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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**THIRD APPELLATE DISTRICT**

**(Nevada)**

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TOWN OF TRUCKEE,  Plaintiff and Respondent,  v.  EDGAR STRATTON et al.,  Defendants and Appellants.	C066281  (Super. Ct. No. T08/2933C)
EDGAR STRATTON et al.,  Plaintiffs and Appellants,  v.  TOWN OF TRUCKEE,  Defendant and Respondent.	C068089  (Super. Ct. No. T10/4190C)

This pair of cases represents the right and left shoes of a land use dispute. The contestants are the incorporated Town of

Truckee (the Town), and Edgar and Galeen Stratton, a husband and wife who own the real property at issue.<sup>1</sup>

The Town brought an action in March 2008 to abate the Strattons' practice of storing vehicles and other materials outdoors on the property in connection with their towing business. The trial court (Judge Holmer) issued a permanent injunction against the nonconforming use in October 2010. The premature notice of appeal from the trial court's *decision*,<sup>2</sup> which we deem to have been filed immediately after the subsequently entered *judgment* (Cal. Rules of Court, rule 8.308(c); see discussion in *In re Gray* (2009) 179 Cal.App.4th 1189, 1197), is the subject of case No. C066281.

Meanwhile, in July 2010 the Strattons filed an action for damages against the Town under a theory of inverse condemnation and other counts. In March 2011, the trial court (Judge Dowling) sustained the Town's demurrer without leave to amend as to the count for inverse condemnation on the ground that it was untimely. The Strattons requested dismissal of the remaining counts without prejudice, and the parties stipulated to an entry of judgment to facilitate appellate review of the crucial issue of the claim for inverse condemnation. (*Norgart v. Upjohn Co.*

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<sup>1</sup> For the sake of clarity, we shall refer to Edgar Stratton as Stratton, and Edgar and Galeen Stratton collectively as the Strattons.

<sup>2</sup> Neither party requested a formal statement of decision.

(1999) 21 Cal.4th 383, 401-402.)<sup>3</sup> This appeal is the subject of case No. C068089.

At the joint request of the parties, we consolidated the appeals for purposes of argument and decision only. In their appeal from the abatement action in case No. C066281, the Strattons contend the evidence showed their use of their property for outside storage—incidental to the operation of their business—was a preexisting legal use and thus should have been allowed to continue after the adoption of zoning that prohibited it (without an amortization period) in the absence of any proof that they discontinued it. In their appeal in the inverse condemnation action, the Strattons contend that if we affirm the abatement action we should reinstate “the inverse condemnation case . . . , as [the Strattons] have a strong claim that they could not have known that all economically beneficial use [would be] taken from them” until the ruling in the abatement case. On the other hand, a reversal of the abatement action means “their claim for inverse condemnation would not be ripe for consideration,” though they do not offer even a suggestion as to what course we should take with respect to the judgment in that event. We shall affirm both judgments.

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<sup>3</sup> A recent case in which review has been granted noted a split of authority on the propriety of this procedure, and adhered to the point of view that upholds it. (*Kurwa v. Kislinger* (2012) 204 Cal.App.4th 21, review granted June 20, 2012, S201619.) We will do the same unless and until directed otherwise.

## FACTUAL AND PROCEDURAL BACKGROUND

The Strattons present a manifestly inadequate statement of the *entirety* of the facts in their appeal in case No. C066281 that is premised on an unsupportable claim that review of this judgment *after trial* in the abatement action is *de novo*. In point of fact, on appeal we resolve all explicit evidentiary conflicts or inferences to be drawn from the facts *in favor of the judgment*. (*People v. Mack* (1992) 11 Cal.App.4th 1466, 1468.) “We include this reminder because [their] rendering of the facts highlights what [appellants deem] to be inconsistencies and credibility issue with respect to the . . . witnesses. . . . [However], the [court] resolved these credibility issues against [them] and we are bound by that resolution. Accordingly, we set forth the evidence without [the] extensive commentary regarding its reliability.” (*People v. Curl* (2009) 46 Cal.4th 339, 342, fn. 3.)<sup>4</sup>

