not thereafter be occupied except by a use which conforms to the use regulations of the zone in which it is located.

Property at 352 W. Kentucky should have lost all rights to existing nonconforming status due to being vacant for more than one year.

- D&S Ventures – Business license approved on 09/30/2008 for Trucking – using the shop to store their trucks and equipment. Approved with conditions.
- Welltec – 07/20/09 - Proposed reuse of the property by Bill Weber.
Proposed reuse approved with conditions by Planning Department.
Storage of all materials shall be inside of the two existing buildings. No outside storage will be allowed.
Obtain business license

NO BUSINESS LICENSE ISSUED

- 4Z WELDING SERVICES – Proposed reuse of property by Randy Eyraud.
10/02/12 – Letter from Randy Eyraud for reuse.
10/04/12 – Approval letter from planning.
Approved with conditions.
NO BUSINESS LICENSE ISSUED
- 4Z Welding Services – (Welding – Repair and fabrication) –Randy Eyraud
10/27/15 – Business license submitted
11/09/15 – Approved with conditions (Cindy Norris)
- Business was an extension of a nonconforming use and required a C.U.P.
 - Extension of non-conforming use.
Sec. 25-21-55 (c)(1) – Extension of Use. A nonconforming use may not be extended to other parts of a building unless authorized by the zoning administrator.

INDUSTRIAL LAND USES

- PER 25-18-10-Table 3-Permitted Uses
E) Repair, Service and Incidental Sales
7) Shop uses:
Welding (c) = Conditional use permit required if abutting a residential zone

NO CONDITIONAL USE PERMIT HAS BEEN ISSUED

ZONING INTERPRETATION

The property at 352 W. Kentucky Avenue after annexation was initially a trucking company (Wahl's Trucking), when the trucking company no longer existed and the less intensive use of warehousing (La Tourangelle, Inc.) was brought into the property. The existing nonconforming use of trucking was therefore abandoned, and the newly established less intensive use became the use of the property. This should have now been the threshold for which the same or less restrictive use in the future being brought into the property is judged. This is a move towards conformance with the current R-1 zoning for the property and consistent with prior enforcement of nonconforming cases in the past in the City of Woodland (See Attachment 3– Code Enforcement Case Summary #CE03100064).

The following are case law and planning/land use interpretations of reputable sources regarding the issue of changing a nonconforming use to a less intensive use and it not allowing the use to be reverted back to the more intensive existing nonconforming use at a later date.

Case law/Interpretations/Examples

(Attachment 1)

Zoning News – American Planning Association (APA) – March 1997

Changing or Expanding Nonconforming Uses – By: Mark S. Dennison

Pg. 1

Establishment of Nonconforming Use

“What is required to establish a nonconforming use as lawful? The land use must meet two basic requirements:

- It must have existed before the prohibitory regulation was enacted.
- It must have been lawful when commenced.

The burden of proving the extent or existence of a nonconforming use rests on the landowner, who must establish both of the above points (*R.K. Kibblehouse Quarries v. Marlborough Township Zoning Hearing Board*, 630 A.2d 937 (Pa. Commw. 1993); *City of Peoria v. Danz* 585 N.E.2d 1207 (Ill. App. 1992); *Town of Ithaca v. Hill*, 571 N.Y.S2d 609 (App. Div. 1991)”)

“The use in question must have been in full conformance with all applicable land-use regulations in effect when the activity began. (*City of Dublin v. finkes*, 615 N.E. 2d 690 (Ohio App. 1992.))”

Pg. 1-2

Limitations on Change

"A zoning ordinance can proscribe a new nonconforming use or one of a different character. The questioned use may not be grandfathered from the operation of new zoning restrictions if:

- Fails to reflect the nature and purpose of the preexisting nonconforming use
- Is different in quality or character as well as in degree
- Is different in kind in its effect on the neighborhood where it is located (*Keith v. Saco River Corridor Commission*, 464 A.2d 150 (Me. 1983))"

"Others allow changes to a less intensive nonconforming use or one that would be less detrimental to the neighborhood's character than the existing nonconforming use. (McLaughlin v. City of Brockton, 587 N. E. 2d 251 (Mass. App. 1992)) These ordinances are designed to achieve eventual eradication of nonconforming uses through gradual change to uses that are "more appropriate" to the district. (Kopietz v. Zoning Board of Appeals for the City of the Village of Clarkston, 535 N.W.2d 910 (Mich. App. 1995))."

(Attachment 2)

Longtin's – California Land Use, 2nd Edition, 1987

Pg. 377-379

3.82 EXPANSION AND ALTERATION OF NONCONFORMING USES

"3.82[1] General Rule Prohibiting Expansion of the Use...Given the objective of zoning to eliminate nonconforming uses, the California courts have generally followed a strict policy against their extension or enlargement. As stated by the court in *Paramount Rock Co. v. County of San Diego* (1960) 180 CA2d 217, 228, 4 CR 317 "The ultimate purpose of zoning is to confine certain classes of building and uses to particular localities and to reduce all nonconforming uses with the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected. Any change in the premises which tend to give permanency to, or expands the nonconforming use would not be consistent with this purpose."

3.82[2] Change in Use. Some zoning ordinances provide that a nonconforming use may be changed to a use that is similar to present nonconformity or is more restrictive in nature...changes or additions to the existing use which are dissimilar, tend to enlarge it, or tend to make it more permanent, are not protected. City of Los Altos v. Silvey (1962) 206 CA2d 606, 609, 24 CR 200 (disallowing change from bottling wines to manufacture of boats and trailers).

(Attachment 4)

The Law of Nonconforming Uses

By, Clifford H. Bloom Law, Weather & Richardson, P.C.

WHAT CONSTITUTES A "CHANGE OF USE".

Such ordinances will normally allow a change to use that is more appropriate to the District in which it is located that the existing nonconforming use. An example would be a change of use from an office use that generated significant traffic, such as a doctor's office, to an office use which generated very little traffic, such as an insurance broker that did not deal with the general public . . . such permission is usually freely given on the basis that the "New Use" is a move toward the eventual elimination of a non-conformity.

(Attachment 5)

CORNELL UNIVERSITY LAW SCHOOL

NON-CONFORMING USE

Also known as a prior nonconforming use (PNU). This exists when a zoning code is changed. But a parcel of land that is already being used for something disallowed by the new zoning code is "Grandfathered In" (is allowed to continue). For example, if a neighborhood zoning is changed to residential, a corner grocery store may be allowed to continue to operate. The PNU will generally end when the use of the land is changed. (So if the grocery store closes, the new zoning code will bar a new store from moving in.)

(Attachment 6)

TOURO LAW: 2010 – Abandonment, Discontinuance and Amortization of nonconforming uses: lessons for drafters of zoning regulation.

By, Patricia E. Salkin

Pg. 500

8. Can an abandoned use be converted to a less intensive nonconforming use?

"Typically zoning ordinances provide that abandoned uses may resume or be converted to a less intensive nonconforming use. Courts prohibit the conversion back to the more intensive use" (Taylor v. Zoning Board of Appeals of City of Evanston, 375 Ill. App. Ct. 2007). "Likewise, courts have not allowed the reversion to a previously abandoned more expansive nonconforming use once it has been abandoned" (Town of Orange v. Shay, 68 Mass. App. Ct. 358 (Mass App. Ct. 358 (Mass. App. Ct. 2007))

(Attachment 7)

Nonconforming Structures, Uses and Lots – A Discussion of the Intent and Practice of California Land Use and Planning Law Governing Nonconforming Structures, Uses and Lots

City of Tustin Community Development Department, Sept. 2011

Pg. 4-5

“To ensure that a community’s adopted vision and goals are fully accomplished overtime, regulatory provisions are put into place to require nonconforming structures, uses, or lots to be made conforming or ensure their replacement over time. Any change in a structure, use or lot that gives permanency to, or expands the nonconformity would not be consistent with this purpose and are typically prohibited.”

“As a general rule, nonconforming regulations presume that a nonconformity is detrimental to the public interest (Health, Safety, Morals or Welfare), and that the nonconformity needs to be brought into conformance with the current code at some point in time.”

(Attachment 8)

APA – American Society of Planning Officials Information Report, No. 2, May, 1949

Elimination of Non-Conforming Uses

Pg. 3

“The most commonly accepted restriction is that no nonconforming use may be extended. A nonconforming use usually may be extended throughout a building, but additions may not be made to the building, or the nonconforming use may not extend to another building. Other restrictions include...Refusing to allow a nonconforming use to be reestablished once a more highly restricted use has been substituted, and refusing to permit a re-establishment of a use if the use or building has been discontinued or abandoned for a specified period of time.”

(Attachment 9)

William & Mary Law Review – Volume 6, Issue 1, Article 2 – January 1965

The Termination of Nonconforming Uses - By: Marvin M. Moore

Pg. 2

“Zoning ordinances would commonly forbid a property owner to substitute one nonconforming use for another (Young, supra note 1, at 692). Sometimes an exception would be made to permit a change to a use more restrictive in nature.

However, the exception was usually conditioned on there being no structural alteration.”

(Attachment 10)

Pace Law School – Land Use Law Center
Beginner’s Guide to Land Use Law

Pg. 25

Changing to Another Nonconforming Use

“The consequence of finding that a material change in use has occurred, is to deem the prior nonconforming use abandoned and, therefore terminated.”

“It has been held, however that it is not only a change in volume of business conducted but in the character of that business that determines whether one business use is a continuation of another. This is true despite the generic similarity between the old and new proposed use.”

(Attachment 11)

Missouri Law Review – Volume 31, Issue 2, Spring 1966, Article 7

Zoning-Abatement of Prior Nonconforming Uses: Nuisance Regulations and Amortization Provisions – By: David M. Roberts

Pg. 4

“If the property owner has abandoned or discontinued his nonconforming use, it is within the power of the municipality to forbid a resumption of that use...”

“It also has been held that the change from one nonconforming use to another evidences an intent to abandon the former, which thereafter may not again be resumed”

(1 Antieau, op. cit. supra note 19, § 7.07; 2 Rathkopf, op. cit. supra note 11, § 61-13. Most zoning ordinances are “cumulative,” and the landowner is given the power to change to a *lesser* nonconforming use. This is a very practical provision, since it tends to bring the nonconformity more into harmony with its surroundings. See Reno, *Non-Euclidian Zoning: The use of the Floating Zone*, 23 MD. L. Rev. 105 (1963)).

(Attachment 12)

Case Western Reserve Law Review – Volume 12, Issue 4, 1961

Substitution of Nonconforming Uses

“Another method of regulating a nonconforming use is by refusing to allow a property owner to substitute one nonconforming use for another. In *State ex rel. Clifton-Highland Company v. City of Lakewood* (124 Ohio St. 399, 178 N.E. 837 (1931)), the Ohio Supreme Court held that the city could refuse to permit the property owner to substitute a new nonconforming use for an existing nonconforming use. In the *Stegner case* (120 Ohio St. 418, 166 N.E. 226 (1929)), the court upheld such a regulation even though that ordinance prohibited the substitution of a use of greater conformity than the prior nonconforming use.

In view of the above decisions, it would seem to be logically clear that if a property owner substitutes one nonconforming use for another, he has terminated his right to claim any nonconforming use (*Dorman v. Baltimore*, 187 Md. 678, 51 A.2d 658 (1947); *Town of Darien v. Webb*, 115 Conn. 581, 162 Atl. 690 (1932); *Branch v. Powers*, 210 Ark. 836, 197 S.W.2d 928 (1946)). Such a position is also supported by the general policy relating to nonconforming uses – only uses existing on the effective date of the ordinance are protected, and even those uses are to be terminated as rapidly as possible. In effect, then, the substitution of nonconforming uses is actually a termination of the prior nonconforming use through abandonment.

(Attachment 13)

MSU Extension

Understanding nonconformity: Are you ‘grandfathered’ in?

Pg. 1

“Substitution of one nonconforming use for another is usually allowed if the change is more conforming or no less conforming, allowing for the property to move closer to conformity over time with district requirements.”

Summary

The property at 352 West Kentucky Avenue is zoned R-1 and is to eventually become a residential use compatible with the surrounding residential homes.

However, it has been operating as an Industrial use or uses as an existing nonconforming use since annexation. There have been multiple violations on the site and on at least two occasions the industrial use ceased for more than 12 months and the use should have been required to be brought into compliance with the R-1 zoning that the land belongs. That was not done and Industrial uses were allowed to continue on the site. Once the use on the site was reduced to a less intensive use of warehousing in 2006 (La Tourangelle, Inc.) which was contained only within the building. Conditions were placed on that business and future businesses which restricted the use of the back lot to protect the adjacent neighbors and allow industrial businesses to continue to operate at this location. This was a move towards bringing the property towards compliance. The adjacent neighbors felt this was fair and consistent with the code. In 2015 the use of the back lot increased and with it noise and dust began to be an issue. Complaints were filed with code enforcement at the City regarding these issues. The property was placed on the market around 2015 and the property owners and a perspective buyer requested that City staff do a zoning interpretation of the property for clarification of the existing nonconforming status. The adjacent neighbors were not a part of this zoning interpretation and only found out about this by letter on September 22, 2016 notifying us that a zoning interpretation had been completed and we had 10 days to file for an appeal. If the interpretation was consistent with the past enforcement of existing nonconforming properties in the City of Woodland, we would not have filed an appeal. However by stating that the "land can be used for industrial uses in their entirety" and "the yard area may be used as long as required industrial performance standards are met." are not consistent with the ordinance and the land use goal "to achieve eventual eradication of nonconforming uses through gradual change to uses that are "more appropriate" to the district"(attachment 1). Instead the zoning interpretation gives permanency to the existing nonconforming use and is not consistent with land use law.

