



# Welcome to the K5RC Web Portal Devoted to Ham Radio



SPECIAL USE PERMIT DATA PAGE

## NOTICE

### SPECIAL USE PERMIT HEARING MARCH 3 2011

### PLEASE ATTEND

I have been involved in a 2 ½ year controversy over my towers that has been in the federal court system. The federal judge has established guidelines for us and the County to achieve an amicable outcome and we have filed for a Special Use Permit to get back our building permit for two new towers and to gain sanctions for the existing towers. The permit application will be heard on March 3 at the monthly meeting of the Storey County Planning Commission. The agendas are included.

[http://www.storeycounty.org/Planning/Agendas/AGENDA\\_110303\\_Tour.pdf](http://www.storeycounty.org/Planning/Agendas/AGENDA_110303_Tour.pdf)

[http://www.storeycounty.org/Planning/Agendas/AGENDA\\_110303.pdf](http://www.storeycounty.org/Planning/Agendas/AGENDA_110303.pdf)

THE FOLLOWING ARE FAQ'S AND DOCUMENT LINKS TO HELP DISSEMINATE THE FACTUAL DATA FOR THIS HEARING

Based on Issues Raised in the Last Few Days, FAQ's #2 Have Been Added Below

#### FAQ's #1

370 Panamint Road, Highland Ranches

Q - What are the towers for?

A - They are used by homeowners Tom and Midge Taormina for two-way communications with ham radio operators throughout the county, and around the world.

### **370 Panamint Road, Highland Ranches**

Q - What are the towers for?

A - They are used by homeowners Tom and Midge Taormina for two-way communications with ham radio operators throughout the county, and around the world.

Q - What is ham radio?

A – It is a hobby where individuals are tested and licensed by the FCC to transmit radio signals on designated frequency bands. Most communications breakthroughs have been the result of ham radio experimentation.

Q – Why are they so tall?

A – Different frequencies require different heights for antennas to radiate efficiently. Most hams who live in subdivisions significantly compromise performance to build antennas appropriate to a suburban neighborhood.

Q – Aren't they a hazard to airplanes and Care Flight?

A – No. This installation will be totally compliant with all FAA regulations. Care Flight has landed within half a mile of the towers on several occasions.

Q – Will these antennas be lighted, or have hazard painting?

A – No. To blend in, the towers will be dull gray, with no lighting or hazard painting.

Q – Why are there so many?

A – Antennas for different frequencies perform more efficiently when they are on separate supports. Most hams who live in restricted neighborhoods make compromises. They may not operate certain frequencies for which they are licensed, or they may suffer materially less effective communications.

Q – Do the CC&R's permit these towers?

A – There are no prohibitions for ham radio towers in the CC&R's. The HRPOA filed a letter with the Storey County Building Department confirming that these towers do not violate their CC&R's.

Q – Does the County Codes permit these towers?

A – In 1996, before the Taorminas purchased their house, the Storey County Building Department informed them that there were no height restrictions in the Storey County Codes. In 1999, the Code was changed to include a maximum fixed height of 45' above grade for such structures.

Q – Shouldn't they be "grandfathered" in?

A – The Code provides for grandfathering of existing structures, but not for structures built after the ordinance went into effect. The Taorminas were not aware the Code had changed until 2008. There was no perceived need to check on zoning changes because the Building Department repeatedly to the Taorminas that they did not need building permits for ham radio towers.

Q – Didn't they have to get building permits for the towers?

A – From 1996 to 2008, The Taorminas were repeatedly told by the Storey County Building Department that they did not require building permits for ham radio towers. When two new structures of 120' and 195' were planned for erection in 2008, the Building Department asked them to apply for a building permit. It was granted. Inspections approved the base and guy anchors.

Q – What is the problem if they had building permits?

A – Some neighbors complained to the Building Department and County Officials. Under direction of former DDA Laura Grant, the Building Department issued a Stop-Work-Order on the new towers, and effectively made the order retroactive to 1997.

Q – How can the County change their minds after issuing a building permit and approving the concrete foundations?

A – In a series of letters back and forth between Taorminas' attorneys and the DDA, there was no common ground on the issues of Federal Laws and Nevada Statutes that deal directly with how ham radio towers must be treated by Storey County.

Q – Why did they not just file for a Special Use Permit at that time?

A – In the various letters from the County, they were sometimes told that they needed a Variance, and other times told that they needed a Special Use Permit. There were conflicting directions as to what was nonconforming. The Federal Court has now determined what is required.

Q– What happened next?

A – The Taorminas filed a civil action in Federal Court to require the County to comply with Federal and Nevada law which preclude setting firm, fixed heights. They argued that the County ordinance had a firm, fixed maximum height of 45'. Requiring two different rulings, the Judge finally established that a Special Use Permit may be issued to get around the maximum height problem. The Court specified that the correct procedure was to file a Special Use Permit under one (only one) specific section of the County Code. After the Judge's last ruling that spelled out the steps to be followed, the Taorminas then filed a SUP application for the existing structures above 45' and for the two structures that were stopped in July 2008.

Q –What issues are before the Planning Commission?

A – The SUP asks for permission to finish the two towers formerly permitted, and to legalize the four existing towers over 45 '.

Q – What factors will influence the Commission's recommendations?

A – The Federal Judge ruled that only Section 17.62.010 is applicable. It reads:

"Certain uses may be permitted by the board of county commissioners in zones in which they are not permitted by this title where such uses are deemed essential or desirable for the public convenience or welfare."

Q – What determines “essential or desirable?”

