

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO.

CITY OF MENLO PARK)	
a municipal corporation,)	No. 92561
Plaintiff)	
-vs-)	
WILLIAM I. ORR and)	
NATALIE A. ORR)	FINDINGS OF FACT
Defendants.)	AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on September 17, 1962 before the Court, sitting without a jury, a jury having been expressly waived by the parties. JOHN D. JORGENSON appeared as counsel for plaintiff CITY OF MENLO PARK, and CALDECOTT & PECK, by EDWARD F. PECK, appeared as counsel for defendants WILLIAM I. ORR and NATALIE A. ORR. The court having heard the testimony and having examined the proofs offered by the respective parties, and the cause having been submitted for decision, the Court being fully advised in the premises, makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. The CITY OF MENLO PARK is a municipal corporation, organized and existing under the laws of the State of California.
2. Defendants are and were at all times the owners in possession of a certain house and lot located at 48 Campbell Lane, Menlo Park, California.
3. Defendant WILLIAM I. ORR is and at all times here concerned was duly and regularly licensed by the Federal Communications Commission as an amateur radio operator and amateur radio station owner at said 48 Campbell Lane, Menlo Park, California.
4. The said amateur radio operator and amateur radio station licenses were issued by the Federal Communications Commission in the public interest, convenience and necessity.
5. On June 23, 1960, in accordance with the requirements of the Ordinances of plaintiff CITY OF MENLO PARK, defendant regularly applied for a building permit to erect on his aforesaid real property a 70 ft. retractable trilon based radio tower and antenna.
6. On July 11, 1960, after hearing duly and regularly conducted by the Planning Commission of plaintiff CITY OF MENLO PARK, said Commission did approve the application filed on June 23, 1960.
7. On July 12, 1960 plaintiff CITY OF MENLO PARK duly and regularly issued to defendant WILLIAM I. ORR building permit #A-7113, which said permit authorized the construction by defendant on

his real property of the aforesaid radio tower and antenna.

8. By July 26, 1960, defendant WILLIAM I. ORR had fully and completely erected said tower and antenna, all pursuant to and in accordance with the valid and subsisting building permit issued by plaintiff CITY OF MENLO PARK.

9. Plaintiff CITY OF MENLO PARK issued building permit #A-7113 with full knowledge of its own ordinances and the extent and nature of the radio antenna and tower proposed to be erected by defendants and with the intent that defendants should act in reliance thereof; defendants, while ignorant of plaintiff's construction and application of its own ordinances, acted in reliance on said building permit, expended money, and erected said radio antenna and tower to their loss and injury should said radio antenna and tower be ordered removed.

10. Prior to June 23, 1960, plaintiff CITY OF MENLO PARK had adopted Ordinance No. 308 (The Uniform Building Code) and Ordinance No. 228, which said Ordinances were at all times here concerned in full force and effect.

11. The radio tower and antenna constructed by defendant WILLIAM I. ORR is not a public nuisance.

12. The amateur radio station, including the tower and antenna, is not maintained by defendants for any commercial purpose.

13. The amateur radio station, including the tower and antenna, is an accessory use of their residential property by defendants.

14. The radio tower and antenna as now constructed on defendants' property is not in violation of Ordinance No. 228 of the CITY OF MENLO PARK or any of its sections, and said radio tower and antenna are exempt from said Ordinance by its very terms.

15. Ordinance No. 228 of the CITY OF MENLO PARK as applied to defendants radio tower and antenna is an invalid exercise of the police power of said City, in that said ordinance does not bear any reasonable relationship to public safety, health, morals or general welfare.

16. The radio tower and antenna as now constructed on defendants' property are not in violation of sections 301, 302, 304, 1501 or 1502 of Ordinance No. 308 of the CITY OF MENLO PARK.

17. All actions and proceedings taken by the plaintiff CITY OF MENLO PARK after the issuance of the building permit on July 12, 1960 in attempting to void said building permit were ineffectual, illegal and void.

18. The maintenance of defendants' radio tower and antenna will not result in irreparable injury to the CITY OF MENLO PARK.

CONCLUSIONS OF LAW

1. The radio tower and antenna as now constructed on defendants' property is not in violation of Ordinance No. 228 of the CITY OF

MENLO PARK, or any of its sections, and said radio tower and antenna are exempt from said Ordinance by its very terms.

2. Ordinance No. 228 of the CITY OF MENLO PARK as applied to defendants' radio tower and antenna is an invalid exercise of the police power of said City in that said ordinance does not bear any reasonable relationship to public safety, health, morals or general welfare.

3. The radio tower and antenna as now constructed on defendants' property are not in violation of sections 301, 302, 304, 1501 or 1502 of Ordinance No. 308 of the CITY OF MENLO PARK.

4. All actions and proceedings taken by the plaintiff CITY OF MENLO PARK after the issuance of the building permit on July 12, 1960 in attempting to void said building permit, were ineffectual, illegal and void.

5. Plaintiff CITY OF MENLO PARK is estopped from ordering defendants to remove their radio antenna and tower or from obtaining an injunction against defendants, requiring the removal of said radio antenna and tower.

6. Plaintiff's application for a prohibitory and a mandatory injunction be denied.

7. Plaintiff CITY OF MENLO PARK take nothing against defendants' by virtue of this action.

DATED: October 11, 1962

(S) Joseph T. Ciano
Judge of the Superior Court