We request that the Planning Commission have City staff reevaluate the zoning interpretation and do more research on the property in question before making a policy decision which affects multiple families and property owners who live near this existing nonconforming property. The current interpretation will affect our properties in a negative fashion by decreasing property values and increasing the nuisances in the neighborhood. The General Plan recognized that the close proximity of Industrial activities to residential area creates land use conflicts. "By separating Industrial activities from Residential areas, Woodland has avoided many land use conflicts (pg. 14)." And that is why the Industrial uses are mainly located in the Northeastern part of town. The general plan also states that, "The City shall attempt to ensure that decisions concerning land use and development are not detrimental to the positive character and identity of Woodland's existing Residential neighborhoods." We hope that this policy is considered when making your determination.

Thank you in advance for your time in this matter.

ATTACHMENT 1

Changing or Expanding Nonconforming Uses

By Mark S. Dennison

The ultimate purpose of zoning ordinances is to confine certain classes of uses and structures to certain areas. The law generally frowns on nonconforming uses because they undermine that goal. The general rule is this: If prior to the adoption of an original zoning ordinance—or a subsequent amendment or revision—property was being used for a then-lawful purpose that the ordinance prohibits and renders nonconforming, the property owner acquires a vested right to continue the nonconforming use.

Thus, the policy of zoning ordinances is to secure the gradual or eventual elimination of nonconforming uses. To further this goal, state zoning enabling acts confer powers on local zoning bodies to impose restrictions on the expansion or change of nonconforming uses. This issue of *Zoning News* evaluates the circumstances under which a change or expansion of a nonconforming use is considered illegal under most zoning ordinances. (Where case citations are missing in the text, they appear in the accompanying sidebar.)

Establishment of Nonconforming Use

What is required to establish a nonconforming use as lawful?

The land use must meet two basic requirements:

- It must have existed before the prohibitory regulation was enacted. [See, for example, *Heyman v. Zoning Hearing Board of Abington Township*, 601 A.2d 414 (Pa. Commw. 1991).]
- It must have been lawful when commenced. [See, for example, *Oceanview Homeowners Association, Inc. v. Quadrant Construction & Engineering*, 680 P.2d 793 (Alaska 1984); *Hooper v. City of St. Paul*, 353 N.W.2d 138 (Minn. 1984).]

The burden of proving the extent or existence of a nonconforming use rests on the landowner, who must establish both of the above points. [See, for example, *R.K. Kibblehouse Quarries v. Marlborough Township Zoning Hearing Board*, 630 A.2d 937 (Pa. Commw. 1993); *City of Peoria v. Danz*, 585 N.E.2d 1207 (Ill. App. 1992); *Town of Ithaca v. Hill*, 571 N.Y.S.2d 609 (App. Div. 1991).]

A use that was begun in violation of the ordinance in effect at the time cannot gain status as a preexisting and lawful nonconforming use. [See, for example, *Lantos v. Zoning Hearing Board of Haverford Township*, 621 A.2d 1208 (Pa. Commw. 1993).] The use in question must have been in full conformance with all applicable land-use regulations in effect when the activity began. [See, for example, *City of Dublin v. Jinks*, 615 N.E.2d 690 (Ohio App. 1992).] In a few cases, the landowner's failure to obtain a certificate of occupancy when the use was established under a former zoning ordinance has prevented the property from acquiring nonconforming use status under subsequent amendments to the ordinance that prohibited the

use. [See, e.g., *Bernstein v. District of Columbia Board of Zoning Adjustment*, 376 A.2d 816 (D.C. App. 1977).]

However, where the invalidity of a use lies in the fact that the landowner failed to obtain a business license or to comply with requirements imposed by an ordinance other than the one regulating land use, such invalidity generally will not preclude the property from acquiring nonconforming use status. [See, for example, *Carroll v. Hurst*, 431 N.E.2d 1344 (Ill. App. 1982) (failure to obtain license for operation of automobile junkyard as required by state motor vehicle code did not defeat nonconforming use status under zoning ordinance).]

Limitations on Change

A zoning ordinance can proscribe a new nonconforming use or one of a different character. The questioned use may not

CASES ON CHANGE OR EXPANSION OF NONCONFORMING USE

❖ Permissible Changes

Types of changes that the courts have deemed permissible:

- DiBlasi v. Zoning Board of Appeals of the Town of Litchfield*, 624 A.2d 372 (Conn. 1993) (change in use from a construction office to an adult probation office).
- Hall v. Brazzale*, 624 A.2d 916 (Conn. App. 1993) (change from a secondary storage site to the sole storage site for construction business).
- Limley v. Zoning Hearing Board of Port Vue Borough*, 625 A.2d 54 (Pa. 1993) (change from private club to public restaurant and bar).
- Appeal of Schneider*, 521 A.2d 528 (Pa. 1987) (change of use of property from storage and repair of general hauling trucks to storage and repair of empty trash trucks).
- Aboud v. Wallace*, 463 N.Y.S.2d 572 (App. Div. 1983) (change from doctor's office to professional lobbying group's office).
- Kastendike v. Baltimore Association for Retarded Children*, 297 A.2d 745 (Md. App. 1972) (change from nursing home for treatment of elderly and alcoholics to home for treatment of retarded children).

❖ Impermissible Changes

Types of changes that the courts have deemed impermissible:

- Gilmore v. County of DuPage*, 597 N.E.2d 1111 (Ill. App. 1991) (change from chiropractor's office to dentist's office).
- Boivin v. Town of Sanford*, 588 A.2d 1197 (Me. 1991) (change from auction barn to antique business).
- Tier Oil Corp. v. Egan*, 472 N.Y.S.2d 505 (App. Div. 1984) (change from gasoline service station to combination gas station and convenience store).
- Stevens v. Town of Rye*, 448 A.2d 426 (N.H. 1983) (change from automobile garage to bath shop and plumbing supplies showroom).
- Board of Zoning Appeals v. McCulley*, 300 S.E.2d 790 (Va. 1983) (change from auto body shop to metal forge and machine shop).

(continued on page 3)

be grandfathered from the operation of new zoning restrictions if it:

- fails to reflect the nature and purpose of the preexisting nonconforming use
- is different in quality or character as well as in degree
- is different in kind in its effect on the neighborhood where it is located. [See, for example, *Keith v. Saco River Corridor Commission*, 464 A.2d 150 (Me. 1983).]

To qualify as a continuation of an existing nonconforming use, a proposed use must be similar to the original use. (See, for example, *Boivin v. Town of Sanford*.) However, it need not be identical. [See, for example, *Pappas v. Zoning Board of Adjustment of the City of Philadelphia*, 589 A.2d 675 (Pa. 1991) (pizza restaurant with seating for 40 customers was similar to preexisting nonconforming use as sandwich shop that had very limited customer seating and sold primarily take-out food).]

In determining whether a new use bears adequate similarity to an existing nonconforming use, courts evaluate various factors, including:

- the extent to which the current use reflects the nature and purpose of the original use;
- whether the use is different in character, nature, and kind;
- whether the current use has a substantially different effect on the neighborhood.

[See *Zachs v. Zoning Board of Appeals*; *Knwilton v. Browning-Ferris Industries*, 260 S.E.2d 232 (Va. 1979); *Town of Bridgewater v. Chuckran*, 217 N.E.2d 726 (Mass. 1966).]

Determining whether a questioned use meets this test necessarily involves consideration of the specific facts of each case. [See, for example, *Mason v. Crooker-Mulligan*, 570 A.2d 1217 (Me. 1990).] For instance, in *Ka-Hur Enterprises, Inc. v. Zoning Board of Appeals of Provincetown*, 661 N.E.2d 120 (Mass. App. 1996), the court evaluated whether a nonconforming use as a fuel oil storage and distribution depot was terminated by a change in use. The property at issue was used as a fuel oil storage and distribution facility before the city enacted a 1951 zoning ordinance that zoned it for residential use. This use continued until 1979, when the Nauset Trawling Company acquired the property and operated a fishing business and truck repair shop on the premises that lasted until August 1987. The evidence showed that Nauset used the property primarily to operate its fishing business and to garage and repair trucks used for hauling fish.

While there was evidence that Nauset continued to store fuel in the two tanks on the premises and to make deliveries to its fishing vessels, out-of-town fishing boats, and a few homes of its employees, neighboring property owners testified that they never saw any fuel oil trucks enter or leave the premises. The town's building inspector also testified that, on his numerous visits to the property from 1985 to 1987, he never saw any evidence that the property was being used as a fuel storage and distribution facility. The court was unpersuaded by the fact that the property continued to be used for incidental storage of fuel oil. It concluded that a substantial change in use had occurred during Nauset's ownership, and the property lost its nonconforming use status.

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On the other hand, some courts have held that incidental storage activities that were part of the preexisting nonconforming use may be continued despite a change or discontinuance of the property's primary nonconforming business use. [See, for example, *Toys R Us v. Silva*, 639 N.Y.S.2d 881 (Sup. Ct. 1996); *Hendgen v. Clackamas County*, 849 P.2d 1135 (Ore. App. 1993).]

Some zoning ordinances allow a change in use provided that the new use would have been permitted in the most restrictively zoned district in which the original use was allowed. [See, for example, *Prudence v. Town of Ithaca Zoning Board of Appeals*, 599 N.Y.S.2d 749 (App. Div. 1993).] Others allow changes to a less intensive nonconforming use or one that would be less detrimental to the neighborhood's character than the existing nonconforming use. [See, for example, *McLaughlin v. City of Brockton*, 587 N.E.2d 251 (Mass. App. 1992).] These ordinances are designed to achieve eventual eradication of nonconforming uses through gradual change to uses that are "more appropriate" to the district. [See, for example, *Kopietz v. Zoning Board of Appeals for the City of the Village of Clarkson*, 535 N.W.2d 910 (Mich. App. 1995).]

Zoning ordinances seldom contain an absolute prohibition against all expansions of nonconforming uses, and some courts, most notably in Pennsylvania, have ruled that local ordinances cannot impose such an absolute prohibition.

Limitations on Expansion

The rationale for prohibiting a change from one nonconforming use to another applies also to expansions of preexisting nonconforming uses. The only nonconforming use entitled to protection is the one that existed when passage of the zoning ordinance made it nonconforming. Allowing the nonconforming use of land and buildings to be expanded or enlarged would further exacerbate the offense to the general community and undermine the public policy that nonconforming uses should eventually be eliminated and made to conform to the zoning laws. [See, for example, *SLS Partnership v. City of Apple Valley*.]

Zoning ordinances seldom contain an absolute prohibition against all expansions of nonconforming uses, and some courts, most notably in Pennsylvania, have ruled that local ordinances cannot impose such an absolute prohibition. [See, for example, *Gatti v. Zoning Hearing Board of Salisbury Township*, 543 A.2d 622 (Pa. Commw. 1988).] Most zoning ordinances permit some expansion. Permissible expansions typically include an increase in business volume that does not include an enlargement of the size of a nonconforming building or an extension of the nonconforming use within the confines of the same nonconforming lot or building. Impermissible expansions commonly include structural alterations that increase the size of a nonconforming building or its expansion onto additional land that was not formerly used for that purpose. The applicable zoning ordinance determines which expansions are deemed either lawful or illegal.

ATTACHMENT 2

LONGTIN'S
CALIFORNIA
LAND USE

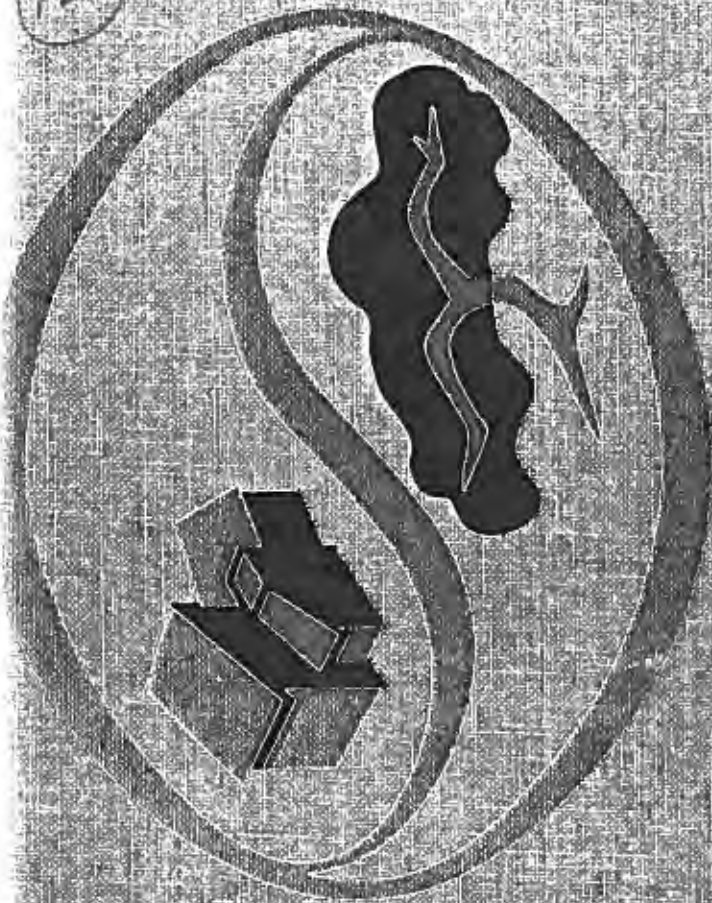
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1

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2



Longtin's california land use

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an ordinance declaring nonconforming gravel pits a nuisance and requiring their elimination within 60 days. In an action to enjoin operation of the ordinance, the court held that the granite quarry operation was not a nuisance, and that the landowner was entitled to continue operation as a matter of right, without obtaining a conditional use permit. On the other hand, if the landowner did not have a legal nonconforming use and therefore could not maintain it as a matter of right, the zoning authority may condition any extension of the use. See also *Edmonds v. County of Los Angeles* (1953) 40 C2d 642, 651 (landowner unlawfully expanded nonconforming use of property from 20 trailer sites to 50 sites. The county permitted the expansion for three years provided the entire trailer park operation was terminated at the end of that period. The court upheld the condition.)

