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Fredrikson & Byron Wins Significant Nonconforming Use Rights Case at the Minnesota Supreme Court

Firm News

08.11.2020

In a significant victory for landowners throughout Minnesota, the Minnesota Supreme Court issued an important decision on July 15, 2020, defining the scope of property owners' nonconforming use rights and what activities constitute a continuation of those rights in *AIM Development (USA), LLC v. City of Sartell*, __ N.W.2d __ (Minn. July 15, 2020). AIM Development LLC (AIM), represented by Fredrikson & Byron attorneys Brian S. McCool and Joseph J. Cassioppi, who argued the case before the Minnesota Supreme Court, purchased a landfill associated with the closed Verso paper mill in the City of Sartell in 2013. Following this purchase, the city sought to prevent AIM from using the landfill by arguing that the only allowed source of waste for the landfill was the demolished papermill and waste from any other source would constitute an improper expansion of the landfill's status as a nonconforming use. Both the District Court and Minnesota Court of Appeals accepted the city's arguments, with the Court of Appeals holding that the scope of AIM's nonconforming use rights were narrowly defined by the Minnesota Pollution Control Agency (MPCA) permit in effect at the time the paper mill was destroyed during 2012.

AIM Development (USA), LLC v. City of Sartell

The Minnesota Supreme Court reversed the Court of Appeals and determined that the scope of AIM's nonconforming use rights is not defined by the MPCA permit in effect when the paper mill was destroyed, but instead by the uses lawfully existing at the time of the 1989 zoning change that converted the landfill to a legal nonconforming use. The Court also clarified what activities constitute a continuation, rather than an expansion, of a nonconforming use. As it relates to AIM, the Court explained that AIM's proposal to accept non-hazardous industrial waste from generators other than the demolished papermill constitutes a lawful continuation, rather than expansion, of AIM's nonconforming use rights, even though the continued deposit of waste will result in the vertical and horizontal expansion of the physical dimensions of the landfill.

The Supreme Court's decision emphasized the constitutional and statutory protections afforded landowners in Minnesota to continue, including through repair, replacement, restoration, maintenance and improvement, a legal nonconforming use.

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The decision will have wide-ranging application throughout the state and will significantly limit the ability of municipalities to force the discontinuance of legal nonconformities based on changed circumstances that do not alter the general nature of the use.

Fredrikson & Byron is a 300-attorney law firm based in Minneapolis, with offices in Bismarck, Des Moines, Fargo, Mankato, St. Paul, Saltillo, Mexico, and Shanghai, China. Fredrikson & Byron has a reputation as the firm “where law and business meet.” Our attorneys bring business acumen and entrepreneurial thinking to work with clients, and operate as business advisors and strategic partners, as well as legal counselors. More information about the firm is available at www.fredlaw.com. Follow us on LinkedIn and on Twitter @FredriksonLaw.

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