

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/06/09

DEPT. 86

HONORABLE DAVID P. YAFFE

JUDGE

C. HUDSON/J. JONES DEPUTY CLERK

HONORABLE
3.

JUDGE PRO TEM

B. JAUREGUI, COURTROOM ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

C. CRUZ, CSR # 9095

Reporter

9:30 am

BS114330

Plaintiff LEONARD J. SHAFFER (X)

Counsel

ALEC ZUBARAU

Defendant DAWN A. MCINTOSH (X)

Counsel

VS

CITY OF PALMDALE

NATURE OF PROCEEDINGS:

HEARING ON PETITION FOR WRIT OF MANDATE;

Matter comes on for trial and is argued.

The Administrative Record (consisting of five volumes) is admitted in evidence as petitioner exhibit one

The Petition for Writ of Mandate is granted.

Petitioner, an amateur radio operator, who resides in the City of Palmdale, erected a 55 foot high amateur radio station antenna structure upon his property pursuant to a permit issued to him by the City of Palmdale in 2005. Respondent City revoked the permit due to complaints from Petitioner's neighbors that the areal structure is unsightly, much taller than any other structure in the area, lowers their property values, interferes with the use of their electric and electronic appliances, attracts lightning, causes harmful radiation, and for other reasons too numerous to mention.

Petitioner administratively appealed the revocation of his permit, and a final administrative decision was issued by the City Council of the City of Palmdale on January 16, 2008, rejecting his appeal and ordering him to cease using the antenna and to

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remove it from his property within 14 days (A.R. 1106-1112).

The administrative decision constitutes an abuse of discretion by the City Council because it violates Section 65850.3 of the Government Code and because it contains findings that are not supported by substantial evidence.

Because the use of the airways is regulated by the Federal Communications Commission, an agency of the Government of the United States, the ability of the individual cities and towns to regulate in that area is limited. In recognition of that fact, the State Legislature enacted Section 65850.3 of the Government Code in 2003. That statute requires that any municipal ordinance that regulates amateur radio station antenna structures must allow those structures to be erected at heights sufficient to accommodate amateur radio service communications. Such ordinances must "reasonably accommodate" such communications, and any local regulation must constitute, "the minimum practicable regulation to accomplish the city's legitimate purpose."

The administrative decision of the City Council is to eliminate the structure completely, which directly violates the express requirements of the statute.

In its opposing brief in this Court, the City makes only a passing reference to the statute in a

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footnote, and relies exclusively upon local ordinances of the City that require that such antennae "are compatible with the surrounding neighborhood by preventing adverse visual, health, safety, and other impacts on the surrounding properties and/or the community." Such ordinances are void because they do not constitute the minimum practicable regulation to accomplish the City's legitimate purpose, as required by the statute.

The so called "evidence" in support of the findings by the City Council is characterized by the Council itself as "anecdotal evidence." (A.R. 1110). The findings that "transmissions occurring from the antennas... are causing interference with electrical equipment in the surrounding neighborhood"; and the finding that the antenna, "poses a potential safety hazard" are supported only by unsubstantiated complaints or assertions made by the neighbors that do not constitute substantial evidence that such accusations and statements are true.

The Petitioner to some extent brought the revocation of his permit upon himself by adding what the City Council characterized as "a large horizontal array that extends into the required 10 foot side yard setback for vertical antenna" after the permit to him was issued and after the antenna in its original configuration was completed. During the administrative proceedings, Petitioner conceded effectively that he had exceeded the scope of his permit, and the

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uncontradicted evidence is that he removed the offending horizontal attachment before the matter came before the City Council. Bowing to the complaints of Petitioner's neighbors, the City Council nevertheless used the no longer existing horizontal attachment as a pretext to revoke Petitioner's permit. Such action was arbitrary, capricious and an abuse of discretion.

The Administrative Record lodged in this action is ordered forthwith returned to the party who lodged it, to be preserved without alteration until the Judgment herein is final, and to be forwarded to the Court of Appeal in the event of an appeal.

Counsel for Petitioner is to submit a proposed judgment and a proposed writ that commands Respondent City of Palmdale to vacate its Resolution Number CC2008-009, adopted on January 16, 2008. Said proposed judgment and writ is to be submitted to this department within 10 days with a proof of service showing that a copy has been served upon opposing counsel by hand delivery or fax. The Court will hold it for 10 days before signing and filing the judgment and causing the clerk to issue the writ.

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