

OFFICE OF
APPELLATE COURTS

OCT - 4 2011

No. A11-1155

FILED

STATE OF MINNESOTA
IN COURT OF APPEALS

Daniel S. Ortell,

Respondent,

vs.

City of Nowthen,

Appellant.

RESPONDENT'S BRIEF AND ADDENDUM

Daniel S. Ortell - PRO SE
Resopondent
428 Constance Boulevard NW
Andover MN 55304

James J. Monge, III - #029200X
Attorney for Appellant
League of Minnesota Cities
145 University Avenue West
St. Paul MN 55103
651-281-1271

Page 1-3	Response to Argument I
Page 4	Response to Argument II
Page 5	Respondent's Summary
Page 6	Proof of Occupancy

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

Apellant's Arguments

- I. THE DISTRICT COURT ERRED WHEN IT HELD THAT RESPONDENT'S NONCONFORMITY COULD BE CONTINUED BECAUSE UNDER THE PLAIN LANGUAGE OF MINN. STAT. 462.357 SUBD. 1E RESPONDENT'S NONCONFORMITY WAS DISCONTINUED WHEN HE FAILED TO APPLY FOR A BUILDING PERMIT WITHIN 180 DAYS OF ITS DESTRUCTION.

- II. ASSUMING FOR THE SAKE OF ARGUMENT THAT THE LANGUAGE OF MINN. STAT. 462.357 SUBD. 1(E) IS AMBIGUOUS, THIS COURT SHOULD STILL REVERSE THE DISTRICT COURT BECAUSE THE INTENT OF THE LEGISLATURE WAS TO DISCONTINUE NONCONFORMITIES WHEN THEY ARE DESTROYED AND NO BUILDING PERMIT IS APPLIED FOR WITHIN 180 DAYS.

Response to Appellant's Argument I

Page 5 of Appellants Brief and addendum

I. The District Court Erred

First and foremost, Daniel Orttel (Respondant) was working under a legal building permit when the construction accident occurred in November 2007, see App. 7 and 8. That permit was issued on September 25, 2007 by Barry Olson, building inspector for Burns Township.

note; (Burns Township did not incorporate as the city of Nowthen until May of 2008.) The roof on Orttel's house was leaking and infested with bats. On building permit application (App. 6), under description of repairs, Orttel wrote 'replace roof, and siding, some structural reinforcement and replacement.' Barry Olson told Orttel that he may have to go all the way down to the foundation being the house was old balloon style construction. Barry Olson issued the permit for roof, siding and windows, that were in roof area. On November 24, 2007 while lifting a large section of rotted roof the entire house was nearly pushed down. For safety's sake Orttel's contracted roofers removed the upper level of the house and dumped debris in on-site refuse containers. The lower level of the house which was occupied by Orttel's full time employee was unharmed.

On 11-30-07 Barry Olson arrived at Orttel's house to red tag the construction site. (see App. 9 lower page) Barry Olson told Orttel and four contracted workers that the stop work order was for no demolition permit. Orttel explained this was an accident and he had only removed the debris for safety's sake. Under state building code law, when posting a stop work order, an inspector must 'clearly' state conditions to resume

construction. Barry Olson simply wrote 'NO PERMIT'. No mention was made of a 180 day deadline to apply for a building permit. Due to poor health and cold weather Orttel decided to put the project on hold. He covered the remaining structure to protect the Oak flooring and prevent leakage in the lower level. With a walk-out basement entrance, it was in essence an Earth Burn until it could be re-constructed.

In March of 2008 Orttel went to Burns Township to talk to Barry Olson about resuming construction on his house. Though no mention was made of a 180 day deadline to rebuild, Barry Olson did say there would be setback issues. Barry Olson also told Orttel he would have to present an alternate site plan and an alternate sewer plan. This did not sound right being this was a construction accident under a legal building permit, it seemed the proper solution would be to amend the existing building permit. Orttel then got a copy of Burns Township's building and zoning ordinances which were later adopted by the city of Nowthen when the township incorporated as a city in May of 2008 - (App. 223) non-conforming uses/structures section 401-3 "If such non-conforming use consists of a substantial building and CEASES TO BE USED FOR A CONTINUOUS PERIOD OF ONE YEAR; any subsequent use of said building shall be in conformity to the requirements of this ordinance. "The structure at [REDACTED] [REDACTED] has never ceased to be used for a period of one year. The lower level has been occupied since the construction accident.

