Sec. 86-9. Definition of terms.

Terms not otherwise defined in this section shall be interpreted first by reference to the comprehensive plan and this subpart B; secondly, by reference to generally accepted engineering, planning, or other professional terminology if technical; and otherwise according to common usage, unless the context clearly indicates otherwise. For the purpose of enforcing and administering this subpart B, the following words shall have the definition and meanings ascribed:

Abandon means to discontinue a land use for a period of 24 months without demonstrating an intent to continue the use as indicated by the following:

(1) Allowing licenses to lapse;
(2) Removing meters;
(3) Not maintaining a structure in a habitable condition;
(4) Not making a unit available for occupation (i.e., advertising or marketing through a Realtor or other agent); and/or
(5) Failure to perform pursuant to the terms of an active building permit.

831 So.2d 745, 27 Fla. L. Weekly D2469
(Cite as: 831 So.2d 745)

District Court of Appeal of Florida,
Fifth District.
Tommy C. HOBBS, Appellant,
v.
DEPARTMENT OF TRANSPORTATION, Appellee.

No. 5D01–3790.
Nov. 15, 2002.
Rehearing Denied Dec. 12, 2002.

Landowner applied to Department of Transportation (DOT) for sign permit, after county certified landowner's sign was legally existing as non-conforming sign. DOT denied permit. Landowner appealed. The District Court of Appeal, Palmer, J., held that: (1) landowner's right to use sign did not become illegal simply because entity which applied for permit to use sign changed, and (2) there was no evidence that landowner intended to abandon right to advertise on sign.

Reversed.

West Headnotes

[1] Administrative Law and Procedure 15A 413

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules, Regulations, and Other Policymaking
15Ak412 Construction
15Ak413 k. Administrative construction. Most Cited Cases

Administrative Law and Procedure 15A 435

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules, Regulations, and Other Policymaking
15Ak428 Administrative Construction of Statutes
15Ak435 k. Erroneous construction; conflict with statute. Most Cited Cases
(Formerly 361k219(4))

With regard to conclusions of law, Florida courts defer to an agency's interpretation of statutes and rules the agency is charged with implementing and enforcing, unless they are clearly erroneous or contrary to law.

[2] Zoning and Planning 414 1305

414 Zoning and Planning
414VI Nonconforming Uses
414k1305 k. Legality or illegality of use. Most Cited Cases
(Formerly 414k326)

Landowner's right to use sign located on his property, which was a legally existing, nonconforming sign previously used by different entity, did not become illegal simply because entity which applied for permit to use sign changed; no statute or rule supported determination by Department of Transportation (DOT) that it could not issue new permit for legally existing, nonconforming sign.

[3] Zoning and Planning 414 1319

414 Zoning and Planning
414VI Nonconforming Uses

831 So.2d 745, 27 Fla. L. Weekly D2469
(Cite as: 831 So.2d 745)

414k1317 Discontinuance or Abandonment
414k1319 k. Cessation of use. Most Cited Cases
(Formerly 414k337)

There was no evidence that landowner intended to abandon right to advertise on sign on his property, which was legally used as non-conforming sign until prior sign owner's sign permit ended, for purposes of rule stating a nonconforming sign was abandoned when sign owner failed to operate and maintain sign for 12 month period; at conclusion of prior sign owner's lease, landowner was actively pursuing new permit with county, whose permission was necessary for application with Department of Transportation (DOT), and landowner apparently stopped leasing sign while he was attempting to obtain a new permit since he could not have properly continued advertising on sign until new permit was obtained. Fla.Admin.Code Ann. r. § 14–10.007(6)(b).

[4] Zoning and Planning 414 ⚿1319

414 Zoning and Planning
414VI Nonconforming Uses
414k1317 Discontinuance or Abandonment
414k1319 k. Cessation of use. Most Cited Cases
(Formerly 414k337)

Generally, temporary cessation of a nonconforming use does not operate to effect abandonment of the nonconforming use; instead, abandonment occurs when the landowner intentionally and voluntarily foregoes further non-conforming use of the property.

*746 Roy A. Praver of Law Offices of Roy A. Praver, Titusville, for Appellant.

Pamela S. Leslie, General Counsel and Richard A. Weis, Assistant General Counsel for the Department of Transportation, Tallahassee, for Appellee.

PALMER, J.

