

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

THOMAS J. OWENS

FILE NO. S-80-001

from a determination of the  
Superintendent of Buildings

The appeal is GRANTED and the Findings and Decision  
of the Superintendent of Buildings is PARTIALLY REVERSED.

#### Introduction

The appellant, Thomas J. Owens, filed an appeal from a written interpretation by the Superintendent of Buildings (Superintendent) relating to the proper computation of the height of his structure for amateur radio transmission and reception at 3955 S.W. Ida Street.

The appellant exercised his right to appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were: the appellant, Thomas J. Owens, represented by G. Lee Raaen, counsel and James Simon of Perkins, Coie, Stone, Olsen & Williams, associate counsel and the Superintendent, represented by Joyce Kling, Zoning Administrator.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance (86300, as amended).

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

#### Findings of Fact

1. This single family residence at 3955 S.W. Ida Street has as an accessory use an amateur radio transmission tower and aerial.

2. The property is zoned Single Family Residence High Density, RS 5000.

3. Section 6.31(1), Zoning Ordinance, permits outright as an accessory use:

Amateur radio transmission towers to a maximum height of 50 ft. above grade; provided that the base of such tower shall be located at a point which is distant from any other lot at least one-half the height above grade of such tower.

4. The Zoning Ordinance at Section 22.22(a) states:

The following types of structures or structural parts shall not be subject to a height limitation except in airport areas as specified in Section 22.21: tanks and bunkers, church spires, belfries, domes, monuments, water towers, fire and hose towers, observation towers, stadiums, transmission towers, chimneys, smoke stacks, flag poles, commercial

radio towers, masts, aerials, bulkheads, water tanks, monitors, scenery lofts, cooling towers, grain elevators, gravel and cement tanks and bunkers, gas holders, drive-in theater projection screens, provided such structures or parts shall be fifty (50) feet or more from any adjoining lot lines.

5. The subject property is not in an airport area as specified in Section 22.21.

6. The tower rises from a cement footing foundation in metal tubing called the "mast" for 45.17 ft. above grade to a "cage". This "cage" is a partially open, cylindrically-shaped element that houses equipment used to rotate the antenna above. The height of the "cage" is 7.07 ft. The "mast" plus the "cage" total 52.24 ft. Above this is the antenna, a multi-tiered system of metal grids rising 17.66 ft. above the "mast" and "cage", for a total height of 69.90 ft. above grade. Measurements were done by the Seattle Engineering Department.

7. This structure is 35 ft. at the closest point from its adjoining lot line.

8. Expert testimony revealed that the tower height is measured from the base to the top of the support structure. This height does not include any rotating mechanisms (cage), mast (pipe) actually holding the antenna, or the antenna.

9. The Superintendent's interpretation is that the "tower" portion is measured up to the "cage" consistent with radio word usage. Therefore, appellant's "tower" complies with the Zoning Ordinance height limitation of 50 ft; it is 45.17 ft.

10. The Zoning Ordinance does not define either aerial or antenna, and Webster's definitions offered were:

antenna: a usually metallic device (as a rod or wire) for radiating or receiving radio waves.

aerial: antenna.

11. The Superintendent argues that the antenna rising on above 50 ft. is not permitted since the antenna is less than 50 ft. (Section 22.22(1)) from the adjoining lot lines.

12. The appellant argues that this interpretation brings absurd results, inconsistent with the purposes of the zoning regulations.

13. The specific regulation of amateur radio transmission towers by Section 6.31(1) is clear. There is agreement on the meaning of the term "towers" and the Superintendent agrees that the appellant's tower meets the ordinance height limitation.

14. The remainder of the specific language of Section 6.31(1) restrict the distance "from any other lot (to) at least one-half the height above grade of such tower." Thus, a 50 ft. tower must be at least 25 ft. from an adjoining lot.

15. Antennae vary from a simple, single wire strung from the ground and fastened to a tree top, to inverted V-shapes, and more complex multi-tiered grids. Height is necessary to functioning since the radio waves must be able to reflect and move without blockage by buildings, trees, hills or other obstacles. The height is limited by natural scientific laws in that antennae can be too high and be unable to use the ground to mirror or bounce off waves effectively, as well as too low so that the signals get lost among the buildings and are picked up by various electrical devices within other homes and buildings.

16. The testimony indicated that an amateur radio transmission tower without an antenna is virtually useless. The appellants argue, therefore, that Section 6.31(1) implied that antennae above such structures are unregulated by the Zoning Ordinance.

17. The variety of antennae make measurement from adjoining lot lines impracticable and would make the simplest antenna - a single wire stretched to a tree top, rarely possible on city lots if the 50 ft. setback of Section 22.22(b) were to apply.

