by Lawrence Savell

Zoning Out Part I

A Residential Restoration Battle

If you enjoy restoring cars at your home, you may have given some thought to possibly taking on some additional projects for others for profit. While the idea of making money through a hobby you enjoy can be very appealing, you should bear in mind some potential legal implications. One of these is the question whether or to what extent you are permitted to maintain and work on vehicles and operate such a business on your residential property. This month's column begins a two-part analysis of this issue, through a couple of cases where zoning ordinances and other restrictions were alleged to impact the ability of a homeowner to conduct such efforts.

Our first case is *Larsen vs. Town of Colton*, decided on February 16, 1999, by the Court of Appeals of Washington State. The case focused on the ability of a landowner to build a separate structure in which to do such work, even as a hobby.

According to the Court, J. Charles and Susan Tilton owned two partially adjacent residential lots in Colton. The area consisted of new, well-built, nicely maintained homes, with no businesses or unsightly vacant lots. Brent and Cherie Larsen lived in a single-family home, which abutted the Tiltons' two lots on two sides.

The Tiltons began building a single-family home, including an attached two-car garage, on one of their lots. Then Mr. Larsen saw Mr. Tilton laying out stakes on the other lot. Tilton told Larsen he was planning to build a shop to pursue his hobby of restoring old vehicles. He said he planned eventually to move and sell the house and the structure separately.

Larsen investigated the town's zoning ordinance and believed construction of the second building would be improper. He brought the matter to the attention of local authorities. Eventually, the Larsens filed a lawsuit.

The Superior Court agreed with the Larsens, and issued an order enjoining (barring) the Tiltons from building a garage or shop on their property. The Tiltons appealed, but the Court of Appeals affirmed the judgment against them.

The appellate court analyzed whether Colton's zoning ordinance prohibited the Tiltons' proposed structure. It noted that zoning ordinances are construed (interpreted) liberally to accomplish their purpose, but must not be extended "beyond the clear scope of legislative intent as manifest in their language."

Here, the ordinance provided in pertinent part: "In the Residential Zone, no building or premises shall hereafter be used, and no building shall hereafter be erected or structurally altered, unless otherwise provided for herein, except for one or more of the following uses: (a) Single family dwellings...(b) Accessory buildings such as ordinarily appurtenant to dwelling houses. (c) Garages for not to exceed two automobiles, but no repair shop, service station, or other business shall be conducted therein."

Turning to the facts, the Court observed that the Tiltons' building permit was issued for construction of a two-car garage. However, their house on the first lot had an attached two-car garage. While the ordinance arguably permitted more than one garage, under subsection (c) the total garage space could not exceed that for two automobiles. Thus, the structure on the second lot was not permitted under subsection (c).

The Court then turned to the question whether, under subsection (b), the proposed structure would be considered an accessory building such as is ordinarily appurtenant to (connected with) a dwelling house.

"Although the Tiltons offer dictionary definitions of various terms used in the ordinance, the basic question is whether a structure may be deemed 'appurtenant' to a house when it is built on a lot separate from the house. This question was resolved in [a prior Washington case] in which the owner of adjacent lots started construction of a storage building on one of the lots. A covenant (restriction) prohibited use of the property for anything other than residential purposes...Noting that a garage is a proper appurtenance to a dwelling and is not a violation of such a covenant, the court nevertheless held that if a garage is built on an adjoining lot, it is no longer appurtenant and violates the covenant even if it is used in connection with the dwelling on the adjoining lot. Under this reasoning, the Tiltons' proposed structure cannot be appurtenant to their residence...because it would be built on a separate lot."

The Court rejected the Tiltons' argument that their two lots combined should be considered one lot for these purposes. "Here, there is no evidence the Tiltons used or fenced the two lots as a single property. [O]ne lot will not be appurtenant to another on which the owner dwells if it is 'physically disconnected from the dwelling and in fact unnecessary for the use and enjoyment thereof.'"

"The superior court correctly concluded the Tiltons' structure could not be appurtenant to their house on a separate lot. The structure thus was not permitted by Section 4(b) of Colton's zoning ordinance."

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