Tommy C. Hobbs appeals the final order entered by the Department of Transportation (DOT) denying his application for a sign permit. Concluding that DOT erred in ruling that Hobbs' sign was not grandfathered in at the time the property was rezoned, we reverse.

In 1983, Hobbs purchased land adjacent to Interstate 95 in Brevard County. Included in the purchase of the land was the purchase of an outdoor advertising sign which was located on the property. At the time Hobbs purchased the land, the sign was leased to Cape Kennedy KOA (KOA) for purposes of advertising. KOA had obtained, and continuously maintained, a state permit authorizing such use. KOA continued to lease the sign from Hobbs and to maintain the permit through December 1998. Of particular importance to the instant appeal, during that fifteen year time period, Brevard County rezoned Hobbs' property to RR1 which authorized the land for residential use only. The rezoning caused the advertising sign to become a nonconforming use, but the county and DOT determined that the use was legally existing. Consequently, upon application by KOA, DOT continued to renew the sign permit even after the zoning change.

*747 No problems arose until December 1998, when KOA asked DOT to cancel its sign permit and DOT agreed. No one notified Hobbs of this action. When he later discovered that KOA's sign permit had been cancelled, Hobbs began efforts to obtain a new sign permit. He first sought the necessary permission from Brevard County. On November 1, 2000, a Brevard County official certified that Hobbs' sign was "not in compliance with local ordinances, but is legally existing as a non-conforming sign." Based upon this certification, Hobbs applied to DOT for a sign permit. However, DOT denied the application, stating that the sign was "not permittable under land use designations of site."

831 So.2d 745, 27 Fla. L. Weekly D2469
(Cite as: 831 So.2d 745)

Hobbs thereafter requested a hearing in order to challenge the denial. The hearing officer issued a recommended final order concluding that, although the sign had legally existed as a nonconforming use while KOA was leasing it, use of the sign became illegal once KOA's permit was canceled. The hearing officer recommended that DOT issue a final order finding that Hobbs' permit application was properly denied and ordering that the sign be removed from his property. DOT issued a final order adopting, in *toto*, the hearing officer's findings of fact and conclusions of law. This appeal timely followed.

[1] In reviewing an administrative agency's final order, an agency's findings of fact must be upheld if they are supported by competent, substantial evidence. *See* § 120.68(10), Fla. Stat. (2001); *Pershing Industries, Inc. v. Dep't of Banking & Finance*, 591 So.2d 991, 994 (Fla. 1st DCA 1991). With regard to conclusions of law, Florida courts defer to an agency's interpretation of statutes and rules the agency is charged with implementing and enforcing, unless they are clearly erroneous or contrary to law. *See Palm Beach County Canvassing Bd. v. Harris*, 772 So.2d 1273, 1283 (Fla.2000); *Republic Media, Inc. v. Dep't of Transp., State of Fla.*, 714 So.2d 1203 (Fla. 5th DCA 1998).

Hobbs challenges DOT's denial of his application for a sign permit arguing that such use is legally existing. DOT responds by arguing that the denial was proper because the property on which the sign is located is presently zoned for residential purposes only. While acknowledging that it renewed KOA's permit annually even after Hobbs' land was rezoned, DOT contends that a distinction exists between "renewing" an existing permit and "issuing" a new permit. DOT contends that, "although an existing permit may be renewed for a nonconforming sign, a new permit may not be issued for a nonconforming sign. *See* § 479.07(8)(a), Fla. Stat. (2001); Fla. Admin. Code R. 14–10.0041." We disagree, relying on *Lewis v. City of Atlantic Beach*, 467 So.2d 751 (Fla. 1st DCA 1985), a liquor license case wherein the First District rejected the same argument which DOT raises here.

[2] In *Lewis*, the landowner constructed a building on his property solely to be used as a lounge. The landowner leased the property to a tenant, who obtained a valid liquor license and operated a lounge for several years. During that time, the city amended its ordinance by requiring that such establishments be more than 1500 feet apart, which made the lounge non-conforming. After the tenant's liquor license came under investigation, the landowner attempted to obtain a new license in his own name. The city denied the landowner's application, acknowledging that the tenant's nonconforming use of the property as a lounge was grandfathered in, and thus allowed for the renewal of his permit, but maintaining that the grandfathered status did not apply to the landowner because he was attempting to obtain a *748 new permit. The First District rejected the city's argument, stating:

> The application of zoning regulations to restrict an existing use of property, resulting in substantial diminishing of its value, may constitute a "taking" by the governmental agency which requires the payment of compensation under well-established principles of constitutional law. 82 Am.Jur.2d, Zoning and Planning, § 178. To avoid these consequences, zoning regulations generally "grandfather" the continuation of existing nonconforming uses on property subject to the zoning classification. *State v. Danner*, 159 Fla. 874, 33 So.2d 45 (1947). By the same token therefore, it is reasonable to conclude that the termination of such grandfathered nonconforming uses may result in a "taking" for constitutional purposes unless the basis of such termination accords with applicable legal principles.

