STATE OF MINNESOTA

IN SUPREME COURT

A18-0443

Court of Appeals — McKeig, J.
Concurring in part, dissenting in part, Hudson, Chutich, JJ.

AIM Development (USA), LLC,

Appellant,

vs.

Filed: July 15, 2020
Office of Appellate Courts

City of Sartell,

Respondent.

Brian S. McCool, Joseph J. Cassioppi, Fredrikson & Byron, P.A., Minneapolis, Minnesota, for appellant.

John M. Baker, Aaron P. Knoll, Greene Espel PLLP, Minneapolis, Minnesota, for respondent.

Susan L. Naughton, Saint Paul, Minnesota, for amicus curiae League of Minnesota Cities.

S Y L L A B U S

1. The scope of a property owner's nonconforming-use rights is defined by the uses lawfully existing at the time of the adverse zoning change.

2. The owner of a facility for nonhazardous, non-toxic industrial waste that accepted waste from a single source may accept waste from additional sources without expanding its nonconforming-use rights.

Reversed and remanded.

O P I N I O N

MCKEIG, Justice.

In 2013, appellant AIM Development (USA), LLC, purchased property in respondent City of Sartell containing a facility for nonhazardous, non-toxic industrial waste, which had operated as a nonconforming use since 1989. This case concerns the scope of AIM Development's nonconforming-use rights and, specifically, whether the waste facility may accept waste from more than one source. The court of appeals defined AIM Development's nonconforming-use rights based on the terms of a state permit in effect at the time that it purchased the property. Based on the terms of that permit, the court of appeals determined that the facility was limited to accepting waste from a nearby paper mill, which was recently demolished. We conclude that the scope of a property owner's nonconforming-use rights is defined by the uses lawfully existing at the time of adverse zoning change. We further conclude that accepting waste from more than one source does not, standing alone, constitute an impermissible expansion of AIM Development's nonconforming-use rights. Therefore, we reverse the decision of the court of appeals and remand to that court for consideration of other issues not reached.

FACTS

For approximately 100 years, a paper mill operated in respondent City of Sartell along the shore of the Mississippi River. In 1984, the owner of the paper mill sought permission to open and operate a landfill nearby.

The property owner applied to the Minnesota Pollution Control Agency ("MPCA") for permission to construct and operate a 70-acre storage and disposal facility for

nonhazardous, non-toxic industrial waste ("the landfill") on a nearby site ("the property"). The MPCA subsequently approved a permit, which provided that the landfill could accept any nonhazardous industrial waste that was listed in Appendix L of the permit application.[1]

In December 1984, the City passed a resolution that rezoned the site of the proposed landfill from a residential district to a light-industrial district. The City then approved an ordinance that allowed as a permitted use in a light-industrial district an "industrial storage and disposal facility," defined as "[a] facility permitted by the Minnesota Pollution Control Agency or its regulatory successor for the disposal of non-hazardous and non-toxic industrial solid waste." Significant to this appeal, the ordinance defined "industrial solid waste" as "[n]on-hazardous, non-toxic waste material resulting from an industrial operation. It shall not include garbage, refuse and other discarded materials, animal waste, fertilizer, or solid or dissolved material from domestic sewage."

The landfill became operational a few years later. The landfill began accepting wood yard debris, boiler ash, scrubber cake, and other approved waste from the paper mill in September 1987. In 1989, the City amended its zoning ordinance to remove the operation of industrial storage and disposal facilities from the permitted uses of land in light-industrial districts. The operation of the landfill continued as a nonconforming use. As the district court observed, there is no indication that the landfill was ever used "for any purpose other than a captive landfill" for the paper mill.

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[1] Neither the original application, nor Appendix L, is included in the record.

In 2012, a fire significantly damaged the paper mill, ceasing all paper mill operations.[2] AIM Development purchased the paper mill and the nearby property (containing the landfill) in January 2013. AIM Development asked the MPCA to amend the permit in effect at that time (the 2009 MPCA permit) to reflect the change in ownership.[3] The MPCA approved the change in ownership and issued an amended permit in AIM Development's name. The amended 2009 MPCA permit stated that the "[w]aste authorized for disposal" would "consist of wood yard waste (log wash grit and truck sweepings), paper mill bar screenings, wastewater grit, boiler ash, and scrubber cake generated by" the paper mill.

In January 2014, AIM Development applied to renew the amended 2009 MPCA permit, which was valid through March 2014. AIM Development's permit renewal application requested authorization to accept a wider variety of non-hazardous industrial waste from new sources and to construct additional fill area to increase the area of land used for disposal. The City opposed the application, arguing that the nonconforming use had been discontinued.[4] In the alternative, the City argued that the proposal is an impermissible expansion of AIM Development's nonconforming-use rights.

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[2] The paper mill was later demolished. AIM Development has no plans to rebuild.

[3] The court of appeals referred to the 2009 MPCA permit as the 2013 permit. Because the permit that was in effect when AIM Development purchased the property in 2013 was issued by the MPCA in 2009, we refer to it by its issuance date.

[4] Under Minnesota law, a property owner loses its nonconforming-use rights if a nonconformity is discontinued for a period of more than one year. Minn. Stat. § 462.357, subd. 1e(a)(1) (2018).

AIM Development filed a declaratory judgment action against the City to define the scope of its nonconforming-use rights. The parties filed cross-motions for summary judgment. The issues concerned: (1) the sources of waste; (2) the types of waste; (3) the volume of waste accepted each year; (4) the area of land used for disposal; and (5) whether the nonconforming use had been discontinued or abandoned. The district court granted summary judgment in the City's favor on the issues of the source, type, and volume of waste.[5]

The district court ruled that the use of the landfill is "limited to waste generated by the paper mill operation" and that "the disposal of . . . wastes from other generators is an unpermitted expansion of the use." The court of appeals affirmed. *AIM Dev. (USA), LLC v. City of Sartell*, 925 N.W.2d 255 (Minn. App. 2019). The court of appeals determined that AIM Development's use of the landfill was "limited to the activities approved by the [2009 MPCA] permit that was transferred to AIM [Development]" in 2013 and concluded that AIM Development did not establish that its predecessors in title used the landfill "as a

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[5] Specifically, the district court concluded that "the use of the landfill is limited to waste generated by the paper mill operation, limited to wood yard waste, paper mill bar screenings, waste water grit, boiler ash and scrubber cake." The district court concluded that "[t]he area constituting the permitted nonconforming use is the 27 acres contained within the 70-acre parcel" that was "designated as the landfill site" in the MPCA permits. Finally, the district court found "that a factual issue exists as to abandonment or discontinuance," and so denied cross-motions for summary judgment on the issue of abandonment. Because AIM Development has no plans to rebuild the demolished paper mill, the court ultimately concluded that the City was entitled to summary judgment, and dismissed AIM Development's complaint with prejudice.

