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The Planning and Zoning Officials Academy provides local elected and appointed officials with both basic and advanced topics addressing issues that are unique to the role as a local government representative. To suggest a topic, please contact Kelly McIntyre at (734)913-2000.

Nonconforming Uses of Land

Zoning ordinances and zoning maps are not adopted or amended in a vacuum. In many communities, previous development and uses of land may have preceded the adoption of zoning by many years. Existing uses of land that are not in compliance with the new or amended zoning ordinance are considered to be “nonconforming.” State law requires that local zoning ordinances provide specific protections to “grandfather-in” existing uses of land that don’t conform to the new or amended ordinance. For example, an automobile dealership that has occupied a parcel of land in a particular community for many years will be allowed to continue after a new zoning map is adopted that zones the parcel for multiple-family residential uses. Despite the zoning change, the dealership may remain in business on the site until the owner decides to abandon the use or re-develop the parcel with a conforming multiple-family use.

One of the goals of zoning is to ensure compatibility between uses in a community by establishing minimum standards or conditions for various uses of land, and by grouping compatible uses into zoning districts. Since nonconforming uses are incompatible by definition, one objective of most local zoning ordinances is to limit, restrict and eventually

eliminate such uses where possible. The following are some of the ways communities can regulate nonconforming uses:

- **Limitations on repairs.** Communities may limit or restrict the repair, re-construction or restoration of damaged structures associated with nonconforming uses. For example, repairs to a fire-damaged building containing a nonconforming use may be limited to 50% of the assessed value of the property. If repairs would exceed this value, the community may require the use to be discontinued permanently.
- **Size, intensity limitations.** Nonconforming uses may be prevented from expanding in size or intensity. Also, a community may require a nonconforming use to be permanently discontinued if it ceases for an extended period of time (such as six months or a year).
- **Purchase.** The state zoning enabling act states, "The elimination of nonconforming uses...is declared to be for a public purpose and for a public use." This allows a community to remove a nonconforming use by purchasing the property through the eminent domain process, through condemnation, or by other means.

State law also provides local communities with the following options to work more proactively with owners of certain nonconforming uses to seek gradual improvements that bring the use, over a period of time, into conformance with the zoning ordinance:

- **Substitution of uses.** With the community's approval, one nonconforming use may be replaced by another use that is more compatible with permitted uses in the zoning district. For example, an auto body repair shop in an office district could be approved to be replaced by a video rental store that, while not a permitted use in the office district, is more compatible with office uses.
- **Class "A" vs. class "B" uses.** The state zoning enabling act allows communities to establish various classes of nonconforming uses, and to regulate each class differently. In practice, this provides communities with the option to work with certain preferred, or less objectionable, nonconforming uses (such as a convenience store in a residential district) while continuing to seek the removal of more incompatible uses (such as a metal stamping plant in the same district).

Usually, the community will treat these "preferred" nonconforming uses as a type of special land use. Following a public hearing before the planning commission, the community may designate a specific nonconforming use as "preferred" or "Class A" to allow the use to expand, renovate or make other improvements not available to other nonconforming uses. Like special land uses, this designation is usually subject to approval of a site plan, and to any conditions placed upon the designation by the approving body.

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