We have been cited to no legal authority upholding the proposition that a municipality can terminate a grandfathered nonconforming use of property simply because the tenant and operating license holder of the establishment on the property

> undergoes a change. **It is clear that the concept of grandfathered nonconforming use relates to the property and the use thereof, not to the type of ownership or leasehold interest in the property.** *City of Miami Beach v. Arlen King Cole Condominium Assn., Inc.*, 302 So.2d 777 (Fla. 3d DCA 1974).

Id. at 754 (emphasis added). The court in *Lewis* held that "the city illegally withheld certification that the nonconforming use of the premises could be continued by appellants under these circumstances." *Id.* at 755. We conclude that this same reasoning applies to the instant case and supports Hobbs' claim that the right to use the sign located on his property did not become illegal simply because the entity which applied for a permit to use the sign changed. Further support for our ruling is found in the fact that there is no statute or rule which supports DOT's determination that it cannot issue a new permit for a legally existing, nonconforming sign.

DOT further argues that, even if the sign legally existed, its decision to deny Hobbs' application should be affirmed because Hobbs abandoned or discontinued using the sign by leaving it blank for over 12 months. DOT relies on rule 14–10.007(6)(b) of the Florida Administrative Code, which states:

> A nonconforming sign is "abandoned" or "discontinued" when the sign owner fails to operate and maintain the sign for a period of 12 months or longer.

[3][4] Generally, temporary cessation of a nonconforming use does not operate to effect abandonment of the nonconforming use. Instead, abandonment occurs when the landowner "intentionally and voluntarily foregoes further non-conforming use of the property." *Lewis*, 467 So.2d at 755 (citing 82 Am.Jur.2d, *Zoning and Planning*, § 216). While no Florida courts have interpreted rule 14–10.007(6)(b), two Florida cases have addressed ordinances recognizing similar time requirements as being evidence of abandonment.

In *Peters v. Thompson*, 68 So.2d 581, 582 (Fla.1953), the Florida Supreme Court held that where a county zoning ordinance deemed a non-conforming use abandoned if it was not used for over six months, the board of county commissioners did not have the authority to issue a new permit where it was clear the property had not been used for over six months. In reaching this decision, the court emphasized the fact that no "effort was made to renew the license." *Id.* at 582. In *Crandon v. State ex rel. Uricho*, 158 Fla. 133, 28 So.2d 159 *749 (1946), an airport in Dade County was closed in 1942 by the Civil Aeronautics Board as a war measure. When the war was over, the county sought to prohibit the airport from reopening based on an ordinance which prohibited continuation of non-conforming uses where the use had been discontinued for over six months. The supreme court disagreed with the county, finding that the discontinuation was involuntary. *Id.*

Here, DOT does not dispute Hobbs' assertion that "[a]t the conclusion of KOA's lease for the use of the sign, Mr. Hobbs began to apply for a permit by making application to Brevard County". This assertion is supported by Hobbs' permit application, which reflects that Brevard County officials determined the zoning designation on January 5, 2000, and issued final approval for the sign on November 1, 2000. Thus, Hobbs was actively pursuing a new permit with Brevard County, whose permission was necessary for the DOT application. Hobbs apparently stopped leasing the sign while he was attempting to obtain a new permit since he could not have properly continued advertising on the sign until a new permit was obtained. On this record, there is no evidence that Hobbs intended to abandon his right to advertise on the sign.

Having found no legal basis to support DOT's decision, we reverse the order denying Hobbs' appli-

cation for a sign permit.

REVERSED and REMANDED.

COBB and PLEUS, JJ., concur.

Fla.App. 5 Dist.,2002.
Hobbs v. Department of Transp.
831 So.2d 745, 27 Fla. L. Weekly D2469

END OF DOCUMENT

C Lewis v. City of Atlantic Beach
Fla.App. 1 Dist.,1985.