The property at issue is an undeveloped lot on River Park Place in Truckee bordering the north bank of the Truckee River. In a Nevada County (the county) ordinance enacted before the

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<sup>4</sup> Moreover, the imbalanced factual account in the Strattons’ brief forfeits any challenge on their part to the sufficiency of the evidence to support the trial court’s account of the pertinent facts. (*Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218; *Hauselt v. County of Butte* (2009) 172 Cal.App.4th 550, 563.) We therefore focus in our appellate account on the facts as found in the trial court’s opinion that are reflected in the evidence and the exhibits at trial. As a result, we do not need to rule on the “Table of Objections” in the Town’s brief to the factual representations contained in the Strattons’ brief.

Town's incorporation (apparently in December 1970), "open storage" was an otherwise permitted use in connection with industrial uses such as lumber sales, utilities, and yards for the storage of building materials or contractor equipment.<sup>5</sup> The trial court found that "[i]n primordial times zoning-wise" before 1977, property owners in the area in which the subject property is located regularly stored their excavation equipment outside either in conformance with the zoning or with the acquiescence of the county.

The county approved a tentative subdivision map that the then-owners (the Northrups) submitted in December 1977. Among the conditions of the approval was the removal of all abandoned vehicles, industrial equipment, or any other equipment not authorized to be stored on the property before recording of the final map.

However, it does not appear that the Northrups ever filed a final map. Eventually, they sold the undeveloped subdivision to the Truckee Business Park Company, which either transferred the property to Baywest Properties III or operated its business under that name. The latter filed a new tentative subdivision map. The county's approval required the recording of covenants with the final map that included a design guide. These

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<sup>5</sup> Although referenced at trial and included as an exhibit, we do not discern any relevance to the determinative issue on appeal in predecessor ordinances that the county had enacted in 1954 and 1967.

covenants were eventually recorded in 1991, which included a requirement that "[a]ll sales, display, storage[, ] or other uses shall be confined . . . within enclosed buildings unless specifically permitted by [a] land use permit."<sup>6</sup> The subject property is listed as lot 5 in this subdivision map.

WestStar Communications, Inc. (WestStar) bought the subject property in 1992. In its response to the company's construction proposal on what was described as vacant land, the county requested written confirmation from WestStar that the design was in conformance with the recorded covenants.

The Town incorporated in 1992. Initially the Town continued the county ordinances in effect. It then adopted the county's zoning ordinance as its own in 1995. In 1997, the Town enacted a specific plan for downtown Truckee that prohibited unscreened outdoor storage of nonoperational vehicles, salvage, or scrap materials where visible from any public road or public park. In a zoning code adopted in 2000, the Town also defined nuisances generally in Truckee Municipal Code section 18.30.100.<sup>7</sup>

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<sup>6</sup> Although the parties frequently adverted to these covenants, the Town did not think the trial court needed to reach the issue of their effect, and the court's opinion did not rely on them. We thus do not need to address the Strattons' arguments that the covenants are irrelevant to the present dispute.

<sup>7</sup> Subdivision B. of Truckee Municipal Code section 18.30.100 ("Property Maintenance") provides, in material part, "It is hereby declared to be a public nuisance for any property owner . . . to keep . . . the[ir] property . . . in a manner resulting in any of the following conditions. [¶] 1. . . . Any . . . dismantled, inoperable, [or] wrecked equipment or objects including . . . automobiles . . . , trailers, trucks . . . ,

The Strattons bought the property from their immediate predecessor in interest in August 1994. Initially (and at the time of the hearing), they used the lot in connection with their towing business for the storage of vehicles damaged in accidents pending lien sales. They also stored six to eight trucks and two trailers on the lot, along with "a partial trailer body . . . used to store wooden framing materials." Stratton testified that he had been towing vehicles onto the property since 1975, and it had been used for storage of pipe and construction equipment from the late 1970's except for a period of 10 days or less when it was cleared and graded without anything on it; he believed his use of the property was consistent with the prior owners, and thus was "grandfathered" in.