3.81 ESTABLISHING THE NONCONFORMING USE

3.81[1] Actual Vested Use Required. In order to establish a nonconforming use which may legally continue in nonconformance to later established zoning regulations, the use or structure must be "actual" or in existence, and must be established to the extent that the right to continue becomes "vested." 43 Ops. Cal. Atty. Gen. 144, 147 (1964). Non-use, such as pre-existing and continuous abandonment, does not amount to actual use so as to establish a nonconforming use. *Hill v. City of Manhattan Beach* (1971) 6 C3d 279, 286, 98 CR 785. Additionally, the "actual" use or structure must be established to a sufficient extent that the landowner's rights become "vested" to continue such use. See *Spindler Realty Corp. v. Monning* (1966) 243 CA2d 255, 269, 53 CR 7 (holding that the preparation of land for the construction of buildings was insufficient to establish vested rights in a landowner constituting a nonconforming use. Owner also made other substantial expenditures). See also *Anderson v. City Council* (1964) 229 CA2d 79, 88-89, 40 CR 41 (purchase of property with an intent to make a particular use of it does not give buyer vested right against future zoning regulations); and *Paramount Rock Co. v. County of San Diego* (1960) 180 CA2d 217, 4 CR 317 (obtaining permit, pre-construction planning, award of construction contracts, obtaining mortgage financing held insufficient to give landowner a vested right to expand nonconforming use). But see *Griffin v. County of Marin* (1958) 157

CA2d 507 (issuance of building permit, property survey, drafting of plans and specifications, and employing a contractor held sufficient to vest right to use property as a service station although county subsequently rezoned property to single family residential). For a detailed discussion of vested rights as against subsequently enacted zoning regulations, see §1.90 et seq.

3.81[2] Lawful Use Required. In addition to the requirement that the use or structure be "actual" and established to the point that the right becomes "vested," the use or structure must also be "lawful" at the time of enactment of the subsequent ordinance rendering the use nonconforming. *Melton v. City of San Pablo* (1967) 252 CA2d 794, 804, 61 CR 29. In *Melton*, the court held that plaintiff's use was not lawfully established in that, from the beginning, it operated in violation of the city's building codes and continued in violation thereof after the zoning ordinance was enacted. Thus, plaintiff was not entitled to the benefit of the doctrine of pre-existing nonconforming use. See also *Mang v. County of Santa Barbara* (1960) 182 CA2d 93, 100, 5 CR 724 wherein the court held that excavation and grading without a required permit was an illegal act that did not allow application of the nonconforming use doctrine.

3.81[3] Burden of Proof. The party asserting a right to a nonconforming use has the burden of proof to establish the lawful and continuing existence of the use at the time of the enactment of the ordinance. *Melton v. City of San Pablo* (1967) 252 CA2d 794, 804, 61 CR 29.

3.82 EXPANSION AND ALTERATION OF NONCONFORMING USES

3.82[1] General Rule Prohibiting Expansion of the Use. Frequently, a landowner enjoying a valid nonconforming use, seeks to change the use or expand it beyond its present scope. Although the courts have considered the issue of alteration of nonconforming uses, and have established certain rules applicable thereto, it is normally advisable to first consult the local zoning regulations, as there are differences among local jurisdictions concerning the permissible scope of change or expansion of nonconforming uses and structures. Most nonconforming use

provisions of zoning ordinances, although recognizing the right of a property owner to continue a nonconforming use existent at the time his property becomes subject to the new ordinance, prohibits any expansion or extension thereof and contemplates the eventual elimination of such uses through abandonment, obsolescence or destruction. Given the objective of zoning to eliminate nonconforming uses, the California courts have generally followed a strict policy against their extension or enlargement. As stated by the court in *Paramount Rock Co. v. County of San Diego* (1960) 180 CA2d 217, 228, 4 CR 317 "The ultimate purpose of zoning is to confine certain classes of buildings and uses to particular localities and to reduce all nonconforming uses with the zone to conformity as speedily as is consistent with proper safeguards for the interests of those affected. Any change in the premises which tends to give permanency to, or expands the nonconforming use would not be consistent with this purpose." The court further stated that, in determining whether nonconforming use is the same before or after the application of a zoning ordinance, each case must stand on its own facts. See *Paramount*, p. 229, for a listing of eight cases wherein the courts had previously followed a strict policy against extension or enlargement of nonconforming uses. In properly analyzing the cases involving alteration of nonconforming uses, it appears necessary to analyze proposed alterations by types, to wit: change in use; change in land area or location; and change in structure. See §§3.82[2]–[4].

3.82[2] Change in Use. Some zoning ordinances provide that a nonconforming use may be changed to a use that is similar to the present nonconformity or is more restrictive in nature. Changes to a similar nonconforming use have been judicially sanctioned, even when the ordinance does not provide for such changes. *Endara v. City Culver City* (1956) 140 CA2d 33, 38, (allowing change from nonconforming manufacture of tile and ceramics to nonconforming production and storage of laminated sheets). On the other hand, changes or additions to the existing use which are dissimilar, tend to enlarge it, or tend to make it more permanent, are not protected. *City of Los Altos v. Silvey* (1962) 206 CA2d 606, 609, 24 CR 200 (disallowing change from bottling wines to manufacture of boats and trailers). In *Silvey*, the court specifically distinguished *Endara*, stating that each

case must stand on its own facts and that the trial court found, by implication, that the uses are sufficiently dissimilar to withdraw the protection of a nonconforming use. *Silvey*, pp. 610 and 611. For other cases holding a change in use improper, see *Wilson v. Edgar* (1923) 64 CA 654, 657 (change from milk bottling to dyeing and cleaning); *Orange County v. Goldring* (1953) 121 CA2d 442, 446 (change from crop growing and occasional grazing to feeding and watering three thousand head of cattle – a formidable change which added noise and odors); *County of San Diego v. McClurken* (1951) 37 CA2d 683 (change from bulk storage with movable gasoline tanks to larger oil storage tanks for a filling station); *Paramount Rock Co. v. County of San Diego* (1960) 180 CA2d 217 4 CR 317 (change from sand pit and concrete mixing to rock crushing); and *Walnut Properties, Inc. v. City Council* (1980) 100 CA3d 1018, 1024, 161 CR 411 (change from usual neighborhood theater to adult entertainment theater).

3.82[3] Change in Land Area or Location. In general, any significant changes in land area or location of a nonconforming use are usually prohibited by zoning ordinances and such prohibitions have generally been upheld by the courts. See *Yuba City v. Cherniavsky* (1931) 117 CA 568 (prohibition of change in location of nonconforming mercantile business upheld); *Edmonds v. County of Los Angeles* (1953) 40 CA2d 642 (owner of nonconforming trailer court which contained 20 trailers at the time of adoption of ordinance, was not entitled to enlarge nonconforming use to accommodate 30 or more trailers); and *City of Fontana v. Atkinson* (1963) 212 CA2d 499, 28 CR 25 (city prohibition against expanding land area of nonconforming dairy farm to additional 10 acres, upheld). On the other hand, in *McCaslin v. City of Monterey Park* (1958) 163 CA2d 339, 349, the court upheld the right of a landowner to expand a nonconforming granite quarry operation both as to area and depth of extractions in spite of a local ordinance providing "that no nonconforming use of land shall in any way be expanded or extended either on the same or adjoining property." The court stated that the very nature and use of an extractive business contemplates the continuance of such use of the entire parcel of land as a whole, without limitation or restriction to the immediate area excavated at the time the ordinance was passed. A mineral extractive operation is susceptible of use and has value only in

ATTACHMENT 3

Case Summary
#CE03100064

2/19/03 – Received a complaint from Assistant City Manager regarding property located at 533 Community Lane. Upon inspection observed numerous inoperable vehicles, auto parts, and misc. junk/debris. Case #CE03020019 opened and a notice to abate was sent to the property owner, via certified mail. Notice to abate cited violations of city code **Sec.14A-1-3(b)(2) & Sec. 14A-1-3(7)** (see attached)

2/28/03 - Mr. Harrison, owner, requested an extension from CDD Director Stevens in order to arrange a meeting to discuss this complaint. He was granted an extension until 3/30 due to being away on vacation.

Case closed due to lack of evidence regarding “Grandfathered In” status.

10/22/03 – Complaint was received regarding junk/debris accumulation at 533 Community Lane, the complainant also provided aerial photos of the subject property for the years 1984 and 1988, which show no storage in rear section of property.

Case #CE03100064 opened and a notice to abate sent to the property owner, via certified mail. Notice to abate cited violations of **Sec.14A-1-3(b)(2) & Sec. 14A-1-3(7)** (see attached). Case notes attached also indicated that photos were submitted which show Junk/Debris was not existing non-conforming.

11/2/03 – Letter received from Mr. Harrison requesting a hearing to challenge the declaration that a nuisance exists at subject property (case #CE03100064).

11/12/03 – Notice of hearing sent to Mr. Harrison, via registered mail, setting the hearing for December 3, 2003.

Staff Comments – The property located at 533 Community Lane, was annexed to the City in 1978 as High Density Residential (R-4) zone. This zone does not allow for industrial storage yards. The current industrial storage yard would need to have been continuous since time of its annexation in 1978 in order to be granted “Grandfathered In” status as an existing legal non-conforming use. The aerial photos submitted demonstrate that the use of the storage yard behind the existing building as not being used for storage of vehicles and junk/debris in 1980, 1984, 1988 and 1993. The “Grandfathered In” rights were not established and the legal non-conforming status no longer applies to the property.

Recommended Action - Staff recommends that the vehicles and junk/debris accumulation be declared a public nuisance, and an order to abate the violation by January 3, 2004 (30 days) be issued. If the order to abate has not been completed by that date, the Community Development Director is authorized to cause the nuisance to be abated by City personnel or private contract. Also, the Director or their agent is expressly authorized to enter upon the premises for the purpose of abating the nuisance.

ATTACHMENT 4

THE LAW OF NONCONFORMING USES

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May, 2001

the use which existed at the time of passage of a valid zoning ordinance or amendment thereto. Deardon v Detroit, 70 Mich App 163 (1976); Norton Shores v Carr, 81 Mich App 715 (1978). Even extending a roof over an existing patio to allow year-round use has been found to constitute an expansion of a nonconforming use. Jobert v Morant, 192 A2d 553 (Conn 1963).

3. What Constitutes a "Change of Use". Related to the issue of expansion of a nonconforming use is the issue of a change of use. The Michigan Zoning and Enabling Acts permit municipalities to adopt regulations regarding the substitution of nonconforming uses. Such ordinances will normally allow a change to use that is more appropriate to the district in which it is located than the existing nonconforming use. An example would be a change of use from an office use that generated significant traffic, such as a doctor's office, to an office use which generated very little traffic, such as an insurance broker that did not deal with the general public. While the ordinance will normally require that the permission of the municipality be obtained to change the use, such permission is usually freely given on the basis that the "new use" is a move toward the eventual elimination of a nonconformity.

Many changes of use are prohibited by local ordinances as they would be treated as establishing a new nonconforming use. It is not always easy to determine whether a change of use has occurred, though. For example, if a restaurant is operating as a nonconforming use, would it be a change of use for that restaurant to obtain a liquor license? No Michigan case has addressed this question, but the courts in New York, Connecticut, and Massachusetts have all found that obtaining a liquor license was a change in use which

ATTACHMENT 5



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nonconforming use

Also known as a prior nonconforming use (PNU), this exists when a zoning code is changed, but a parcel of land that is already being used for something disallowed by the new zoning code is "grandfathered in" (is allowed to continue). For example, if a neighborhood zoning is changed to residential, a corner grocery store may be allowed to continue to operate. The PNU will generally end when the use of the land is changed (so if the grocery store closes, the new zoning code will bar a new store from moving in).