District Court of Appeal of Florida,First District.
Frederick E. LEWIS and Joy K. Lewis, his wife, Appellants,
v.
CITY OF ATLANTIC BEACH, Florida, Appellee.
No. AT-15.

April 9, 1985.

Owners of property that had been leased for operation of a liquor lounge appealed from final judgment entered by the Circuit Court, Duval County, Gordon A. Duncan, Jr., J., in favor of city holding that city properly applied an ordinance to prohibit continued operation of lounge on that property. The District Court of Appeal, Zehmer, J., held that city was without authority to remove property from grandfathered status and illegally refused to certify continued operation of alcoholic beverage establishment on property.

Reversed and remanded.

West Headnotes

[1] Intoxicating Liquors 223 ⚿59(1)

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(A) In General
223k57 Eligibility for License
223k59 Places
223k59(1) k. In General. Most Cited Cases

Record lacked competent, substantial evidence to prove that liquor lounge was voluntarily closed prior to date on which Division of Alcoholic Beverages revoked tenant's liquor license, and thus city was without authority to remove property from grandfathered status allowing lounge to operate even though it was in violation of ordinance prohibiting such an establishment if located within 1500 feet of any other establishment operating under a current alcohol beverage license and city illegally refused to certify continued operation of alcoholic beverage establishment on property.

[2] Eminent Domain 148 ⚿2.10(5)

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k2 What Constitutes a Taking; Police and Other Powers Distinguished
148k2.10 Zoning, Planning, or Land Use; Building Codes
148k2.10(4) Zoning and Permits
148k2.10(5) k. In General. Most Cited Cases
(Formerly 148k2(1.2))

Application of zoning regulations to restrict an existing use of property, resulting in substantial diminishing of its value, may constitute a taking by the governmental agency which requires the payment of compensation under well-established principles of constitutional law; to avoid these consequences, zoning regulations generally grandfather the continuation of existing nonconforming uses on property subject to the zoning classification.

[3] Eminent Domain 148 ⚿2.10(5)

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k2 What Constitutes a Taking; Police and Other Powers Distinguished
148k2.10 Zoning, Planning, or Land Use; Building Codes
148k2.10(4) Zoning and Permits
148k2.10(5) k. In General. Most Cited Cases
(Formerly 148k2(1.2))

Termination of grandfathered nonconforminguses may result in a taking for constitutional purposes unless the basis of such termination accords with applicable legal principles.

[4] Zoning and Planning 414 ⚿336.1

414 Zoning and Planning
414VI NonconformingUses
414k336 Discontinuance or Abandonment
414k336.1 k. In General. Most Cited Cases
(Formerly 414k336)

Nonconforminguses may be eliminated by attrition, abandonment, and acts of God as speedily as is consistent with proper safeguards and the rights of those persons affected.

[5] Zoning and Planning 414 ⚿336.1

414 Zoning and Planning
414VI**Nonconforming**Uses
414k336**Discontinuance** or **Abandonment**
414k336.1 k. In General. Most Cited Cases
(Formerly 414k336)
Neither attrition nor **abandonment** occurs where a nonconforming use is interrupted or **discontinued** involuntarily by compulsion of governmental action.

[6] Zoning and Planning 414 ⚿337

414 Zoning and Planning
414VI**Nonconforming**Uses
414k336**Discontinuance** or **Abandonment**
414k337 k. Cessation of Use. Most Cited Cases
Temporary cessation of a nonconforming use or the temporary vacancy of buildings used for the nonconforming use does not operate to effect **abandonment** of the nonconforming use.

[7] Zoning and Planning 414 ⚿336.1

414 Zoning and Planning
414VI**Nonconforming**Uses
414k336**Discontinuance** or **Abandonment**
414k336.1 k. In General. Most Cited Cases
(Formerly 414k336)
Involuntary suspension of nonconforming use of premises for the sale of alcoholic beverages due to the loss of beverage license in administrative disciplinary proceedings does not constitute **abandonment** and terminate the grandfathered status of such nonconforming use of such premises.

