

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROGER L. BOROWSKI, DANIEL BURBA,)
FRANCES R. BURBA, PAUL T. GIFFEY,)
JAMES KATOCS, DENNIS MISNER,)
LESTER VAN ESSEN, DANIEL E. WEBER,)
ROBERT O'KEEFE, and CHARLES SEATON,)
individually and on behalf of)
all others similarly situated,)

Plaintiffs,)

v.)

THE CITY OF BURBANK, an Illinois)
Municipal Corporation, JOHN J.)
FITZGERALD, WILLIAM J. FLAHERTY,)
JOHN L. PYLE, THOMAS J. ROACH,)
FRANK J. RADOCHONSKI, LESTER R.)
SOLIDAY, DANIEL P. SUKEL, EUGENE O.)
MASON and ROBERT HERRMANN,)

Defendants.)

No. 82 C 5578

JUDGE NICHOLAS J. BUA

CONSENT DECREE

INTRODUCTION

On September 10, 1982, the named Plaintiffs commenced a class action law suit in the United States District Court for the Northern District of Illinois on behalf of themselves and all other similarly situated residents of the City of Burbank, Illinois who hold operator and station licenses in the Amateur Radio Service or Citizens Band Radio Service issued by the Federal Communications Commission, and who operate or maintain a radio station licensed or authorized by the Federal Communications Commission in either service within the corporate limits of the City of Burbank, Illinois. The Defendants are the City of Burbank, Illinois and the Mayor, Aldermen, and City Administrator of the City of Burbank.

The suit was based on the enactment of Ordinance 9-4-82, on March 10, 1982, by the City Council of the City of Burbank, Illinois. Ordinance 9-4-82 imposed a one year moratorium on the issuance of permits for amateur radio and citizens band antennas, required applicants for such permits to furnish evidence of insurance, a \$5,000.00 bond, limited amateur radio and citizens radio antennas to the applicable building height of 35 feet in each residential district, and imposed annual inspection fees, unrelated to the cost of such inspection, for each antenna. The Ordinance also imposed severe monetary penalties of as much as \$1,000.00 for the transmission of a signal alleged to cause interference to home electronic entertainment equipment, or for the violation of the terms of the ordinance.

The law suit alleges that Ordinance 9-4-82 violates Plaintiffs' statutory rights under the Communications Act of 1934, and their constitutional rights under the Supremacy Clause and the First Amendment of the United States Constitution. Plaintiffs also claimed that the Ordinance violates their rights under the due process and equal protection clauses of the Fourteenth Amendment of the Constitution. Plaintiffs sought declaratory and injunctive relief against the enforcement of the provisions of Ordinance 9-4-82 on behalf of themselves and all other licensed or authorized Amateur Radio or Citizens Radio operators residing in Burbank, Illinois.

Defendants responded to the allegations of the Complaint by filing a Motion to Dismiss, alleging that no federal jurisdiction existed, and further alleging that Plaintiffs had failed to state a claim upon which relief could be granted. After denial of their Motion to Dismiss by the Court on June 2 1983, Defendants caused Ordinance 9-4-82 to be amended by Ordinance 32-4-83. Defendants thereafter answered Plaintiffs' Complaint, denying the allegations thereof. Plaintiffs alleged that their statutory and constitutional rights continued to be violated by the amended ordinance. On February 16, 1984, the Court granted Plaintiffs' Motion for Class Certification. Borowski v. City of Burbank, 101 F.R.D. 59 (1984).

During the process of discovery, the parties by their attorneys, entered into settlement negotiations. After lengthy settlement discussions, Plaintiffs and Defendants have agreed to resolve this case by the entry of a consent decree. This agreement is made solely for the purpose of settlement of all of Plaintiffs' legal claims, without admission by the Defendants that any of their past or present policies violate Plaintiffs' rights under the United States Constitution or applicable federal statutes or regulations.

The Court having assessed the fairness, adequacy and reasonableness of the proposed consent decree; and having considered the possible benefits of continued litigation as compared with the benefits of settlement by consent decree; and

being of the opinion that the decree represents a fair, adequate and reasonable resolution of the competing interests of the parties; and further being convinced that the decree is fair, reasonable, and adequate to resolve the matters in dispute and should be approved pursuant to Federal Rule of Civil Procedure 23(e), it is hereby ORDERED, ADJUDGED, and DECREED:

JURISDICTION

This Court has jurisdiction over the parties and over Plaintiffs' constitutional and statutory claims pursuant to 28 U.S.C. §§ 1331, 1337, and 1343.

CLASS CERTIFICATION

This action is properly maintainable as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2). The Court finds that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class; (3) the representative parties and their claims are typical of the class; and (4) the representative parties fairly and adequately protect the interests of the class. The class consists of:

All residents of the City of Burbank, Illinois who hold operator and station licenses in the Amateur Radio Service or Citizens Band Radio Service issued by the Federal Communications Commission, and who operate or maintain a radio station licensed or authorized by the Federal Communications Commission in either Service within the corporate limits of the City of Burbank, Illinois.

