

OPINION NO. 69-027

Syllabus:

A nonconforming use existing under a township zoning regulation is not terminated by virtue of an amendment to the regulation changing the area classification from residential to commercial. The exclusive method of uncompensated termination as provided by statute is voluntary discontinuance for two years or more.

To: David M. Griffith, Trumbull County Pros. Atty., Warren, Ohio
By: Paul W. Brown, Attorney General, March 6, 1969

I have your request for my opinion as to whether a nonconforming use of the particular parcel of real estate you have in mind is extinguished by virtue of an amendment to the governing township zoning regulation changing the classification of the area in which the parcel is situated from residential to commercial. You further ask under what circumstances a nonconforming use may be terminated.

I am assuming that the use of the property in question is nonconforming under the commercial classification, as well as under the former residential classification. The Ohio zoning enabling statute applicable to townships prohibits a township from zoning-out a use which exists at the time of enactment of the zoning regulation. The statute also provides just one basis for termination of a nonconforming use, namely: when it has been discontinued voluntarily for two years or more. Section 519.19, Revised Code, reads as follows:

"The lawful use of any dwelling, building, or structure and of any land or premises, as existing and lawful at the time of enactment of a zoning resolution or amendment thereto, may be continued, although such use does not conform with such resolution or amendment but if any nonconforming use is voluntarily discontinued for two years or more, any future use of said land shall be in conformity with sections 519.02 to 519.25, inclusive, of the Revised Code. The board of township trustees shall provide in any zoning resolution for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon such reasonable terms as are set forth in the zoning resolution."

Thus, the Ohio enabling statute clearly fails to provide that a township may terminate a nonconforming use by the enactment of an amended regulation changing the classification of the area in question. Further, Ohio law strongly indicates that any attempt to so terminate a nonconforming use by this method would be unconstitutional. In the case of Akron v. Chapman, 160 Ohio St. 382 (1953), the court in discussing a municipal zoning ordinance which attempted to terminate a nonconforming use which had existed for a reasonable

period of time, held in Syllabus 2 of the Opinion as follows:

"2. The right to continue to use one's property in a lawful business and in a manner which does not constitute a nuisance and which was lawful at the time such business was established is within the protection of Section 1, Article XIV, Amendments, United States Constitution, and Section 16, Article I of the Ohio Constitution, providing that no person shall be deprived of life, liberty, or property without due process of law."

I think it is worth emphasizing in connection with your stated question, Section 519.19, supra, specifically provides that the lawful use of any premises existing at the time of enactment of a township zoning resolution or amendment thereto, may be continued and that in either case, termination occurs only by voluntary discontinuance after two years or more. The method terminating an existing use through eminent domain procedure where compensation is involved is not implied in your question and therefore not here discussed.

I am, therefore, of the opinion, and you are so advised, that a nonconforming use existing under a township zoning regulation is not terminated by virtue of an amendment to the regulation changing the area classification from residential to commercial. The exclusive method of uncompensated termination as provided by statute is voluntary discontinuance for two years or more.