[8] Zoning and Planning 414 ⚿381

414 Zoning and Planning
414VIII Permits, Certificates and Approvals
414VIII(A) In General
414k378 Grounds for Grant or Denial
414k381 k. Prior Nonconforming Use. Most Cited Cases
Where property owners did not intend to abandon the nonconforming use but, rather, they did all they could to continue such use on premises while city refused to certify that a permitted use of property included the retail sale, service, and on-premises consumption of alcoholic beverages, city illegally withheld certification that nonconforming use of premises could be continued by property owners.

[9] Declaratory Judgment 118A ⚿395

118A Declaratory Judgment
118AIII Proceedings
118AIII(H) Appeal and Error
118Ak392 Appeal and Error
118Ak395 k. Determination and Disposition of Cause. Most Cited Cases
Trial court's failure to declare rights of parties as requested by property owners in their complaint for declaratory relief filed in connection with city's application of ordinance to prohibit continued operation of liquor lounge on property required reversal and remand.

[10] Eminent Domain 148 ⚿2.10(6)

148 Eminent Domain
148I Nature, Extent, and Delegation of Power
148k2 What Constitutes a Taking; Police and Other Powers Distinguished
148k2.10 Zoning, Planning, or Land Use; Building Codes
148k2.10(4) Zoning and Permits
148k2.10(6) k. Particular Cases. Most Cited Cases
(Formerly 148k2(1.2))

Eminent Domain 148 ⚿266

148 Eminent Domain
148IV Remedies of Owners of Property; Inverse Condemnation
148k266 k. Nature and Grounds in General. Most Cited Cases
Since grandfathered status of property had not been terminated by involuntary loss of tenant's liquor license, actions of city did not rise to the level of a taking or inverse condemnation requiring the payment of just compensation.

***752** William G. Noe, Jr., and Paul M. Eakin, of Noe & Eakin, Atlantic Beach, for appellants.
Claude L. Mullis, City Atty., Atlantic Beach, for appellee.
ZEHMER, Judge.
Frederick E. Lewis and his wife own property in the city of Atlantic Beach that for the past ten years has been leased for the operation of a liquor lounge. They

appeal a final judgment in favor of the City of Atlantic Beach holding that the city properly applied an ordinance to prohibit the continued operation of a lounge on this property. We reverse.

*753 On April 28, 1980, the city of Atlantic Beach adopted ordinance 10-80-13, which amended chapter 3 of the city ordinance code regulating sale at retail, serving, and consumption of alcoholic beverages within the city. Section 3-6 of the ordinance prohibits an establishment from operating pursuant to an alcoholic beverage license if located within fifteen hundred feet of any other establishment operating under a current alcohol beverage license. The ordinance also provides, in section 3-8:
Establishments in locations presently open for business and where a current valid alcoholic beverage license existed on the effective date of this ordinance shall not in any manner be affected by this part, nor shall any right of renewal of such licenses be altered or changed by the distance limitations or any other provision of this part.

Lewis testified that he constructed the building on his property solely for use as a lounge. On the effective date of this ordinance, a valid alcoholic beverage license was held in the name of Richard Hoj, appellant's tenant, who was operating a lounge known as Casablanca in the building. The city admits that when the ordinance was adopted, even though the Casablanca was within fifteen hundred feet of another alcoholic beverage establishment, the nonconforming use was grandfathered in pursuant to section 3-8 of the ordinance.

At some point in late July or early August 1981, Richard Hoj became the subject of an investigation by the State Division of Alcoholic Beverages which raised the possibility that he could have his beverage license revoked; so Hoj attempted to sell the Casablanca, including a sale or transfer of the beverage license. As a prerequisite to such sale, Hoj was required by the Division to obtain from the City of Atlantic Beach a statement that the property upon which the Casablanca was located was properly zoned for alcoholic beverage consumption. The city declined to give Hoj such a statement, contending that the property was located within fifteen hundred feet of another establishment serving alcoholic beverages and was thereby prohibited from being zoned to permit alcoholic beverage consumption. The city acknowledged that the property's nonconforming use had originally been grandfathered in when the ordinance was passed in April 1980, but maintained that the property lost that status because Hoj had closed the Casablanca and attempted to sell his business.

On August 10, 1981, appellant Frederick Lewis appeared at a city commission meeting to join in the request with Hoj for zoning approval, but his request was denied by the commission, apparently on the same grounds. On September 3, 1981, as a result of its investigation, the Division ordered Hoj's alcoholic beverage license revoked. On or about September 17, 1982, Lewis made another request of the city commission to allow the reopening of an alcoholic beverage business on his property with an alcoholic beverage license in his name, contending that the property was not suitable for any use other than as a tavern. Again the commission denied this request based on the recently enacted ordinance imposing the fifteen hundred foot limitation.

