

# **Bond Case Briefs**

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## **ZONING - NEBRASKA**

### **Rodehorst Brothers v. City of Norfolk Board of Adjustment**

**Supreme Court of Nebraska - March 28, 2014 - N.W.2d - 287 Neb. 779**

Partnership owned a fourplex apartment building in Norfolk, Nebraska. The building's use as a fourplex (to house up to four families), in an area zoned R-2 for one- and two-family use, was a legal, nonconforming use.

[Neb.Rev.Stat. § 19-904.01 \(Reissue 2012\)](#), as well as the applicable zoning ordinance, both provide that the right to continue such a use is lost if it has been discontinued for 1 year.

The partnership argued that although some of the apartments in the building were unoccupied for several years, the building's use as a fourplex never changed, primarily because it had all the trappings of a fourplex and the units were available for use.

The Supreme Court of Nebraska affirmed the City of Norfolk Board of Adjustment's ruling that the partnership had forfeited its right to continue the use due to the fact that two of the four apartment units had been unoccupied for more than one year. Relevant to this conclusion was the fact that the owners had not attempted to find new tenants for the unoccupied apartments.

The court also held that the City of Norfolk Board of Adjustment lacked authority under [Neb.Rev.Stat. § 19-910 \(Reissue 2012\)](#) to grant a "use" variance to otherwise allow the use to continue and that there was no "taking" of the property.