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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1505**

Independent School District No. 281, Robbinsdale,
Appellant,

vs.

City of New Hope,
Respondent.

**Filed May 11, 2026
Appeal dismissed
Harris, Judge**

Hennepin County District Court
File No. 27-CV-24-5924

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Considered and decided by Harris, Presiding Judge; Reyes, Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

HARRIS, Judge

The question we answer in this matter is whether there is a justiciable case and controversy. Appellant Independent School District No. 281, Robbinsdale, sought review of respondent City of New Hope’s interpretation of a zoning ordinance that prohibited it from using warehouse property in an industrial district for “trade school” instruction under the Postsecondary Enrollment Options Act (PSEO), Minnesota Statutes section 124D.09,

subdivision 1 (2024). The school district argued that its use of the property was a permitted use in the industrial district as a “trade school” because postsecondary-education students included students dually enrolled in high-school and trade-school programming. While litigation was pending in district court, the city amended its zoning ordinance to clarify that a “trade school” did not include dually enrolled students in secondary and postsecondary schools.

The district court determined that the statutory language was ambiguous but that the city’s decision to reject the school district’s proposed use as a permitted use was reasonable and supported by the record. The school district now argues that the district court erred by failing to exclusively apply a *de novo* standard of review, failing to construe the zoning ordinance against the city, and erroneously concluding that it lacked a vested right or a legal, nonconforming use. In light of the city’s amended zoning ordinance, we conclude that the school district’s appeal is moot.

FACTS

Under the PSEO program, certain high-school students are eligible to enroll in college-level “career or technical education” courses while also taking high-school courses. Minn. Stat. § 124D.09, subd. 5a (2024). The purpose of the PSEO is to “promote rigorous academic pursuits and to provide a wider variety of options to high school pupils” at no additional cost to the students. *Id.*, subds. 2, 13 (2024). Students enrolled in PSEO-eligible courses must satisfy the admission standards of the college in which they are enrolled. *Id.*, subds. 9(c), 12(e) (2024).

The school district contracted with Hennepin Technical College (HTC) to offer PSEO courses to eligible high-school students. HTC was responsible for providing the PSEO courses, the professor's access to learning resources, such as the library and the online course-management system (e.g., D2L, Canvas, etc.) and awarding college credit to students who successfully completed the courses. The school district was responsible for, among other things, providing classroom space. To deliver PSEO courses, and because of space limitations in its existing buildings, the school district submitted a business use of occupancy permit application to the City of New Hope for a property at 5240-5440 Highway 169 (the property) in March 2023. The school district believed the property provided a unique opportunity to offer certified nursing assistant (CNA) or emergency medical technician (EMT) courses because it had large doors that allowed an ambulance to pull into the space as part of student instruction. It did not indicate in its application that it intended to use the property for educational courses.

The property lies within an industrial zoning district. The industrial district is generally associated with heavy industrial and manufacturing development that often involves intense noise and traffic from semi-trucks, along with smoke and odor that is disruptive to other activities. New Hope, Minn., Zoning Code (NHZC) § 4-20(a) (2026). By its nature, industrial districts are isolated from residential and other commercial zones. *Id.* But the city's zoning ordinance allows for some permitted uses, such as "trade schools." *Id.*, § 4-20(b) (2026). At the time the school submitted its application in May 2023, the city's zoning ordinance defined "trade school" as "a school or teaching unit that provides training, apprentice education, or continuing education in manual, technical, and

mechanical skills to postsecondary education students.” *Id.*, § 4-2(b) (2023).¹ The school district believed that its use of the property aligned with this definition of trade school, primarily because the PSEO programming taught postsecondary-education students.

Throughout March and April 2023, the city’s community development specialist and the school district’s representative exchanged a series of emails discussing how the school district intended to use the property. Initially, the city understood that the school district intended to use the property for warehouse or storage space. But during an inspection towards the end of April, the school district’s representative indicated that it planned to convert the space into a classroom. After learning this, the community development specialist reached out to the school district’s representative to further clarify how the school intended to use the property. In two separate emails, the community development specialist reminded the school district that it would need a conditional-use permit if it wished to use the space for educational purposes.

In May 2023, city staff met with the school district’s representative to discuss other options; the city reiterated that classroom use by the school district was not permitted on the property, emphasizing that “[a]ny school instruction of K-12 grades would not fit within the definition of ‘trade school.’” It then informed the school district that one of its options was to apply for a rezoning. The school district did not apply for a conditional-use

¹ We cite both the 2023 and 2026 versions of the city’s ordinance. Each defines “trade school,” but the city amended the ordinance in 2026 to clarify that the term does not include middle- and secondary-school students, including those dually enrolled in postsecondary-education courses.

permit or rezoning and moved forward with its plan to provide PSEO courses at the property for the 2023-2024 academic year.

