

Zoning Out Part II *Restoring Collectibles Or Storing Junk?*

This month we continue our analysis of zoning ordinances and other restrictions which may impact a homeowner's ability to store cars in need of restoration or to operate a restoration business on his or her property.

Fans of the television Western *Gunslinger* will recall the distinctive character Festus, played memorably by Ken Curtis. Festus, Marshall Dillon's trusted colleague and friend, invariably displayed a grizzled and dilapidated personal appearance, unshaven and unkempt even by "Old West" standards. The case of *Gray vs. White*, decided on December 7, 1999, by the Court of Appeals of Missouri involved rather heavy-handed steps taken by the city of Festus to maintain its own appearance.

According to the court, in 1979, Louis White obtained a Conditional Use Permit (CUP) from the city for the sale and servicing of antique and classic automobiles on his property. The property was located in what then was a predominantly rural area; across the road was land that, although consisting of a large hayfield, was zoned residential.

In reliance upon the CUP, White constructed a \$30,000 building. It was placed toward the back of the lot in accordance with the city's specifications, leaving the front of the building as a storage and display area for the automobiles. White then obtained a city business license and a state auto dealer's license. Tim White's Auto Sales was established for "the buying and selling of mostly 'project-status' (also known as pre-restoration) antique and classic cars, along with restoration work done by [White] for a fee on cars that customers would purchase. Although [White] would occasionally purchase antique/classic vehicles in good or even pristine condition, his usual method of operation was to purchase such vehicles that were generally dilapidated and in gross need of repair to be brought into a restored and operable condition."

White's business continued uninterrupted for many years; the city annually renewed his business license. However, a new subdivision with many new residences developed in the nearby residential district. In addition, tragic family health issues diverted White's attention from his business. In 1993, the city notified White that it had received complaints from neighbors about seeing "junk" vehicles stored on his property and that the original CUP required a "buffer zone...to shield any objectionable material or activity from adjoining property owners."

White continued to operate his business until the city

denied his request for a business license in mid-1994. White never failed to comply with the city's ordinances until they required a sight-proof barrier for the first time in 1994.

The city filed a petition for Injunction to Abate Ordinance violation. White filed an answer and a counterclaim seeking a business license and damages for loss of business. The trial court ruled for the city. White appealed. The appellate court ruled for White.

"The record in this case establishes beyond dispute that a sight-proof barrier was not a condition of the original CUP, and that the City did not require a sight-proof barrier at [White]'s property from 1979 until 1994.


"The Board of Adjustment was aware, when they granted [White] this conditional use in 1979, that the area to the south was zoned R-1 and had the potential for residential development; they granted him the CUP nonetheless. He has a vested right to continue the operation of his business, as long as he conforms to the original conditions of the CUP.

"[T]he trial court's interpretation of Festus Ordinance Section 31-92 would be confiscatory and result in what amounted to a taking of [White]'s property without compensation.

"The city's demand that [White] erect a sight-proof fence would make it impossible for [White] to maintain a state automobile dealer's license for his property since state law requires that an automobile dealer's display lot must provide 'unencumbered visibility from the nearest public street of the motor vehicles being sold' by the dealer.

"[W]here a person is lawfully conducting a business in a certain area, he has a vested right to continue even though such business has become, by reason of changed zoning, a nonconforming use. To then say that the city, by the simple expedient of first requiring then denying him a license, could destroy such vested right and put him out of business would be absurd and unreasonable. Such is not the law."

The court also rejected the city's argument that by the time the city denied renewal of [White]'s city business license in mid-1994, the nature of his business use had changed from that of auto sales/service to that of operating a junkyard. "[T]he basic nature of [White]'s business has remained unchanged over the years, and [White] has continued to buy mostly dilapidated or wrecked but restorable antique and classic cars, then restore some of them to be sold per customer orders, and sell others in an unrestored stage to customers who then did their own restoration work on the vehicles."

The court removed the requirement that White erect a sight-proof fence, directed that the city grant him a business license, and reinstated his counterclaim for damages. 

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