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FEDERAL COMMUNICATIONS
COMMISSION

Washington, DC 20554

Emergency communications
by Amateur Radio Service Operators

Docket No. 12-91

WA5VSK

May 15, 2012

I have had two different encounters with antenna problems regarding CC&R's HOA's and a city that had no standing and wished to ignore PRB-1.

My wife and I sold our house quickly and scrambled for a place to buy. All new developments either had restrictions in the CCR'S, HOA's or both. We could not find one new development in which to build or buy a new home that did not have outright bans or severe limitations on antennas and towers. We finally found an almost completed new house in a new development whose CCR's stated no antenna shall exceed 5 feet of the tallest part of the house. After asking the realtor, builder and closing company to double check and after reading the deed restrictions several times we bought this new house. It was known there would be an HOA but since it was an early development, the developer WAS the HOA. I never saw any HOA rules nor was I told who to go to for certain problems. Initially I put up a Cushcraft R8 Vertical on top of a 10 foot tower section and guyed it. Folks made comments but no one forced me to remove it. It was up about 6 or 8 months. It did not exceed 5 feet of the tallest point of the house.

I then took it down and replaced it with a TRI EX 51 ft crank up self supporting tower and put a 4 element SteppIR beam up. I kept the tower nested at 21 feet. Some residents began to complain to the developer who lived

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in Dallas, TX. I never heard any of these complaints directly. We started getting drive by visits from the developer's local representative telling us we were in violation of the CCR's and didn't get approval from the architectural committee before erecting the tower and antenna. As far as I knew there were no committees in the HOA and it had not had a meeting as of that time. A letter from the HOA's attorney was sent to all residents except me of course asking about RFI and the usual nonsense. When I sent a certified letter return receipt requested to the Dallas office of the developer asking how I was in violation when no architectural committee existed and the tower/antenna did not exceed 5 feet of the tallest part of the house, it was returned to me as undelivered. I never got an answer. I finally decided to take the antenna down on a Saturday. The Friday night before we were to begin taking it down both my wife, who is not a ham, and me were each served with a lawsuit in State court. I consulted Bob Stevens a volunteer ARRL attorney in Midland and a local volunteer attorney, Ralph Brock. I finally had to hire counsel to deal with this. Dulan Elder, who specializes in real estate law, said I had a good chance to come out winning this but at a cost of about \$20,000. It would drag on because the court it was set for had a judge that refused to make timely decisions. He had alienated most attorneys in the area for his lack of timely decision making. Therefore costs could go higher.

My wife and I decided we wanted to move anyway so we settled by paying nearly \$5000.00 in attorney's fees for the HOA as well as our own. Bottom line, I met the CCR requirements to the best of my knowledge at the time but still ended up being sued. That should not be allowed.

While looking for another place to buy or build after the above disaster, once again, every new development either severely limited antennas or outright

denied them. We looked out at Ransom Canyon, an incorporated city about 12 miles east of Lubbock and a 30 minute drive to work. As a physician on call it presented somewhat of a problem for me. After making numerous trips out here and talking to the City Administrator, it seemed the tower issue would be a slam dunk. A previous mayor had been a ham. In fact, the City Manager told me to come on out and put the tower and antenna up.

Just to try to be nice about it, I wrote up plans and provided pictures of my tower and SteppIr antenna to the building committee for approval. I really didn't need to since there were no deed restrictions or city ordinances regulating towers and antennas and no permits were required. I read them several times and had my lawyer read them. In fact, a few houses had towers installed for TV reception. The tallest tower, probably 75 feet, was visible from the front of City Hall. It served no purpose other than holding a big lighted star during Christmas. Initially the building committee chairman refused a hearing citing it violated the deed restrictions. After we informed him he was wrong he set a hearing date. The permit that I didn't need in the first place was denied without a reason being given. Another ham here in the canyon had been trying for a year to get permission for a tower and was always told more study was needed. Finally I made it onto the City Council Agenda and that is where I found out who the culprits were. It seems a female lawyer and college professor lived across the street from me and didn't want the tower up spoiling the beauty of the canyon. After educating the council about PRB-1, only the FCC could regulate unsolved RFI issues, providing them with documents from pacemaker companies showing no threat to pacemakers from the RF I would be transmitting, engineering confirmation of tower safety installation and several other items that really presented a burden which the FCC says they cannot do, we got neither a yes or a no. They couldn't say no because they would have to

tell us why and they couldn't. My attorney and I attended several council meetings trying to work through this and each time we asked for a complete list of what else they needed. Instead of providing a complete list every time we met, they would come up with one more thing.

My attorney finally told me to put the tower and antenna up and see what they did since there was no legal reason they could use to stop me. So we did over a weekend. The following Monday we received a letter from the mayor telling my wife and I we had to take it down or face a \$500.00 fine each day it was up. The maximum fine in Texas is a onetime \$100.00 or \$200.00 fine. I cannot remember exactly. My attorney tried to explain to them we did nothing wrong and the fines and amounts were against Texas law. We even sent them a letter inviting them to come inspect the installation. On Tuesday the tickets began arriving, one for me and one for my wife. All total I believe we had 22 tickets each for \$500.00. They continued playing their games and we ended up with a 1983 civil rights violation as well against the city. We filed a Federal lawsuit on July 5, 2007. The Property Owners Association, (POA), had remained quiet this whole time. Interestingly the mayor went to the POA, which had limited funds, and told them they could voluntarily enter the lawsuit and the ***city attorney would represent them at the city's expense*** or the city would enjoin the POA into the suit and they would have to cover their own legal fees. That is interesting isn't it? Here we have taxpayer money being used to defend a nongovernmental group in order to have them "voluntarily" join the suit. Having no real option the POA joined the suit.

