

No. A11-1155

STATE OF MINNESOTA

IN COURT OF APPEALS

Daniel S. Ortell,

Respondent,

vs.

City of Nowthen,

Appellant.

APPELLANT'S REPLY BRIEF

Daniel S. Ortell – PRO SE
Respondent
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INTRODUCTION

Respondent has not made any argument or cited any law to refute the City's interpretation of Minn. Stat. § 462.357 subd. 1e. Respondent's nonconforming house collapsed in November 2007. He has never applied for a building permit to rebuild it. Therefore, pursuant to Minn. Stat. § 462.357 subd. 1e the nonconformity may not be continued. As a result, the District Court's grant of partial summary judgment in favor of Respondent should be reversed.

LEGAL ARGUMENT

I. UNDER THE PLAIN LANGUAGE OF MINN. STAT. § 462.357 SUBD. 1E, RESPONDENT'S NONCONFORMITY CANNOT BE CONTINUED BECAUSE IT WAS DESTROYED AND NO BUILDING PERMIT WAS APPLIED FOR WITHIN 180 DAYS OF WHEN THE PROPERTY WAS DAMAGED.

Minn. Stat. § 462.357 subd. 1e(a) is clear that a nonconformity may not be continued if it is destroyed "to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of the damage and no building permit has been applied for within 180 days of when the property is damaged." "Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy." Minn. Stat. § 462.357 subd. 1e(b). Respondent concedes that in November 2007 his house was destroyed to the extent of greater than 50 percent of its estimated market value as indicated in the records of the county assessor at the time of the damage. *Respondent's Response Brief* p. 1, 4. Respondent also concedes that he has never applied for a building permit to rebuild the house. Therefore, his use of the land must conform to the City's zoning ordinance. Minn. Stat. 462.357 subd. 1e(b).

That Respondent was working pursuant to a building permit when the house was destroyed has no bearing upon the question of whether his nonconforming structure can be continued. Under the plain language of Minn. Stat. § 462.357 subd. 1e(a) Respondent had to apply for a building permit within “180 days of when the property is damaged.” However, Respondent’s building permit was issued before the house was damaged and was for “re-roof, siding, windows”. Respondent has never applied for a building permit to rebuild the house following its destruction. Therefore, the nonconformity cannot be continued.

Respondent claims that he had someone occupying the basement of the collapsed structure. However, whether there was someone living in the ruins of the house is not relevant to the question of whether Respondent applied for a building permit within 180 days after the house was destroyed.

Respondent complains that he was never told that Minn. Stat. § 462.357 subd. 1e(a) required him to apply for a building permit within 180 days of when the house was destroyed in order to continue the nonconformity. However, Respondent is charged with knowledge of the law. *See Anderson v. City of Minneapolis*, 287 Minn. 289, 178 N.W.2d 215, 216 (Minn. 1970). His lack of knowledge of the law does not excuse his failure to apply for a building permit to rebuild his nonconforming house within 180 days of its destruction.

The District Court’s grant of partial summary judgment in favor of Respondent should be reversed because under the plain language of Minn. Stat. § 462.357 subd. 1e his destroyed nonconformity cannot be continued.

II. RESPONDENT HAS WAIVED THE ARGUMENT THAT HE HAS MET THE CRITERIA FOR GRANTING A VARIANCE BECAUSE HE FAILED TO APPEAL THE DISTRICT COURT'S GRANT OF PARTIAL SUMMARY JUDGMENT IN FAVOR OF THE CITY ON THAT ISSUE.

Respondent contends that he met the criteria for granting a variance. However the District Court granted partial summary judgment to the City holding that it had a rational basis to deny Respondent's variance request. Respondent did not appeal the District Court's determination. Therefore, the issue has been waived and is not properly before the Court. *Arndt v. American Family Ins. Co.*, 394 N.W.2d 791, 793-94 (Minn. 1986). Furthermore, Respondent's allegations of "blackmail" are unfounded. The record shows that Respondent's neighbor appeared before the Nowthen Planning and Zoning Commission at a Public Hearing on Respondent's variance application and offered to work with Respondent to adjust their boundary lines. *App. 20-25, 30-33, 190-91*. There is nothing in the record to indicate that the City exerted any pressure on Respondent to accept the neighbor's proposal. Moreover, Respondent's baseless allegations have no bearing on the interpretation of Minn. Stat. § 462.357 subd. 1e regarding nonconformities.

Respondent failed to appeal the District Court's grant of partial summary judgment in favor of the City. Therefore, he has waived his argument that he met the criteria for granting a variance.

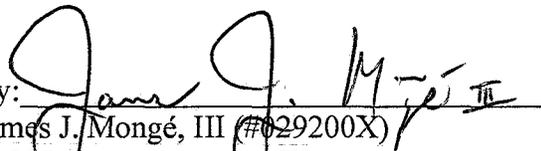
CONCLUSION

The language of Minn. Stat. § 462.357 subd. 1e is clear. A nonconformity that is destroyed to the extent of greater than 50 percent of its estimated market value as

indicated in the records of the county assessor at the time of damage may not be continued if no building permit is applied for within 180 days of when the property is damaged. Respondent has never applied for a building permit to rebuild his nonconforming house. Therefore it may not be continued. As a result, the District Court's grant of partial summary judgment in favor of Respondent should be reversed.

Dated: *October 6, 2011*

LEAGUE OF MINNESOTA CITIES

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