

**REQUEST TO CONSIDER EVIDENCE OF INTENT TO CONTINUE USE OF MOTOR
VEHICLE SALES RELATED TO LEGAL, NON-CONFORMING USE CLAIM AT 8110
HIGHWAY 10 NW;
CASE OF CHAD LUNDQUIST AND ERIC LUNDQUIST
By: Tim Gladhill, Associate Planner**

Background:

The City has received an a request from Chad Lundquist and Eric Lundquist to classify motor vehicle sales as a legal, non-conforming use at 8110 Highway 10 NW. Per City Ordinance #09-13, Motor Vehicle Sales and Repair became a conditional use in the B-2 Highway Business District, effective October 19, 2009. Any parcel actively using their parcel as motor vehicle sales or repair became at the time the ordinance became effective was classified as a legal, non-conforming use. The Subject Property was not used as motor vehicle sales when the ordinance became effective, but the Property Owners claim a lease existed on the Subject Property for motor vehicle sales through March 2, 2009. The Subject Property is currently being used for motor vehicle repair, but not sales.

Notification:

No notification is required.

Observations:

On October 23, 2009, the Property Owners contacted the City Clerk to obtain a City Motor Vehicle License to operate a motor vehicle sales use. The City's Planning Division requested evidence of the last date the Subject Property was used as Motor Vehicle Sales to establish legal, non-conforming use, if warranted.

Minnesota Statute § 462.357 governs non-conforming uses (the "Statute"). In addition, City Code §9.03.14 deals with non-conforming structures and uses. It is important to note that local ordinance cannot supersede State Statute for non-conforming uses. The Statute states that legal, non-conforming use can be lost when the use is discontinued for more than a year. Under case law, according to the League of Minnesota Cities Insurance Trust (LMC-IT), a one-year period of discontinuance creates a presumption of abandonment. A property owner can then rebut the presumption by presenting evidence of intent to continue the use, or that the discontinuance was beyond his or her control.

The Property Owner submitted a copy of a lease by and between the Property Owners and Amazon Auto that expired on March 2, 2009 (the "Lease"). City Staff verified with the owner of Amazon Auto that the lease was valid. In the Applicants' request, it is stated that the Subject Property has been used for motor vehicle/recreational vehicle sales for forty plus years. Regardless of the number of years in the past a parcel has been used for a non-conforming use, State Statute is clear in stating that a non-conforming use is terminated if discontinued for more than a year.

City Staff is aware that it appears that the tenant, Amazon Auto, vacated the premises prior to the expiration of the lease. Nonetheless, it appears that the Property Owners' intended to continue the use as motor vehicle sales, as shown in the Lease. This assumption is predicated on City Council accepting the lease as credible evidence of legal, non-conforming use. If the City Council finds that the lease submitted is not credible evidence of intent to continue use, it would then appear that, based on evidence provided to the City by the Applicant, that there is not a claim of legal, non-conforming use.

In Richard J. Haefel, et al., v. The City of Eden Prairie, the Court deals with "intent to abandon". In this case, Haefel provided evidence of intent to continue the non-conforming use in the form of rental listings for lease of the property as the non-conforming use. Based on this evidence, the Court ruled that Haefel did not possess intent to abandon and had provided credible evidence of intent to continue.

The Applicant has also made the request to use Class V as a parking surface should the Subject Property be used for motor vehicle sales. This request will not be heard as part of this request, but will be heard in the near future. City Staff finds that the Property Owners may not park or store any motor vehicle on any surface on the Subject Property that is not concrete or bituminous. In the interim, City Staff finds the Applicants may not use the unimproved (grass) area in the rear of the Subject Property for off-street parking (see attached letter from City of Ramsey dated October 6, 2006).

In summary, City Staff is seeking direction as to whether City Council finds the Applicants intended to continue to use the Subject Property as Motor Vehicle Sales, based on the evidence submitted by the Applicants, attached to this case.

Recommendation:

City Staff recommends directing staff to consider the attached lease as credible evidence of intent to continue the non-conforming use.

Council Action:

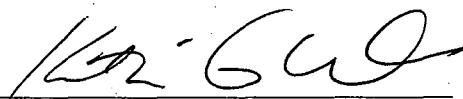
Motion to instruct staff that materials provided related to request of legal, non-conforming use at 8110 Highway 10 NW *do* provide credible evidence of legal, non-conforming use.

-or-

Motion to instruct staff that materials provided related to request of legal, non-conforming use at 8110 Highway 10 NW *do not* provide credible evidence of legal, non-conforming use.

Review Checklist:

City Administrator
Planning Manager



Copies to:

City Attorney

Attachments:

- a) Site location map
- b) Request from Applicant dated October 28, 2009
- c) Request from Applicant dated November 12, 2009
- d) Memo prepared by League of Minnesota Cities-Insurance Trust
- e) Findings from Richard J. Haefele, et al., v. The City of Eden Prairie
- f) Copy of the Lease
- g) Copy of Letter from City of Ramsey dated October 6, 2006 regarding Off-Street Parking

CC: 11.24.2009