Because the court of appeals resolved the appeal based on the terms of the 2009 MPCA permit, the court declined to address whether the nonconforming land use had been discontinued. *AIM Dev. (USA), LLC v. City of Sartell*, 925 N.W.2d 255, 262 n.6 (Minn. App. 2019).

commercial enterprise accepting both public and private waste." *Id.* at 261. Therefore, the court of appeals held that "AIM [Development]'s proposal to accept waste from other waste sources constitutes an impermissible expansion of the prior nonconforming use." *Id.*

AIM Development requested further review. We granted review of the two issues that AIM Development raised in its petition: (1) whether the terms of the MPCA permit in effect at the time of the property transfer defined the scope of AIM Development's nonconforming-use rights; and (2) whether AIM Development's proposal to accept waste from sources other than the demolished paper mill is an impermissible expansion of AIM Development's nonconforming-use rights.

ANALYSIS

This case comes to us on appeal from summary judgment, and our review is de novo. *See Visser v. State Farm Mut. Auto. Ins. Co.*, 938 N.W.2d 830, 832 (Minn. 2020). On appeal from summary judgment, we determine whether genuine issues of material fact exist and whether the district court correctly applied the law. *White v. City of Elk River*, 840 N.W.2d 43, 48 (Minn. 2013). This dispute concerns whether the lower courts misapplied a provision of state law, Minn. Stat. § 462.357 (2018), and the City's zoning regulations, Sartell, Minn., City Code tit. 10. The application of statutes and local ordinances to undisputed facts is a legal question that we review de novo. *Jennissen v. City of Bloomington*, 938 N.W.2d 808, 813 (Minn. 2020).

We begin with a brief discussion of zoning law and nonconforming-use rights. A municipality's authority to regulate the use of privately owned land derives from state zoning enabling law. *See* Minn. Stat. §§ 462.351–.364 (2018); *White*, 840 N.W.2d at 49.

This authority provides municipalities with "the necessary powers and a uniform procedure for adequately conducting and implementing municipal planning," Minn. Stat. § 462.351, and allows a municipality to "guide the development of [its] community," *White*, 840 N.W.2d at 49. The scope of municipal authority is defined by statute and limited by "the valuable property rights of citizens guaranteed protection" under the Due Process and Equal Protection Clauses of the Minnesota and United States Constitutions. *Pearce v. Vill. of Edina*, 118 N.W.2d 659, 671 (Minn. 1962); *see White*, 840 N.W.2d at 49.

The issues presented concern the scope of AIM Development's nonconforming-use rights. "A nonconforming use is a use of land that is prohibited under a current zoning ordinance but nonetheless is permitted to continue because the use lawfully existed before the ordinance took effect." *White*, 840 N.W.2d at 49. Although a zoning ordinance may constitutionally prohibit the creation of nonconforming uses, existing uses must be allowed to remain or be eliminated through eminent domain. *Krummenacher v. City of Minnetonka*, 783 N.W.2d 721, 726 (Minn. 2010).

With this context in mind, we turn to the issues presented in this appeal.

I.

The court of appeals defined the scope of AIM Development's nonconforming-use rights by the terms of the MPCA permit in effect at the time that AIM Development purchased the property (the 2009 MPCA permit). *AIM Dev. (USA), LLC*, 925 N.W.2d at 261–62. AIM Development argues that the court of appeals erred by focusing on this

MPCA permit because "the scope of a nonconforming use is measured at the time the use became nonconforming due to an adverse zoning change." We agree.

With exceptions not relevant here, Minnesota law provides that "the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement." Minn. Stat. § 462.357, subd. 1e(a). Similarly, the Sartell City Code states: "On the effective date of adoption or amendment of the Ordinance codified in this Title, should lawful uses of land exist that are no longer permissible under the terms of this Title as enacted or amended, such use may be continued so long as it remains otherwise lawful . . . ." Sartell, Minn., City Code tit. 10, § 10-13-5.

Our case law is clear on how to determine the time the use became nonconforming. "It is a fundamental principle of the law of real property that uses lawfully existing *at the time of an adverse zoning change* may continue to exist until they are removed or otherwise discontinued." *Hooper v. City of Saint Paul*, 353 N.W.2d 138, 140 (Minn. 1984) (emphasis added). "[W]e have repeatedly acknowledged that although a 'zoning ordinance may constitutionally prohibit the creation of uses which are nonconforming,' existing nonconforming uses must be permitted to remain." *White*, 840 N.W.2d at 49–50 (quoting *Krummenacher*, 783 N.W.2d at 726). Moreover, we have long recognized that a subsequent property owner "stands in the place of [its] predecessors" for purposes of defining the scope of nonconforming-use rights. *See Hawkins v. Talbot*, 80 N.W.2d 863, 867 (Minn. 1957).

Consistent with the plain language of Minn. Stat. § 462.357, subd. 1e, and our precedent interpreting that provision, we reaffirm that the scope of a property owner's nonconforming-use rights is determined by the uses lawfully existing at the time of the adverse zoning change—not at the time the property owner purchased the property. Therefore, the court of appeals erred in defining the scope of the nonconformity by the 2009 MPCA permit.[6]

II.