On September 30, 1982, Lewis filed a four-count complaint in the circuit court. Count one was styled as an action for declaratory judgment concerning the validity of applying section 3-6 of the ordinance to preclude the use of appellants' property as a tavern. Count two alleged an action for damages in excess of five thousand dollars on the contention that the city's refusal to permit the property to be used as a tavern had prevented appellants from renting the premises. Count three was an action to invalidate the ordinance because it violated plaintiff's constitutional right of equal protection. Count four was voluntarily dismissed at trial. The matter was tried to the court without a jury, and the court entered final judgment in favor of the city of Atlantic Beach. The judgment contained no declaration of rights and merely provided:
1. The plaintiffs, FREDERICK E. LEWIS and JOY K. LEWIS, his wife, take nothing by this action and the defendant,*754 CITY OF ATLANTIC BEACH, go hence without day.
2. The Court retains jurisdiction to tax the costs of the defendant upon application therefor and proper notice.

Appellants raise four issues on appeal:

1. The judgment is erroneous because it is not supported by competent, substantial evidence.

2. The judgment must be reversed because the court

failed to address and rule upon the declaratory relief requested in the complaint.

3. The ordinance, as applied to appellants' property, violates their constitutional rights to equal protection and due process.

4. The court erred in not awarding damages to appellants.

We find error on the first two issues, and reverse.

[1] The city argued in the trial court, and argues on appeal, that the evidence "clearly established" that the Casablanca was closed by Hoj prior to August 10, 1981, the date appellant appeared before the city commission, and that such closing terminated the grandfathered status of the property under the city ordinance. Appellants, on the other hand, contend there was no evidence in the record proving the Casablanca was closed prior to the request of the city commission to certify to the property's zoning for an alcoholic beverage license. Accordingly, appellants urge, the property did not lose its grandfathered status and the 1500-foot limitation in the ordinance should not have been applied to curtail its use as a tavern. We have carefully reviewed the record and conclude that it lacks competent, substantial evidence to prove the Casablanca was voluntarily closed prior to September 3, the date on which the Division of Beverages revoked Hoj's license. The city, therefore, was without authority to remove appellant's property from a grandfathered status and illegally refused to certify to the continued operation of an alcoholic beverage establishment on the property.

The city also attempts to support the trial court's judgment by arguing that because Hoj sought to obtain a completely new alcoholic beverage license on the Casablanca property, rather than merely a renewal or transfer of his existing license, its grandfathered status came to an end. The city construes section 3-8 as terminating the grandfathering provision of the ordinance whenever the operator of an alcoholic beverage establishment sells the business and a new operator attempts to take over the business pursuant to a new alcoholic beverage license. To avoid serious constitutional due process issues, we decline to approve that construction of the ordinance.

[2][3] The application of zoning regulations to restrict an existing use of property, resulting in substantial diminishing of its value, may constitute a "taking" by the governmental agency which requires the payment of compensation under well-established principles of constitutional law. 82 Am.Jur.2d, *Zoning and Planning*, § 178. To avoid these consequences, zoning regulations generally "grandfather" the continuation of existing **nonconforminguses** on property subject to the zoning classification. *State v. Danner*, 159 Fla. 874, 33 So.2d 45 (1947). By the same token therefore, it is reasonable to conclude that the termination of such grandfathered **nonconforminguses** may result in a "taking" for constitutional purposes unless the basis of such termination accords with applicable legal principles.

[4] We have been cited to no legal authority upholding the proposition that a municipality can terminate a grandfathered nonconforming use of property simply because the tenant and operating license holder of the establishment on the property undergoes a change. It is clear that the concept of grandfathered nonconforming use relates to the property and the use thereof, not to the type of ownership or leasehold interest in the property. *City of Miami Beach v. Arlen King Cole Condominium Assn., Inc.*, 302 So.2d 777 (Fla. 3d DCA 1974). The general rule is that ***755nonconforminguses** may be eliminated by attrition (amortization), **abandonment**, and acts of God as speedily as is consistent with proper safeguards and the rights of those persons affected. *Bixler v. Pierson*, 188 So.2d 681 (Fla. 4th DCA 1966); 82 Am.Jur.2d, *Zoning and Planning*, § 179. The property was not, of course, destroyed by an act of God.

