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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**
10 **UNLIMITED JURISDICTION**
11

12	ALEC ZUBARAU,)	CASE NO. BS114330
)	
13	Petitioner/Plaintiff,)	PETITIONER'S MEMORANDUM OF
)	POINTS AND AUTHORITIES IN
14	vs.)	SUPPORT OF PETITION FOR WRIT OF
)	OF MANDATE AND DECLARATORY
15	CITY OF PALMDALE; DOES 1-50,)	RELIEF
16	inclusive,)	
)	TIME: 9:30 A.M.
17)	DATE: FEBRUARY 6, 2008
)	DEPT: 86
18	Respondents/Defendants.)	
	_____)	

1 I. SUMMARY OF ARGUMENT

2 This case arises from the arbitrary and improper decision of Respondent's City Council to
3 uphold the erroneous and arbitrary decision of Respondent's Planning Commission revoking
4 Petitioners Minor Modifications and ordering Petitioner to remove antennas and support towers
5 installed pursuant to Respondent's Zoning Code. The administrative record reveals substantial
6 evidence to support Petitioners position that both the Planning Commission and the City Council
7 arbitrarily and erroneously ignored both rule Federal preemption and the arbitrary and ambiguous
8 nature of Zoning Code §95.03 A and B.

9 A writ of mandate should be granted for the following reasons:

- 10 1. The Planning Commission and the City Council refused to recognize the
11 principle of Federal preemption in the area of Radio Frequency Interference (RFI).
- 12 2. The Planning Commission and the City Council erred in applying
13 discretionary land use principles to an administrative approval process.
- 14 3. The Minor Modifications at Petitioners residence conformed to Zoning
15 code §95.03 A and B.
- 16 4. The decisions of the Planning Commission and the City Council were
17 arbitrary. (*Ross v. City of Yorba Linda*, (1991) 1 Cal. App. 4th 954)
- 18 A. The permitting defect had been cured.
- 19 B. Petitioners installation conformed with Zoning Code §95.03 A and B.
- 20 C. The Planning Commission and the City Council applied standards
21 not defined in Zoning Code §95.03 A and B.

22 Declaratory relief should be granted for the following reasons:

- 23 1. Respondent's ordinance seeks to regulate antennas based upon Radio
24 Frequency Interference (RFI). The field of RFI regulation has been preempted by the Federal
25 Government to the exclusion of all other governmental institutions.

1 2. Respondents Zoning Code § 95.03 A and B is in some parts ambiguous
2 and unintelligible to the extent that the average homeowner is unable to determine if they may or
3 may not be in violation of said code.

4 3. Respondents Zoning Code § 95.03 A and B is incompatible with partial
5 Federal and State preemption principles regarding Amateur Radio antennas.

6
7 II. INTRODUCTION

8 The within action challenges the decision of the Palmdale City Council in upholding
9 Planning Commission Resolution No. PC-2007-025 revoking two Single Family Minor
10 Modifications previously granted to Petitioner by the Palmdale Planning Department.

11 Petitioner was approved for two Single Family Minor Modifications by the Palmdale
12 Planning Department and subsequently granted permits by the Palmdale Department of Building and
13 Safety to install a 55 foot tower support structure and a roof mounted vertical antenna at his
14 residence in Palmdale. The grants were pursuant to Zoning Code §95.03 A and B and Chapter 2,
15 Article 26.04 of the Palmdale Municipal Code.

16 Unfortunately for Petitioner neighborhood opposition to the pursuit of his ham radio hobby
17 soon swelled to the point that the city authorities were deluged with complaints regarding the
18 unsightliness of the tower and antennas along with claims of interference with home electronic
19 equipment. In the end, Respondent's Planning Commission and City Council ignored both the city
20 ordinance and Federal and State law in order to side with the many neighbors against the rights of
21 the individual ham radio operator.

22 As set forth in greater detail below, Respondents City Council had the opportunity to
23 correct the arbitrary and erroneous decision of its Planning Commission but chose to adopt the
24 position that it could impose a discretionary standard on an administrative action long after that
25 action had been relied upon by Petitioner.