Another witness, however, recalled that the property had been cleared and graded by the time the Strattons purchased it, and another did not think there had been outdoor storage present at the time the plan for downtown Truckee came into being. The

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[or] miscellaneous equipment and machinery . . . standing or stored on the property . . . which can be viewed from a public highway, walkway, or from private or public property . . . .  
[¶] . . . [¶] 4. . . . [The] presence of grease, oil, other petroleum products, noxious chemicals . . . , or any gaseous, liquid, or solid waste in a manner which would consist of a . . . hazard or degrade the appearance of or detract from the aesthetic and property values of surrounding properties. . . .  
[¶] 5. . . . Lumber (excluding stacked firewood or lumber for a construction project on the property with a valid . . . Building Permit) . . . [or] salvage materials (including auto parts . . . , miscellaneous equipment[, ] and machinery) . . . stored on the premises for a period in excess of one week."

trial court apparently gave these latter witnesses credence, because it remarked at the hearing, "When the subdivision came into play here and the ground was scraped bare and improvements were put in, then at that point the issue of a nonconforming use . . . whatever it [had been], went away because there was a break." (We note, however, that the trial court did not premise its ultimate ruling on this point.)

After their purchase of the lot, the Strattons initially had sought a permit to store and repair cars, but put it on hold because there would be a condition that they pave the lot for this use. They then filed an application for a use permit in 1994 from the Town for the fenced outdoor storage on a portion of the property of a tenant's pipe that was being used in the construction of natural gas facilities in Truckee; as a second phase, they also sought permission to construct an industrial building. They disclaimed any intent "to occupy this property in the capacity of a tow yard or for vehicle storage."<sup>8</sup> The minutes of the hearing on the application reflect a concern that in the absence of a tenant the Strattons might make use of the property as part of their towing business. The Town approved a temporary permit for the fenced outdoor storage through December 1998 (noting that this use was illegal). It conditioned this

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<sup>8</sup> Stratton testified, "It wasn't going to be a combined use for both [the Strattons and the pipeline tenant]." Neither party here identifies any evidence of whether the Strattons used the remainder of the property during the tenancy, beyond Stratton's remark in his testimony that after the tenant's departure, the Strattons used the property for "continued" storage.

approval on removal of all related materials from the property at the expiration of the use permit. Finally, it noted that after the expiration of the permit, any "new use in this area" would require a new use permit, and that vehicle maintenance or the storage of towed vehicles was "prohibited on the site." The Town denied the requested permit to construct the industrial building. It also denied the Strattons' appeal, which was limited to the issues of the denial and a bonding condition of the use permit.

Beginning in October 2003, the Town began to send notices to the Strattons that their use violated Truckee Municipal Code section 18.30.100.<sup>9</sup> The items located on the property were in violation of the express terms of the local ordinance, being clearly visible from River Park Place, adjoining properties, and the Truckee River. Photographs reflecting the condition of the property were included in one of the Town's trial exhibits. The Town filed a notice of noncompliance in January 2007 after posting a notice on the property. The Strattons did not respond or request an administrative hearing. The Town filed its complaint in March 2008. The Town sought an injunction against the Strattons' use of the property based on violation of the Town's zoning code and the common law. The Strattons argued their use of the property was grandfathered in as a continuous

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<sup>9</sup> See footnote 7, *ante*.

nonconforming use antedating the Town's adoption of its zoning code.

