

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 30, 2018

Sheila T. Reiff
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. 2017AP606

Cir. Ct. No. 2016CV1011

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CITY OF GREEN BAY,

PLAINTIFF-RESPONDENT,

V.

HENRY DOMBROWICKI,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Brown County:
MARC A. HAMMER, Judge. *Affirmed.*

¶1 HRUZ, J.¹ Henry Dombrowicki, pro se, appeals an order finding him in violation of certain City of Green Bay ordinances. We affirm.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

BACKGROUND

¶2 In 2007, Dombrowicki purchased a property at 1109 South Broadway Street in Green Bay. That property was adjacent to Dombrowicki's automotive repair business. At the time of the purchase, a two-family dwelling with a gravel driveway existed on the property. The property was zoned as a General Commercial district when Dombrowicki purchased the property, but the dwelling and driveway on the property were considered legal nonconforming uses at that time.² The City had also previously placed a raze or repair order on the dwelling, and Dombrowicki elected to raze the dwelling later in 2007. He proceeded to use the property as an unpaved, overflow parking lot for his business, in addition to keeping a dumpster on it. In 2009, the City rezoned the property to a Special Residential Light Industrial (S-RLI) district.

¶3 In September 2014, the City received a complaint that vehicles were parked on the property, which was still a grass/unpaved lot. The City notified Dombrowicki that if he wished to use the property as a parking lot, he would have to submit a site plan for a change of use and pave the lot. Dombrowicki did not submit a plan by the City's set deadline, and a later inspection revealed vehicles were still being parked on the property. The City issued Dombrowicki a citation.

² Dombrowicki asserts several times in his appellate briefing that the property was zoned as both a General Industrial district and a General Commercial district when he purchased it. The circuit court, however, in its written decision, only noted that "the property was located in a General Commercial zone" at the time of purchase, citing the City's initial brief in which the City only stated that the property was zoned General Commercial. For the sake of completeness, we observe that even if the property was also zoned as a General Industrial district, that alternate designation does not alter our analysis. Much like property uses in a General Commercial district, as we explain below, property uses in a General Industrial district must abide by the requirements in GREEN BAY, WIS., MUNICIPAL CODE § 13-1700 for off-street parking, which requirements include paving a parking lot. *See* GREEN BAY, WIS., MUNICIPAL CODE §§ 13-906; 13-1714.

Dombrowicki then informed the City he would pursue a change-of-use permit and submit a site plan. The City withdrew the citation after Dombrowicki removed the vehicles and the dumpster from the property.

¶4 Despite his earlier representation, Dombrowicki did not submit a site plan, and the City received another complaint in early 2015 that vehicles and a dumpster had returned to the property. The City sent another notice to Dombrowicki to remove the vehicles and dumpster. Dombrowicki again told the City inspector that he would submit a site plan for the City's approval, but Dombrowicki again failed to do so by the City's deadline. The City then cited Dombrowicki for violating GREEN BAY, WIS., MUNICIPAL CODE § 13-2111, which sets forth the general standards of compliance for accessory uses and structures in an S-RLI district, and GREEN BAY, WIS., MUNICIPAL CODE § 13-1714, which addresses parking lot surfacing requirements.

¶5 The municipal court found Dombrowicki guilty of violating the ordinances. Dombrowicki appealed this decision to the circuit court and requested a new trial pursuant to WIS. STAT. § 800.14(1).³ The circuit court also found Dombrowicki in violation of the ordinances. It concluded that because Dombrowicki had discontinued the "only acceptable nonconforming use" status of the property upon razing the dwelling, he needed to go through the proper procedures under the ordinances to legally change the use of the property, but he never did so. Accordingly, the court concluded Dombrowicki's use of the property was, and continued to be, unlawful, such that the "grandfathering"

³ Dombrowicki initially retained counsel in the circuit court. He submitted all of his briefing pro se, however, and counsel ultimately withdrew from representation after briefing was completed but before the circuit court issued its written decision.

provisions of WIS. STAT. § 62.23(7)(h) were of no benefit to him. The property would remain in its unlawful use until he either discontinued using it as a parking lot or he complied with the zoning requirements and ordinances regarding an S-RLI district. Dombrowicki now appeals.