On October 6, 2023, during a building inspection by the state, the city was informed that students were inside the building. The school district confirmed this with the city. Two days later, the city sent a cease-and-desist letter to the school district asserting that although trade schools were permitted in industrial districts, the school district's use of the property was prohibited by NHZC § 4-20 (2026) because the students were not postsecondary-education students.

Following the cease-and-desist letter, the school district appealed the city's interpretation of postsecondary-education students and its resulting determination under NHZC § 4-30(e) (2026). The school district also informed the city that it would immediately cease holding PSEO courses pending resolution of the appeal.

Administrative Appeal to Board of Adjustment

On December 11, 2023, the city's board of appeals and adjustments (the board) heard the school district's appeal at a public hearing. The board received letter briefs from the city and the school district and heard arguments from both parties' attorneys. The core issue was the proper interpretation of the term "trade schools" under the city's zoning code.

In its letter brief, the school district argued that the definition of "trade school" includes dually enrolled high-school students in PSEO programs. It asserted that under the PSEO, these students receive a postsecondary-level education taught by postsecondary-level professors, earn college credit like any other college student, and, once enrolled, students cannot be displaced by other college students at the trade school. At the hearing,

the school district reiterated that trade schools were a permitted use in the city’s industrial districts.

The city maintained that its definition of “trade school” properly excludes dually enrolled high-school students for two main reasons. First, the city drew on the definitions of “trade school” and “secondary school” to support its reading of the ordinance. It relied on Minnesota Statutes section 120A.05, subdivision 13 (2024), which defines “secondary school” as “any school with building, equipment, courses of study, class schedules, enrollment of pupils ordinarily in grades 7 through 12.” Thus, if “secondary school” encompassed “pupils” from 7th through 12th grade, then “postsecondary school” would mean “schooling after secondary school.” Second, the city pointed to NHZC § 4-1(g) (2026), which stated that a “use . . . shall be considered prohibited” when that use is not specifically permitted or denied. The city reasoned that because it neither permitted nor denied K-12 instruction in industrial districts, the school district’s use was prohibited.

In January 2024, the board adopted the city’s reading of the ordinance and issued Resolution No. 24-01, setting forth its findings of fact and order denying the school district’s appeal. The board also passed an interim ordinance prohibiting all trade schools as a permitted use in industrial districts because of concerns arising out of the dispute between the city and the school district. In doing so, the board determined that it was “necessary to protect the planning process and health, safety and general welfare” of its citizens. As a result, new trade schools were prohibited in the industrial district at least until a study was completed.

School District Files Suit in District Court

Following the board's decision, the school district sued the city, arguing that the board's interpretation of "trade school" was incorrect. The school district insisted that the proper definition of trade school encompassed "college-level courses taught to college-level students, regardless of their age," which included its high-school students under the PSEO.

But in May 2024, while litigation was pending, the city council amended its definition of "trade school."² The amended definition reads:

Trade school means a school or teaching unit that provides training, apprentice education, or continuing education in manual, technical, and mechanical skills to post-secondary education students only. Trade school definition does not include: (1) training or education to students enrolled in middle school (junior high school) or secondary school (senior high school); or (2) dual enrollment students who are dually enrolled in secondary school and post-secondary school.

See NHZC § 4-2 (2026) (alterations in original).

In light of its new definition, the city argued that the entire matter was moot for two reasons. First, the school district's argument relied on a past version of city code that was no longer in effect. And second, the school district ceased its use of the property and lacked a vested right to use the property in a manner prohibited by city code. The school district argued that the district court must construe the term postsecondary-education students

² The district court's order indicated that the city adopted the amended ordinance "[o]n June 6, 2024." We note that the record reflects the city amended the ordinance in May 2024.

against the drafter and enforce its plain and ordinary meaning. In July 2025, the district court granted summary judgment in favor of the city.

The school district appeals.

DECISION

As a threshold matter, the parties dispute whether the city’s decision to amend the ordinance has rendered this appeal moot.