As the trial court noted, "The issue here . . . is whether [the Strattons'] illegal use is a vested non-conforming use and thus immune from [an] enforcement action." The court concluded that the Strattons' use was "quantitatively and qualitatively different" than their predecessors; Baywest Properties III used it only for storage while it was in the process of developing the properties, and WestStar described it as vacant. Furthermore, when the Strattons applied for the temporary use permit for the fenced storage of their tenants' pipe, this "drew the curtain down on any claim of continuous use of a nonconforming activity," because they gained the "benefit of a peaceful tenancy . . . as the Town withheld its rights to attempt to enjoin the use. Having received that benefit, [the] Stratton[s] cannot raise the claim successfully now" that they have a grandfathered use.

## **DISCUSSION**

### **I. Case No. C066281**

It is the Strattons' burden as appellants to demonstrate error in the reasoning of the trial court. (*Thomas v. Shewry* (2009) 170 Cal.App.4th 1480, 1485.) We thus confine ourselves to their contentions—spread under several different headings—but focused on the same two points. We disregard their efforts in passing to rely on the trial court's oral remarks at the hearing

as a basis for impeaching its written ruling. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 199.)

The Strattons assert that "outdoor storage" was a lawful use under the zoning ordinances in effect until November 1997, when the Town enacted its ban on outdoor storage in industrial areas that are visible from the Truckee River as part of the plan for downtown Truckee (later continuing this prohibition in its 2000 zoning ordinance). They again detail the use of the property antecedent to their ownership (in the course of which they impermissibly denigrate the testimony about the land being unused as "self-serving and convenient" and rely on the other testimony to the contrary), which was continuous up to their purchase. They assert their present use is similar. They contend the trial court had a "fatal flaw" in its ruling when it failed to address the provision in the 1997 and 2000 ordinances for continuance of legal nonconforming uses, and the failure of either enactment to provide an amortization period to eliminate the use for outdoor storage.

On these selectively chosen facts, the Strattons would be correct in the abstract. A use that was legal at its inception cannot subsequently be rendered illegal through changes in zoning; it must either be allowed to continue (without an increase in scope or abandonment) as a "nonconforming" use, or be given a reasonable amortization period in which to cease. (*Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533, 552 (*Hansen Bros.*)).

However, this principle is beside the point if, as the trial court ruled, the Strattons' request for a permit for their tenant's illegal use extinguished their own nonconforming use as a result of the condition in the permit imposing a future restriction against their nonconforming use. On this question, they offer a single page of argument in their opening brief (and are matched for brevity in the Town's brief). The Strattons contend the permit was limited to a portion of their property and did not purport to limit their concurrent usage (of which, as noted above, there is scant if any evidence in the record). In the alternative, they contend they did not receive any benefit in exchange for the permit under the principle recited in our decision in *Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459 (*Tahoe Keys*), on which the trial court relied.

"A landowner . . . is barred from challenging a condition imposed in a land-use regulation if [there is an] acquiescence] therein by either [a] specific[] agree[ment] to the condition or [a] fail[ure] to challenge its validity while accepting the benefits afforded." (*Tahoe Keys, supra*, 23 Cal.App.4th at p. 1484 [agreement to mitigation fee in exchange for right to continue to develop land; no timely challenge to condition; cannot now challenge fee in present proceeding].) Among the cases we cited for this proposition is one more closely akin to the present situation: *Edmonds v. County of Los Angeles* (1953) 40 Cal.2d 642 enforced a property owner's oral acceptance of a

three-year amortization period on the right to operate a trailer park as a nonconforming use as a condition of approval of a request to amplify the scope of the use from 20 to 50 trailers. (*Id.* at pp. 645-646, 650.) "In these circumstances plaintiffs should not now be allowed to challenge the effectiveness of the three-year conditional exception under which they have obtained definite advantages to which they were not otherwise entitled." (*Id.* at p. 650.)