DISCUSSION

¶6 Dombrowicki does not argue that the property complied with either GREEN BAY, WIS., MUNICIPAL CODE § 13-1714, which requires that “[a]ll open off-street parking areas ... shall be surfaced with a dustless all-weather hard surface material capable of carrying a wheel load of four thousand (4,000) pounds[,]” or, by extension, GREEN BAY, WIS., MUNICIPAL CODE § 13-2111. Instead, Dombrowicki’s primary contention is that, after he razed the dwelling, the property could be lawfully used as a parking lot and to house his dumpster without him needing to do anything more.⁴ Based on this premise, Dombrowicki further argues that he was engaged in a legal, conforming use of his property under WIS. STAT. § 62.23(7)(h) prior to the City’s rezoning of the property in 2009, such that he did not violate either ordinance. We review de novo the interpretation and application of statutes and ordinances to undisputed facts. *Olson v. City of La Crosse*, 2015 WI App 67, ¶3, 364 Wis. 2d 615, 869 N.W.2d 537.

¶7 WISCONSIN STAT. § 62.23(7) authorizes a city to enact zoning ordinances, but para. (7)(h) exempts preexisting lawful uses—both then-legal-conforming uses and then-legal-nonconforming uses—from those restrictions. *See*

⁴ Neither Dombrowicki nor the City explain why any use of the dumpster is significant either in relation to the lot surfacing requirements or otherwise, so we do not address the use of the dumpster in any further depth in this opinion.

City of Lake Geneva v. Smuda, 75 Wis. 2d 532, 536, 249 N.W.2d 783 (1977).

The statute provides, in full:

The *continued lawful use* of a building, premises, structure, or fixture *existing at the time of the adoption or amendment of a zoning ordinance* may not be prohibited although the use does not conform with the provisions of the ordinance. The nonconforming use may not be extended. The total structural repairs or alterations in such a nonconforming building, premises, structure, or fixture shall not during its life exceed 50 percent of the assessed value of the building, premises, structure, or fixture unless permanently changed to a conforming use. If the nonconforming use is discontinued for a period of 12 months, any future use of the building, premises, structure, or fixture shall conform to the ordinance.

Sec. 62.23(7)(h) (emphasis added).

¶8 Generally speaking, a nonconforming use is a use of a property in a manner that a municipality has prohibited via ordinance. See *Hussein v. Village of Germantown Bd. of Zoning Appeals*, 2011 WI App 96, ¶12, 334 Wis. 2d 764, 800 N.W.2d 551. A nonconforming use becomes legal, however, when there is an active and actual use of the property that existed prior to the commencement of the ordinance and the use has continued in the same or a related use until the present. *Smuda*, 75 Wis. 2d at 536-37; see also *Hussein*, 334 Wis. 2d 764, ¶12. Even if the original use of a given property is a legal nonconforming use, a change of use—including expansion or enlargement of the original use—may invalidate the legal nonconforming use as well as the illegal change. *Village of Hobart v. Brown Cty.*, 2007 WI App 250, ¶16, 306 Wis. 2d 263, 742 N.W.2d 907.

¶9 Dombrowicki contends that he established a legal, *conforming* use of the property when he purchased the property, razed the dwelling, and proceeded to use it as a parking lot. Dombrowicki argues that when the property was later

rezoned as an S-RLI district, his past use of the property as an unpaved parking lot was “grandfathered” under WIS. STAT. § 62.23(7)(h) and was thus not subject to S-RLI district regulations. In doing so, he also necessarily presumes that because parking lots generally can be used on properties zoned General Commercial, *his* use of the property as an unpaved parking lot was per se lawful. The City agrees with Dombrowicki that use of a parking lot in an S-RLI district (as well as in a General Commercial district) is generally permissible. *See* GREEN BAY, WIS., MUNICIPAL CODE § 13-2102(b). The City takes issue, however, with Dombrowicki’s failure to follow the procedure under the relevant ordinances to properly establish that use after he razed the dwelling, and his related failure to comply with all applicable regulations governing such parking lots.

¶10 Dombrowicki’s argument fails for two main reasons. First, Dombrowicki unquestionably ceased using the property pursuant to its original legal nonconforming use status. Dombrowicki discontinued using the property as a two-family residential dwelling for over twelve months; in doing so, that legal nonconforming use lapsed, and any changed uses had to conform to the relevant ordinances. *See* WIS. STAT. § 62.23(7)(h); *Village of Hobart*, 306 Wis. 2d 263, ¶16.