We next consider AIM Development's proposal to accept waste from a source other than the defunct paper mill.[7] For AIM Development's proposed nonconforming use to be protected by section 462.357, the proposed use must: (1) be a continuation of the original

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[6] The court of appeals concluded that the scope of the nonconforming-use rights for the property was limited over time by the terms of each successive MPCA permit and that "[t]he permittee, through each successive permit renewal application, expressly limited use of the landfill to certain defined forms of waste material generated by operation of the paper mill." *AIM Dev. (USA), LLC*, 925 N.W.2d at 261–62. Absent any evidence that the MPCA permitting process resulted in a valid waiver of the property owner's protected property interests, we decline to address whether a state agency has the authority to redefine the scope of nonconforming use rights by permit. *Cf. White*, 840 N.W.2d at 51 (concluding that "a landowner does not surrender the right to continue a nonconforming use by obtaining a conditional-use permit unless the landowner validly waives that right").

[7] "The court will generally not address issues that were not specifically raised in the petition for review." *George v. Estate of Baker*, 724 N.W.2d 1, 7 (Minn. 2006). AIM Development's petition for review was narrow in scope, focusing only on the source of waste: "Did the court of appeals err by holding that AIM [Development]'s proposal to accept waste from sources other than the demolished paper mill constitutes an impermissible expansion of AIM [Development]'s nonconforming-use rights?" The dissent's analysis goes beyond the question presented to this court. Whether the landfill may accept construction debris is a qualitatively different question than whether the landfill is restricted by law to function as a captive facility.

nonconforming use, and (2) not constitute an expansion. *See* Minn. Stat. § 462.357, subd. 1e(a). We consider each requirement in turn.

A.

We start with whether accepting waste from a new source is a continuation of the original nonconforming use. AIM Development argues that the source of the landfill's waste "is immaterial for purposes of determining whether [its] proposal is an impermissible expansion of [its] nonconforming use." The City disagrees, arguing that, because the landfill operated for the sole purpose of disposing waste that was generated by a nearby paper mill under common ownership, AIM Development's nonconforming-use rights are limited to the continued operation of a captive waste facility. The application of statutes and local ordinances to undisputed facts is a legal conclusion that we review de novo.[8] *Jennissen*, 938 N.W.2d at 813.

In determining a statute's plain meaning, "words and phrases are construed according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08(1) (2018). "We do not read words in isolation; the meaning of a word

[8] The Sartell City Code provides that "[n]o such nonconforming use [of land] shall be enlarged or increased, nor extended to occupy a greater square footage of land than was occupied as required for the effective operation of said use" as of the effective date of the zoning change. Sartell, Minn., City Code tit. 10, § 10-13-5(A). The Sartell City Code also includes a general statement of intent "to permit the nonconformities to continue until they are removed but not to encourage their survival." Sartell, Minn., City Code tit. 10, § 10-13-1. Because neither party argues that the City's ordinance is less restrictive than section 462.357, we read the Sartell City Code to restrict the expansion of nonconforming uses of land to the full extent allowed under state law. *See Jennissen v. City of Bloomington*, 913 N.W.2d 456, 459 (Minn. 2018) (noting that "[c]ities have no power to regulate in a manner that conflicts with state law").

is informed by how it is used in the context of a statute." *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 177 (Minn. 2020). Only if more than one meaning is reasonable in context, and as applied in the particular case, will we declare the statute to be ambiguous. *State v. Henderson*, 907 N.W.2d 623, 626 (Minn. 2018).

With this framework in mind, we turn to the meaning of the word "continued." State zoning law provides, in pertinent part:

> For the purpose of promoting the public health, safety, morals, and general welfare, a municipality may by ordinance regulate . . . uses of land . . . .
>
> . . . .
>
> Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be *continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion* . . . .

Minn. Stat. § 462.357, subds. 1, 1e(a) (emphasis added). The plain language of the statute reveals that Legislature defined the term "continued" to include certain activities, such as "repair, replacement, restoration, maintenance, or improvement," so long as those activities were non-expansionary. *Id.*, subd. 1e(a). Defining the term in this way evinces the legislative intent to allow a landowner to make replacements, restorations, or improvements—or to perform maintenance—that are necessary for the landowner to continue the nonconforming use in the same manner as at the time of adverse zoning. *See id.*; *see also Freeborn Cty. v. Claussen*, 203 N.W.2d 323, 327 (Minn. 1972) (holding that an individual "is entitled to continue [the] present nonconforming use in the same manner and to the same extent that it was operated at the time the zoning ordinance went into effect"). Relevant here, "replace" is defined as "[t]o take the place of or fill the role

of" or "[t]o provide a substitute for." *The American Heritage Dictionary of the English Language* 1489 (5th ed. 2018).

It is an undisputed fact that the only source of waste was the paper mill, which has been destroyed and will not be rebuilt. Accordingly, AIM Development wishes to replace the paper mill waste with other sources of waste. AIM Development's proposal limits the new sources of waste to generators of nonhazardous, non-toxic industrial waste—the same category of waste stream as its prior source, and precisely the category of waste allowed by the ordinance of December 1984. Because the plain language of the statute allows a landowner to continue a nonconforming use through replacement, we conclude that AIM Development's proposed substitution of its sources of waste satisfies the continuation requirement of the two-part test of subdivision 1e(a).

B.

We next consider whether the replacement of a source of waste would constitute an expansion. The nonconforming use of land as a landfill presents a unique problem: "by its continued use, [it] grows in size as well." *Bauer v. Waste Mgmt. of Conn., Inc.*, 662 A.2d 1179, 1192 (Conn. 1995). Compared to the typical limits on nonconformities, the continued use of a landfill creates a natural tension with "the well-established rule" that municipalities are not required to let nonconformities expand, and may restrict any existing nonconforming uses "in a way which will be conducive to their ultimately being phased out." *See Hawkinson v. Cty. of Itasca*, 231 N.W.2d 279, 282 (Minn. 1975). The unique problem presented in this case requires us to reconsider the standards for determining

whether the continuation of a nonconforming use is reasonable. We do so de novo. *White*, 840 N.W.2d at 48.

