

Oct 27 1994

Kevin F. Rowe, Clerk
By Parker Heine
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

F. PARKER HEINEMANN : CIVIL ACTION NO.
Plaintiff : 2:91cv00776 (PCD/GLG)
: :
VS. : :
: :
TOWN OF LYME, et al. :
Defendants :

ORDER

This case is before the Court for consideration of a Federal Communications Commission ("FCC") Order relating to the preemption of state and local land use regulations of amateur radio antennae ("PRB-1"), and the application of that FCC Order to the zoning regulations of the defendant Town of Lyme, as administered by the defendant Lyme Planning and Zoning Commission.

This matter was before the Court previously on defendants' summary judgment motion, which was granted in part on June 29, 1993. Familiarity with that ruling and the facts presented therein is assumed. Presently pending before the Court is the plaintiff's claim that section 3.2 of the Lyme Zoning and Sub-Division Regulations is invalid as applied to his special permit

application because of the reasonable accommodation standard mandated by PRB-1 (count I). The defendants deny any wrongdoing or liability, nor should this Order be construed as a specific finding in that regard, and accordingly the parties consent to the Court entering the following order.

Wherefore, it is hereby ORDERED as follows:

1. The defendants acted in good faith, based on the information available at the time of the March 1991 special permit application that is the subject of this suit. However, in light of facts not available to the defendants at the time of the aforesaid special permit application, and given the limited federal preemption contemplated by PRB-1, the Court orders, as to Count I, that based on the facts of this case alone, without regard to any other special permit applications now pending or which may be filed in the future, the plaintiff's special permit application shall issue immediately in the terms contained in his application, a copy of which is attached hereto as Exhibit 1, except as provided in paragraph 2 of this ORDER.


2. While the plaintiff's special permit application shall issue, the Court imposes the following condition: the tower/antenna is to be dismantled within a reasonable time not to exceed one hundred and twenty (120) days of either the appointment of an executor or administrator of the plaintiff's estate when he

dies or the time when he no longer has the legal right to use or occupy the subject property.

3. As to Count I, the parties are to bear their own costs and attorneys' fees. No damages shall be awarded.

4. This ORDER is unique to this case, and does not affect or in any way alter section 3.2 of the Lyme Zoning and Sub-Division Regulations.

SO ORDERED.



Gerard L. Goettel
Senior United States District Judge

11/27/94