¶11 Second, and more important, Dombrowicki never complied with the legal requirements to establish a valid use of the property as a parking lot. Under GREEN BAY, WIS., MUNICIPAL CODE § 13-802(c), the use of a surface parking lot in a General Commercial district, including establishment or expansion of that use, requires obtaining a “conditional use permit” for a property. The steps for obtaining a conditional use permit are set forth in GREEN BAY, WIS., MUNICIPAL CODE § 13-205(c). For a property zoned in an S-RLI district, “[p]ersons wishing to establish or modify a permitted use ... shall obtain a zoning certificate for such

use.”⁵ GREEN BAY, WIS., MUNICIPAL CODE § 13-2102(b). For the city zoning administrator to issue a certificate of zoning, “the use of the building or premises” on the property must be “in compliance with all applicable provisions” of chapter 13. GREEN BAY, WIS., MUNICIPAL CODE § 13-207. Without any certificate of zoning, it is “unlawful” to “occupy or use any ... premises.” *Id.* In addition, before a zoning certificate may be issued, a party must also submit a valid site plan for administrative review. *See* GREEN BAY, WIS., MUNICIPAL CODE §§ 13-1803(a), 13-1804. With several exceptions (none of which are at issue here), site plan review applies to all proposed changes of use. GREEN BAY, WIS., MUNICIPAL CODE § 13-1802. Parking and loading requirements for uses in either of the above zoning districts must comply with chapter 13-1700 of the ordinances, which includes the surfacing requirement for which Dombrowicki was cited. *See* GREEN BAY, WIS., MUNICIPAL CODE §§ 13-808; 13-2108; 13-1714.

¶12 Dombrowicki simply never undertook any of the above requirements—let alone surfacing the lot in compliance with applicable ordinances. The problem with his argument is that he does not recognize the distinction between a lawful use—whether a *legal* nonconforming use (such as the prior dwelling) or a legal, conforming use (such as a properly approved and regulation-compliant parking lot)—and an unlawful use. Even though a parking lot is a permitted use under any of the zoning classifications the property has been subject to, Dombrowicki’s use of the property as a parking lot was illegal after his discontinuation of the property’s previous, legal nonconforming use. If

⁵ To whatever extent that General Industrial zoning may be relevant, *see supra* n.2, a surface parking lot is a permitted use in that type of district, but that use also requires a person to first “obtain a zoning certificate for such use, as specified in Chapter 13-200.” *See* GREEN BAY, WIS., MUNICIPAL CODE § 13-902(b).

Dombrowicki wanted to permissibly use the property as a parking lot, he was required to properly change its use by: (1) going through the required process for a change of use; and (2) complying with the ordinances that were relevant to establishing that use, which, here, included properly surfacing the lot. He never did so. We thus conclude that the circuit court correctly found Dombrowicki in violation of the ordinances.⁶

¶13 Finally, we interpret Dombrowicki as attempting to argue the City effected a “regulatory taking,” see *Murr v. Wisconsin*, 137 S. Ct. 1933, 1942 (2017), when it cited him for not complying with the above ordinances. But Dombrowicki did not raise this argument in the circuit court, and, in any event, the argument is undeveloped and unsupported by legal authority. We need not address issues that have been forfeited or that are inadequately briefed. See *Townsend v. Massey*, 2011 WI App 160, ¶¶23-27, 338 Wis. 2d 114, 808 N.W.2d 155; *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

⁶ Dombrowicki argues the circuit court erred when it cited *David A. Ulrich, Inc. v. Saukville*, 7 Wis. 2d 173, 180, 96 N.W.2d 612 (1959), in concluding he continued to use his property in an illegal manner. Specifically, the court quoted that case for the proposition that the “claimed use ... of the premises prior to the enactment of the zoning ordinance was unlawful There can be no rights vested or otherwise in an unlawful use.” *Id.* Dombrowicki argues *Ulrich* is distinguishable on its facts, but, in doing so, he fails to understand why the circuit court cited that proposition. The court explained that Dombrowicki’s continued use of the property in the years leading up to the citation did not exempt the property from properly complying with the ordinances once the property lost its prior legal nonconforming use. As the balance of this opinion makes clear, that proposition is correct.