It is thus immaterial that the 1996 permit applied to only a portion of the Strattons' property, or that the permit did not preclude their purported concurrent continuing use for outdoor storage on the property.<sup>10</sup> In exchange for rental income for a use that even the Strattons concede was an intensification of the nonconforming use, they agreed vehicle maintenance or the

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<sup>10</sup> Given that the burden of proof is on the property owner to establish an uninterrupted similar nonconforming use (*Hansen Bros., supra*, 12 Cal.4th at pp. 552, 564), we could also uphold the judgment on the basis of an insufficiency of proof that the Strattons continued to use the property during the 1996 to 1998 period of their tenant's use. They represented in the permit application that they would *not* be jointly using the property with their tenant, and the minutes of the hearing reflect a concern about the Strattons' future use of the property in connection with their business upon the termination of the tenancy. This inferentially establishes that the property was *not* being used in this fashion at the time. This is also in accord with the testimony (of the witness involved in drafting the 1997 ordinance) that the property was not being used for that purpose before its enactment. If we were to credit Stratton's testimony about continued usage, we would have to find that the Strattons engaged in deliberate subterfuge at the time of their permit application. Therefore, the Strattons failed to show that their nonconforming use continued without interruption after the enactment of the 1997 ordinance.

storage of towed vehicles would be prohibited "on the site" after the expiration of the lease. They did not contest the imposition of this condition at the time. Therefore, the right to such nonconforming use terminated.<sup>11</sup> We therefore affirm the judgment in case No. C066281.

## **II. Case No. C068089**

This appeal exists only as an apparent afterthought in the Strattons' briefing. The Strattons filed their complaint in July 2010, labeling the action as one for inverse condemnation. After the trial court sustained the Town's demurrer premised on the running of the statute of limitations (with leave to amend a basis for delayed discovery), the Strattons filed an amended pleading that reiterated the claim of inverse condemnation and other theories, attaching the decision in the abatement case as an exhibit. In sustaining the Town's demurrer to the pleading without leave to amend as to the claim for inverse condemnation, the court ruled, "the pleading, taken as a whole, shows clearly . . . that the Plaintiffs' action is time[-]barred as to the inverse condemnation cause of action because the Plaintiffs were in fact on notice as to facts that might give rise to the taking, including the ordinance itself, use permits . . . and Town actions . . . that occurred more than five years prior to the filing of this matter, and some facts (the Plaintiffs' use

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<sup>11</sup> In light of this conclusion, we do not need to address the Strattons' arguments regarding their right to continue a nonconforming use under the 1997 and 2000 ordinances, or the lack of any provision for amortization under those enactments.

permit proceedings) dating back to the time of Plaintiffs' purchase of the property in 1994." The court also noted that if the ruling in the abatement case were reversed on appeal the issue of inverse condemnation would be moot, and if it were affirmed it would bar the complaint.

The Strattons argue *only*, "The Town must either have taken the Outdoor Storage use on the Property, and therefore [is] obligated to compensate the Strattons for it, or the Strattons' Outdoor Storage use rights continue to exist. [¶] Therefore, this Court should reverse the . . . order sustaining the Town's demurrer, and reinstate the Strattons' complaint for inverse condemnation." As noted above, the only amplification of this argument in their reply brief states that they have a "strong" (if *unarticulated*) claim that they could not have known "all economically beneficial use" would be taken from them until the ruling in the abatement case "made new law."

The failure to supply any reasoned argument based on the circumstances of this case or any authority in favor of delayed discovery forfeits our consideration of the Strattons' claim. Courts do not have any obligation to respond to undeveloped perfunctory claims or make arguments for parties. (*People v. Oates* (2004) 32 Cal.4th 1048, 1068, fn. 10; *Sourcecorp, Inc. v. Shill* (2012) 206 Cal.App.4th 1054, 1061.) We thus will simply observe that the ruling in the abatement case did not create new law. Accordingly, we affirm the judgment in case No. C068089.

**DISPOSITION**

The judgments in case Nos. C066281 and C068089 are affirmed. The Town, respondent in both appeals, shall recover its costs of appeal in each case. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

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BUTZ, J.

We concur:

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NICHOLSON, Acting P. J.

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DUARTE, J.