Hawkins v. Talbot is instructive because it deals with a business exercising a similar nonconforming right to excavate the earth. 80 N.W.2d at 864. The Talbots began operating a gravel pit on their property in 1940, excavating the earth by power shovel and, on one occasion, using a rock screen. *Id.* at 864–65. In 1953, the city of Coon Rapids passed a zoning ordinance that reclassified the Talbots' land for residential use. *Id.* at 864. The ordinance permitted nonconforming uses of land to continue as long as the nonconforming use was not "enlarged or increased" and did not "extend[] to occupy a greater area of land" than the area occupied at the time of adverse zoning. *Id.* The Talbots continued removing sand and gravel from their land. *Id.* at 865. In 1955, the Talbots began using a rock crusher, which screened and crushed rock and sand as a part of their removal operation. *Id.* As the Talbots continued to excavate their property, the gravel pit grew in size. *Id.*

We determined that the landowner could upgrade his equipment so long as the new equipment was "merely an improvement over the previous method and did not constitute a change in the nature and purpose of the original use." *Id.* at 866–67. Our holding recognized that landowners are not confined to exercising their nonconforming use rights with outdated or inefficient equipment if it is possible to make improvements that are consistent with the original use of their land.

We also considered whether increasing the size of the gravel pit violated the city's ordinance. We acknowledged that "[i]f the [property owner] [were] to be limited to the

area of land actually excavated at the time of the adoption of the ordinance, the restriction, in effect, [would] prohibit[] *any* further use of the land as a gravel pit." *Id.* at 865. Accordingly, we concluded that "by the very nature of that business [the landowner] had to expand the area of its operation or be deprived of all value." *Hawkinson*, 231 N.W.2d at 282 (discussing *Hawkins*).

Other jurisdictions share similar concerns regarding the nonconforming rights of certain special use properties (such as quarries, gravel pits, and landfills), and have adopted a more flexible approach that takes the nature of nonconforming operations into account. *See Bauer*, 662 A.2d at 1192; *Eddins v. City of Lewiston*, 244 P.3d 174, 178 (Idaho 2010) (using a "flexible approach that focuses on the character of the alleged enlargement or expansion on a case-by-case basis"); *Jones v. Town of Carroll*, 931 N.E.2d 535, 537–38 (N.Y. 2010) (noting that "the use of property as a landfill, like a mine, is unique because it necessarily envisions that the land itself is a resource that will be consumed over time"); *Chartiers Twp. v. William H. Martin, Inc.*, 542 A.2d 985, 989 (Pa. 1988) (upholding the right of the owner of a nonconforming landfill to increase the daily intake of solid waste); *see also Point San Pedro Rd. Coal. v. Cty. of Marin*, 245 Cal. Rptr. 3d 580, 584 (Cal. Ct. App. 2019); *but see Twp. of Fairfield v. Likanchuk's, Inc.*, 644 A.2d 120, 124 (N.J. Super. Ct. App. Div. 1994) (explaining that "simply because the nature of the use involves a diminishing asset does not necessarily justify its expansion"); *Huckleberry Assocs., Inc. v. S. Whitehall Twp. Zoning Hearing Bd.*, 120 A.3d 1110, 1115 (Pa. Commw. Ct. 2015) (limiting the scope of a landowner's nonconforming use right to operate a surface mine and quarry to the "natural expansion" of that use).

Here, nonindustrial, non-toxic waste is required for the existing operation of a nonconforming waste facility. AIM Development's proposal, with respect to the source of waste, seeks to replace a depleted source with viable waste streams. In this instance, denying AIM Development's request to replace the sources of waste would truncate the landowner's vested right to continue to operate an industrial waste facility.

Our holding today is consistent with the reasoning in *Hawkinson* and *Claussen*. In *Hawkinson*, a multi-lot resort owner wished to expand his unzoned lakeshore property for recreational-commercial purposes when the area was zoned for residential use. 231 N.W.2d at 280. We assessed the landowner's actual use of property, lot by lot, without regard for his comprehensive, but unrealized, design. *Id.* at 282. Ultimately, we upheld the application of zoning restrictions. *Id.* We noted, "[w]hile it is true that [the landowner's] long-range plans have been frustrated, he is not prevented from carrying on at the same level [that was] obtained before the zoning ordinance was adopted." *Id.* When the same reasoning is applied here, it is clear that precluding AIM Development from replacing its waste stream would do more than "frustrate" its long-term plans. Without new sources of waste, the landowner would be prevented from carrying on altogether.[9]

In *Claussen*, the landowner wished to enclose his nonconforming, open-air business. 203 N.W.2d at 324. The landowner asserted that the shelter would likely make the

[9] The landowner would be allowed to continue monitoring the waste management and to comply with regulatory requirements of that govern facilities for nonhazardous, non-toxic industrial waste facilities. Because compliance would not equate to carrying on at the same level as the prior facility, we conclude this is not a meaningful exercise of the owner's nonconforming use rights.

nonconformity less disruptive to the surrounding area. *See id.* While that might have been true, we noted that the sheltered workspace would also have unreasonably prolonged the lifespan of the nonconformity and made it more difficult to convert the land to a different use when the nonconformity was eliminated. *Id.* In addition, a sheltered workspace would change the nature of the operations by allowing the landowner to conduct business during the harsh winter months that could not be completed outside. *See id.* We held that "construction of a building where none existed before constitutes an expansion of a nonconforming use in the same manner as an addition to an existing building." *Id.* Ultimately, because a sheltered workspace was not required for the landowner to continue his nonconforming business, his proposal was denied. *See id.* at 327.

Similarly, we have long recognized that the reasonable substitution of equipment used in the operation of a nonconforming business is not an expansion as long as the nature and purpose of the original use remains unchanged. *See Hawkins*, 80 N.W.2d at 866–67. We choose to treat the reasonable substitution of materials the same. *See Eddins*, 244 P.3d at 179 (allowing the reasonable substitution of materials and equipment).

The dissent argues that the change in the business structure of the landfill changes the nature and purpose of this nonconformity. We disagree. The City raises concerns about traffic patterns that are entirely speculative and unpersuasive. There is no indication in the record that converting the business structure of the landfill into an income-producing property will have any effect on the nature of the land use.

