



variance for a 58 foot tower, and this application was denied by the Hinckley Township Board of Zoning Appeals January 9, 1974, from which denial landowner appeals to this Court pursuant to R.C. Chapt. 2506.

The Court further finds that aside from the numerous procedural short-comings of the Hinckley Township Board of Zoning Appeals at the two hearings conducted by it on the landowner's two applications which in themselves are sufficient to hold their decisions on each date to be arbitrary, unreasonable and unsupported by a preponderance of substantial, reliable and probative evidence on the whole record and therefore should be reversed by this Court in accordance with R.C. 2506.04. There is also a substantive question involved in this appeal.

The Court further finds that the following cited cases state the law on this matter:

Wondrak v. Kelly, et al., 129 OS 268, the Supreme Court held that aesthetic reasons alone, unrelated to the requirements of the public health, safety and welfare will not justify the exercise of the police power.

Dettmar v. County Board of Zoning Appeals, 28 Ch. Misc. 35, the Court held that amateur radio is an accessory use customarily incident to single family dwellings.

The Court further finds that there was no evidence adduced to indicate that the health, safety or welfare of the community would be jeopardized by the landowner's amateur radio tower, and that the legislative authority of the Township of Hinckley failed to contemplate or consider the question of height regulation of amateur radio towers or other antenna (flag poles, church spires, chimneys, television antenna, windmills, cooling towers, domes and the like) when they enacted a 35 foot height regulation without exception for Hinckley Township, and that evidenced by picture exhibits introduced by landowner, there are numerous towers within the Township exceeding the 35 foot height limitation.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the decision of the Hinckley Board of Zoning Appeals is hereby reversed, and it is ordered that appellant landowner, John W. Brown, be issued a permit for his 58 foot amateur radio tower.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the costs of this action are taxed to the defendant appellee.

S/Neil W. Whitfield

J U D G E

Approved by:

S/Eugene M. Symms

EUGENE M. SYMMS

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