Attrition, or amortization, contemplates the eventual elimination of **nonconforminguses** by requiring the termination of such uses within or at the expiration of a specified period of time. 82 Am.Jur.2d, *Zoning and Planning*, § 188. The Atlantic Beach ordinance contained no specific time period for ending **nonconforminguses**. *Cf.*, *Peters v. Thompson*, 68 So.2d 581 (Fla.1953).

[5][6][7]**Abandonment** occurs when the landowner intentionally and voluntarily foregoes further nonconforming use of the property. 82 Am.Jur.2d, *Zoning and Planning*, § 216. *See generally*, Annot., *Zoning: Right to Resume Nonconforming Use of Premises After Involuntary Break in the Continuity of Nonconforming Use Caused by Difficulties Unrelated*

to Governmental Activity, 56 A.L.R.3d 14 (1974). Neither attrition nor **abandonment** occurs where a nonconforming use is interrupted or **discontinued** involuntarily by compulsion of governmental action. *Crandon v. State*, 158 Fla. 133, 28 So.2d 159 (1946). *See generally*, Annot., *Zoning: Right to Resume Nonconforming Use of Premises After Involuntary Break in the Continuity of Nonconforming Use Caused by Governmental Activity*, 56 A.L.R.3d 138 (1974). Temporary cessation of a nonconforming use or the temporary vacancy of buildings used for the nonconforming use does not operate to effect abandonment of the nonconforming use. *City of Miami Beach v. State*, 128 Fla. 118, 174 So. 443 (1937); *Quinnelly v. City of Prichard*, 292 Ala. 178, 291 So.2d 295 (1974). Accordingly, an involuntary cessation of the nonconforming use of a premises for the sale of alcoholic beverages due to the loss of a beverage license in administrative disciplinary proceedings does not constitute abandonment and terminate the grandfathered status of such nonconforming use of such premises. *E.g.*, *Green v. Copeland*, 286 Ala. 341, 239 So.2d 770, 56 A.L.R.3d 134 (1970).

[8] There is no evidence in the record indicating that appellants, as owners of the property in question, ever intended to abandon their nonconforming use. On the contrary, appellants did all they could to continue such use on the premises while the city refused to certify that a permitted use of the property included the retail sale, service, and on-premises consumption of alcoholic beverages. Appellants attempted to assist in the transfer of Hoj's license and, failing that, attempted to get a new license in their own or a new tenant's name, but were thwarted each time by the city's wrongful refusal to recognize a continuation of the nonconforming use. We hold that the city illegally withheld certification that the nonconforming use of the premises could be continued by appellants under these circumstances. *See Daoud v. City of Miami Beach*, 150 Fla. 395, 7 So.2d 585 (1942).

[9] With regard to the second issue raised on appeal, the trial court erroneously failed to declare the rights of the parties as requested by appellants in their complaint for declaratory relief. This alone requires reversal and remand for the trial court to enter an appropriate declaratory judgment stating the rights of the parties. *7200 Corp. v. Town of Medley*, 340 So.2d 1281 (Fla. 3d DCA 1977). *See also*, *Coral Gables Federal Savings & Loan Assn. v. City of Lighthouse Point*, 444 So.2d 92 (Fla. 4th DCA 1984).

[10] With regard to the final argument raised by appellants, we find that the court did not err in refusing to award damages to appellants. We have not been cited to any authority which would support the right of appellants to obtain damages under the facts of this case. Since the grandfathered status of the property has not been terminated by the involuntary loss of Hoj's license, the actions of the city do not *756 rise to the level of a taking or inverse condemnation requiring the payment of just compensation.

The judgment is REVERSED and the case REMANDED for further proceedings consistent herewith.