The dissent would extinguish the vested interests of a property owner because of a hardship that occurred on an entirely separate property, miles away, due to common

ownership. We have never defined the duration of a nonconformity by the vitality of a business operating on non-adjacent land. We decline to do so now. The destruction of the paper mill may seem like a convenient time to terminate the nonconformity, and it might have led other landowners to abandon the nonconforming waste facility, but it is not the legal cause of the nonconformity's end.[10]

It is undisputed that the prior source of waste no longer exists, and that securing a new source of waste is necessary for continued operations. AIM Development's proposal limits the new sources of waste to generators of nonhazardous, non-toxic industrial waste—the same category of waste stream as its prior source, and precisely the category of waste allowed by the ordinance of December 1984. Without addressing the other aspects of AIM Development's proposal, we conclude that AIM Development's proposed substitution of its sources of waste is reasonable and necessary, constituting a non-expansionary continuation of its nonconforming use.

Our holding today is confined to the issues presented. We therefore remand to the court of appeals for consideration and decision of the remaining issues.

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[10] The dissent also overlooks that Minnesota law allows a landowner to recover from certain hardships. *See* Minn. Stat. § 462.357, subd. 1e(a)(2) (providing that a landowner may replace any nonconforming use partially destroyed by fire or other peril). This provision evinces a willingness to allow landowners to rebuild despite the law's disfavor for prolonging nonconformities, and acknowledges that in some circumstances—such as when the damage is minimal—accommodations to the vested property interests of landowners are necessary.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the court of appeals for consideration and decision of the remaining issues.

Reversed and remanded.

C O N C U R R E N C E & D I S S E N T

HUDSON, Justice (concurring in part and dissenting in part).

I agree with the court that the scope of a property owner's nonconforming land use rights are determined by the uses lawfully existing at the time of an adverse zoning change, not by the terms of a state permit. But the court's conclusion that Minn. Stat. § 462.357 (2018) entitles AIM Development to proceed with its plan to build a commercial landfill on the property at issue is inconsistent with the plain language of the statute and our precedent on the scope of nonconforming-land-use rights. Accordingly, I respectfully dissent.

This case turns on the proper application of Minn. Stat. § 462.357. Subdivision 1 of the statute explains that municipalities "may by ordinance regulate . . . uses of land" to promote "public health, safety, morals, and general welfare." This power is subject to the condition of subdivision 1e(a): nonconforming uses of land "existing at the time of the adoption of an additional control . . . may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion." *Id.*, subd. 1e(a).

The plain language of subdivision 1e sets forth two basic requirements that must be met for AIM Development's proposed nonconforming use to fall within the scope of the statute's protections. First, the proposal must be a "continued" nonconforming use of the land that "exist[ed] at the time" the City of Sartell adopted the ordinance that changed the zoning of the property. Second, assuming there is a continuation of the nonconforming use

that existed at the time of the zoning change, the proposal must not "expan[d]" the existing nonconforming use. AIM Development's proposal does not satisfy either requirement.

I.

I begin with the plain language of the statute. The relevant portion of the statute reads as follows: "the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion." *Id.*, subd. 1e(a). The court seizes on the word "replacement," offering a dictionary definition of "replace" as "to take the place of or fill the role of . . . to provide a substitute for" to explain that AIM Development can proceed with its plans because it is merely replacing the paper mill waste with other waste sources that are in the same general category.

A.

The court's strained interpretation cherry picks one word of the statute, "replacement," and then finds a definition to go with it. It is a basic principle of statutory interpretation that the court should not read words in a statute in isolation. *See Christensen v. State*, 175 N.W.2d 433, 437 (Minn. 1970). The court must read each word in the context of the surrounding terms, taking care not to render any word meaningless. *See Owens v. Federated Mut. Implement & Hardware Ins. Co.*, 328 N.W.2d 162, 164 (Minn. 1983) ("A statute should ordinarily be construed as a whole to harmonize all its parts and, whenever possible, no word, phrase or sentence should be deemed superfluous, void or insignificant."). The court's interpretation fails in both respects.

The term "replacement" must be read in the context of the surrounding words: repair, restoration, maintenance, and improvement. The court's chosen dictionary defines "repair" as "[t]o restore to sound condition after damage or injury; fix." *Repair*, *The American Heritage Dictionary of the English Language* 1488 (5th ed. 2018). "Restore" means "[t]o bring back into existence or use; reestablish." *Id.* at 1497. "Maintenance" is "[t]he work of keeping something in proper condition; upkeep." *Id.* at 1058. "Improve" means "[t]o raise to a more desirable or more excellent quality or condition; make better." *Id.* at 885.

All of these terms refer to actions that address the condition of an object by either returning the object to its original status (repair, restoration, maintenance) or making it better (improve). But in each instance, the object remains—it "continue[s]." The first definition of "replace" in the court's preferred dictionary is consistent with this pattern: "[t]o put back into a former position or place." *Id.* at 1489. And this pattern makes sense when considered in context of the statute as a whole. The statute allows property owners to continue the nonconforming land use that existed at the time of an adverse zoning change, including through repairs, replacements, maintenance, and improvements. Minn. Stat. § 462.357, subd. 1e(a). But replacing the existing nonconforming use with an entirely different nonconforming use—as the court sanctions here—is inconsistent with the plain language of the statute.

By failing to read the word "replacement" in context of the statute as a whole, the court's interpretation renders the word "continued" in subdivision 1(e) of the statute meaningless. If the court reads "replacement" to mean that a landowner can substitute the

existing nonconforming use with a different nonconforming use, the landowner does not "continue" the lawful use that existed at the time of the adverse zoning change. Rather, the landowner begins a different nonconforming use by way of substitution.

Under the plain language of the statute, AIM Development may proceed with its proposed land use plans only if it seeks to continue the nonconforming use of the land that existed in 1989. AIM Development may undertake repairs, replacements, maintenance, or other improvements of that existing use. Here, the existing nonconforming use of the property at the time of the zoning change was a paper mill and a captive landfill. AIM Development is free to continue that use and make any necessary alterations to the paper mill and captive landfill consistent with the actions allowed by statute. AIM Development may not, however, substitute a commercial landfill for the paper mill and captive landfill because that action would not continue the nonconforming use that existed at the time of the adverse zoning change in 1989.

B.