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ATTACHMENT 6

2010

Abandonment, Discontinuance and Amortization of Nonconforming Uses: Lessons for Drafters of Zoning Regulations

Patricia E. Salkin

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Some courts have not looked past the presumption of abandonment created by a nonconforming use's statutorily proscribed time period of inactivity. In those courts a showing of intent to abandon a nonconforming use is not required when the statutory time period of abandonment is reasonable and specifically stated in the ordinance.¹⁹ Other courts have ruled that intent is only important where some force outside the control of the property owner prevents the continuous use of the land in a particular manner. When there is nothing involuntary about the cessation of the nonconforming use, the showing of a landowner's intent to abandon is not required.²⁰

Courts which follow this two-pronged approach requiring a showing of intent and an overt act or failure to act, have ruled that mere non-use is not sufficient to establish the fact of abandonment absent other evidence tending to prove the intent to abandon.²¹ According to such reasoning, although the passage of time can create an inference of abandonment there must be the additional showing of an intent to abandon the nonconforming use before the nonconforming use is deemed abandoned.²² The longer the time of cessation the greater the weight is attributable to that factor, but it can be overcome with evidence of the owner's intent to resume operation and factors which have prevented him/her from continuing operation.²³

A zoning ordinance requiring a proof that a nonconforming use was "voluntarily discontinued" for abandonment to occur required proof of a manifest intention to abandon the use coupled with acts or omissions implementing that intent.²⁴ Proof of a previous landowner's decision to dissolve a corporation considered a pre-existing nonconforming use and his choice to cease doing business sufficiently met this burden, and when coupled with nonuse for a statutorily sufficient time period equated to abandonment of the nonconforming use.²⁵ Attempts to sell a property for uses other than nonconforming uses, statements of the owner not to return to the site in question, and removal of equipment integral to the nonconforming use are all acts that have been found equating to the abandonment of a nonconforming use.²⁶

Some courts have ruled that the actions and intent of the current or prior landowner are crucial in determining abandonment of a nonconforming use, while the actions and intent of a lessee or future owner are irrelevant.²⁷

3. Can the Period of Abandonment/Discontinuance be Extended?

Remembering that the goal of zoning is to ultimately bring

any sales. The defendant did not advertise the business or do anything that would put the public on notice that a food establishment had opened. A month later, the defendant threw the items out. The Court did not find the defendant's actions to be a sufficient showing of operation of his business to reverse the trial court's determination that the nonconforming use was abandoned. As a result, the lower court's decision to vacate the zoning board's decision to grant a special permit to NEBC was affirmed.³⁷

8. Can an abandoned use be converted to a less intensive nonconforming use?

Typically zoning ordinances provide that abandoned uses may resume or be converted to a less intensive nonconforming use. Courts prohibit the conversion back to the more intensive use.³⁸ Likewise, courts have not allowed the reversion to a previously abandoned more expansive nonconforming use once it has been abandoned.³⁹ Where the owner of a prior nonconforming use billboard improperly added lights to the sign, he did not abandon the original nonconforming use. The court ruled that an improper expansion of a nonconforming use does not equate to an overt act of abandonment as the original use was not abandoned.⁴⁰ On the other hand, where a nonconforming use deli was converted into a take-out Chinese restaurant which operated beyond the authorization the zoning board granted to the deli, the original nonconforming use was deemed abandoned.⁴¹ The subsequent reversion of the property to a deli use was not possible as the court ruled the nonconforming use was abandoned by the prolonged improper use as a Chinese restaurant.⁴² The sale of alcohol by a restaurant has been considered an accessory use and not an expansion nor a separate and distinct use to a nonconforming restaurant.⁴³ As such the decision of a previous owner of a nonconforming use to stop serving alcohol for several years did not affect the restaurant's ability to serve alcohol in a restaurant setting.⁴⁴

IV. Amortization

A more active or aggressive method of eliminating nonconforming uses is amortization. This concept has its roots in the early 1915 case of *Hadacheck v Sebastian*, 239 U.S. 395 where the Court confirmed that the City could eliminate the brickyard use on the property in question without such action necessitating compensation. Amortization has always been a controversial tool, gaining most notoriety perhaps in

Zoning Appeals of the Town of Harrison, 57 A.D.2d 627 (N.Y. App. Div. 1977).

²⁰City of Red Bank v. Phillips, 2007 WL 4460223 (Tenn. Ct. App. 2007).

²¹Ghindia v. Buckeye Land Development, LLC., 2007 Ohio App. LEXIS 694, **12 (Ohio Ct. App., 2007).

²²Karas v. Foss, 2008 WL 859504 (N.J. Super. A.D., April 2, 2008).

²³S&S Auto Sales, Inc. v. Zoning Board of Adjustment for the Borough of Stratford, 373 N.J. Super. 603, 624. (N.J. Super. Ct. App. Div. 2004).

²⁴Ghindia v. Buckeye Land Development, LLC., 2007 Ohio App. LEXIS 694, **12 (Ohio Ct. App., 2007).

²⁵Ghindia v. Buckeye Land Development, LLC., 2007 Ohio App. LEXIS 694, **12 (Ohio Ct. App., 2007).

²⁶Pezzullo v. Ure, 2008 R.I. Super. LEXIS 167, *18 (R.I. 2008).

²⁷Face Value, LLC v. Zoning Board of Appeals of Town of East Hartford, 2008 Conn. Super. LEXIS 2931 (Conn. Super. Ct. 2008), Karas v. Foss, 2008 WL 859504 (N.J. Super. A.D., April 2, 2008), Gem City Metal Spinning Co. v. City of Dayton Board of Zoning Appeals, 2008 WL 185535 (Ohio Ct. App. 2008), Palmieri Cove Associates v. City of New Haven Board of Zoning Appeals, 2006 Conn. Super. LEXIS 848 (Conn. Super. Ct. 2006).

²⁸Custom Land Development, Inc. v. Coopertown Board of Zoning Appeals, 168 S.W.3d 764, 775 (Tenn. Ct. App. 2004).

²⁹Purich v. Draper Properties, Inc., 395 Md. 694 (2006).

³⁰Smith Bros. Woodland Management, LLC v. Zoning Board of Appeal of Town of Brookfield, 108 Conn. App. 621 (Conn. App. Ct. 2008), Purich v. Draper Properties, Inc., 395 Md. 694 (2006).

³¹Greer v. Washougal Motorcross, LLC., 2007 Wash. App. LEXIS 497, *11 (Wash. Ct. App. 2007).

³²Toys R Us v. Silva, 89 N.Y.2d 411, 676 N.E.2d 862, 654 N.Y.S.2d 100 (1996).

³³Schweizer v. Board of Adjustment of City of Newark, 2009 WL 597630 (Del. 2009).

³⁴Bialik v. Stambaugh Township, 2008 WL 1885772 (Mich. Ct. App. 2008), and Finn v. Zoning Hearing Board of Beaver Borough, 869 A.2d 1124 (Pa. Commw. Ct. 2005).

³⁵Zall v. Zoning Board of Appeals of Salisbury, 73 Mass. App. Ct. 1103 (Mass. App. Ct. 2008).

³⁶Zall v. Zoning Board of Appeals of Salisbury, 73 Mass. App. Ct. 1103 (Mass. App. Ct. 2008).

³⁷Zall v. Zoning Board of Appeals of Salisbury, 73 Mass. App. Ct. 1103 (Mass. App. Ct. 2008).

³⁸Taylor v. Zoning Board of Appeals of City of Evanston, 375 Ill. App. 3d 585 (Ill. App. Ct. 2007).

³⁹Town of Orange v. Shay, 68 Mass. App. Ct. 358 (Mass. App. Ct. 2007).

ATTACHMENT 7



Nonconforming Structures, Uses and Lots

*A DISCUSSION OF THE INTENT AND PRACTICE OF CALIFORNIA
LAND USE AND PLANNING LAW GOVERNING NONCONFORMING
STRUCTURES, USES AND LOTS*

September 2011

City of Tustin Community Development Department





To ensure that a community's adopted vision and goals are fully accomplished over time, regulatory provisions are put in place to require nonconforming structures, uses, or lots to be made conforming or ensure their replacement over time. Any change in a structure, use, or lot that gives permanency to, or expands the nonconformity would not be consistent with this purpose and are typically prohibited. In most cases, nonconformities are allowed to continue unaltered (structures may be repaired within certain limits) until the end of their economic life when they would eventually be replaced with a conforming structure, use or lot.

WHAT IS NONCONFORMING? |

Nonconforming structures, uses and lots are relatively commonplace, but the concept may not be completely understood. One might picture a dusty, old brick-making business, surrounded by single family homes, that long predates its current residential zoning; or, an old church that appears to be too close to a street property line because the City widened the right-of-way some time in the past and eliminated a portion of the property's front yard.

The Zoning Code identifies development limitations associated with various Districts identified on the City's Zoning Maps that establish uniform building setbacks, height limitations, parking requirements, minimum lot sizes, identify allowed uses, etc. Zoning rules change or are updated over time to guide, control and regulate future development.

A legal nonconforming structure, use or lot is caused by a governmental action that changes the Zoning Code, the Zoning Map, or the Subdivision Ordinance. All legal nonconforming structures, uses or lots were lawfully established under the codes at the time, but due to the adoption of a new ordinance, regulation, or map revision, the property no longer conforms to the policies and standards of the code in which the property resides.¹ Legal nonconforming is sometimes referred to with the term "grandfathered."²

Nonconforming Structure, use, or lot – A nonconforming structure, use, or lot has been lawfully established in the past but no longer meets the current code requirements (i.e. setback, height, parking, use, lot size, etc.)

As a general rule, nonconforming regulations presume that a nonconformity is detrimental to the public interest (health, safety, morals or welfare), and that the nonconformity needs to be brought into

¹ Curtin's California Land Use and Planning Law, Cecily Talbert Barclay, Solano Press Books, 2011, Guide to California Planning, William Fulton and Paul Shigley, Solano Press Books, 2005, Eastman's California Land Use and Municipal Law, John Eastman, 2006, A Planner's Dictionary, Edited by Michael Davidson and Fay Dolnick, American Planning Association, 2005.

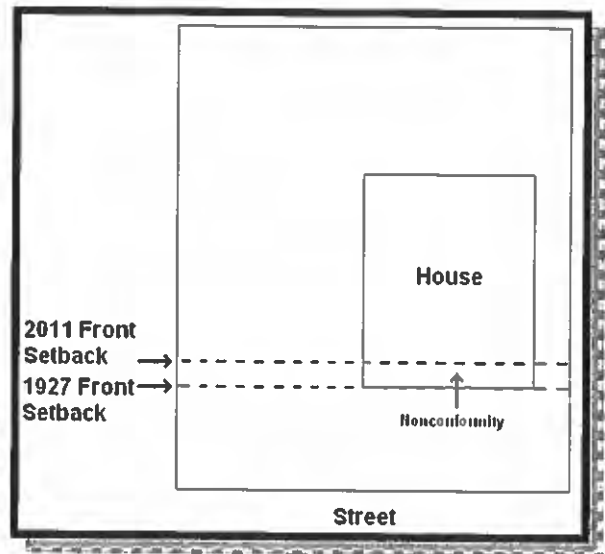
² Note: Under the Building Code, a lawfully constructed building is not affected by subsequent Building Code updates that may occur in future years. However, when an addition/alteration is proposed to a lawfully constructed older building, the addition/alteration would be required to meet current Building Code requirements and some existing building components (e.g. fire sprinklers, electrical panels, energy features, etc.) would be required to be upgraded at the time of permit issuance to current standards.

conformance with the current code at some point in time. For example, a community that finds that an existing code allows structures to be built too tall may adopt a code amendment to lower the height limit of new construction. The code looks to the future and assumes that existing, lawfully established nonconforming buildings that exceed the new height limit may continue to exist but will be brought into conformance or eliminated over time.

Nonconforming Structures – In regards to the built environment of a community, the Zoning Code implements the City’s General Plan and translates the goals and principles of that Plan to parcel-specific regulations intended to guide or restrict development to the overall aesthetic vision of the community. To accomplish this vision, the Zoning Code identifies building limitations and design requirements that restrict the height, setback, design, parking, etc. to ensure that all buildings proposed within a particular Zoning District are similar in bulk, scale and purpose.

A nonconforming structure is a lawful structure existing on the effective date of a new zoning restriction that has continued since that time without conformance to the ordinance. Again, a new zoning ordinance anticipates that a nonconforming structure will be eliminated over time and replaced with a conforming structure.

Nonconforming Structure – In the example at right, the street setback was changed to require more open space adjacent to a street after the house was lawfully constructed.



Nonconforming Structure – In the example at left, this garage was built to accommodate one car before the adoption of the current zoning requirement for a two car garage.

ATTACHMENT 8

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Elimination of Non-Conforming Uses

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Information Report No. 2

May, 1949

Elimination of Non-Conforming Uses

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buildings and uses. The most commonly accepted restriction is that no non-conforming use may be extended. A non-conforming use usually may be extended throughout a building, but additions may not be made to the building, or the non-conforming use may not extend to another building. Other restrictions include those of limiting the alterations or repairs that may be made in a non-conforming building; prohibiting rebuilding or reconstruction of buildings damaged to a specified extent in cases of fire, flood, or similar cause; refusing to allow a non-conforming use to be reestablished once a more highly restricted use has been substituted, and refusing to permit a re-establishment of a use if the use or building has been discontinued or abandoned for a specified period of time.

Some localities provide that no structural changes or alterations may be made other than to maintain the building in safe repair. Enid, Oklahoma is one such community. The more usual provision is that the structural changes or alterations will not be permitted to exceed a specified percentage of the assessed valuation of the building. Springfield, Oregon permits alterations totaling up to 50% of the value of the building in a ten year period. La Crosse, Wisconsin permits alterations up to 50% of assessed valuation for the life of the building. The percentages and the time in which they may be made vary with localities; many communities do not specify a time in which the cost of alterations aggregate.

If there are limitations on the rebuilding of structures following damage by fire, flood or similar cause, the regulations usually provide that if a specified percentage of the value of a building (ranging typically from 50 to 75%) has been destroyed, the building shall not be reconstructed. Some ordinances specify a time limit (generally no more than 2 years, and usually one year or less) in which reconstruction must be started if it is to be started at all.

If a non-conforming use is abandoned for a specified period of time, the use usually may not be re-established. Regulations vary from an unqualified statement that if discontinued, a non-conforming use may not be re-established, as in Schenectady, New York, to a statement that a period of 5 years constitutes abandonment as in Bergenfield, New Jersey. One year is the most frequently specified time period. Examples of shorter specified periods are the Brainerd, Minnesota ordinance which provides that 30 days constitutes abandonment and the Fairfax County, Virginia ordinance which specified 90 days. If it is not explicit in the ordinance, the zoning agency and the courts hold that the period of abandonment must exceed a "reasonable" time interval between tenants. Also, discontinuance of use caused by war service of the proprietor, or accident, or unpropitious circumstances does not constitute abandonment.