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2 **III STATEMENT OF FACTS**

3 Petitioner Alec Zubarau (“Petitioner”) along with his wife, Ana Gonzales, is the current
4 owner of a single family residence located at 39303 Dijon Lane in the City of Palmdale. [Record of
5 Administrative Proceedings (“A.R.”) at 0005] In 2005 Petitioner submitted to Respondent’s
6 Planning Department an application for a 55 foot support tower to be installed in the rear yard of his
7 residence. The application was approved on March 1, 2005 and Petitioner was granted Single Family
8 Minor Modification 05-134 [A.R. 0001 and 0002] On April 14, 2005 Petitioner was granted Permit
9 # B05-00722 by Respondent’s Building and Safety Department for the installation of “Antenna with
10 metal cage”. [A.R. 0037] Petitioner submitted data and a set of plans detailing the structural integrity
11 of the tower and its base. [A.R. 0007, 0033 and 0034] The tower was installed and the final
12 inspection and clearance occurred on May 31, 2006. [A.R. 0003 and 0004] On April 4, 2005
13 Respondent’s Building Department received a complaint regarding an antenna attached to
14 Petitioner’s roof. [A.R. 0035] Petitioner was informed that he needed Planning approval and a
15 permit for the antenna. He complied with the order and the violation was closed. [A.R. 0036] The
16 Minor Modifications and permits for the tower and roof top antenna were issued pursuant to
17 Palmdale Municipal Code Chapter 2 Article 26, Section 26.04 [A.R. 1202] and Zoning Code § 95.03
18 A and B [A.R.1227-1228] In January 2007 Petitioner installed a horizontal antenna on the support
19 tower (“Antenna with metal cage”). A complaint was filed with Respondent’s Code Enforcement
20 Unit on January 7, 2007. [A.R. 0041 and 0042] On March 30, 2007 Petitioner was notified of a
21 modification or revocation hearing to be held before the Planning Commission on April 19, 2007.
22 [A.R. 0043-0044] Prior to the hearing Respondent attempted to explain his current situation and
23 request help from pd Planning Department. [A.R. 0046]

24 **A. Hearings Before the Planning Commission**

25 At the initial hearing on April 19, 2007 the Planning Commission took public testimony and
26 received a multi-page petition from neighbors. [A.R. 0085-0093] Petitioner submitted numerous

1 documents including among other things, a letter setting forth Petitioners position [A.R. 0101]; a
2 study of electromagnetic fields at amateur radio stations by staff members of the FCC and the U.S.
3 Environmental Protection Agency [A.R. 0177]; and a document entitled Antenna Height and
4 Communications Effectiveness, Second Edition, A Guide for City Planners and Amateur Radio
5 Operators [A.R. 0242-0295].

6 In response to a questions from the Commission, staff reported on the approved and
7 unapproved portions of the tower and antenna installation at Petitioners residence:

8 “Commissioner Berg: Does Code Enforcement um if we take that horiz...the horizontal
9 array out of the picture those antennas of the roof um were part of the uh submitted
10 plan to the City and was approved as well as this structure in the backyard. Is that
11 correct or not correct? Those, there’s three antennas??

12 Mr. Kite: The Single Family Minor Mods that were approved the first one was for the
13 tower, the second one was for one of the pole antennas on the roof, the third one um
14 we do not have a Planning approval for that. Uh Building and Safety can review the
15 permits that they have for uh the structures that they have.

16 Mr. Davis: Correct, we also received Planning approval for the two towers, for the
17 main structure you see here in the photo, a roof mounted on which is actually attached
18 to top of the chimney, the other antenna is actually under 45 foot in height this
19 (inaudible) tower is exempt except for Planning Department approval. That’s how we
20 stand right now.” [A.R. 0358]

21 The Commission then agreed to continue the matter to June 21, 2008 in order for the
22 Planning Department to facilitate a meeting between the Petitioner and the neighbors. It was agreed
23 that the offending horizontal antenna would be removed and the residence would be put back as it
24 was prior to January 2008:

25 “Chairman Mayfield: So, if that’s the case then we’ll go for 60 days, but the applicant
26 has to be in compliance with ... everything up until January ... this array and everything

1 that's happened after January that equipment shall not be used. Is that is that for us,
2 what the Planning Commission is saying? [A.R. 0366]

3 Thereafter the matter was continued from June 21, 2007 to August 16, 2007 [A.R. 0386];
4 from August 16, 2008 to September 6, 2007 [A.R. 0406]; and finally from September 6, 2007 to
5 September 20, 2007. [A.R. 0424]