Minnesota courts are tasked with resolving justiciable cases and controversies. *Winkowski v. Winkowski*, 989 N.W.2d 302, 307-08 n.7 (Minn. 2023). A justiciable controversy presents a “genuine conflict in the tangible interests of opposing litigants.” *Izaak Walton League of Am. Endowment, Inc. v. State, Dep’t of Nat. Res.*, 252 N.W.2d 852, 854 (Minn. 1977). That genuine conflict, however, must remain live throughout all stages of litigation, not merely when the complaint is filed. *Dean v. City of Winona*, 868 N.W.2d 1, 4-5 (Minn. 2015). Absent a live controversy, the case is moot and thus nonjusticiable. *Snell v. Walz*, 985 N.W.2d 277, 283 (Minn. 2023). We will dismiss an appeal “when a decision on the merits is no longer necessary or an award of effective relief is no longer possible.” *Dean*, 868 N.W.2d at 5. As an appellate court, we review the law “as it exists at the time [we] rule on a case, even if the law has changed since a lower court ruled on the case.” *Interstate Power Co. v. Nobles County Bd. of Comm’rs*, 617 N.W.2d 566, 575 (Minn. 2000).

The parties disputed the proper interpretation of the term postsecondary-education students under the city’s 2023 ordinance. The city also argued that the amended ordinance

rendered the matter moot. The district court, however, did not analyze the case through the lens of mootness. It instead resolved the matter using tools of statutory interpretation.

The city argues that the school district's appeal is moot because its arguments rest on an outdated version of city code defining "trade school." The school district disagrees, arguing first that it acquired a vested right to continue using the property. *See Interstate Power Co.*, 617 N.W.2d at 575 (recognizing an exception to the general rule that appellate courts apply the law in effect at the time of decision where rights affected by an amended law vested before amendment took effect); *see also Prop. Rsch. & Dev. Co. v. City of Eagan*, 289 N.W.2d 157 (Minn. 1980). It further contends that it established a legal, nonconforming use. *See AIM Dev. (USA), LLC v. City of Sartell*, 946 N.W.2d 330, 335 (Minn. 2020) (explaining that a legal, nonconforming use exists where a property's initially lawful use is later rendered unlawful by an intervening zoning ordinance). Accordingly, the school district maintains that effective relief remains available. We address the applicability of these exceptions in turn.

A. The school district does not have a vested right to continue using the property.

Under the Fourteenth Amendment of the United States Constitution, legislatures are prohibited from enacting legislation that retroactively divests private vested rights. *U.S. Home Corp. v. Zimmerman Stucco and Plaster, Inc.*, 749 N.W.2d 98, 101 (Minn. App. 2008), *rev. denied* (Minn. Aug. 5, 2008). "'Vested' property rights are those that have 'become so fixed that it would be inequitable to abrogate [the right] by retrospective legislation.'" *Schatz v. Interfaith Care Center*, 811 N.W.2d 643, 658 (Minn. 2012)

(quoting *Peterson v. City of Minneapolis*, 173 N.W.2d 353, 357 (Minn. 1969)). To determine whether a party has acquired a vested right, we look to whether a party has progressed sufficiently in its efforts to acquire a vested right to complete the project. *Wermager v. Cormorant Twp. Bd.*, 716 F.2d 1211, 1215 (8th. Cir. 1983) (applying Minnesota law).³

A “right is not vested unless it is something more than a mere expectation, based on an anticipated continuance of present laws.” *U.S. Home Corp.*, 749 N.W.2d at 101. To this end, a party who purchases property, acquires a building permit, incurs expenses commonly associated with acquiring property, or begins preliminary construction to use the property does not create a vested right. *Wermager*, 716 F.2d at 1215; *Hawkinson v. Itasca County*, 231 N.W.2d 279, 284 (Minn. 1975). Likewise, a municipality’s preliminary approval of a project or its determination that a proposed development would be consistent with zoning ordinances are insufficient to create a vested right. *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 294 (Minn. 1980).

There is no vested right “in an existing law” nor in a previous, more favorable zoning ordinance. *Holen v. Minneapolis-St. Paul Metro. Airports Comm’n*, 84 N.W.2d 282, 287 (Minn. 1957); *Rose Clif Landscape Nursery, Inc. v. Rosemount*, 467 N.W.2d 641, 644 (Minn. App. 1991). In *Rose Clif Landscape*, for example, appellant sought approval from the city’s planning commission to use ten acres of land to build a commercial

³ Though not binding on Minnesota courts, we consider federal court opinions for their persuasive value and afford them “due deference.” *Laliberte v. Dollar Tree, Inc.*, 987 N.W.2d 590, 594 n.4 (Minn. App. 2023) (quotation omitted).

