

Planning Board Denies Waiver and Violates Federal Law

The City Planning Commission unanimously denied a request for a waiver Thursday from a local Internet service provider who applied for a City Permit under Federal Laws in April of 2015. CNSP, Inc., dba NMSURF applied for a permit to the City Land Use Department on April 9th, 2015 to consolidate two rooftop towers to one tower 30 feet to the south of their building citing The Spectrum Act, an act passed by Congress and signed by President Obama in 2012.

The Act calls for Cities and Local Governments to approve eligible covered requests within 60 days. If a Local Government does not approve or deny the request, the request is automatically deemed granted. The deemed grant does not become effective until the applicant notifies the City of its intent to pursue its modifications.

Mr. Catanach states "We followed all the rules in accordance with the Federal Government, which allows us to continue with our modifications. We sent a letter to the City after a year of waiting, informing them of our deemed grant right in April of 2016."

According to Mr. Catanach, the City had 30 days to file a suit to challenge the deemed grant right, but it did not do so, so he continued with his modifications. Mr. Catanach states "In accordance with FCC Order 14-153, paragraph 236, the city had 30 days to file a suit challenging our deemed grant right, but the city did not follow the law.

After Mr. Catanach finished with his consolidated tower modifications, Andrea Cypress a local wireless activist filed a complaint with City Attorney Zachary Shandler. After Cypress's complaint, Attorney Shandler filed a lawsuit against Mr. Catanach in the First District Court for violating a City Ordinance. Attorney Shandler was successful in asking the Judge to grant a preliminary injunction against Mr. Catanach, thereby stopping him from continuing to move antennas to the consolidated tower. Mr. Catanach's attorney argued that Mr. Catanach was granted a permit under the "deemed grant" law that allows for facility modifications if a City fails to act within 60 days.

According to Mr. Catanach, Judge Thomson did not consider Mr. Catanach's federal "deemed grant" right. Mr. Catanach later learned that politics may have played a part in Judge Thomson's decisions. Mr. Catanach states "My lawyers could not understand why Judge Thomson granted the injunction because it does not rise to the level or standard of an injunction."

Mr. Catanach stated that he believed politics is to blame. He states "Attorney Shandler and Judge Thomson have previously worked together for more than ten years as Assistant Attorney Generals, Attorney Shandler donated to Judge Thomson's Judicial Campaign, and Attorney Shandler attended Judge Thomson's wedding." According to Mr. Catanach, once he learned about the personal relationship between Judge Thomson and Attorney Shandler, he filed a motion for the Judge to recuse himself, but Judge Thomson refused. According to Mr. Catanach, "I don't think that I am being treated fairly nor will I be given a fair judgment. All the people I have consulted with about this matter state that I will not be given a fair judgment. This is probably why Judge Thomson did not consider the "deemed grant" right, and it is probably why he has pushed the trial to October of 2018, so that we are forced to the Planning Commission and the City Council."

Because Mr. Catanach's hands are tied and he will not get a ruling on his case, he has agreed with the City Attorney's to go before the Planning Commission. When asked what specific law the planning commission is violating, Mr. Catanach states "They are violating both the Spectrum Act and The Telecommunications Act because the City is asking us to get a setback waiver, but the first rooftop tower is grandfathered and because we are consolidating both rooftop towers to one consolidated tower, a waiver is not required."

Mr. Catanach cites FCC Order 14-153, Paragraph 201 which states "We agree with PCIA that legal, non-conforming structures should be available for modification under Section 6409(a), as long as the modification itself does not "substantially change" the physical dimensions of the supporting structure as defined here. . ." Mr. Catanach's consolidated tower is not adding more height or width beyond the FCC definition so it qualifies as a modification under Section 6409(a).

Mr. Catanach further states "The second law that the city is breaking is the 1996 Telecommunications Act. This act states that the City had 150 days to either approve or deny our request. To date it has been over 750 days. In my mind, this is a gross violation of the law, so the City Planning Board authority is limited to consider building codes and other non-discretionary structural and safety codes. The Planning Board did not base their decision on building codes and non-discretionary structural and safety codes, but on complaints from the neighbors. But because the City didn't act, we followed the federal laws and continued our modifications. After we finished our modifications, we submitted a professional engineer's certification that the consolidated tower is safe and built in accordance with tower structural standards."

When asked what Mr. Catanach will do next, he states "We will probably file another suit in Federal District Court, because this is a new action in which the planning commission has overstepped their authority. At some point, someone must recognize the Federal Laws on the books and follow them, and we are hoping that the Federal Courts will vindicate our actions. But we as citizens need to go to our elected representatives and hold them accountable, and inform them of the wrongs that are being done by the City and if they refuse to hear our grievances, then we need to vote them out of office. Just because the City doesn't like a Federal Law, it doesn't give them a right to violate them."