

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 15, 2002

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 01-3230

Cir. Ct. No. 83-CV-84

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

COUNTY OF RACINE,

PLAINTIFF-RESPONDENT,

V.

GLENN STAEGE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Racine County:
ALLAN B. TORHORST, Judge. *Affirmed.*

Before Vergeront, P.J., Dykman and Deininger, JJ.

¶1 PER CURIAM. Glenn Staege appeals an order directing him to terminate the nonconforming use of his property as a welding supply business. He challenges the trial court's determination that he had expanded and changed the nature of his business beyond the use which was grandfathered when an applicable

zoning ordinance was changed. We conclude there was sufficient evidence to support the trial court's determination and therefore affirm.

BACKGROUND

¶2 Staeger was operating a welding supply business out of his basement in the early 1970s, when Racine County modified its zoning ordinances to prohibit such use. Staeger was allowed to continue operating his business as a valid nonconforming use. Over the ensuing years, Staeger began storing other items on his property, including tires and dilapidated automobiles. The County, characterizing the items as junk, attempted on several occasions to compel Staeger to clear them off his property. The court entered a series of orders limiting the welding supply business to the basement and garage and directing Staeger to remove non-welding related items from his yard.

¶3 In 2002, the County attempted to terminate Staeger's nonconforming use altogether, contending that his business had expanded beyond its original nature to become a salvage yard. The County introduced evidence that, in addition to welding supplies, Staeger was selling automotive parts and other items, including tires, floor jacks, jack stands, engine hoists, drill presses, generators, sand blasters, and air compressors. Staeger admitted that he was operating a combination business, which he characterized as a country store, but contended that he had been doing so all along. He further maintained that his storage of many of the items categorized by the County as "junk" was distinct from his business operation.

STANDARD OF REVIEW

¶4 We will treat the trial court's determinations as to the nature of Staeger's business at various points in time as factual findings, which we uphold unless they are clearly erroneous. *Waukesha County v. Seitz*, 140 Wis. 2d 111, 115-16, 409 N.W.2d 403 (Ct. App. 1987). We will independently consider whether those factual findings support the legal conclusion that Staeger had impermissibly expanded the scope of his nonconforming use. *Id.*

ANALYSIS

¶5 The parties agree that a nonconforming use which is in effect at the time a zoning ordinance goes into effect may be continued thereafter. However, the spirit of zoning laws is to restrict and eventually eliminate nonconforming uses. *Waukesha County v. Pewaukee Marina*, 187 Wis. 2d 18, 29, 522 N.W.2d 536 (Ct. App. 1994). Thus, "when an owner of a nonconforming use modifies that use, the municipality is entitled to terminate the entire nonconforming use." *Village of Menomonee Falls v. Preuss*, 225 Wis. 2d 746, 748, 593 N.W.2d 496 (Ct. App. 1999).

¶6 Staeger attempts to avoid application of the modified-use rule to his case by characterizing his sale of welding supplies and his storage of non-welding items as unrelated occurrences. However, the trial court found that Staeger was primarily selling welding supplies in 1971, but was selling a broad array of items unrelated to welding by 2000. Those findings were supported by newspaper advertisements placed by Staeger, as well as past court proceedings of which the court was aware. The findings are not clearly erroneous. Even assuming that some of the items on Staeger's property were merely being stored and were not for sale, that fact does not preclude the finding that the business itself had expanded

beyond welding supplies. To the contrary, Staeger himself characterized his operation as a combination business, and there was no evidence that Staeger was selling welding supplies and other items as separate businesses under separate names or with separate accounts. We therefore conclude that the trial court properly determined that Staeger had changed the nature of his nonconforming use by expanding his business to sell a much broader range of items than welding supplies, and properly ordered that the entire nonconforming use be terminated.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

