

UT LAW

CLE

Continuing  
Legal Education

## LAND USE CONFERENCE

### Nonconformities

APRIL 26, 2019  
BRENDA N. McDONALD



1

1



2

2

# Generally

---

3

3

## Definition

---

Nonconforming a/k/a “Grandfathered”

- A nonconforming use of land or buildings is a use that existed legally when the zoning restriction became effective and has continued to exist.
  - *Swain v. Board of Adjustment of the City of University Park*, 433 S.W.2d 727 (Tex.Civ.App.1968, writ ref'd n.r.e.).

The definition PRESUMES the use, structure, etc. was **LAWFUL** when it was commenced.

4

4

## Bonus Tip!

---

“All uses afforded the special, protected status of ‘nonconforming’ are presumed to have been lawfully commenced and lawfully operated. Uses that were illegally commenced NEVER become nonconforming and the property owner has no protected interest.”

- John Mixon, James L. Dougherty, Jr. & Brenda N. McDonald, *Texas Municipal Zoning Law*, § 8.00 (3d ed.1999)

So PLEASE, as a planning or land use professional, from this day forward till death separates you from this earth – DON’T SAY

**“LEGAL NONCONFORMING”**

Please.

5

5

## Other Nonconformities

---

Some cities may also consider other elements of land development to be/become non-conforming:

- Landscaping
- Parking
- Fencing
- Animals

6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Nonconformities

Also available as part of the eCourse

[Recent Developments in Entitlements, Nonconformities, Takings, and Annexations](#)

First appeared as part of the conference materials for the  
23<sup>rd</sup> Annual Land Use Conference session  
"Nonconformities"