ATTACHMENT 9

William & Mary Law Review

Volume 6 | Issue 1

Article 2

The Termination of NonConforming Uses

Marvin M. Moore

Repository Citation

Marvin M. Moore, *The Termination of NonConforming Uses*, 6 Wm. & Mary L. Rev. 1 (1965),
<http://scholarship.law.wm.edu/wmlr/vol6/iss1/2>

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William and Mary Law Review

VOLUME 6

JANUARY 1965

NUMBER 1

ARTICLES

THE TERMINATION OF NONCONFORMING USES

MARVIN M. MOORE*

A major problem confronting city planners and zoning authorities today is that posed by nonconforming uses.¹ Such uses reduce the effectiveness of zoning ordinances, depress property values, and directly contribute to urban blight. They are "an admitted cause of residential and commercial slums, traffic congestion, and other indicia of urban obsolescence. . ."² The purpose of this article is to examine and evaluate the various measures that have been devised for terminating the nonconforming use.

The early zoning laws were, for three reasons, strictly prospective in operation: First, a municipality's zoning powers are limited by the state enabling act authorizing the zoning,³ and in a number of jurisdictions the enabling act expressly prohibited the abatement of uses existing on the effective date of the zoning ordinance.⁴ Secondly, in those jurisdictions lacking such an express prohibition it was feared that the courts—traditionally hostile to retroactive laws—would view any attempt

* Assistant Professor, College of Law, University of Akron. A.B., 1955, Wayne State University; LL.B., 1957, LL.M., 1960, Duke University.

1. A nonconforming use may be defined as a use of property in existence on the effective date of a zoning ordinance, which use does not comply with the ordinance. Young, *The Regulation and Removal of Nonconforming Uses*, 12 W. RES. L. REV. 685 (1961).

2. Norton, *Elimination of Incompatible Uses and Structures*, 20 LAW & CONTEMP. PROB. 305 (1955).

3. "The basis for zoning rests ultimately in the exercise of the police power, but the cities derive their zoning powers from the state enabling acts. . ." *Id.* at 354.

4. Although this prohibition is less common than it used to be, as of 1959 the enabling acts of nearly half the states forbade all or certain municipal corporations from abruptly terminating uses in existence on the effective date of a zoning ordinance. Anderson, *The Nonconforming Use—A Product of Euclidian Zoning*, 10 SYRACUSE L. REV. 215 (1959).

to eliminate existing uses as an abuse of the police power. At first even prospective zoning rested on a tenuous constitutional basis, and there was reason to fear that the addition of a retrospective effect might cause the whole structure of zoning to crumble under the fourteenth amendment's due process clause.⁵ In 1926 the case of *Euclid v. Ambler Realty Company*⁶ settled doubts concerning the constitutionality of *prospective* zoning, but most authorities continued to assume, as before, that the owner's interest in an *existing* use was in the nature of a "vested right", which could not be constitutionally impaired without the payment of compensation.⁷ Subsequent developments have shown that this assumption was not groundless, for in most of the instances where zoning ordinances have provided for the immediate cessation of existing uses the ordinances have, when tested, been held unconstitutional.⁸

Thirdly, it was originally believed that a well-ordered community could be achieved without resorting to retroactive measures. "Zoning," it was said, "looks to the future and seeks to stabilize and protect, not to destroy."⁹ It was thought that a zoned area could endure its nonconforming uses for a few years without suffering any material disruption of orderly development and that such uses could be expected to gradually dwindle and disappear if the municipality employed certain nonretroactive measures. These measures—which are still extensively used—consisted of restrictions on: change of use, expansion, alteration, resumption following abandonment, and restoration following destruction.

Zoning ordinances would commonly forbid a property owner to substitute one nonconforming use for another.¹⁰ Sometimes an exception would be made to permit a change to a use more restrictive in nature. However, the exception was usually conditioned on there being no structural alteration.

The owner of the building housing the nonconforming use was typically prohibited from expanding the structure or from making alterations except for specified purposes or to a specified extent.¹¹

5. Comment, 57 NW. U. L. REV. 323 (1962).

6. 272 U.S. 365 (1926).

7. *Id.* at 326.

8. Note, 44 CORNELL L. Q. 453 (1959). Such ordinances have been rare.

9. *Id.* at 452.

10. Young, *supra* note 1, at 692.

11. Van Ausdall, *Regulation of Nonconforming Uses in Arkansas: Limitation and Termination*, 16 ARK. L. REV. 275 (1962). Sometimes a nonconforming use exists in a conforming structure. In this situation the ordinance would normally allow structural alterations of a kind that did not render the building nonconforming.

ATTACHMENT 10



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Enlargement, Alteration, or Extension

Similarly, local laws often prohibit the enlargement, alteration, or extension of a nonconforming use. To allow the expansion of nonconforming uses, which the zoning law wishes to eliminate over time, would defeat that underlying policy. Normally, the law allows the owners of nonconforming land uses to perform property repairs, conduct normal maintenance, and complete internal alterations that do not increase the degree of, or create any new, noncompliance with the locality's zoning regulations.

Courts have upheld prohibitions on the construction of an awning over a courtyard outside a restaurant, on the theory that it would create additional space for patrons to congregate and, in this sense, increase the degree of the nonconforming use. Similarly, the prohibition of the conversion of seasonal bungalows to year-round residences has been upheld as an acceptable method of preventing the enlargement of a nonconforming use.

Where nonconforming business operations are proposed to be expanded, the case law is somewhat less clear. Where roads and structures built on a parcel used as a gravel mining operation exhibited the owner's intention to use the entire parcel, the court held that expanding the mining operation to another location on the property was permitted. The addition of a body-toning operation to the premises containing a nonconforming beauty parlor, however, was considered a prohibited extension of the prior nonconforming use. The court's interest in protecting the owner's demonstrated investment in the gravel mining operation could explain the difference between these cases.

Nonconforming use provisions in zoning laws vary considerably from one locality to another. A municipality particularly intent on eliminating nonconforming uses may prohibit any physical expansion of a building; another may favor property use by allowing, for example, the construction of an additional story because it does not increase the footprint, or lot coverage, of the structure.

Changing to Another Nonconforming Use

The property owner's right to continue a nonconforming use does not allow the owner to change to a materially different use. The important question here is what constitutes a material change. The consequence of a finding that a material change in use has occurred, is to deem the prior nonconforming use abandoned and, therefore, terminated. The property owner could argue that the change of a nonconforming use from one commercial use to another, for example, should not be prohibited by the zoning law. The assertion is that to change a building's occupancy from a dairy plant to a business that rents machinery simply shifts the type of nonconformance from one commercial category to another. It has been held, however, that it is not only a change in the volume of business conducted but in the character of that business that determines whether one business use is a continuation of another. This is true despite the generic similarity between the old and new proposed use.

Occasionally, courts hold that changes from one use to another within the same category of use are permitted. In one case, for example, the owner was allowed to establish a storage business in a building that had been occupied as a nursery and florist enterprise. Determinations in these cases depend on the particular facts involved, the court's interpretation of how material the change will be and the specific language of the local ordinance that regulates changes in nonconforming uses.

Abandonment

A property owner's right to continue a nonconforming use may be lost by abandonment. Local zoning laws frequently stipulate that any discontinuance of the nonconforming use for a specified period constitutes

ATTACHMENT 11

Missouri Law Review

Volume 31
Issue 2 Spring 1966

Article 7

Spring 1966

Zoning-Abatement of Prior Nonconforming Uses: Nuisance Regulations and Amortization Provisions

David M. Roberts

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David M. Roberts, *Zoning-Abatement of Prior Nonconforming Uses: Nuisance Regulations and Amortization Provisions*, 31 MO. L. REV. (1966)

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erty owner will suffer no material hardship by prohibition of such use.¹⁸ Though the question of when a lawful nonconforming use arises may be difficult in a given set of circumstances, conceptually it comes into being when the property owner has made a substantial use of the property in a nonconforming manner. If the property owner has abandoned or discontinued his nonconforming use,¹⁹ it is within the power of the municipality to forbid a resumption of that use, again on the theory that no financial hardship will be caused beyond that which he already has inflicted on himself. It also has been held that the change from one nonconforming use to another evidences an intent to abandon the former, which thereafter may not again be resumed.²⁰

(2) *Prohibiting or limiting repairs and extensions.* If zoning ordinances are ever to be effective, nonconformities must not be allowed to enlarge or expand. All that is taken away by these regulations is the landowner's ability to make his noncompliance with the zoning laws more flagrant than it already is. On the theory that the property owner already has lost the value of his investment if his nonconforming structure has been destroyed, as by fire, his right to rebuild and repair can validly be denied.²¹ Similarly, substantial structural alterations may be prohibited.²² However, the property owner may make such repairs as are necessary to continue the nonconforming use, as long as they do not tend to enlarge it.²³

The great shortcoming of the restrictions discussed thus far is that they assume the validity of the existence of nonconformities and attempt to deal with them "after the fact." The practical effectiveness of these restrictions is questionable in most cases. Recognizing that it is necessary to devise principles which cut to the heart of the problem instead of merely chipping away at the periph-

18. Young, *supra* note 12, at 686-88.

19. Strictly speaking, the terms "abandonment" and "discontinuance" are not synonymous. The former is held to require an intent specifically to abandon the use, while no such intent is a condition precedent to the operation of an ordinance terminating the nonconforming use after non-use for a specified period of time. *Auditorium, Inc. v. Wilmington*, 47 Del. (8 Terry) 373, 386, 91 A.2d 528, 534-35 (1952). See 1 ANTIEAU, *MUNICIPAL CORPORATION LAW* § 7.07 (1956). But a few courts require intent to abandon as an element of even the discontinuation ordinances. 2 RATHKOPF, *op. cit. supra* note 11, §§ 61-14, 61-15.

20. 1 ANTIEAU, *op. cit. supra* note 19, § 7.07; 2 RATHKOPF, *op. cit. supra* note 11, § 61-13. Most zoning ordinances are "cumulative," and the landowner is given the power to change to a lesser nonconforming use. This is a very practical provision, since it tends to bring the nonconformity more into harmony with its surroundings. See Reno, *Non-Euclidian Zoning: The Use of the Floating Zone*, 23 Md. L. Rev. 105 (1963).

21. *D'Agostino v. Jaguar Realty Co.*, 22 N.J. Super. 74, 91 A.2d 500 (1952). The complexity of the problem increases when the nonconforming structure is not totally destroyed. Commonly, the applicable ordinance specifies a percentage of destruction, above which repair will not be permitted. 2 RATHKOPF, *op. cit. supra* note 11, §§ 61-14, 61-15.

22. 1 ANTIEAU, *op. cit. supra* note 19, § 7.07.

23. *Ibid.*

ATTACHMENT 12



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Case Western Reserve Law Review

Volume 12 | Issue 4

1961

The Regulation and Removal of Nonconforming Uses

James A. Young

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James A. Young, *The Regulation and Removal of Nonconforming Uses*, 12 Cas. W. Res. L. Rev. 681 (1961)

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been destroyed in excess of fifty per cent of value and sixty per cent of physical proportion.⁵¹ Also, the first *Curtiss v. City of Cleveland* case⁵² said that an ordinance which provided that:

... Repairs to building . . . after damage thereto shall not exceed 50 per cent of the valuation of such building unless it is changed to a conforming use, constitutes a valid exercise of the police power of the municipality.⁵³

By clear implication, an ordinance which prohibited the restoration of a nonconforming building after less than total destruction would be valid.

Substitution of Nonconforming Uses

Another method of regulating a nonconforming use is by refusing to allow a property owner to substitute one nonconforming use for another. In *State ex rel. Clifton-Highland Company v. City of Lakewood*,⁵⁴ the Ohio Supreme Court held that the city could refuse to permit the property owner to substitute a new nonconforming use for an existing nonconforming use. In the *Stegner* case,⁵⁵ the court upheld such a regulation even though that ordinance prohibited the substitution of a use of greater conformity than the prior nonconforming use.⁵⁶

In view of the above decisions, it would seem to be logically clear that if a property owner substitutes one nonconforming use for another, he has terminated his right to claim *any* nonconforming use.⁵⁷ Such a position is also supported by the general policy relating to nonconforming uses — only uses existing on the effective date of the ordinance are protected, and even these uses are to be terminated as rapidly as possible. In effect, then, the substitution of nonconforming uses is actually a termination of the prior nonconforming use through abandonment.⁵⁸

Protection of Nonconforming Uses

Although disfavored by the law, nonconforming users are not completely without protection. Thus, it is clear that the property and build-

51. *Baird v. Bradley*, 109 Cal. App. 2d 365, 240 P.2d 1016 (1952).

52. 166 Ohio St. 509, 144 N.E.2d 177 (1957).

53. *Id.* at syllabus 1.

54. 124 Ohio St. 399, 178 N.E. 837 (1931).

55. 120 Ohio St. 418, 166 N.E. 226 (1929).

56. The ordinance under consideration in the *Stegner* case did permit the property owner of a nonconforming use to appeal to the zoning board of appeals for an extension or a substitution of his nonconforming use, but not both.

57. Other jurisdictions have so held. See *Dorman v. Baltimore*, 187 Md. 678, 51 A.2d 658 (1947); see also *Town of Darien v. Webb*, 115 Conn. 581, 162 Atl. 690 (1932) (when nonconforming use replaced by other uses, some conforming and others nonconforming, it was held to be an abandonment of the nonconforming use); and *Branch v. Powers*, 210 Ark. 836, 197 S.W.2d 928 (1946) (court would not permit a nonconforming use to be substituted for a conforming use).

58. See note 42 *supra* and accompanying text.

ATTACHMENT 13

13

Understanding nonconformity: Are you 'grandfathered' in?