In addition to abiding by the plain language of the statute, the court must also consider authority on nonconforming-land-use rights under Minnesota law. The court completely ignores the compelling argument made by the City of Sartell based on the decisions by the federal district court in Minnesota and the Eighth Circuit Court of Appeals in *Northgate Homes, Inc. v. City of Dayton*, which applied Minnesota law on nonconforming land use. *See Northgate Homes, Inc. v. City of Dayton* (*Northgate Homes I*), No. 3-94-178 (D. Minn. filed Mar. 7, 1996), *aff'd, Northgate Homes Inc. v. City of Dayton* (*Northgate Homes II*), 126 F.3d 1095 (8th Cir. 1997).

Northgate Homes involved a dispute between the City of Dayton and the owner of a business selling mobile homes from a lot located within Dayton Park, a residential mobile home park. *Northgate Homes II*, 126 F.3d at 1097. A prior owner of the land developed the property into a mobile home park in 1958. *Id.* In 1973, the City adopted an ordinance prohibiting the "sale, storage, or display" of mobile homes on the premises of mobile home parks. *Id.* In the mid-1990s, the company selling mobile homes to the public from the property, Northgate Homes, sought a declaratory judgment that retail sales to the public from a lot within Dayton Park was a lawful nonconforming use of the property. *Id.* at 1098. To prevail, the company had to demonstrate that "its predecessor was using the same sales lot to sell, store, and display mobile homes at the time [the ordinance] became effective." *Id.* at 1100. The Eighth Circuit upheld the district court's ruling in favor of the City of Dayton, based on the finding that "no business operation similar to Northgate's existed at the same location at the time [the ordinance] went into effect." *Id.* The decision recognizes the unremarkable proposition that a property owner cannot continue a use that did not exist at the time of a zoning ordinance change.[1]

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[1] The Eighth Circuit's decision is in accord with leading treatises on zoning law and nonconforming land use. *See* 8A Eugene McQuillin, *The Law on Municipal Corporations* § 25.202 (3d ed. 1994) ("The general rule is that a nonconforming use in existence when a zoning ordinance is enacted . . . cannot be changed into a nonconforming use that is substantially or entirely different."); 2 Patricia E. Salkin, *American Law of Zoning* § 12:18 (5th ed. 2019) (explaining that courts analyzing the issue of a "substantial" change consider "(1) whether the present use reflects the nature and use prevailing when the zoning by-law took effect, (2) whether the present use differs in quality, character, or degree, and (3) whether the current use affects the neighborhood differently") (citations omitted).

The Eighth Circuit's decision is also consistent with persuasive authority on nonconforming land use rights. A court in Ohio determined that a property owner did not

AIM Development argues that a change in the business model of the landfill is not a substantial change in the use of the property because the landfill will continue to house nonhazardous industrial waste just as it did before the zoning change in 1989. The district court in *Northgate Homes I* considered a similar argument and properly rejected it: "Simply because sales of manufactured homes occurred somewhere within the borders of Dayton Park since the 1960s does not mean that Northgate's business activities on the current sales lot are also lawful." *Northgate Homes I*, No. 3-94-178, Order at 12. In other words, a property owner cannot meet its burden to prove a "continued" nonconforming use by showing that the present or proposed nonconforming use is in the same general category as the use that existed at the time of the adverse zoning change. *See id.* ("To define the relevant property so broadly would contradict the purpose of the nonconforming use doctrine."). But without citing or even acknowledging *Northgate Homes I* and *II*, the court holds that AIM Development is continuing an existing nonconforming use because the company will accept "the same category of waste stream" as the waste deposited in the paper mill's captive landfill.

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have a right to "maintain a general landfill" where there had been a "captive landfill" because it would not continue the prior nonconforming use of the property. *See Aluminum Smelting & Ref. Co. v. Denmark Twp. Zoning Bd. of Zoning Appeals*, No. 2001-A-0050, 2002 WL 31743011, at *5 (Ohio Ct. App. Dec. 6, 2002) ("The evidence in the record demonstrates that (1) Aluminum Smelting used the landfill only as a captive landfill for storage of its waste, and (2) Aluminum Smelting's continuous use of the captive landfill for numerous years has been solely for maintenance and monitoring. . . . Aluminum Smelting has the right to maintain the non-conforming use of the property, but *only* for those specific purposes . . . .").

Based on the plain language of Minn. Stat. § 462.357, subd. 1e(a) and the reasoning of the *Northgate Homes* decisions, AIM Development's proposed use of the property is not a continuation of the nonconforming use that existed at the time of the adverse zoning change in 1989. Instead, the proposal represents the creation of a different nonconforming use, which is not protected by Minn. Stat. § 462.357, subd. 1e(a). *See Hooper v. City of Saint Paul*, 353 N.W.2d 138, 140 (Minn. 1984) (explaining that a "zoning ordinance may constitutionally prohibit the creation of uses which are nonconforming") (citation omitted) (internal quotation marks omitted).

II.

The second question posed by Minn. Stat. § 462.357, subd. 1e, is whether AIM Development's proposed land use is an "expansion" of a continued, existing nonconforming use. The court contends that the "unique problem presented in this case" leads it to "reconsider the standards for determining whether the continuation of a non-conforming use is reasonable." What is there to reconsider? The "reasonableness" of a continued nonconforming use is irrelevant to the question of whether a development plan would lead to the "expansion" of an existing nonconforming use. Moreover, there is no need to "reconsider" our standards, because nothing prevents the court from applying our longstanding nonconforming-land-use precedent to the facts of this case.

In *Hawkins v. Talbot*, we considered an action to enjoin the operation of a gravel pit in Coon Rapids. 80 N.W.2d 863 (Minn. 1957). The question was whether "the enlargement of the gravel pit and the use of [a] rock crusher constituted an extension of a 'nonconforming use.' " *Id.* at 865. We held that the property owners "did not violate the

ordinance merely by enlarging the size of the gravel pit" because they "confined their excavations within the area occupied by the gravel bed." *Id.* at 866.

Hawkins involved a continuation of the exact same use of the land as at the time of the adverse zoning change—a gravel pit—and the only question before us was whether the municipality could limit the physical size of the gravel pit and the use of certain equipment. *Id.* at 865–66. If AIM Development sought to operate a paper mill with a captive landfill, and only increase the volume of paper mill waste deposited in the landfill[2] or substitute new equipment for old,[3] that use of the property would be analogous to the facts of *Hawkins*. But that is not the case here. AIM Development seeks not only to significantly increase the amount of waste deposited in the landfill on an annual basis, the company also seeks to operate a fundamentally different type of business on the property. Our decisions in *County of Freeborn v. Claussen*, 203 N.W.2d 323 (Minn. 1972), and *Hawkinson v. County of Itasca*, 231 N.W.2d 279 (Minn. 1975), demonstrate that such a change in the nature of the land use is a critical factor in determining whether a change constitutes an "expansion."