6 At the Planning Commission hearing on September 20, 2007 the commission again took
7 public testimony. Petitioner submitted a document entitled Supplemental Information in Support of
8 the Finding by the Planning Department and Supplement to the Staff Report. [A.R. 0526] This report
9 included among other things an article on Antenna Height and Communications Effectiveness [A.R.
10 0586]; a document entitled Showing of Need for Height of an Amateur Radio Antenna System to
11 demonstrate what is needed for Petitioner to communicate with his home country of Belarus [A.R.
12 0600]; photos of Petitioners antenna installation [A.R. 0570-0573]; and photos of other similar
13 installations at various locations within the city of Palmdale. [A.R. 0574-0563].

14 At the conclusion of the hearing the Planning Commission adopted Resolution No. PC-
15 2007-025 revoking Single Family Minor Modification 05-139 and Single Family Minor Modification
16 05-034. The Resolution recited findings as follows:

17 “(b) The installation and operation of the Vertical Antennas...as approved...are
18 inconsistent with Purpose and Intent of the Vertical Antenna regulations in Section
19 95.03 A of the Palmdale Zoning Ordinance...The tower extends to a height of 55 feet
20 **with a large horizontal array that extends into the required ten (10) foot sideyard**
21 **setback** and the other pole antenna extends to height of approximately 40 feet.

22 ©) Based on a field inspection...it was revealed that the ground mounted tower antenna
23 had been modified to include a horizontal array that extends approximately three (3)
24 feet into the required ten (10) foot sideyard.

1 (d) The on-going operation of the antenna use...shall not cause interference with any
2 electrical equipment...**unless exempted by Federal regulation.** Based on anecdotal
3 evidence...the Commission finds that the transmissions...are causing interference.

4 (e) The Zoning Ordinance specifies that the maximum height of the antenna shall not
5 exceed seventy-five (75) feet.... **Further, it specifies that the maximum height of the**
6 **active element...shall be thirty (30) feet or less.... On both antennas, the active**
7 **array exceeds thirty (30) feet....**

8 (f) The antennas as they currently exist...are not **compatible with the surrounding**
9 **neighborhood and create an adverse visual impact...especially when tower**
10 **antenna is raised to its full height with the recently added horizontal array.**[A.R.
11 0870-0875) (Emphasis added)

12
13 **B. Appeal Before the City Council**

14 On January 16, 2008 the matter came before Respondent City Council on an appeal from the
15 action of the Planning Commission. In addition to the public testimony the City Council had before it
16 documents including Computer Law Review and Technology Journal, The Ghost in the Computer:
17 Radio Frequency Interference and the Doctrine of Federal Preemption [A.R. 1047-1067]; FCC letters
18 regarding Federal preemption in the area of RFI [A.R. 1068-1073]; and the FCC Memorandum
19 Opinion and Order entitled “Petition of Cingular Wireless L.L.C. for a Declaratory Ruling that
20 Provisions of the Anne Arundel County Zoning Ordinance are Preempted as Impermissible
21 Regulation of Radio Frequency Interference Reserved Exclusively to the Federal Communications
22 Commission.” [A.R. 1074-1090].

23 After the public hearing was closed there was a discussion among the members of the City
24 Council that included comments by staff.

25 “Asst. Dir. Kite: They have a height of 75 ft. on a vertical antenna. Our interpretation
26 of the ordinance is, as far as any horizontal array that would be a maximum of 30 ft..

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So he could have a strictly vertical antenna that can go up to 75 ft provided it is compatible with the neighborhood.

Councilmember Lackey: I just have a quick question. I am trying to visualize what type of neighborhood. **If it says in our statute that we permit up to 75 ft heigh, what type of neighborhood would that be considered consistent with the neighborhood?**

Asst. City Atty Skousen: An agricultural area?

Councilmember Lackey: Does it have to be a very rural environment? Is that the thinking?

Asst. Dir. Kite: **I think it has to be a more rural or larger lot size area, not necessarily.** This property is located in a R-1-7000 zone. The lot size is about 9000 sq ft on this specific property.” [A.R. 1127] (Emphasis added)

After some discussion regarding the horizontal array the discussion focused on the vertical tower antenna.

“Councilmember Dispenza: But, we will solve some of it, but the vertical antenna is in compliance, is it not?

