

# Judge orders permit issued for 78 foot radio tower

**■ IN BRIEF:** A U.S. District court judge ruled that the Lyme Planning and Zoning Commission should issue a special exception permit for a ham radio tower, which will be discussed at a public hearing Monday.

By Karen Frost Barretta  
Assistant Editor

**LYME** - A proposal by a Hamburg Cove resident to install a 78-foot-tall radio tower on his property will be the subject of a Planning and Zoning Commission public hearing Monday, Nov. 14.

The 7:30 p.m. hearing will provide an opportunity for public comment on an order of the U.S. District Court to issue a special exception permit to F. Parker Heinemann for an amateur radio antenna/tower on his 87 Cove Road property.

After the Planning and Zoning Commission denied Heinemann a permit for the structure nearly three years ago, he filed a civil suit against the town.

An Oct. 27 three-page decision by Gerard L. Goettel, senior U.S. District judge in Bridgeport indicates that the town acted in good faith, based on the information it had at the time of the March 1991 special permit application. "However, in light of facts not available to the defendants at the time," the Planning and Zoning Commission should now issue the permit, he wrote.

Lyme Zoning Enforcement Officer Frank Skwarek said the other information Goettel referred to revolves around a Federal Communications Commission (FCC) Order known as PRB-1, which preempts state and local land use regulations regarding amateur radio antennas.

"This order in essence, says that amateur radio operators shall have... adequate towers to exercise their ham radio operation and that local regulations - this means state and municipal - must make reasonable accommodations to achieve that purpose," Skwarek said.

"The court apparently felt that in reviewing this at the time, the

commission did not appreciate the technical and other requirements that perhaps went into determining what was a reasonable height that would satisfy Mr. Heinemann's use," he added.

Goettel included a condition that the tower/antenna will only be allowed as long as Heinemann lives there. The judge wrote that the tower should be dismantled within a reasonable time not to exceed 120 days of either the appointment of an executor or administrator of the plaintiff's (Heinemann's) estate when he dies or the time when he no longer has the legal right to use or occupy the subject property," the judge wrote.

No damages were awarded in the case, and each party must pay its own legal costs.

Heinemann said he plans to use the tower for his amateur radio hobby and had no comment on the judge's decision.

According to Skwarek, state and local regulations require public hearings for special exception permits.

The town has notified Heinemann's neighbors about the hearing. In 1991, many of them voiced opposition to the application, according to Skwarek.

The commission is expected to vote on the permit during a regular meeting following the public hearing.

# Commission approves 78-foot radio tower along cove

**■ IN BRIEF:** A U.S. District Court judge ordered the Planning and Zoning Commission to issue a permit for a radio tower. The commission approved it Nov. 14 and does not intend to appeal the judge's decision.

By Karen Frost Barretta  
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**LYME** - The Planning and Zoning Commission approved a permit Nov. 14 to allow a Hamburg Cove resident to install a 78-foot amateur radio tower at his residence, following an Oct. 27

ruling from a federal court judge in favor of the applicant.

Five of the six commission members present at the meeting voted in favor of the proposal, while member K.C. Mizer abstained. The commission does not plan to appeal the judge's order, according to commission Chairman William T. Koch Jr.

Three years ago, the commission denied F. Parker Heinemann's application for a special exception permit for an amateur radio antenna/tower at his 87 Cove Road property.

Heinemann subsequently filed a civil suit against the town.

In an Oct. 27 decision, U.S. District Judge Gerard L. Goettel said the town

acted in good faith, based on the information it had at the time of the March 1991 application, but ordered that the permit be granted.

Koch estimated that at least 15 people attended the Nov. 14 public hearing and spoke against installation of the tower. "They, I believe, all live in the neighborhood, and they're all against it for every reason. They just don't want it," he said.

By the end of the meeting, Koch said he thinks those present understood that it was in the town's and the commission's "best interest" to comply with the judge's decision. "I think federal law is on the side of ham radio operators in this case," he said.

In his decision, Goettel wrote that the tower will only be allowed to remain on the property as long as Heinemann lives there.

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