

**Report of the Amateur Radio Legal Defense & Assistance Committee
2013 Second Meeting of the ARRL Board of Directors – July, 2013**

Committee Members: Director Cliff Ahrens, KØCA, Chairman; Director Brian Mileschosky, N5ZGT; Vice Director Mike Raisbeck, K1TWF; Vice Director Jim Tiemstra K6JAT; General Counsel Chris Imlay, W3KD; and Jim O’Connell, W9WU.

Committee Activities

The Amateur Radio Legal Defense & Assistance Committee (ARLDAC) is charged with evaluating individual requests for financial assistance from amateurs involved in legal, legislative, or regulatory activities relating to Amateur Radio. The sole source of funding awards is the ARRL Legal Research and Resource Fund.

One request for funding is still pending. As reported to the board previously, Myles Landstein, N2EHG, a resident of LaGrangeville, NY, and an ARRL member, applied for an antenna permit for a 100-foot tower and antenna at his residence. At the request of the town, he applied for a Special Use Permit and submitted a site plan, together with a \$1300 fee. The town denied the Special Use permit, claiming that Amateur Radio antennas were not a “customary residential use” and that an area variance was required. Following the advice of the town, Landstein applied for a height variance and paid an additional \$150. The town demanded an additional payment of \$7,000 for consultant’s reviews of his application. Due to the costs, Mr. Landstein decided not to proceed. The Town nevertheless demanded \$4,403.90 for reimbursement of engineering, legal and consulting fees and threatened a deficiency assessment and lien on Landstein’s property.

Counsel Imlay advised Mr. Landstein that ARRL would not make any grant toward payment of the arrearage to the Town. Based on Counsel Imlay’s recommendation, the Committee unanimously agreed that ARRL should fund the matter up to the \$10,000 maximum permitted under the funding guidelines, if required, provided that Landstein obtains competent counsel in Counsel Imlay’s opinion, and provided that no ARRL funds are used for purposes other than reasonable and necessary legal fees and costs incurred in challenging the Town’s ordinance, on its face and as applied to Landstein, in two respects:

1. The determination that an Amateur Radio antenna is not a normal, customary accessory use to residential real property; and
2. The assessment of arbitrary and excessive fees to an applicant for a Special Use Permit or Variance for an Amateur Radio antenna.

Since the last report to the Board, Messrs. Henderson and Imlay had a conference call with Mr. Landstein and his attorney, Mr. Jon Adams. ARRL’s representatives expressed concern with the lack of communication from Mr. Landstein’s attorney, and the case appeared to not be progressing. After the conference call, we concluded that Mr.

Landstein and his counsel were more organized than their previous information had conveyed. They intend to utilize a VCE to help educate the Planning and Zoning Boards on the need for the desired antenna height. They also plan to challenge the town's reliance on Presnell v. Leslie New York which held, based on an absence of trial evidence, that Amateur Radio is not a normal and customary accessory use to residential real estate property. Counsel Imlay has provided two memoranda of law to Mr. Landstein's counsel. Mr. Landstein's neighbors have obtained a visual impact study. There is some discussion of a possible administrative compromise resolution of the matter.

Counsel Imlay is still waiting on a case status update from Mr. Landstein's counsel. None of the authorized funds have been expended on this matter to date.

Committee member Jim O'Connell W9WU along with Dan Henderson N1ND, ARRL Regulatory Information Manager, spoke at the Ham Radio and the Law Forum at the Dayton Hamvention. Mr. O'Connell moderated the forum and spoke about antenna zoning and land use issues. Mr. Henderson discussed ARRL HQ services including the Volunteer Counsel Program, the Volunteer Consulting Engineer program, and the ARLDAC.

There are no other matters presently pending before the committee.

Cliff Ahrens

Cliff Ahrens, KØCA
Chairman

July, 2013