Asst City Atty Skousen: **It is within the height limit,** but is the question, the issue is, is it compatible with that neighborhood.

Councilmember Hofbauer: Shouldn’t that had been contemplated before the permit was issued?

Councilmember Hofbauer: **It seems like we are coming back after the fact and asking this guy....But I am trying to figure out did we have the Building Department go out and sign off on this when it was installed?** [A.R. 1128] (Emphasis added)

There was some discussion regarding installation and then the following comment was made:

1 Asst City Atty Skousen: **But he was issued the permit, they did inspect, and he**
2 **built it in accordance with the permit, the vertical tower antenna. Then, later the**
3 **neighbors came in and said we do did not believe it was compatible, and I guess.**

4 [A.R. 1129] (Emphasis added)

5 There was discussion regarding the term “compatible” and the following occurred:

6 “Asst City Atty Skousen: I think that is a word that can be interpreted and defined. It
7 **is a discretionary word and the Planning Commission made their determination:**
8 **It is before you now to make your determination.**

9 Councilmember Dispenza: **We are making the determination after the fact.**

10 Asst City Atty Skousen: **That is correct. At the time the permit was issued**
11 **apparently the person issuing the permit thought it was compatible or else they**
12 **would have not issued it.** But did they go out and talk to the neighbors? No, of
13 course they didn’t but it was issued so they determined at that point it was compatible.

14 Councilmember Dispenza: **But is it not in our Ordinance that you have to go out**
15 **and talk to the neighbors?**

16 Asst City Atty Skousen: **No it is not.**

17 Asst Dir Kite: **And these are administrative approvals that are approved over the**
18 **counter;** typically there is no field inspection on any administrative approval. [A.R.
19 1129] (Emphasis added)

20 The question of structural integrity was raised by Mayor Ledford:

21 Mayor Ledford: I have a question about structural integrity. You indicated a permit
22 was issued; some kind of pylon was obviously put in to sport this antenna. Is that with
23 confidence? Do we have any fear about this thing falling down?

24 Asst Dir Kite: According to Building and Safety, the tower, which is the telescoping
25 tower, is designed structurally to withstand a certain wind load. And they looked at
26 the calculations on that.

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Mayor Ledford: Okay

Councilmember Dispenza: How long has the tower been there now?

Asst Dir Kite: Pardon

Councilmember Dispenza: How long has it been there? Two years, 3 years?

Asst Dir Kite: **It has been there since about '05.** [A.R. 1131] (Emphasis added)

A question was asked about the horizontal antenna:

Councilmember Hofbauer: But it has been removed at this point?

Asst Dir Kite: As of right now it has been removed.

Councilmember Dispenza: So it is not there now.

Asst Dir Kite: No. [A.R. 1132]

At the conclusion of the appeal hearing Respondent City Council denied the appeal in part and adopted the findings of the Planning Commission regarding Single Family Minor Modification 05-139, ordering the tower, horizontal array and one roof mounted vertical antenna removed. It granted the appeal for the Single Family Minor Modification 05-304 allowing Petitioner to retain a single roof mounted vertical antenna approximately 40 feet in height. [A.R. 1106- 1112]

IV. STANDARD OF REVIEW

The inquiry under *Code of Civil Procedure* § 1094.5 (b) © is whether the respondent has proceeded without, or in excess of jurisdiction and/or whether there is prejudicial abuse of discretion, defined to include instances where the record shows the administrative decision “is not supported by the findings , or the findings are not supported by substantial evidence.” *Topanga Assn. for a Scenic Community v. County of Los Angeles*, (1974) 11 Cal.3rd 506, 514-515.

V. THE PLANNING COMMISSIONS AND THE CITY COUNCIL EXCEEDED THEIR JURISDICTION WHEN CONSIDERING RADIO FREQUENCY INTERFERENCE

1 The Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq regulates all
2 telecommunications and radio station operations. The Federal Communications Commission has
3 been granted exclusive jurisdiction over matters involving Radio Frequency Interference (“RFI”).
4 Radio communications matters are interstate commerce. *Pulitzer Publishing Co. v. FCC*, 94 F.2d 249,
5 251 (D.C. Cir. 1937). In *Federal Radio Commission v. Nelson Bros. Bond and Mortgage Co.*, 289
6 U.S. 266, 279 (1933) the Supreme Court held that

