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FULTON COUNTY
COMMON PLEAS COURT
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**IN THE COURT OF COMMON PLEAS
FULTON COUNTY, OHIO**

GARY WODTKE,)	Case No. 09-CV-322
)	
Plaintiff,)	Hon. James E. Barber
)	
v.)	FINAL JUDGMENT ENTRY
)	
VILLAGE OF SWANTON,)	
)	
Defendant.)	

This cause is before the Court on cross-motions for reconsideration of the Court's August 20, 2013 Judgment Entry for the purpose of disposing of all remaining claims and issues and entering a final judgment. For good cause shown, the Court finds that Plaintiff Gary Wodtke's motion is well taken and that it should be granted, and that Defendant Village of Swanton's motion is not well taken and that it should be denied.

The Court further finds that Section 150.007, Definitions, ¶N at ¶21 defines a telecommunications tower as, "A structure designed and constructed to support one or more antennas used by *commercial* wireless telecommunication facilities and including all appurtenant devices attached to it." (Italics added). Further, the Court finds, based on the Stipulated Facts, that Plaintiff is licensed by the Federal Communications Commission as an amateur radio (ham) operator, callsign WW8N, and that the antenna system for Plaintiff's use is not commercial. 47 CFR § 97.1(a) describes the "basis and

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purpose" of amateur (ham) radio as "a voluntary noncommercial communication service."

The Court further finds that the parties have agreed that Defendant's motions for a stay of any judgment and for an injunction against the installation of any towers on Plaintiff's real property pending appeal are moot, as the parties have agreed that, during the pendency of the appeal, Plaintiff may erect a tower and antenna system to a maximum height of twenty (20) feet above the height of the roof of the existing house located at 214 Cypress Drive, Swanton, Ohio (a total structure height of 40 feet).

The Court further finds that Plaintiff Gary Wodtke has withdrawn his claim for an award of attorney fees.

And the Court further finds, therefore, that all claims have been decided or resolved, that nothing further needs to be decided, that there is no just cause for delay, and the Court hereby enters final judgment as follows:

Based upon the foregoing reasons and the reasons stated in its Judgment Entry filed on August 20, 2013, which the Court affirms and adopts its findings as its Final Judgment.

IT IS THEREFORE ORDERED that Swanton's Decision denying Plaintiff the right to erect his contemplated tower and antenna system is reversed and not enforceable, as it prevents the amateur operator from constructing antennas to provide the communications that he desires to engage in. In accordance with Civ. R. 54(B), there is no good nor justiciable reason for further delay, nor any good reason not to grant final judgment herein.

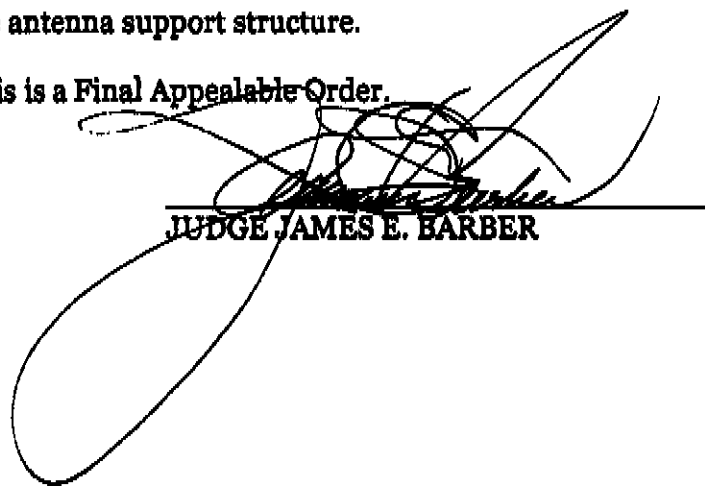
IT IS FURTHER ORDERED that the Plaintiff, during the pendency of the appeal, may erect a tower as stated above, and thereafter Plaintiff is entitled to construct the 60-

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foot Rohn 55G tower for amateur radio antennas that he seeks to erect, and that the Village, including all of its constituent parts, shall issue forthwith all necessary permits for his amateur radio antenna system, including, but not limited to, mast, antennas, rotators, cabling, guy wires and the antenna support structure.

IT IS SO ORDERED, and this is a Final Appealable Order.

Dated: 1-17-14



A large, stylized handwritten signature in black ink, appearing to read 'James E. Barber', is written over a horizontal line. Below the signature, the name 'JUDGE JAMES E. BARBER' is printed in a bold, sans-serif font.

JUDGE JAMES E. BARBER