Daniel Orttel was diagnosed with Cancer in the spring of 2008. He believed that as long as he kept the structure occupied and his original building permit was never revoked, he could resume construction when his health was better. Daniel Orttel was

never told about a 180 day deadline to apply for a building permit if over 50% of the structure was destroyed even when he asked for a copy of current building and zoning ordinances at Burns Town Hall. Burns Township did not become a City until six months after the construction accident. (180 days) At no time was Daniel Ortzel notified of a change in zoning or building ordinances or that his building permit issued 9-25-07 was revoked. That permit is still active.

Response to Appellant's Argument II

Page 10 of Appellant's Brief and Addendum

II Assuming for the Sake of Argument

Assuming Minn. Stat. 462.357 subd. 1 (E) did apply. Orttel was already operating under a legal existing permit and in compliance with Burns Township building code when construction accident occurred just 65 days after building permit was issued. As far as over 50% of structure being destroyed, that figure was derived by property tax assessment. In reality the capped 12 course of block lower level which is still occupied and the oak flooring still intact on the first floor were the only part of the 100 plus year old structure that wasn't deteriorating at the time of the accident. And if the city of Nowthen succeeded in denying Orttel use of the existing foundation (App. 177 and 178) the cost of a new foundation, new sewer, new well, new electric, and excessive excavation would be three times the cost of what was destroyed in the accident. Not to mention loss of livelihood and a driveway which must cross a wet land to reach new location. The location where Orttel would have to move his house to is nearly 600 feet from his garage and pole building and would eliminate the propagation portion of his tree nursery. Orttel still strongly contends that the three criteria necessary to grant a hardship variance were met even though Orttel should never have been required to request a variance.

Respondent's Summary

Since this ordeal began, the treatment I have received from Burns Township, the
Nowthen and the League of Cities has gone from arbitrary and capricious to
malicious. Knowing that there was no insurance coverage on the contractors
liable for the construction accident and that I was diagnosed with terminal
lung melanoma cancer, they chose to ignore every law that would allow me to
return to my home. They actually expected me to change property lines and buy a
standard slab home of a neighbor who wanted to build a new home on higher
ground. (App. 190 and 191) This was a mild form of blackmail. Either buy a slab home
in the 1950's or move 600 feet from your new farm building and garage at an extra
cost of over \$100,000.00. In closing, why am I battling the League of cities when the
construction accident which led to all of this occurred under an existing building permit
issued by Burns Township six months before Burns Township became the city of Nowthen.
Does the league of cities even have jurisdiction in this matter?

Over the four year period, since I drew a permit to replace the roof on my farm
house, I have had three surgeries to remove malignant tumors. I've been through
intensive chemo therapy. Now, in remission, I pray this honorable court will uphold the
district court's decision and allow me to rebuild my house and return to my farm.

Respectfully,

Daniel S. Ortell

GENERAL AFFIDAVIT

Re: Daniel S. Orttel

November 18, 2010

Vs.

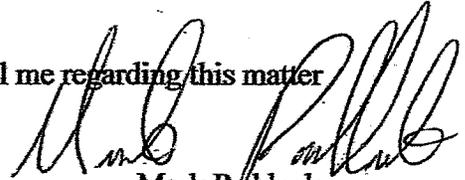
City of Nowthen

District Court County of Anoka

My name is Mark Paddock. I was living in the lower level at [REDACTED] in Nowthen before, during, and after the construction accident in November of 2007. In exchange for rent I helped Dan with farmwork and repair on his equipment. The lower level of the house had its own kitchen, bath and living area and it's own private walk out entrance.

No damage was done to the lower level of the house when the upper level fell. Dan moved into his mother's house after the construction accident and was diagnosed with cancer. The roof contractor claimed he was insured but was not. Replacing the roof was to be in exchange for a large landscaping job Dan had done for him. From July 2008 through December 2008 Jana Olson stayed at the house, other than that I lived at [REDACTED] in Nowthen, MN from June 2006 until April of 2010 when Kim Peechia moved in.

Please call me regarding this matter



Mark Paddock
763-647-4237