TERMS OF THE SETTLEMENT

1. Within 30 days of the entry of this Decree, Defendants agree to enact, and to keep in force, an Ordinance amending Chapter 4, Article VII, Buildings and Structures, of the Municipal Code of the City of Burbank. The Ordinance shall be in substantially the following form and provide for the following definitions and provisions:

A. Section 4-295 Amateur Radio/Citizens Radio Antennas-definitions.

The following definitions shall apply in the interpretation and enforcement of this division of Chapter 4, Buildings and Structures:

- (1) "Antenna" shall mean the arrangement of wires or metal rods used in the sending and receiving of electromagnetic waves.
- (2) "Antenna Support Structure" shall mean any structure, mast, pole, tripod, or tower utilized for the purpose of supporting an antenna or antennas for the purpose of transmission or reception of electromagnetic waves by federally licensed amateur radio or citizens band radio operators.
- (3) "Antenna Height" shall mean the overall vertical length of the antenna support structure above grade, or if such system is located on a building, then the overall vertical length includes the height of the building upon which the structure is mounted.

B. Section 4-296. Permit required.

It shall be unlawful for any person to install, construct or increase the height of any antenna support structure without first obtaining a building permit, except that no permit shall be required if the height of the antenna support structure (excluding the height of any building to which the antenna support structure is attached) is less than 12 feet.

C. Section 4-297. Application.

Applications for a building permit required in Section 4-296 shall be made upon such forms requested by the city and shall have attached thereto the following items:

1. A location plan for the antenna support structure;
2. Manufacturer's specifications for the antenna support structure and details of footings, guys and braces.
3. A copy of the applicant's homeowner or renters insurance policy.
4. A permit fee not to exceed \$15.00 for ground mounted or \$10.00 for roof mounted antenna support structures.

D. Section 4-298. Height limitation.

No antenna support structure shall be installed, constructed, or increased to exceed 65 feet above grade in single-family residential zoning districts or 30 feet above the height limitation allowed if located in a multi-family residential or commercial zoning district.

E. Section 4-299. Construction requirements.

(a) Materials. Antenna support structures must be constructed from one of the following materials: Aluminum, galvanized steel, or equally weather resistant steel. All ground mounted antenna support structures exceeding 35 feet in height shall be mounted in concrete, or erected in such a manner so as to be able to withstand a minimum wind velocity of 80 M.P.H. (impact pressure of 25 pounds per square foot).

(b) For non-commercially manufactured antenna support structures, the thickness of steel used in such antenna support structures shall be not less than one-thirtysecond inch (1/32") and galvanized. Where non-commercially manufactured antenna support structures are constructed of aluminum tubing, the minimum wall thickness of the tubing shall be not less than one-sixteenth (1/16 ") inch.

(c) Electrical Requirements. All antenna support structures, whether ground or roof mounted, shall be grounded. Grounding shall be in accordance with the provisions of the Chicago Electrical Code, and for ground mounted towers, shall consist of a minimum of one ground rod a minimum of five-eighths inch in diameter and eight feet in length. The ground conductor shall be a minimum of #10 GA copper; however, in all instances, construction shall follow the manufacturer's requirements for grounding.

F. Section 4-300. Restrictions

(a) No antenna shall protrude in any manner upon the adjoining property without the written permission of the adjoining property owner; and no antenna shall protrude upon the public way.

(b) Ground mounted antenna support structures may be erected only in a rear or side yard; except that no antenna support structure may be erected in a required side yard setback. The erection of "windmill type towers" with base dimensions exceeding four feet between each leg is prohibited on residential lots less than 40 feet wide.

G. Section 4-301. Exemptions.

This ordinance shall not affect any existing antenna support structure, utilized by federally licensed amateur radio or federally authorized citizens radio service stations, which has been constructed and which is in place prior to the date of the passage of this ordinance; provided however, that such antenna support structures must comply with the grounding requirements of Section 4-299(c); and further provided that owners of existing antenna support structures submit to the Building Department, within 90 days of the date of this Ordinance, the documentation required by Section 4-297, less the required fee.

2. Defendants shall further provide as part of their amendment to Chapter 4, Section VII, that Ordinances 9-4-82 and 32-4-83 are repealed, and that all other ordinances or codes of the City of Burbank in conflict with the provisions of the amendment shall be repealed insofar as they conflict with the provisions of the Ordinance set forth Section 1 of this Consent Decree.

3. Defendants agree to promptly process applications for antenna support structure building permits submitted to the Building Department by Plaintiffs and members of the plaintiff class. Building permits for antenna support structures shall be issued or denied within 10 working days of the date of application. Denials of applications shall be in writing, listing the reasons for the denial. Copies of written denials

of building permit applications for the erection of an antenna support structure submitted by members of the class will be sent to counsel for the plaintiff class for a period of two years after the enactment and publication of the ordinance called for by this Decree.

4. Defendants agree to maintain the provisions of the Ordinance set forth in Section 1 in full force and effect as to present and future members of the class. Defendants agree to give 60 days written notice to counsel for the Plaintiff class by certified, return receipt mail, of any proposed ordinance, amendment to any other ordinance, or the proposed adoption of any building or electrical code which might conflict with the provisions of the Ordinance set forth in this Decree.


5. This matter is hereby dismissed with prejudice; however, the Court shall maintain continuing jurisdiction for the purpose of enforcement of the terms of this Decree. The matter of attorneys' fees is hereby reserved.

DATE _____

ENTER:

Nicholas J. Bua
United States District Judge


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