7 “No question is presented as to the power of the Congress, in its regulation of
8 interstate commerce to regulate radio communications. No state lines divide radio
9 waves and national regulation is not only appropriate but essential to the efficient
10 use of radio facilities”

11 In *City of New York v. FCC*, 486 U.S. 57, 64 (1988) the Supreme Court stated:

12 “we have also recognized that "a federal agency acting within the scope of its
13 congressionally delegated authority may preempt state regulation" and hence
14 render unenforceable state or local laws that are otherwise not inconsistent with
15 federal law.” (Citation omitted)

16 In *960 Radio, Inc.*, FCC 85-578, 1985 Lexis 2342 (released October 29, 1985) the FCC
17 stated:

18 “federal power in the area of radio frequency interference is exclusive; to the
19 extent that any state or local government attempts to regulate in this area, [its]
20 regulations are preempted.”

21 Both the Planning Commission and the City Council were aware of the issue of federal
22 preemption as set forth in Memorandum Opinion and Order entitled “Petition of Cingular Wireless
23 L.L.C. for a Declaratory Ruling that Provisions of the Anne Arundel County Zoning Ordinance are
24 Preempted as Impermissible Regulation of Radio Frequency Interference Reserved Exclusively to the
25 Federal Communications [A.R. 0111-0127] various letters from the FCC regarding the issue [A.R.
26 0106–0110] [A.R. 1047-1090] and a brief explanation of why state and local attempts to regulate RFI

1 has been preempted by the Federal Government pursuant to §302(a) of the Communications Act of
2 1934 (47 USC §3029(a)). [A.R. 0104]

3
4 VI. THE PLANNING COMMISSION AND THE CITY COUNCIL ABUSED THEIR
5 DISCRETION BY APPLYING DISCRETIONARY LAND USE CRITERIA TO AN
6 ADMINISTRATIVE PROCESS

7 Minor Modifications are governed by Chapter 2, Article 26, Section 26.04 of Respondents
8 Municipal Code [A.R. 1202-1204] Subsection D of Section 26.04 sets forth the criteria for review.
9 [A.R. 1204] It is clear that the granting of a Minor Modification is administrative in nature as
10 opposed to discretionary as in the granting of a Conditional Use Permit.

11 Chapter 9, Article 95, Section 95.03 A and B of Respondent's Zoning Code set the standards
12 for the installation of Vertical Antennae. [A.R. 1227-1228] Subsection A states the purpose of §
13 95.03 is to set the standards for vertical television and amateur radio antennae that will ensure
14 compatibility with surrounding neighborhoods. Subsection B then states what those standards are and
15 that antennas may be permitted in all agricultural and residential zones if they conform to the
16 standards set out in that subsection. By its very language the Ordinance sets the standards of
17 compatibility. Subsection C states that vertical antennas shall be subject to administrative approval
18 pursuant to Article 26. No other discretionary approvals are needed. To later apply additional
19 standards of review as to compatibility is both improper and an abuse of discretion. Councilmember
20 Hofbauer correctly identified the problem during this exchange:

21 "Councilmember Hofbauer: The Ordinance did not provide a prospective review. So,
22 I mean, at what point do we? Let's, let's take this out of the context of his antenna.
23 You've got a building that is down the street we don't like, do we retroactively revoke
24 the permits and come and bulldoze it?

25 Mayor Ledford: That's not.

26 Councilmember Hofbauer: Because we don't like the paint color on it now?

1 Mayor Ledford: That’s not the same.

2 Councilmember Hofbauer: No, it could be termed incompatible.

3 Mayor Ledford: I don’t think the courts would support that. **I think an antenna, like**
4 **this, gives us that discretion.”**

5 Councilmember Hofbauer: So, do we need to move this into a CUP process in the
6 future then?” [A.R. 1151]

7 The only question here should have been whether the horizontal antenna array was part of the
8 Minor Modification. Once it was established that the horizontal array had been removed [A.R. 1132],
9 the violation was cured and that should have ended the matter. It is clear that both the Planning
10 Commission and the City Council allowed the neighbors to make their decision by declaring a
11 permitted use incompatible with their neighborhood.