Claussen involved an action by a municipality to enjoin a property owner from constructing a building on his land. 203 N.W.2d at 324. The issue before the court was

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[2] This analogy sets aside the separate question of whether AIM Development could expand the landfill geographically beyond its current physical boundaries.

[3] Contrary to the court's assertion, this case is not about whether AIM Development must continue to operate a paper mill and captive landfill with "outdated or inefficient equipment." The record shows that AIM Development seeks to do much more than merely substitute the type of equipment used on the property.

whether the construction of the building was an expansion of the nonconforming use of the land as a site for outdoor storage and repair of earth-moving equipment. *Id.* at 325. We held that construction of the building was clearly an expansion of the prior nonconforming use. *Id.* at 326. Our holding recognized that not only would construction of a building to house equipment physically expand the nonconforming use of the property, it would also "facilitate [the property owner's] operations in other ways" because the owner would be able to conduct business year-round. *Id.* at 326 ("The harshness of Minnesota winters implies that much repair and maintenance work can be done in a building when similar work cannot be done outside.").

We also focused on how physical changes to the property would have expanded a property owner's business in *Hawkinson*. We explained that the property owner could "carry on the precise business in which he was engaged" at the time of the zoning ordinance change, which was a "small recreational-commercial business on his lakeshore lots." *Hawkinson*, 231 N.W. 2d at 280, 282. He could not, however, expand that business into a much larger resort. *Id.* at 282. Our decision emphasized that "[t]o permit such an expansion would do violence to the well-established rule that nonconforming uses are to be restricted in a way which will be conducive to their ultimately being phased out." *Id.*

Thus, one of the key takeaways from our prior decisions is that we should consider more than a change in the physical size of a nonconforming use when analyzing the question of "expansion" under Minn. Stat. § 462.357, subd. 1e(a). Our decisions in *Claussen* and *Hawkinson* demonstrate that the nature of the business conducted on the

property is important to the question of whether a property owner's plans represent an "expansion" of an existing nonconforming use.[4]

Applying this rule, it is clear AIM Development's proposal would expand the existing nonconforming use of the property. The court's statement that there "is no indication in the record that converting the business structure of the landfill into an income-producing property will have any effect on the nature of the land use" is simply wrong. The City of Sartell has presented a wealth of evidence that AIM Development's proposal will have a significant effect on the use of the land. Specifically, the proposal will allow AIM Development to expand the nonconforming use of the land through the creation of a commercial landfill where any individual or business can pay to deposit nonhazardous waste, and the facility will accept many more types of nonhazardous waste than what the paper mill deposited in its captive landfill.[5] This is a fundamental change in the nature of the existing nonconforming land use.

Instead of following our precedent, the court cobbles together a series of unrelated points to justify the overall conclusion that AIM Development's plans are not an

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[4] The Wisconsin Court of Appeals recognized the same principle in a case that also involved the issue of expanding a nonconforming use of property. *See Waukesha Cty. v. Pewaukee Marina, Inc.*, 522 N.W.2d 536 (Wis. Ct. App. 1994). The court explained that the present use of the property constituted more than a "mere increase in volume, intensity, or frequency of the nonconforming use" because the use changed the nature of the business conducted on the property. *Id.* at 540 ("The jury could well decide that Seitz' new enterprise is more than a wet-dock/dry-dock operation; it is now a multi-faceted enterprise that happens to be on a lake and in a marina-like setting.").

[5] To be clear, none of this analysis depends on the claims about "traffic patterns" that the court raises and dismisses.

"expansion" under the statute. Upon further examination, however, each argument is deeply flawed.

The court first discusses *Hawkins*, *Claussen*, and *Hawkinson*. In each instance, the court takes substantial liberties with the case to support its holding that a property owner can expand an existing nonconforming use—an action prohibited by statute—as long as that expansion is somehow necessary to continue the use.

The court begins with *Hawkins*, quoting the following language in the decision: "If the defendant is to be limited to the area of land actually excavated at the time of the adoption of the ordinance, the restriction, in effect, prohibits any further use of the land as a gravel pit." 80 N.W.2d at 865. The court implies that this was the basis for our decision to allow the property owner to continue to excavate the gravel pit. It was not. Our decision rested on the language of the zoning ordinance:

> We are of the opinion that the phrase "occupy a greater area of land than that occupied by such use at the time of the adoption of this ordinance" should be interpreted, in the case of a diminishing asset, to mean all of that part of the owner's land which contains the particular asset, and not merely that area in which operations were actually being conducted at the time of the adoption of the ordinance. In other words, since the gravel here "occupied" a larger area than the part actually being mined at the time of the adoption of the ordinance, the entire area of the gravel bed could be used without constituting an unlawful extension of a nonconforming use.

Id. at 866. Contrary to the court's assertion, our decision in *Hawkins* does not stand for the proposition that expansion is allowed by way of a "flexible approach" to "special use"

properties like landfills or gravel pits. The authority from other jurisdictions cited by the court also fails to support this proposition.[6]

The court then turns to our decision in *Hawkinson*. We ruled against the property owner in that case and explained that he could not expand the size of his resort operation,

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[6] There is no reference in the Idaho Supreme Court decision to "special use" properties as described by the court, and no indication that Idaho law treats such uses any differently than other types of nonconforming uses. *See Eddins v. City of Lewiston*, 244 P.3d 174 (Idaho 2010). The term "flexible approach" in the decision only refers to the idea that the court should consider the "character" of the "alleged expansion on a case-by-case basis." *Id.* at 178. The Idaho court states that there is an expansion where there is a "change in the fundamental or primary use of the property." *Id.* AIM Development's proposal would be an expansion under the Idaho Supreme Court's rule, regardless of any "flexible approach," because it changes the fundamental use of the property from a captive landfill to a commercial landfill.

