

Bond Case Briefs

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ZONING - MINNESOTA

White v. City of Elk River

Supreme Court of Minnesota - December 4, 2013 - N.W.2d - 2013 WL 6252431

Property owner brought declaratory judgment action against city seeking declaration that campground operated on property was a legal nonconforming use and that city had wrongfully revoked conditional use permits to operate campground, and seeking damages for alleged intentional interference with business relations.

The Supreme Court of Minnesota held that:

- On an issue of first impression, application for and receipt of conditional-use permit did not automatically waive nonconforming use status;
- Property owner did not waive nonconforming use status;
- Municipality lacked authority to terminate nonconforming use by revocation of conditional-use permit; and
- City properly required interim-use permit for replacement of destroyed accessory building.

Property's owner's application for and receipt of conditional-use permit for property did not constitute a surrender of the right to continue nonconforming use of the property as a campground unless the property owner validly waived that right. Nonconforming uses were constitutionally protected property rights, and a property owner's voluntary compliance with a later-enacted zoning ordinance did not automatically waive the right to operate under nonconforming use status in the future.

Property owner who had applied for and received a conditional-use permit did not "waive" its right to continue nonconforming use of property as a campground, where, although property owner knew of its nonconforming-use rights as a campground when it applied for the conditional-use permit, there was nothing in the record to evince an intent that, by applying for and accepting the conditional-use permit, property owner subordinated its rights to the city's zoning regime.