12
13 VII AS APPLIED TO PETITIONER, RESPONDENT’S ORDINANCE IS PREEMPTED BY
14 FEDERAL REGULATIONS AND STATE LAW

15 FCC Memorandum Opinion and Order (FCC 85-506) entitled “Federal preemption of state
16 and local regulations pertaining to Amateur radio facilities.” (commonly known as PRB-1) [A.R.
17 0142-0149] limits the ability of local authorities to establish rules that are restrictive of amateur radio
18 antennas through the doctrine of partial preemption. In its rule making decision, the FCC stated:

19 “We will not, however, specify any particular height limitation below which a local
20 government may not regulate, nor will we suggest the precise language that must be
21 contained in local ordinances, such as mechanisms for special exceptions, variances, or
22 conditional use permits. Nevertheless, local regulations which involve placement,
23 screening, or height of antennas based on health, safety, or aesthetic consideration
24 must be crafted to accommodate reasonably amateur communications, and to represent
25 the minimum practicable regulation to accomplish the local authority’s legitimate
26 purpose.”

1 California Government Code § 65853.3 [A.R.0542-0543] adopts both the language and intent of
2 PRB-1 as follows:

3 “Any ordinance adopted by the legislative body of a city or county that regulates
4 amateur radio station antenna structures shall allow those structures to be erected at
5 heights and dimensions sufficient to accommodate amateur radio service
6 communications, shall not preclude amateur radio service communications, shall
7 reasonably accommodate amateur radio service communications, and shall constitute
8 the minimum practicable regulation to accomplish the city's or county's legitimate
9 purpose.

10 It is the intent of the Legislature in adding this section to the Government Code, to
11 codify in state law the provisions of Section 97.15 of Title 47 of the Code of Federal
12 Regulations, which expresses the Federal Communications Commission's limited
13 preemption of local regulations governing amateur radio station facilities.”

14 The ordinance as applied certainly does not represent “the minimum practicable regulation” to
15 accomplish Respondent’s goal to safeguard the “surrounding neighborhood by preventing adverse
16 visual, health, safety, and other impacts on the surrounding properties and/or the community.”


17 Some cases have held that local authorities can balance the needs of the amateur with those of
18 the surrounding community. (*Howard v. City of Burlingame*, 726 F. Supp 770 (N.D. Cal. 1989)
19 *Pentel v City of Mendota Heights*, 13 F.3rd 1261 (8th Cir., 1994) provides a more thorough analysis
20 and holds that the FCC did the balancing itself and it is the court’s duty to determine if the
21 municipality has made a reasonable accommodation. See also FCC 99-2569 entitled “In the Matter of
22 Modification and Clarification of Policies and Procedures Governing Siting and Maintenance RM-
23 8763 of Amateur Radio Antennas and Support Structures, and Amendment of Section 97.15 of the
24 Commission's Rules Governing the Amateur Radio Service” wherein the FCC, after quoting its
25 earlier “reasonable accommodation” language from PRB-1 stated, “Given this express Commission
26 language, it is clear that a "balancing of interests" approach is not appropriate in this context.”

1 Therefore, the act of balancing the needs of Petitioner with those of the community for
2 “compatibility” was improper.

3
4 VIII CONCLUSION

5 It is clear from the record that Respondent improperly applied discretionary land use criteria to
6 an administrative, over the counter procedure. Respondent should have cited Petitioner for a code
7 violation and ordered the offending horizontal antenna removed until Planning clearance and a permit
8 had been acquired as had been done in the case if the roof mounted vertical antenna. Given the fact
9 that Respondent proceeded with the hearings, both the Planning Commission and the City Council
10 exceeded their jurisdiction by considering radio frequency interference as a legitimate subject for
11 local control. Further the rulings of both the Planning Commission and the City Council are in
12 conflict with both Federal and State law as applied to Petitioner because they used a balancing test as
13 opposed to making reasonable accommodations to allow Petitioner to communicate with his home in
14 Belarus as well as other areas of the world. For the reasons set forth above, the court should issue the
15 writ of mandate ordering the City Council to uphold Petitioner’s appeal and reverse the decision of
16 the Planning Commission. Further the court should grant the relief sought by declaring invalid and
17 unenforceable those portions of Respondent’s Zoning Code § 95.03 A and B that purport to regulate
18 radio frequency interference and limit the “active element of the antenna array” to a maximum height
19 of 30 feet.

20 DATED: December 16, 2008

21
22 By 
23 LEONARD J. SHAFFER
24 Attorney for Petitioner
25 ALEC ZUBARAU
26