Properties that qualify as nonconforming often have particular regulations that affect how an owner can make changes to the property. Understanding these regulations is important in order to avoid potential conflict with local government.

Posted on **April 4, 2013** by **Ryan Coffey** (http://msue.anr.msu.edu/experts/ryan_coffey), Michigan State University Extension

A nonconforming use, building or parcel is a use of land, a structure, or a parcel that was lawfully in existence prior to the adoption or amendment of the zoning ordinance that made it nonconforming. These are often referred to as *grandfathered in* or *grandparented in*.

In communities across Michigan, there are many homes, businesses, and parcels that have been grandfathered in under nonconforming status, since they were built or established prior to zoning taking effect. If you own a nonconforming use, structure or parcel, there are a few things you should know and consider before planning or making any changes.

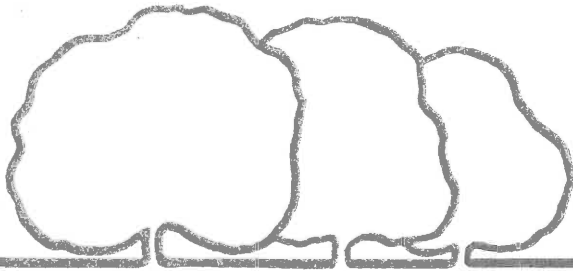
Nonconformities are allowed to continue into the future in the same manner and same extent as they existed at the time they became nonconforming. A nonconforming property can be sold and the new owner is permitted to continue its use in the same fashion as the previous owner without any new zoning approvals. However, if a change in a nonconforming use, building, or parcel is proposed, it must conform to ordinance requirements. The ordinance should have established standards and procedures for treatment of nonconformities (the basic objective is gradual elimination of nonconformities). The three most basic types of regulation address enlargement, reconstruction and substitution.

Enlargement, expansion or extension of nonconforming uses is generally restricted because each is usually contrary to the intent of the ordinance. Many communities prohibit any enlargement or expansion of nonconforming uses because that usually entrenches the use, when the ordinance objective is for nonconforming uses to either go away, or even better, changed to conform to the ordinance.

Reconstruction of a nonconforming building is usually prohibited if it is damaged greater than 50 percent. There are various ways of measuring damage and the method selected should be clearly spelled out in the zoning ordinance. This method provides a great opportunity for reconstruction in a manner that conforms to the ordinance and therefore replaces a nonconforming building with a conforming one.

Substitution of one nonconforming use for another is usually allowed if the change is *more conforming* or *no less conforming*, allowing for the property to move closer to conformity over time with district requirements.

Most nonconforming provisions are administered by your local zoning administrator. Ordinances, however, vary dramatically with regard to nonconforming requirements. Consequently, it is important to become familiar with the unique requirements in your zoning



City of Woodland

COMMUNITY DEVELOPMENT DEPARTMENT
(530) 661-5820

520 COURT STREET
(530) 406-0832 FAX

WOODLAND, CA 95695
<http://www.cityofwoodland.org>

October 4, 2012

Randy Eyraud
4 Z Welding Services Inc.
P.O. Box 8193
Woodland CA 95776

RE: 4 Z Welding Services and Reuse of 352 & 360 West Kentucky Avenue

Dear Mr. Eyraud,

The City of Woodland has reviewed your proposal (See attached letter dated October 2, 2012) for the reuse of 352 & 360 West Kentucky Avenue. As staff explained, the site is zoned Single Family Residential (R-1) and any reuse of the building(s) would need to be similar to the use in existences that the time the property was rezoned to R-1. Uses can be "Grandfather In" provided the Zoning Administrator can find that the use is the same or of a more restrictive nature (Sec. 25-21-55).

Based on your description of 4 Z Welding Services and the proposed reuse of the site, the Zoning Administrator can allow this change of use provide the following conditions are adhere to in order to minimize impacts on the surrounding residential neighborhood.

- No outside storage of materials will be allowed beyond the second building closet to the residential neighborhood (360 W. Kentucky Ave.).
- A layer of gravel shall be applied to vehicle travel and parking surfaces and exposed dirt areas.
- Vehicles shall not be allowed to idle in the back half of the property beyond the second building closet to the residential neighborhood (360 W. Kentucky Ave.).
- Vehicles shall be not storage or parked within 10 feet of the masonry wall.
- *4 Z Welding Services* will need to update the current business license with the new addresses.
- You will need to contact the Building and Fire Departments prior to using the buildings for code compliances and possible inspections:
- Failure to comply with these requirements and/or complaints from the neighborhood can be grounds to terminate your use of this property.

If I can be of further assistance, please don't hesitate to contact me at (530) 661-5814 or by e-mail at paul.hanson@cityofwoodland.org.

Respectfully,

Paul L. Hanson, AICP, Senior Planner

H:\PAUL\LETTERS\2012\4 Z welding.docx



City of Woodland
Community Development Dept.
300 First St, Woodland CA 95695
(530) 661-5820 www.cityofwoodland.org

FORM TO EXPRESS OPPOSITION OR SUPPORT

FORM TO EXPRESS OPPOSITION OR SUPPORT

Project Name: APPEAL OF ZONING INTERPRETATION

Project Address: 352 AND 360 WEST KENTUCKY AVE

Planner: JEFF BALLANTINE

Hearing Date: DEC. 15 ☒ Oppose ☐ Support

Today's Date: _____

Name: Jane Plocher

Address: 324 MT. Whitney Drive, Woodland, CA.

Phone Number: 530 668 6249

Comments: _____

I am disappointed and opposed the City's actions to allow the industrial businesses located at/in a residential zone to expand or increase in any way. The city's decision to do so - goes against the current plan which we as a family choose the location of our home(s) to be. This decision and action will have negative effects on our family(ies) and our property values. Please keep to the original intent and plan for this to be a residential zone and area. Thank you

Please mail comments to:
City of Woodland
Planning Development Dept
300 First Street
Woodland CA 95695

for your sincere consideration
Keep Woodland true to its word.
Jane



City of Woodland
Community Development Dept.
300 First St, Woodland CA 95695
(530) 661-5820 www.cityofwoodland.org

FORM TO EXPRESS OPPOSITION OR SUPPORT

FORM TO EXPRESS OPPOSITION OR SUPPORT

Project Name: APPEAL OF ZONING INTERPRETATION
Project Address: 352/360 WEST KENTUCKY AVE
Planner: JEFF BALANTINE
Hearing Date: 11/17/16 12/15/16 ☒ Oppose ☐ Support
Today's Date: 11/11/16 (CITY ACTION)
Name: Gilbert, Annette & Alyssa Hernandez
Address: 341 Pinnacles Drive
Phone Number: 530-383-8659
Comments: _____

Please mail comments to:
City of Woodland
Planning Development Dept
300 First Street
Woodland CA 95695

Dear Neighbor,

We had no idea about this!

We are still fairly new to the
neighborhood! Thanks for being
on the Lookout!

You have our support! ☺

With many thanks,

The Hernandez Family



City of Woodland
Community Development Dept.
300 First St, Woodland CA 95695
(530) 661-5820 www.cityofwoodland.org

FORM TO EXPRESS OPPOSITION OR SUPPORT

FORM TO EXPRESS OPPOSITION OR SUPPORT

Project Name: APPEAL OF ZONING INTERPRETATION
Project Address: 352/360 WEST KENTUCKY AVE
Planner: JEFF BALLANTINE
Hearing Date: Dec. 1, 2016 ☒ Oppose ☐ Support
Today's Date: Dec. 1, 2016 (CITY ACTION)
Name: Dennis Darnan
Address: 301 Mt. Whitney Dr. Woodland Ca. 95695
Phone Number: 530-419-5123
Comments: _____

Please mail comments to:
City of Woodland
Planning Development Dept
300 First Street
Woodland CA 95695



City of Woodland
Community Development Dept.
300 First St, Woodland CA 95695
(530) 661-5820 www.cityofwoodland.org

FORM TO EXPRESS OPPOSITION OR SUPPORT

FORM TO EXPRESS OPPOSITION OR SUPPORT

Project Name: APPEAL OF ZONING INTERPRETATION
Project Address: 352/360 WEST KENTUCKY AVE
Planner: JEFF BALLANTINE
Hearing Date: DEC. 15, 2016 ☐ Oppose ☒ Support (APPEAL)
Today's Date: 11/14/2016
Name: MANUEL AND LUZ GUERRERO
Address: 309 MOUNT WHITNEY DR. WOODLAND, CA. 95695
Phone Number: (530) 554-0444
Comments: _____

Please mail comments to:
City of Woodland
Planning Development Dept
300 First Street
Woodland CA 95695



City of Woodland
Community Development Dept.
300 First St, Woodland CA 95695
(530) 661-5820 www.cityofwoodland.org

FORM TO EXPRESS OPPOSITION OR SUPPORT

FORM TO EXPRESS OPPOSITION OR SUPPORT

Project Name: APPEAL OF ZONING INTERPRETATION
Project Address: 352/360 WEST KENTUCKY AVE
Planner: JEFF BILANTINE
Hearing Date: DEC. 15, 2016 ☐ Oppose ☒ Support (APPEAL)
Today's Date: _____
Name: SUE BALL
Address: 313 MT WHITNEY DR.
Phone Number: 560-661-6575
Comments: _____

Please mail comments to:
City of Woodland
Planning Development Dept
300 First Street
Woodland CA 95695

Cindy Brock
17940 County Rd. 85B
Esparto, CA 95627

October 27, 2016

Randy Eyraud
4 Z Welding Services Inc.
PO Box 8193
Woodland, CA 95776

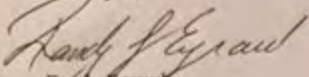
Dear Cindy,

We won't be renewing our lease for 352 and 360 W. Kentucky Ave. after October 31st. It has been difficult to operate and have a viable business here. My employees have been harassed by the neighbors at the back-end of the property with continued stalking and video taping. My employees informed me that they will not work in the back area of the property.

We're unable to operate the equipment necessary to run our business during normal business hours, store the materials we need for our fabrication, or essentially do anything to continue our normal business operations. We have tried to be accommodating by only working 10:00 a.m. to 4:00 p.m. Monday – Friday, yet the tension with the neighbors continues.

It's unfortunate but we feel we have no other choice then to move our business elsewhere.

Thank you,


Randy Eyraud

OWNER:
JAMES E. TRUCK, TRUSTEE OF THE OLGA N. WALK TRUST
775 LEX WALK
1400 WEST 10TH AVENUE
SACRAMENTO, CA 95813

SUBDIVIDER:
STANLEY M. DAVIS COMPANY
1700 BOX 1230
1800 COURT STREET
DAVIS, CA 95617
PHONE: (916) 754-3830

ENGINEER & SURVEYOR:
LAUGHLIN AND MOORE CIVIL ENGINEERS
608 COURT STREET
SACRAMENTO, CA 95817
PHONE: (916) 442-7755

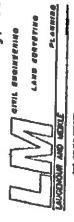
NOTES:
ASSESSOR'S PARCEL NUMBER: 64-010-04
FLOOD ZONE DESIGNATION: "ZONE 1" PER 10/13/81 REVISED FEMA FLOOD INS.
RATE MAP, COMMUNITY PANEL NO. 060-28 0005 B.
ONE-FOOT DEEP SHALLOW FLOODING (100 YR.) PER
FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NO. 060-28 0005 B.
REPORT OF NESTLE ENGINEERS TO YOUR OFFICE.

EXISTING LAND USE:	PROPOSED LAND USE:	BASE 1	BASE 2
INDUSTRIAL	INDUSTRIAL	INDUSTRIAL	VACANT/INDUSTRIAL
R-1	R-1	R-1	RESIDENTIAL (LDR)
R-1	R-1	R-1	R-1
PRIVATE	PRIVATE	PRIVATE	NONE
CITY	CITY	CITY	NONE
PRIVATE	PRIVATE	PRIVATE	NONE
PRIVATE	PRIVATE	PRIVATE	NONE
CITY	CITY	CITY	CITY
CITY	CITY	CITY	CITY
PROPOSED STORM DRAINAGE:	PROPOSED STORM DRAINAGE:	PROPOSED STORM DRAINAGE:	PROPOSED STORM DRAINAGE:
P.G.R.E.	P.G.R.E.	P.G.R.E.	P.G.R.E.
PROPOSED ELECTRICAL SERVICE:	PROPOSED ELECTRICAL SERVICE:	PROPOSED ELECTRICAL SERVICE:	PROPOSED ELECTRICAL SERVICE:
P.G.R.E.	P.G.R.E.	P.G.R.E.	P.G.R.E.
EXISTING GAS SERVICE:	EXISTING GAS SERVICE:	EXISTING GAS SERVICE:	EXISTING GAS SERVICE:
P.G.R.E.	P.G.R.E.	P.G.R.E.	P.G.R.E.
EXISTING TELEPHONE SERVICE:	EXISTING TELEPHONE SERVICE:	EXISTING TELEPHONE SERVICE:	EXISTING TELEPHONE SERVICE:
PACIFIC BELL	PACIFIC BELL	PACIFIC BELL	PACIFIC BELL
PROPOSED TELEPHONE SERVICE:	PROPOSED TELEPHONE SERVICE:	PROPOSED TELEPHONE SERVICE:	PROPOSED TELEPHONE SERVICE:
PACIFIC BELL	PACIFIC BELL	PACIFIC BELL	PACIFIC BELL
PROPOSED NUMBER OF LOTS:	PROPOSED NUMBER OF LOTS:	PROPOSED NUMBER OF LOTS:	PROPOSED NUMBER OF LOTS:
1	1	1	37 PLUS LOT "X"
GROSS ACRES:	GROSS ACRES:	GROSS ACRES:	GROSS ACRES:
2.28	2.28	2.28	6.82

