



## **ADMINISTRATIVE ORDER**

### **#000113-091310**

#### **Issue**

Does the acquisition of right-of-way, by eminent domain, dedication or purchase, by a city, county, state, or federal agency create a nonconformance as defined in 20.20.036 and 20.30.280?

#### **Findings**

1. Section 20.20.036 defines three types of nonconformity:

***Nonconforming Lot:** A lot, the area, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of the Code but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.*

***Nonconforming Structure or Building:** A structure or building, the size, dimensions, or location of which was lawful prior to the adoption, revision, or amendment to the Code but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning district.*

***Nonconforming Use:** A use or activity that was lawful prior to the adoption, amendment to conform to the present requirements of the zoning district.*

2. Section 20.30.280 further clarifies nonconformance:

#### **20.30.280 Nonconformance.**

*A. Any use, structure, lot or other site improvement (e.g., landscaping or signage), which was legally established prior to the effective date of a land use regulation that rendered it nonconforming, shall be considered nonconforming if:*

1. *The use is now prohibited or cannot meet use limitations applicable to the zone in which it is located; or*
2. *The use or structure does not comply with the development standards or other requirements of this Code;*

3. Section 20.20.050 defines use as:

*An activity or function carried out on an area of land, or in a building or structure located thereon. Any use subordinate or incidental to the primary use on a site is considered an accessory use.*

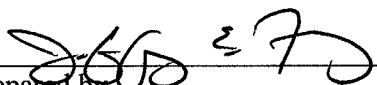
4. A use can include landscaping and parking,
5. A *regulation* is defined as a law, rule or other order prescribed by authority.
6. Acquisition of right-of-way by eminent domain, dedication or purchase is accomplished by *ordinance* approved by the City Council making a legislative determination that private property interests are needed for a public use.
7. An *ordinance* is an authoritative rule or law; a public injunction or *regulation*.

**Conclusions**


1. Land use regulations are ordinances.
2. The condemnation may effect the building or structure location in relation to the property line (setbacks), the area of available open space (building coverage percentage) and/or improved area (hardscape percentage, parking, landscaping).
3. Regulatory acts that affect a legally established building location or legally established use create a nonconformance.

**Decision**

1. Where a lot, tract, or parcel is occupied by a lawful use or structure, and where the acquisition of right-of-way, by eminent domain, dedication or purchase by the threat of eminent domain, by the City, county, state, or federal agency creates noncompliance of the use or structure regarding any requirement of this code, such use or structure shall be deemed a lawful use or structure.
2. This designation shall apply only to nonconformances that result from the direct acquisition of right-of-way. Any new construction on the lot, tract, or parcel, including expansion of any existing structure or use, shall comply with all applicable zoning standards, and building setbacks of the expansion or new construction and shall be measured relative to the new property line.
3. Uses or structures authorized pursuant to a conditional use permit, special use permit, or variance may not qualify as nonconforming and shall be evaluated on a case-by-case basis.

Prepared by 

9/14/10  
Date

  
Director's Signature

9-14-10  
Date