All kinds of inappropriate things went on. The city newsletter continually quoted scripture aimed at us and obtuse remarks were written obviously aimed at us. Open meeting laws were violated constantly by the city council. I could go on and on.

It appeared the city figured we would plead the tickets and appeal it to a county court. Ransom Canyon, in its 40 plus year history, had never held a jury trial. We asked for one on all 22 counts. The local judge, an appellate lawyer and resident of Ransom Canyon, hired by the city, decided he would try us on 6 counts first. They did dismiss my wife from the suit finally. He called over 200 jurors from a city of a population of 1185. The potential jurors were seated in an area cordoned off by yellow tape labeled "crime scene". We picked 6 juries of 6 jurors each. They all sat in the same room next to one another hearing the trial on all six counts simultaneously. I don't know how that is legal and neither did my lawyers. I had asked for a court reporter even offering to pay for one. The judge said no. We had one show up anyway. The judge personally, forcibly escorted her out of the building giving no reason for not allowing a reporter to record the proceedings. I testified and admitted putting up the tower. One jury came back with a guilty verdict, one jury apologized for having to find me guilty and the older lady, who was the foreman, told the judge they fined me \$6.00, threw the bills in a wad at the judge and said they were sending him a message. They were initially going to fine me \$1.00 but the other jurors wanted to contribute so it became \$6.00. The other 4 juries came back with a not guilty verdict. In effect ignoring the law as the judge laid out the rules for deliberation for the juries.

In the meantime, the City Attorney had passed the case off to other counsel. In speaking with the city's insurance carrier, the attorney said it would be better to try to settle this sooner than later and suggested mediation.

Mediation took all day. As it turned out I got everything I asked for except the dollar amount I wanted. We did receive \$40,000. That plus about \$10,000 out of my pocket covered the attorney's fees. At mediation the mediator called the judge and told him we had reached a settlement. He was fine with that. Within

days the judge changed his mind feeling he was doing the citizens of Ransom Canyon a disservice by accepting the mediation agreement. We pointed out the cordoning off of the potential jurors behind crime scene tape as being prejudicial. He agreed and dropped all charges. However his little power play drove the attorney's fees up higher. The city refused to cover the extra fees.

I will attach the original Federal Petition to this as well as the only copy of the mediation agreement I have been able to locate.

While this does not really meet your strict requirement of CCR's deed restrictions etc, it does point out the vagaries of PRB-1 when it uses terms like "reasonable accommodation" and doesn't address terms such as nuisance, blending with the environment etc.

This suit was completely uncalled for, an absolute abuse of State police powers and an abuse of the city council attorney using her education and position to violate the law. She should have recused herself from the case. Instead she called many of the citizens of the canyon, especially those close by my house, and in stirring them up emotionally, she gave them a false sense of empowerment.

If the Amateur Radio Service is to be able to provide emergency communications during times of local, regional or national disaster, assisting agencies such as the Red Cross and the Salvation Army, Radio Amateurs must be allowed to erect antennas that will be efficient. An inefficient antenna is not of much use when lives and property are at stake. Knowing an efficient antenna, among other things, should be a half wavelength above ground, that puts a 40 meter antenna at approximately 66-70 feet above ground. HF antennas are just as important if not more so than VHF and UHF antennas and repeaters. If repeaters are knocked out, communication is limited to a very small area. If a

few repeaters survive or can be quickly brought back online, that will increase the footprint of communications and when they are able to be linked to a network that will truly be helpful. All of this may take hours, days or weeks.

Meanwhile, a wire between two or three supports as high as one can get it will allow passage of information by voice, CW, and other digital modes. Email can be sent using any of several programs with the correct TNC or modem. Again to accomplish this will require an HF antenna in lieu of VHF/UHF losses. Many areas of the world have no VHF/UHF repeater system and depend solely on HF communication.

The Department of Homeland Security and FEMA must convince Congress to pass clear and ironclad legislation preventing cities, HOA's and developer CC&R's from limiting tower placement, height and antenna placement on one's own property if the Amateur Radio Service is to be expected to provide a reliable emergency communication network both in the US and worldwide. The FCC is not likely to take such a giant step on its own. Congress must enact an impenetrable law that prevents lawsuits as I have described above. Most hams cannot afford to defend themselves in court since rarely do they get attorneys fees awarded if they win. HOA's always get awarded attorneys' fees. Many hams that can afford to defend themselves will have second thoughts about spending tens of thousands of dollars and going through the long drawn out emotional process allowing them to enjoy a hobby. By not making the law explicitly clear, free from all vagaries and unchallengeable in protecting a Federally Licensed Amateur Radio Operators' rights to erect as efficient and practical antenna as he or she possibly can, then there can be no effective emergency communication network. Congress ***MUST*** enact iron clad legislation protecting an Amateur Radio Operators' right to erect an antenna of his or her choice understanding they will not be threatened by lawsuits that not only emanate from CCR's and developers, HOA's but anyone who deems an

antenna an eyesore. Individuals and groups with unlimited power pose a serious threat to the Amateur Radio Service.

There needs to be a firm and explicit ruling allowing only the FCC to regulate antennas as they have been allowed to regulate RFI by Congress. Anything short of that, any compromise that allows a rebuttable presumption will not be any better than what we have. Having to defend any lawsuit is expensive and will put ham radio out of reach of most hams. It will also make hams afraid to use anything other than a HT. That will make the Amateur Radio service useless to any agency responding to any disaster anywhere which with every passing day becomes more and more likely.

Respectfully submitted May 15, 2012,

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