ERVIN, C.J., and BOOTH, J., concur.
Fla.App. 1 Dist.,1985.
Lewis v. City of Atlantic Beach
467 So.2d 751, 10 Fla. L. Weekly 893

END OF DOCUMENT

Time Line of the Pursuit of City Licensing
208 Telegraph Lane, Key West

2003- 2006	Summary of permit activity shows required kitchen improvements to facilitate a bakery - 3-bay sink, venting, & ADA compliancy with bathroom. Summary submitted to Brendon 11/4/2013.
2006 - 2008	Blonde Giraffe leases 208 Telegraph Lane- operating bakery & retail in conjunction with 414 Green St store
	Keys Energy Service confirms that power is in name of Blonde Giraffe at 208 Telegraph Ln
April 2009	Fred transfers electric into his name after blonde Giraffe bakery vacates.
2009	Kelly's Caribbean takes occupancy when the bakery vacates. Kelly's catering operates out of the space.
2009	City Licensing will not issue a Business Tax Receipt, cites no record of activity at 208 Telegraph Lane - sends Fred to Planning Department for clarification as to prior use at the site. Confusion over address as well.
Dec 2010	Secures a County License 2010-2011 (Business Tax Receipt) for Commercial Rentals at 208 Telegraph Lane.
2010	Liability Insurance Policy - shows 208 Telegraph Ln as wine & liquor store
Nov 2011	County License for Commercial Rental renewed 2011-2012
Dec 2011	Spoke to Diane Nickles with the City - heading up the correcting of the address discrepancies on this parcel between the City, Post Office & Utility Companies. Kim in licensing confirms that the process must start with Post Office, then the City and finally the Utility Companies.
Dec 2011	Application submitted to expand the existing building at 208 Telegraph Ln - denied due to incorrect statement of ongoing use at the site as storage.
**	Letters being secured from the architect & planner Fred engaged to do the work confirming the existing use at the time was Kelly's catering operation.
9-Jan 2012	Fred meets with Nicole & Don to review options for property. Suggestion made to apply for bakery & retail license based on Blonde Giraffe's prior recognized use of the site as a retail bakery operation.
12-Jan 2012	Fred emails Ashley with continued discussions on the ongoing retail bakery use at the site.
12-Jan 2012	Fred sends follow up letter to Ashely referencing the existing bakery and Don's suggestions.
17-Feb 2012	City Letter from Doug Brad Shaw, Senior Project Manager - confirms addresses are cleared up which created previous confusion with licensing & utilities - confirms commercial use at 208 Telegraph Lane.
April 2012	Fred installs separate water line by permit for 208 Telegraph Lane. Service previously from 414 Green St.
May 2012	Windstorm Insurance Policy - confirming 208 Telegraph Ln and a mixed use building.
June 2012	Fred installs a privacy fence by permit along north side property line.

Applicant - Fred Tillman 305.923.4913

Time Line of the Pursuit of City Licensing
208 Telegraph Lane, Key West

7-May	2013	Email from Tillman to Nicole references Don's thoughts on pursuing a license for a café plus 8 seats because of Blonde Giraffe's prior recognized use of 208 Telegraph Lane.
May	2013	Bike shop takes occupancy
May	2013	Bike shop tenant tries to get license from the City. Declined.
May	2013	Fred meets with Licensing Department - directed back to the Planning Department. Once again, Licensing states no record of prior activity at site.
6-Jun	2013	Ray Capas emails Nicole with requested documentation of prior retail activity at the site. Leases & appraisal excerpts provided. She is continuing to work with Fred on the licensing issue.
15-Aug	2013	Brendon emails Fred - declines request for café & retail based on lack of prior commercial activity at the site & HRO zoning prohibiting the use.
Nov	2013	County License for Commercial Rental renewed. 2013 - 2014
4-Nov	2013	Detailed package of documentation submitted to Brendon substantiating prior & ongoing commercial retail activity at the site going back several years. Required as part of a formal application process.
3-Dec	2013	Carolyn Walker provides a summary of permits pulled for 208 Telegraph Lane
26-Feb	2014	Brendon schedules a site visit - takes photos, confirms the handicap bathroom, venting system, slop sink
26-Feb	2014	Fred provides Brendon with a copy a 1996 Occupational License for Paint-a-Pot for 208 Telegraph Lane. The license is referenced through 414 Green Street which is why Licensing Dept couldn't find it months ago.
26-Mar	2014	Denial letter from Don Craig - cites lack of continuing legal non-conforming use within the last 24 months.
Jun thru	present	Working with Kevin Bond to appear before the Planning Board.

*** Property has never been cited by Code Enforcement for improper occupancy of the property.

Green hi-lited dates - Shows the ongoing communications & meetings with the City since 2009

Yellow hi-lited dates - Shows Fred's continuous activities on, and with regard to the site, to keep it occupied, improved & insured. Other than the destruction with Hurricane Wilma, the site has not been vacant.,