18. The record includes evidence that only about 3 percent of the city lots would be 100 ft. by 100 ft. or greater, the dimensions necessary to accommodate an aerial based on the setback from adjoining lots of 50 ft. under Section 22.22(b).

19. Amateur radio operators (HAMS) are licensed and regulated by the federal government as to frequencies and levels of mastery of the technology. They serve useful, even vital, functions in times of emergency when regular communications channels are inadequate.

20. Limiting the height of aerials to the 50 ft. together with the tower or requiring a 50 ft. setback from lot lines if the aerial exceeds 50 ft. from grade would severely restrict amateur radio transmission within the City of Seattle. Low height limits frequencies and therefore usefulness. Only those with extra-large lots could have aerials above 50 ft.

21. The applicant's first permit No. 543929 dated April 6, 1972, to "erect and maintain amateur radio transmission tower accessory to existing one family dwelling per plan" was based on plans indicating a 48 ft. extended mast of structural steel tubing. A 6-element Thunderbird PX antenna which would rise above the tower is included in these plans showing a 24 ft. horizontal boom.

22. On August 14, 1975, the applicant obtained permit No. 558964 to alter his radio transmission tower and plans again included tower, mast and antenna specifications.

#### Conclusions

1. The Superintendent's decision is considered correct on its face. However, the appeal is a de novo hearing.

2. The Superintendent has determined that the "tower" portion of the structure meets the Zoning Ordinance Section 6.31(1) requirements and is correct in this interpretation.

3. Since the ordinance does not define either "aerial" as used in Section 22.22(a) or "antenna", the ordinary meaning attaches which includes that antenna is a synonym for aerial. Pearson v. Evans, 51 Wn.2d 574 (1958).

4. Since rotor cage is not a word of common ordinary meaning, its meaning in this radio field is correctly applied and the Superintendent is correct in stating that this part of the structure is part of the "antenna" or "aerial" rather than the "tower".

5. It is clear that amateur radio transmission is permitted and its towers are regulated to a height of 50 ft. within the City of Seattle, with a setback from other lots of at least one-half the tower height (Section 6.31(1)). It is implied that an aerial or antenna can be attached, as well as rotor cages, since these are integral parts of amateur radio transmission structures and the tower without antenna or aerial would be useless for radio transmission.

6. The law should not be interpreted to reach an absurd result. Knappett v. Locke, 92 Wn.2d 643, 600 P.2d 1257 (1979). If the tower were permitted to a 50 ft. height, but no antenna attached above without a 50 ft. setback, we would have such an absurd result.

7. The rules of statutory construction provide that the specific control the general. Section 6.31(1) is the specific regulation of amateur radio transmission. Therefore, the setback of up to 25 ft. from adjoining lots applies to amateur radio transmission towers with antennae.

8. Rules of statutory construction also provide that every part of an act should be given effect, if possible. State ex rel Wilson v. King County, 7 Wn.2d 104, 108, 109 P.2d 291 (1941). And, zoning ordinances are to be construed as a whole and any unreasonable construction must be rejected. Bartz v. Board of Adjustment, 80 Wn.2d 209, 492 P.2d 1374 (1972).

Applying these rules to Section 22.22(a), it is concluded that this section applies to commercial type structures and the "aerials" there listed refer to commercial aerials. They, along with the other enumerated structures, are unregulated as to height, so long as they are 50 ft. from adjoining lots. Commercial lot areas are of adequate size for this regulation to apply. This is a reasonable interpretation of the ordinance, without ignoring any part thereof.

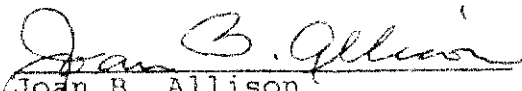
9. As to interpretation of the Zoning Ordinance, the legislative intent is paramount. East v. King County, 22 Wn.App. 247, 589 P.2d 805 (1978). The intent was to regulate amateur radio transmission towers both as to height and setback requirements through Section 6.31(1). Section 6.31(1) applies to this case.

10. Because of the variety of antennae, it would be well for the Building Department to consider Zoning Ordinance amendment to cover the technical requirements of this hobby, while protecting neighbors from interference caused by amateur radio transmission. Since there is likely to be more interference from low transmission structures where radio waves are down among the buildings, the current ordinance may need revision.

#### Decision

The appeal is GRANTED and the Findings and Decision of the Superintendent of Buildings is PARTIALLY REVERSED.

Entered this 29<sup>th</sup> day of February 1980

  
Joan B. Allison  
Hearing Examiner Pro Tempore

#### Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).