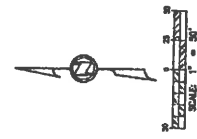
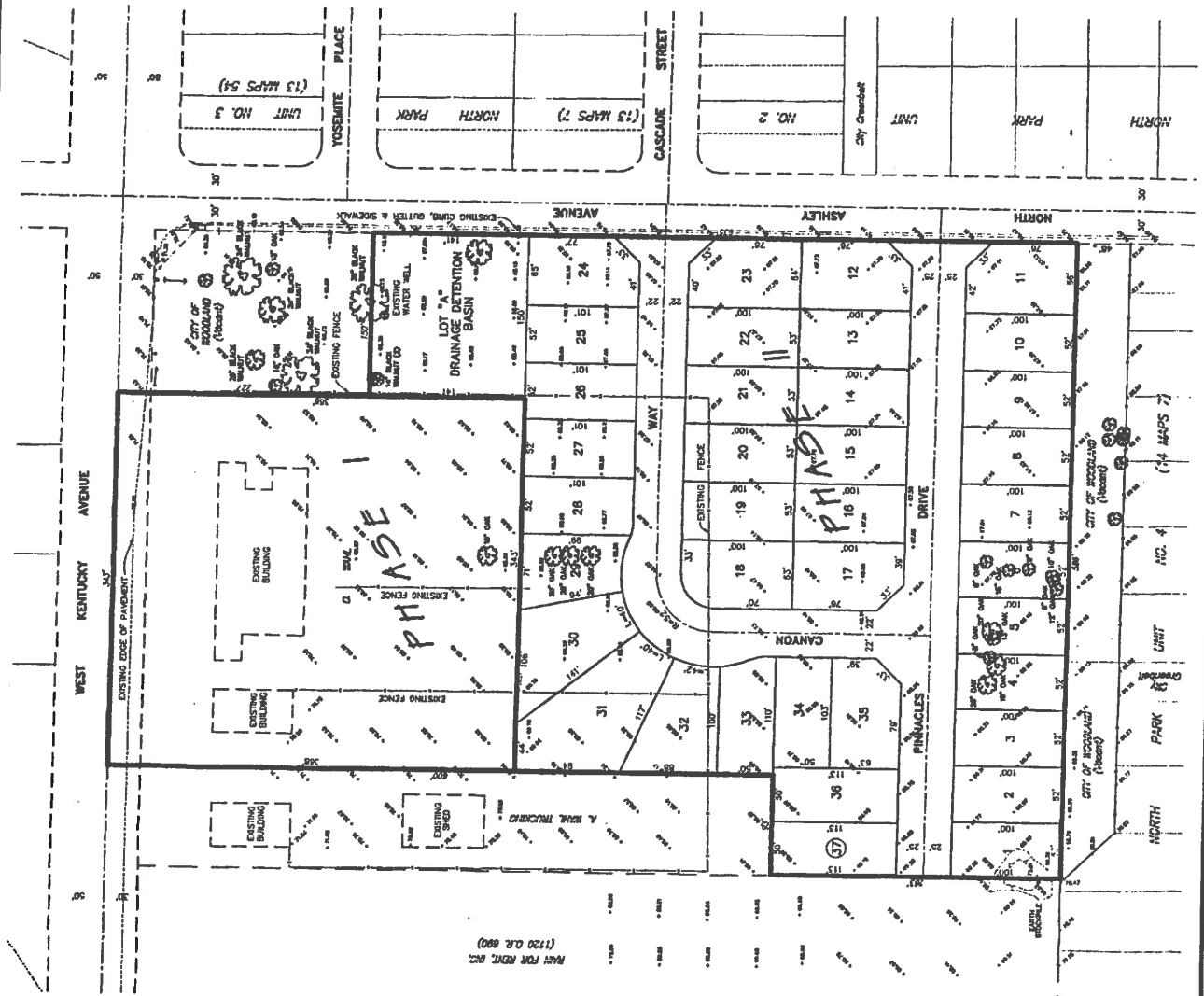
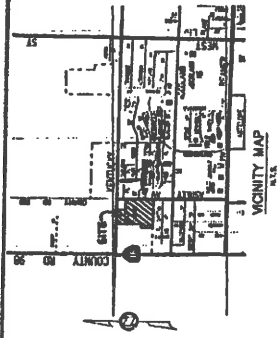
LOT "X" FOR DRAINAGE DETENTION BASIN TO BE DEDICATED TO THE CITY.
THIS MAP CONFORMS WITH THE REQUIREMENTS OF THE STATE SUBDIVISION
MAP ACT AND THE CITY SUBDIVISION ORDINANCE.

TENTATIVE SUBDIVISION MAP NO. 4332 FOR NORTH PARK UNIT NO. 6

A portion of the Northwest Quarter
of the Northwest Quarter of
Section 30, Township 10 North, Range 2 East, M.D.M.,
City of Woodland, Yolo County, California



CIVIL ENGINEERING
LAND ENGINEERING
PLANNING
1000 P STREET, SUITE 100
SACRAMENTO, CA 95811
PHONE: (916) 442-7755



STAFF REVIEW: RON PINEGAR

AGENDA ITEM 2

PROJECT TITLE: North Park Unit No. 6 (Tentative Subdivision Map No. 4332)

REPORT FOR: Planning Commission Public Hearing - May 1, 1997

STAFF RECOMMENDATION: Conditional Approval

APPLICANT: Stanley M. Davis Company

OWNER: O. Wahl Trust

LOCATION: Southwest corner of N. Ashley Avenue and W. Kentucky Avenue (see attached vicinity map)

PARCEL SIZE: Approximately 9.5 acres

CURRENT ZONING: R-1 Single Family

GENERAL PLAN DESIGNATION: Low Density Residential

EXISTING LAND USES: Vacant (Phase I 6.6 acre parcel)
2 Industrial Buildings (Phase I 2.9 acre Designated Remainder)

ADJACENT LAND USES & ZONING:

NORTH	-	Light Industrial (2 Bldg. & Storage Yds)	R-1
SOUTH	-	Park Strip, Single family/duplex	R-1
EAST	-	Single family/duplex	R-1
WEST	-	Vacant	I/PD

STREET ACCESS: N. Ashley Avenue

PREVIOUS ACTION TAKEN: On April 17, 1997 the Planning Commission held a public hearing on the proposed project which included only alternative a). At the public hearing the Commission agreed to continue the item until the May 1, 1997 Planning Commission meeting in order to allow time for the Parks and Recreation & Community Services Commission to meet, consider the possible alternatives for dealing with the remnant linear park strip and develop some recommendations for the Planning Commission and the developer. Tim Barry, the Parks and Recreation & Community Services Director had recommended this action since the alternatives that evolved out of staff level discussions involved policy issues that needed to be considered by the Parks and Recreation & Community Services Commission. They had previously agreed that they did not want to have any more tot lots/mini parks because of their limited utility, potential for inappropriate user behaviors and the relatively high cost of maintenance of them. Since the estimated costs for improving the proposed park did not

match the projected park funds that would be generated from the sales of the homes Director Barry indicated that he would prefer to take the proposal to the Commission for their input. The Parks and Recreation & Community Services Commission will be considering the proposed park strip alternatives on Wednesday April 30, 1997 at 7:00 PM at the Parks Building at 1122 Main Street.

PENDING/POTENTIAL ACTION: Planning Commission action on a tentative map, Partial abandonment/reconfiguration of Park Strip and NDEIR.

PROJECT PROPOSAL: The applicant is proposing a tentative subdivision map which will divide a 9.5 acre parcel into 38 lots plus a designated remainder. Phase I (a final parcel map) will split the 9.5 acre parcel into a 6.6 acre parcel and a 2.9 acre designated remainder and Phase II (a final subdivision map) will split the 6.6 acre parcel into 35 or 36 lots for single family homes and one lot (Lot A) for a storm water drainage detention basin. Consideration of Tentative Subdivision Map No. 4332 involves the possible abandonment of most of an existing City owned greenbelt park strip (that is undeveloped) located immediately south of the project which is a remnant of the City's old linear park system in the area. The City is now considering two alternatives for dealing with the abandonment of the park strip: Alternative A; the creation of a tot lot/mini park using remnants of the park strip and two of the 37 residential lots (see preliminary Map of North Park Unit No. 6) or Alternative B; extending the existing 32 foot wide walking path north of El Capitan Drive north to create a connection to Pinnacles Drive using one of the 37 residential lots. Both alternatives involve the City abandoning most of the park strip by deeding 24 feet to the existing home owners to the south and using the north 24 feet as part of the 116 foot deep lots in the proposed subdivision (see lots 1-9 of Preliminary Map of North Park No. 6). The final subdivision map also proposes a 7.5 foot wide parkway planter strip along the south side of Pinnacles Drive extending east to north Ashley and a 20 foot wide landscaped pathway extending north along the west side of North Ashley Avenue from Pinnacles Drive to Kentucky Avenue (in order to connect the city parks in the subdivisions north of Kentucky Avenue to the existing linear park system to the south). Both alternatives involve the City and the developer negotiating the sale price of the north 24 feet of the park strip to be used as lots in the proposed subdivision. A portion of the City owned park strip would be used for the Alternative A tot lot/mini park and the Alternative B walking path. The developer is proposing to install the improvements for either alternative in exchange for the park fund fees that would be generated from the sale of the homes. He is also proposing to put in a new six foot wood fence along the new property line that would be created by the abandonment of the park strip. A meeting was held with the adjoining home owners on April 8, 1997 to discuss the abandonment of the park strip and creation of a new tot lot. The neighbors were generally in favor of the proposal but disagreed on the amount of land to be deeded to them.

APPLICABLE CODES/ORDINANCES: City of Woodland Zoning and Subdivision Ordinance, the California Environmental Quality Act.

ENVIRONMENTAL ASSESSMENT STATUS: A Negative Declaration has been prepared which indicated this project will not have a significant effect on the environment. The project

will not have an impact on fish and wildlife resources and a finding of “de minimis” is recommended.

REVIEW AGENCY COMMENTS:

Police Department: The Police Department has comments favoring the abandonment of the greenbelt park strip and converting a portion of it to a mini park/tot lot. The small park would allow for police department and neighborhood monitoring of activities. See memo dated April 7, 1997.

Public Works Department: The Public Works Department has comments regarding public improvements - see memo dated April 1, 1997.

Pacific Bell: Pacific Bell has requested public utility easements along Pinnacles Drive, Canyon Way and along the west side of N. Ashley Avenue and the W. Kentucky Avenue frontages of the tentative subdivision map.

Yolo County Environmental Health Department:

1. Earth stockpile noted at SW corner of Subdivision Map No. 4332 to be properly removed or disposed of prior to actual development.
2. The back portion of Wahl Trucking to be evaluated for petro-chemical contamination. Mitigation measures to be taken if warranted.
3. On-site existing well to be properly abandoned under permits from the County Environmental Health and the City of Woodland.

Parks, Recreation & Community Services Department: Their comments will be forthcoming regarding the proposed alternatives and related improvements after their Commission meeting of April 30, 1997. A copy of Tim Barry's comments received on April 15, 1997 are attached. His memorandum indicates that due to an anticipated shortfall of \$43,774 in development fees needed to pay for landscape or park improvements that they have reservations about the original proposal for the tot lot/mini park that would use two of the lots in the proposed subdivision and 48 feet of the linear park strip adjacent to the proposed park. This in turn has led to their decision to go back to their Commission with two specific alternatives in order to develop a formal recommendation to the Planning Commission.

Woodland Joint Unified School District: On April 15, 1997 the City received a letter from the School District requesting that the school mitigation fees for the subdivision be set at \$10,509 per single family unit. A copy of the letter is attached.

Note: Upon advise from the City Attorney Staff is recommending that the requested school mitigation fee not be made a condition of approval and that the current fee schedule in effect be used until a new agreement between the School District and the City can be adopted.

The Building Department, Fire Department and Sheriff's Department had "no comment" on this project. The following reviewing agencies did not respond to our referral on the project: Pacific Gas and Electric and Sonic Cable.

STAFF COMMENTS: Staff supports this in-fill project. It will provide affordable for-sale units on a piece of property that has remained vacant for many years despite being surrounded by development. We have the following comments on the project:

1. Abandonment of Park Strip: The General Plan no longer shows a continuation of the linear park system west of N. Ashley Avenue which reflects a change in philosophy on the part of the City due to security and policing concerns and a desire for larger more recreation oriented public parks versus linear parks which have use limitations but still have fixed costs to maintain. The Parks, Recreation & Community Services Department would rather see their park funds used to develop parks that offer the most park for the money. The developer and the neighbors are generally supportive of the proposal although it appears that most of the property owners would like to have all or most of the 48 foot wide linear park strip deeded to them instead of split down the middle. David Villescay, the homeowner at 324 El Capitan Drive, who is adjacent to the proposed lot (who would not receive any of the strip as it is now configured on the Preliminary Map of North Park Unit No. 6) has submitted a letter expressing his desire to receive a 40 foot wide piece of the strip with the developer receiving the remaining 8 feet (see copy of letter and 4 alternative configurations attached). Letters requesting the full 48 foot strip were also received from Steven Lampman and LaMar Price (see copies attached). Staff is hesitant to support any specific requests until comments are received from the Parks and Recreation & Community Services Commission. Some of the neighbors have also requested that the new homes that would be going in on the proposed lots to the north be one story homes only. Other homeowners have requested that the common fence be 7 feet in height to offer more privacy.
2. Existing trees. There are a number of existing trees on the property (their locations are shown on the attached tentative map). The applicant has expressed some interest in keeping the trees shown on lot 27 of the Preliminary Map of north Park Unit No. 6. The City Park Superintendent, George Ahlgren, has inspected the trees shown on the tentative map and has concluded that all should be removed and replacement trees provided to the City as mitigation. A copy of his April 22, 1997 memo summarizing his findings and recommended mitigation formula is attached. Staff recommends that tree mitigation (young replacement trees be provided to the City by the developer) as required by the Park Superintendent.