greenhouse and landscape nursery. 467 N.W.2d at 642. At the time, the city’s zoning ordinance did not define “commercial greenhouse” or “landscape nursery.” *Id.* Despite city staff’s recommendation of approving the application, the commission denied it because the retail sales associated with the proposal did not align with the ordinance’s goals; it also recommended that city staff amend the ordinance to define “commercial greenhouse” and “landscape nursery.” *Id.* Two months later, the city amended the zoning ordinance and defined both terms as “operations which sell flowers and vegetables exclusively at wholesale to retailers and jobbers.” *Id.* However, the amendment also prohibited accessory sales. *Id.* Appellant sought a writ of mandamus to compel the city to issue the building permit. *Id.* at 643. This court concluded that “appellant lost whatever right it may have had to approval” when the city amended the zoning ordinance. *Id.* at 644. We held that the “right to rely on the initial ordinance was subordinate to the city council’s police power to enact a different zoning regulation.” *Id.*

That case is distinguishable, however. Unlike the appellant in *Rose Clif Landscape*, the school district here not only received approval from the city to use the property, but it took the additional step of holding classes on it until the city issued its cease-and-desist letter in October. This raises the question, however, whether its use was illegal. Accordingly, we turn to the school district’s next argument—that its use of the property constituted a legal, nonconforming use.

B. The school district failed to establish a legal, nonconforming use.

A legal, nonconforming use applies when 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.” *AIM Dev. (USA), LLC*, 946 N.W.2d at 335. The Minnesota Supreme Court has “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.” *Id.* at 336 (quoting *White v. City of Elk River*, 840 N.W.2d 43, 49-50 (Minn. 2013) (“To protect the landowner’s interest and investment in the existing lawful use, a nonconforming use generally is allowed to continue even after an adverse zoning change.”)). The legal, nonconforming-use exception requires that “use of real property must be *lawfully existing* at the time of the zoning change. *State v. Reinke*, 702 N.W.2d 308, 313 (Minn. App. 2005) (emphasis added); *State v. Lee*, 584 N.W.2d 11, 15 (Minn. App. 1998) (stating that a party “cannot acquire a vested right to an illegal use of property”).

The school district offers no evidence or legal authority that its use of the property was a lawful use to begin with, and the record evidence suggests that it was not. First, the school district’s commercial building application indicated that it would use the property as “warehouse space”—notably, it made no mention of hosting classes there. To the extent that the school district obtained city approval, it was only to use the property as a warehouse. Second, once the city learned about the school district’s plans to use the property for educational use, the school district was twice informed that it needed a conditional-use permit from the city. Nothing in the record suggests that the school district obtained such a permit.

To this end, the school district contends that it was not required to obtain a conditional-use permit or “any zoning approval” from the city because its contract with

HTC rendered its use as a “trade school.” And because trade schools were (and still are) a permitted use within the industrial district, the school district is “simply allowed” to use the property for educational uses. In other words, the school district asks us to accept its good-faith belief that the use was permitted. But calling a use “permitted” does not make it so.

The undisputed facts demonstrate that the school district’s use of the property was not lawful to begin with. The city informed the school district on several occasions *before* it began hosting PSEO courses that the property was not to be used for educational uses. On April 25, 2023, for example, the community development specialist emailed the school district’s representative and explained that “classroom use” on the property required a conditional-use permit. The community development specialist followed up again on May 8, 2023, with a reminder that the school district needed a conditional-use permit for classroom use. Despite the city’s clear objections, the school district went ahead with its plans and commenced PSEO courses on the property. The city discovered this inadvertently during a building inspection with city staff and state representatives, after which the city sent a cease-and-desist letter to the school district.

We understand the school district’s frustration with the city preventing it from hosting PSEO courses on the property. And while the school district insists that its use of the property was lawful, the city consistently told the school district that it was not.

In summary, here, the city’s 2026 zoning ordinance “is the law as it exists at the time” that we consider this appeal. *Interstate Power Co.*, 617 N.W.2d at 575. And, as it exists today, the city’s zoning ordinance expressly excludes high-school students dually

enrolled in secondary and postsecondary courses. We believe this resolves the school district's appeal because, even if we accepted the school district's reading of postsecondary-education students, our decision would amount to an advisory opinion defining an inoperative and outdated zoning ordinance. *Verhein v. Piper*, 917 N.W.2d 96, 100 (Minn. App. 2018) ("This court may not issue advisory opinions."). Thus, an award of effective relief to the school district is no longer possible. The school district lacked both a vested right and a legal, nonconforming use to continue using the property. Therefore, neither exception applies. And, applying the city's zoning ordinance as it exists today, the school district's appeal is moot and nonjusticiable.

Appeal dismissed.