The decision by the Connecticut Supreme Court cited by the court concerned an increase in the height of a landfill over the 90 feet maximum allowed by the applicable zoning ordinance. *See Bauer v. Waste Mgmt. of Conn., Inc.*, 662 A.2d 1179, 1189 (Conn. 1995). The decision makes no mention of a special rule that applies only to properties like "quarries, gravel pits, and landfills." The facts and holding of the case also cut against the court's reasoning. The *Bauer* court ruled against the property owner because it could not prove that the landfill stood over 90 feet high at the time of the change in the zoning ordinance. *Id.* at 1189–90. Applying that logic here, AIM Development should lose because it cannot prove that its predecessor in interest used the property as a commercial landfill in 1989.

The Supreme Court of Pennsylvania does not apply a special rule for properties like landfills. *See Twp. of Chartiers v. William H. Martin, Inc.*, 542 A.2d 985 (Pa. 1988). In *Township of Chartiers*, the court ruled in favor of the property owner because the owner did not seek to change "the intended use of the property." *Id.* at 989. Again, under this rule AIM Development would lose, because the company is changing the intended use of the property from an industrial operation with a captive landfill to a commercial landfill.

Finally, the court cites a decision by one of the intermediate courts of appeal in California, *Point Pedro Rd. Coal. v. County of Marin*, 245 Cal. Rptr. 3d 580 (Cal. Ct. App. 2019). There is no evidence in the decision of a special rule for certain types of properties. More importantly, the court held that the property owner could not proceed with its development plans because the plans were not "within the scope of the existing nonconforming use" and would impermissibly expand the nonconforming use. *Id.* at 586. The same is true in this case.

but could carry on "at the same level" as "before the zoning ordinance was adopted." 231 N.W.2d at 282. The court concludes that, when applying *Hawkinson* to this case, it must find in favor of AIM Development because the company will be "prevented from carrying on altogether" if it is not allowed to accept new sources of waste. To the contrary, AIM Development is not "prevented from carrying on altogether" if the company cannot operate a commercial landfill, because it can still use the property as an industrial site with a captive landfill.

Next is *Claussen*. The court claims that we denied the landowner's request to construct an enclosure for a nonconforming open-air business in *Claussen* because "a sheltered workspace was not required for the landowner to continue his nonconforming business." We made no such holding in *Claussen*. We never stated that the owner would be entitled to enclose his open-air business if it was necessary to continue the existing nonconforming use of the land—and the court provides no citation or quotation of *Claussen* to this effect.

Simply put: neither our precedent nor the statute allows expansion as long as that expansion is necessary to continue a nonconforming use of land. But even assuming that this is a valid inference from our decisions in *Hawkins*, *Clausen*, and *Hawkinson*, it does not support a decision in AIM Development's favor because the company does not need to create a commercial landfill to continue the existing nonconforming use of the land.

Ignoring our decisions, the court suddenly announces that it intends to treat the "reasonable substitution of materials" in the same manner as the "reasonable substitution of equipment." To start, the court offers no justification for treating these actions in a

similar fashion. But more importantly, the court makes no attempt to explain why building a commercial landfill where a paper mill and captive landfill once stood is a "reasonable substitution of materials." This assertion does little more than inject confusion into the law of nonconforming land use rights.

The court concludes by claiming that I would "extinguish the vested interests of a property owner because of a hardship that occurred on an entirely separate property, miles away, due to common ownership." There are two problems with this assertion.

First, AIM Development does not have a "vested interest" or "vested right" to proceed with its proposed land use plans because those plans do not fall within the scope of Minn. Stat. § 462.357 subd. 1e, and the guiding principles of *Northgate Homes*, *Hawkins*, *Claussen*, and *Hawkinson*. As explained above, even if the plans would not lead to the creation of a new nonconforming land use, AIM Development's proposal would expand an existing nonconforming use. That AIM Development bought the property with the intention to create a commercial landfill does not change this analysis or somehow endow the company with a "vested right" to proceed with its land use plans. The court should not step in to save AIM Development from its own failure to conduct due diligence regarding the City of Sartell's zoning laws under the guise of protecting private property rights.

Second, I do not seek to "extinguish" AIM Development's vested property right based on a "hardship," as the court claims. The "hardship" provision cited by the court allows a landowner to rebuild a nonconforming use partially destroyed by "fire or other peril." Minn. Stat. § 462.357, subd. 1e(a)(2) (2018). Nothing in my analysis depends on

this provision. My argument is that Minn. Stat. § 462.357 does not provide AIM Development with a right to proceed with its plans for the property because the proposal would either create a different nonconforming use of the property or expand the existing nonconforming use.

But at the same time, the court accuses me of "overlooking" the law on hardship in Minnesota. If I overlook it, I do so because it is irrelevant to the question at hand. AIM Development does not seek to rebuild the nonconforming use—the paper mill and captive landfill—partially destroyed by a hardship. The "hardship" provision has no relevance in this instance.

It is instead the court that overlooks an important aspect of the law of nonconforming land use rights, which is that public policy favors the restriction of nonconforming land uses "to increase the likelihood that such uses will in time be eliminated due to obsolescence, exhaustion, or destruction." *Claussen*, 203 N.W.2d at 325; *see also White v. City of Elk River*, 840 N.W.2d 43, 52 (Minn. 2013) (acknowledging the "policy informing the nonconformity doctrine" set forth in *Claussen*). Rather than increasing the likelihood that the nonconforming use of the property will end, the court's decision allows AIM Development to operate a commercial landfill on the property that will dramatically expand and prolong a nonconforming use of the land.

In sum, the court's decision turns subdivision 1e of Minn. Stat. § 462.357 into a loophole that allows property owners to evade the zoning laws of municipalities. Any use that advances the interests of property owners and falls within the same general category as an existing nonconforming use now becomes a protected property interest. Similarly,

the court's decision will allow property owners to expand existing nonconforming uses as long as that expansion is somehow necessary to continue the nonconforming use. This is clearly contrary to our nonconforming land use precedent and longstanding principles of public policy. For these reasons, I respectfully dissent.

CHUTICH, Justice (concurring in part and dissenting in part).

I join in the concurrence and dissent of Justice Hudson.