SUMMARY OF RECOMMENDATIONS: Staff recommends certification of the NDEIR and approval of the tentative map (without the condition from the City Attorney regarding indemnification).

PLANNING COMMISSION ACTION: The Planning Commission will be taking action regarding the Negative Declaration and Tentative Subdivision Map.

MOTION NO. 1: MOVE TO CERTIFY THAT THE NDEIR IS COMPLETE AND ADEQUATE, THAT THE PROJECT IS NOT EXPECTED TO GENERATE ANY SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS, THAT NO FURTHER ENVIRONMENTAL ASSESSMENT IS REQUIRED, AND THAT THE PROJECT WILL NOT HAVE AN IMPACT ON FISH AND WILDLIFE RESOURCES AND THEREFORE A FINDING OF "DE MINIMIS" CAN BE MADE FOR THIS PROJECT.

MOTION NO. 2: MOVE TO RECOMMEND THAT THE CITY COUNCIL INITIATE ACTION TO ABANDON THE LINEAR PARK STRIP ALONG THE SOUTH ROW OF LOTS IN TENTATIVE SUBDIVISION MAP # 4332.

MOTION NO. 3: MOVE TO APPROVE TENTATIVE MAP #4332 FOR THE PROPERTY LOCATED AT THE SOUTHWEST CORNER OF N. ASHLEY AVENUE AND W. KENTUCKY AVENUE WHICH WOULD DIVIDE A 9.5 ACRE PARCEL INTO 38 LOTS PLUS A DESIGNATED REMAINDER AS SHOWN ON THE ATTACHED MAP WITH THE FOLLOWING FINDINGS AND CONDITIONS OF APPROVAL:

FINDINGS:

- A NDEIR HAS BEEN REVIEWED AND APPROVED AND NO FURTHER ENVIRONMENTAL REVIEW IS NEEDED.
- THE DESIGN OF THE PROJECT WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT.
- THE PROPOSED MAP IS CONSISTENT WITH THE GENERAL PLAN IN THAT THE PROPERTY IS DESIGNATED LOW DENSITY RESIDENTIAL WHICH ALLOWS FOR SINGLE FAMILY HOMES AND SPLIT LOT DUPLEXES
- THE DESIGN AND IMPROVEMENT OF THE PROPOSED SUBDIVISION IS CONSISTENT WITH THE GENERAL PLAN WHICH REQUIRES THE INSTALLATION OF PUBLIC SERVICES AND IMPROVEMENTS.
- THE PARCELS ARE PHYSICALLY SUITABLE FOR DEVELOPMENT AS THEY HAVE ACCESS TO NORTH ASHLEY AVENUE.
- THE PARCELS ARE PHYSICALLY SUITABLE FOR THIS TYPE OF DEVELOPMENT AS THE PROJECT MEETS THE REQUIREMENTS OF THE ZONING ORDINANCE.
- THE DESIGN OF THE PROJECT AND IMPROVEMENTS WILL NOT CAUSE SERIOUS PUBLIC HEALTH PROBLEMS AND UTILITIES ARE AVAILABLE TO THE SITE.

-----THE ABANDONMENT OF THE LINEAR PARK STRIP IS
CONSISTENT WITH THE GENERAL PLAN

CONDITIONS OF APPROVAL:

COMMUNITY DEVELOPMENT DEPARTMENT

1. SECURE APPROVAL AND SATISFY REQUIREMENTS OF ALL AGENCIES OF JURISDICTION.
2. PROVIDE 48 FIFTEEN GALLON TREES AS MITIGATION FOR OAK TREE REMOVALS AS RECOMMENDED BY THE PARK SUPERINTENDENT.
3. PROVIDE ONE STORY HOMES FOR LOTS 1-9 AS SHOWN ON THE PRELIMINARY MAP OF NORTH PARK UNIT NO. 6
4. MAP APPROVAL SUBJECT TO CITY COUNCIL ABANDONMENT OF LINEAR PARK STRIP AND CREATION OF (TOT LOT PARK OR CONTINUE WALKING PATH), PARKWAY PLANTER STRIP AND LANDSCAPED PATHWAY.
5. MAP APPROVED SUBJECT TO CREATION OF (TOT LOT PARK OR WALKING PATH).
6. MAP APPROVED SUBJECT TO CREATION OF PARKWAY PLANTER STRIP AND LANDSCAPED PATHWAY.
7. DEED 24 FOOT WIDE SEGMENT OF LINEAR PARK STRIP TO HOMEOWNERS TO SOUTH OF SUBDIVISION # 4332. DEVELOPER AND CITY TO NEGOTIATE THE PRICE OF 24 FOOT PLANTER STRIP MADE AVAILABLE TO DEVELOPER.
8. RECOMMEND CONSTRUCTION OF SEVEN FOOT HIGH GOOD NEIGHBOR FENCE ALONG COMMON PROPERTY LINE ALONG LOTS 1-9.
9. REQUIRE MASONRY WALL ALONG LOTS ADJACENT TO INDUSTRIAL PROPERTY TO NORTH AND WEST.

PUBLIC WORKS DEPARTMENT

10. ENTER INTO A SUBDIVISION IMPROVEMENT AGREEMENT FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS.
11. PREPARE, AND SUBMIT FOR APPROVAL, A UTILITY SITE PLAN PRIOR TO PREPARATION OF FULL IMPROVEMENT PLANS.

12. ALL PUBLIC IMPROVEMENTS SHALL CONFORM TO THE CURRENT CITY OF WOODLAND STANDARD SPECIFICATIONS.
13. IN ADDITION TO INSTALLING DRIVEWAYS, REMOVE AND REPLACE ANY DAMAGED SIDEWALK, CURB, AND GUTTER ALONG THE PROJECT FRONTAGE.
14. CONFORM TO ALL COUNTY HEALTH REGULATIONS AND REQUIREMENTS FOR THE ABANDONMENT OF ANY SEPTIC TANKS AND OR WATER WELLS ON THE PROPERTY.
15. PUBLIC IMPROVEMENTS IN ADDITION TO ROADWAY CONSTRUCTION SHALL INCLUDE WATER, SEWER AND STORM DRAIN MAINS, FIRE HYDRANTS AND STREET LIGHTS.
16. DEDICATE A 1 FOOT STRIP OF LAND AT THE WEST END OF PINNACLES DRIVE, TO THE CITY OF WOODLAND.
17. IF CONSTRUCTION ACTIVITY WILL OVERLAP ONTO ADJACENT PRIVATE PROPERTY, TEMPORARY CONSTRUCTION EASEMENT FROM THOSE OWNERS WILL BE NEEDED. PROVIDE COPIES TO THE CITY PRIOR TO APPROVAL OF THE IMPROVEMENT PLANS.
18. THE GRADING PLAN SHALL INCLUDE ELEVATIONS ON ADJACENT PROPERTY WITHIN 20 FEET OF THE PROJECT BOUNDARY. A LIGHTING AND LANDSCAPE DISTRICT SHALL BE FORMED FOR THIS SUBDIVISION PRIOR TO RECORDING OF THE FINAL MAP.
19. THE STORM DRAINAGE DETENTIONS FACILITY SHALL BE DEDICATED TO THE CITY OF WOODLAND AND MAINTAINED THROUGH THE LIGHTING AND A LANDSCAPE DISTRICT.

WOODLAND JOINT UNIFIED SCHOOL DISTRICT

20. PAY APPLICABLE SCHOOL DEVELOPMENT FEES AT THE RATE OF PER UNIT.

CITY ATTORNEY

(OPTIONAL - NOT REC.)

21. THE APPLICANT SHALL HOLD HARMLESS THE CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES FROM LIABILITY FOR ANY AWARD, DAMAGES, COSTS, AND FEES INCURRED BY THE CITY AND/OR AWARDED TO ANY PLAINTIFF IN AN ACTION CHALLENGING THE VALIDITY OF THIS PERMIT OR ANY

ENVIRONMENTAL OR OTHER DOCUMENTATION RELATED TO APPROVAL OF THIS PERMIT. APPLICANT FURTHER AGREES TO PROVIDE A DEFENSE FOR THE CITY IN ANY SUCH ACTION.

OR MOTION NO. 4:

MOVE TO DENY THE PROPOSED TENTATIVE MAP FOR THE FOLLOWING REASONS:.....(SPECIFY).

npark6a1.doc

Sec. 25-21-55. - Nonconforming uses.

- (a) Continuing Existing Buildings and Uses. Except as hereinafter provided, any use of land, building or structure, lawfully existing at the time of the adoption of this chapter may be continued, even though such use, building or structure may not conform to the provisions of this chapter or the zone in which it is located. Nonconforming signs are subject to the provisions of Article 25.
- (b) Nonconforming Buildings and Structures.
 - (1) Maintenance and Repair. A conforming building or structure may be maintained or repaired as required to keep the building or structure in sound condition, provided however that no structural alterations shall be made except those required by the building inspector.
 - (2) Additions and Enlargements. No building or structure nonconforming as to use, lot area, or yard width or depth regulations, may be added to or enlarged unless such nonconforming building or structure and the additions and enlargements thereto and the use thereof are all made to conform to the regulations of the zone in which it is located.
 - (3) Relocation. A nonconforming building shall not be moved to any other lot or to any other portion of the lot on which it is presently located unless as a result of the move the building shall conform to the regulations of the zone in which it will be located after the move.
 - (4) Restoration—Damaged Buildings. A nonconforming building or structure, which is damaged or partially destroyed by any reason to an extent of not more than fifty percent of its market value at that time, may be restored and the occupancy or use of such building or structure may be continued or resumed, provided such restoration is started within a period of one year and is diligently prosecuted to completion. In the event such damage or destruction exceeds fifty percent of the market value of the building or structure, no repairs or reconstruction shall be made unless every portion of such building or structure is made to conform to all regulations for new buildings in the zone in which it is located.
- (c) Nonconforming Use of Buildings.
 - (1) Extension of Use. A nonconforming use may not be extended to other parts of a building unless authorized by the zoning administrator.
 - (2)

Change of Use. The nonconforming use of a building may be changed to another nonconforming use, which, in the opinion of the zoning administrator, is of the same or of a more restrictive nature.

- (d) Vacancy. Any nonconforming use of land and/or building or structure which becomes vacant and remains unoccupied for a continuous period of one year shall not thereafter be occupied except by a use which conforms to the use regulations of the zone in which it is located.

(Amended during the March 2009 supplement.)

RESOLUTION NO. PC 16 -

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
WOODLAND DENYING THE APPEAL OF THE ZONING
ADMINISTRATOR INTERPRETATION FOR THE LEGAL
NONCONFORMING INDUSTRIAL USE ON 1.213 ACRES AT 352 AND
360 WEST KENTUCKY AVENUE IN THE SINGLE FAMILY
RESIDENTIAL ZONE.**

WHEREAS, the Woodland Planning Commission held a duly noticed public hearing on December 15, 2016, to review and consider a request for an appeal of a Zoning Administrator interpretation for the legal nonconforming industrial use on 1.213 acres at 352 and 360 West Kentucky Avenue ("Property") in the Single Family Residential Zone; and

WHEREAS, the Property was annexed into City Limits on April 16, 1991 and was rezoned as Single Family Residential, causing the existing industrial use of the Property to be a legal nonconforming use; and

WHEREAS, several industrial businesses have utilized the Property since it was annexed into the City; and

WHEREAS, the City's Community Development Department placed conditions on some of the business licenses for some of the businesses that operated at the Property; and

WHEREAS, the City cannot legally place conditions on a business license that go beyond standard performance standards or requirements in the City's Municipal Code; and

WHEREAS, any new or modified use at the Property will require review by the Zoning Administrator to decide whether the new use is of the same or of a more restrictive manner than historical industrial uses of the Property; and

WHEREAS, on September 20, 2016, the Zoning Administrator made a zoning interpretation that the existing buildings and land at the Property can be used for industrial uses in their entirety as long as such use is consistent with or less intense than the existing industrial use and such use complies with all City requirements and polices, including all Industrial Performance Standards and nonconforming use requirements; and

WHEREAS, on September 26, 2016, Lewis and Nicole Dennis filed an appeal of the Zoning Administrator interpretation, pursuant to Section 25-31-40 of the City's Municipal Code; and

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA"), the proposed modified use is categorically exempt from further environmental review pursuant to CEQA Section 15321 which exempts enforcement actions by regulatory agencies including the

adoption of an administrative decision or order enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective.

WHEREAS, proper notice of this public hearing was given in all respects as required by law; and

WHEREAS, the Planning Commission has reviewed all written evidence and oral testimony presented to date.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Woodland, based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby:

1. Affirm the Zoning Administrator interpretation that the existing buildings and land at 352 and 360 West Kentucky Avenue can be used for industrial uses in their entirety as long as such use is consistent with or less intense than the existing industrial use and such use complies with all City requirements and polices, including all Industrial Performance Standards and nonconforming use requirements.
2. Denial of the appeal of the Zoning Administrator interpretation mentioned above.

PASSED AND ADOPTED by the Planning Commission of the City of Woodland at a regular meeting on the 15th day of December, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chris Holt, Vice Chairperson

ATTEST:

Cindy Norris, Principal Planner