



San Bernardino County

Sentinel

News of Note
from Around the
Largest County
in the Lower
48 States

Upland Gives Up On Brown Lawn Criminal Prosecution

Bowing at last to political, legal and environmental reality, the city of Upland this week dismissed the criminal case it had lodged last year against Fernand Bogman, the city resident who was being prosecuted for his refusal to water his lawn during the ongoing California drought.

As California was entering the third year of an historic drought, Bogman in 2013 installed a drip irrigation system to water the plants and shrubs in his front yard located in the 1000 block of 14th Street and ceased watering his grass. His intention, he said, was to replace the water-intensive lawn with drought tolerant plants. He said he believed it was “immoral to pour buckets and buckets of water on grass and landscaping while the entire state is in the middle of a drought.” He was contacted by a city code enforcement officer, who informed him that it was a violation of the city’s code for him to neglect his lawn. Bogman made inquiries at City Hall to ascertain what types of drought tolerant landscaping would be permissible under the city code as a replacement for his lawn. According to Bogman, however, city officials were unable to give him a clear answer to his questions, and they blurred the distinction between drought tolerant plants and California native plants, many of which are themselves water intensive. Unable to obtain reliable clearance from the city for landscaping his yard with plants that would reduce his water usage, Bogman did not proceed with replanting, concerned that if he invested in cultivating plants eventually deemed unacceptable to the city, he would be put to the trouble and expense of having to tear them out and replant again.

The city cited Bogman under its civil code enforcement authority. In his dialogue with city officials, Bogman said, they showed no sensitivity toward his rationale for his action, but insisted that he come into compliance with the code by maintaining his lawn. The city adjudicated the civil citation against him in its own favor. Bogman remained defiant. The city then went to the extraordinary level of escalating the civil case against Bogman into a criminal one.

At that point Bogman went public. He attended city council meetings where he addressed the city council, informing them of the action city staff had taken against him. He articulated his rationale, citing the four-year running drought. He referenced California Governor Jerry Brown’s action in response to the drought, which entailed calling upon all individuals and communities statewide to conserve water and his own adherence to that mandate, including allowing the lawn at the governor’s mansion in Sacramento to turn brown. Bogman pointed out that Upland’s policy clashed with those of other municipalities in San Bernardino County and elsewhere, which had ordinances

against using too much water on lawns and landscaping. And he gathered photographs of city property, including portions of the landscaped areas around the Upland Civic Center, where the city itself had neglected its own grass and landscaping, allowing it to die. When the city continued to force the issue criminally, media outlets picked up on the story, including newspapers, radio stations and television stations. In the coverage that ensued, which featured an open running debate of sorts with the city and its prosecutor, Dan Peelman, on one side and Bogman on the other, Bogman appeared to give as good as he got.

Bogman at that point was represented by the San Bernardino County Public Defender's Office. On November 24, Bogman showed up for a hearing at which Perlman failed to make an appearance. Judge Jon Ferguson, who was clearly becoming impatient with the case having been pushed into the criminal realm, very nearly dismissed it outright, but postponed making such a ruling until the next week, when Perlman did show. The case was extended to January 12. Meanwhile Bogman reseeded his lawn and with the winter rains, the lawn rejuvenated. Furthermore, local attorney Michael Vollandt of the Upland-based Law Office of Marc E. Grossman substituted in as Bogman's attorney. In January, Peelman, perhaps believing that Bogman was truly not prepared to go to the expense and trouble of taking the matter to trial, offered Bogman a plea deal, which Vollandt rejected out of hand. Ferguson then set a trial date of January 27 which was later extended to March 30. Further signaling his impatience, Ferguson instructed the parties to come to some kind of settlement. Over the next two months, despite having been presented with evidence that Bogman's lawn was again intact and thriving, Peelman was unwilling to dismiss the case outright and allow Bogman's challenge of the city's policy to be in any way vindicated.

This week, however, just as Governor Jerry Brown and the state legislature were introducing a \$1 billion drought relief package, Peelman on behalf of the city of Upland through in the towel against Bogman, saying the case against him was being dismissed "in the interest of justice."

At the same time, the city sought to put the best face possible on the debacle, relaying a press release that stated, "For the past 18 months, neighbors of Mr. Bogman have been complaining that Mr. Bogman let his lawn die and that the lack of landscaping was negatively affecting neighborhood property values. The city subsequently requested that Mr. Bogman comply with City laws that require landscaping to be maintained, dead landscaping be removed, and that dirt areas not exceed a maximum of 25% of lawns and parkways. City staff met with Mr. Bogman and provided various landscape and hardscape options for his front yard that was mostly dirt, but these suggestions were not initially followed. Recently however, staff observed that Mr. Bogman chose to re-seed his front lawn and add mulch and rock to the parkway, all in compliance with the City's Municipal Code. Mr. Peelman informed the court that he made the motion to dismiss "in the interest of justice."

Grossman said the city's press release was self-serving and inaccurate. He pointed out that the city staff and Peelman knew in January that Bogman's lawn was reseeded and growing but had gambled on proceeding with case out of the mistaken belief that Bogman would capitulate and accept a guilty plea prior to trial commencing. In actuality, Grossman said, Bogman and Vollandt were anxious for the matter to go to trial because they believed it would give them a forum to demonstrate the shortsightedness of the city's policies and the wrongheadedness of its draconian enforcement and prosecutorial action.

"The city has denied Mr. Bogman his day in court," Grossman said. "This case would have set a clear precedent and would prevent the city from bullying other citizens into compliance with its dubious codes."

Vollandt said Bogman was "a staunch supporter of the governor's fight against the drought. He complied with the state's mandates on water conservation, only to be rebuffed by the city of Upland's water guzzling administration instructing their prosecutor to file the criminal charges against him."

Grossman said that despite the city's attempt at face saving and warding off negative publicity, he and members of his firm would continue to be on the lookout for instances of the city abusing its authority and would again rally to the defense of any resident they learn is falling victim to the city's overreaching.