A – In his draft Report of 2/18/11 for the Planning Commission, Senior Planner Osborne writes:

“[A]ccess to the amateur radio communication system by key staff may prove to be beneficial and desirable for the public convenience and welfare during times of Emergency Operations Command and extended power or emergency communication outages.”

He set forth conditions under which the Building Department recommends the grant of an SUP, with Condition # 8:

“In accordance with determining that the Amateur Radio facility is used partly for the convenience and necessity of the local jurisdiction and community, the Permit Holder shall coordinate with the Storey County Emergency Management Departments to develop a binding agreement [to] enable the Amateur Radio facility and/or the operator (Permit Holder) to be utilized by the County during times of Emergency Operations Command and extended power and communication outages.”

Q – Is this project allowable under the County’s Master Plan?

A – In Section VII of his report, Senior Planner Osborne answered: “The proposal appears to comply with The Storey County Master Plan.”

Q – What about the visual impact on the neighborhood?

A – “Staff recommends, as demonstrated in the list of conditions for this special use permit, that a durable coating is applied to the additional towers that visually resembles the non-reflective (dull) gray finish that is seen on the existing structures.”

Q – Does the Building Department recommend approval of the SUP?

A – Yes. Section XI deals with the conditions of the recommendation.

February 25, 2011

## FAQ's #2

Q – Before the Stop Work Order was issued, was Taormina warned that he would be required to get a SUP for the two towers over 45' erected in 2008?

A – The last inspection report prior to the Stop Work Order reads: *“Owner has been advised that Storey County now is of the opinion that a Special Use Permit is required.”* This was a change in opinion and work stopped on those structures. That was the first time Taormina ever learned that an SUP would be required for existing structures over 45'.

Q – Did the Property Owners Association Architectural Control Committee approve the various towers before they were built?

A – The Chairman of the VCHRPOA has written: “I have reviewed the existing association CC&Rs and find nothing which prevents erection, limits tower size, or the quantity of these structures on a member's property.”

Q – Are all of the tower bases and guy anchors on the Taormina property and within the setbacks?

A – Inspectors Haymore and Gardner approved the foundation work and signed off on the OK to pour bases and guy anchors. Setbacks were a factor in those approvals.

Q – What about interference with electronics in neighbor's homes, or other communications services?

A – The FCC controls all radio transmissions, and enforces all rules about interference. The County has no jurisdiction. Taormina has never received an interference complaint, though he'd be willing to help if someone asks. In addition, the Chief of the Private Radio Bureau at the FCC wrote to one city:

I would also like to point out that there is no reasonable connection between requiring [the ham] to reduce the height of his antenna and reducing the amount of interference to his neighbors' home electronic equipment. On the contrary, antenna height is inversely related to the strength, in the horizontal plane, of the radio signal that serves as a catalyst for interference in susceptible home electronic equipment. It is a matter of technical fact that the higher an amateur antenna, the less likely it is that radio frequency interference will appear in home electronic equipment.

Q – Is it true that many complainers bought land and built homes after there were three or four towers already in place?

A – Yes.

Q – Do the steel towers create a fire hazard reducing the effectiveness of firebreaks or access by fire crews and tankers?

A – No. The Nevada Division of Forestry has inspected Taormina's property every few years without ever mentioning hazards in their written reports. Fire Chief Hames is aware of the structures and has neither cautioned nor cited Taormina on hazards to fire fighting.

Q – Can a tower damage a home below one of the towers?

A – No. There are no houses closer than 610’ to the nearest tower. Also, towers do not fail at the base and fall like a pencil. If a tower were to break, it would break at the point of greatest stress – up high where it is thinnest, or close to the biggest antennas. A tower would then collapse on itself. In any event, the County will require P.E. stamps and liability insurance.

Q – Are these towers a public nuisance?

A – No.

NRS 40.140 Nuisance defined; action for abatement and damages; exceptions.

*(a) Anything which is injurious to health, or indecent and offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property;*

A nuisance must be both injurious to health or indecent **AND** offensive.

Ham radio towers are neither. In addition, federal law holds them to be a public benefit. “[R]egulation at all levels of government should facilitate and encourage amateur radio operation as a public benefit.” P.L. 103-408 §1(3)

Q – Don’t the neighbors have a say in what Taormina does on his land?

A – Welcome to democracy and the rule of law. Short of defamation, neighbors have every right to express concerns. But homeowner land rights are strong. Two elements limit objections in this case.

1. The federal judge has ruled that this is an SUP controlled by SCC 17.62.010:

Certain uses may be permitted by the board of county commissioners in zones in which they are not permitted by this title where such uses are deemed essential or desirable for the public convenience or welfare.

[Special note: This is NOT a special use permit controlled by SCC 17.12.018, which requires the applicant to demonstrate that a project is “in the best interest of the general public and would not be incompatible with or detrimental to the surrounding area.” That is *not* the applicable law.]

2. Amateur radio antennas are an ordinarily accessory to a residential use. A common thread in these ordinary use cases is that neighbors do not determine what is customarily incidental to a particular homeowner’s use of his property. *Town of Paradise Valley v. Lindberg*, 551 P.2d 60, 62 (Ariz. Ct. App. 1976); *Dettmar v. County Bd. of Zoning Appeals*, 273 N.E.2d 921, 922 (Ohio Ct. Com. Pl. 1971) (use customarily incidental “**does not limit the use to the incidental activity chosen by the neighbors**”).

Q – Where can these claims be checked out?

A – The Taorminas have filed hundreds of pages of supporting documents, including citations to laws and cases. These documents were submitted with the building permit applications, the Special Use Permit application and there are documents filed with the federal court, including a long list of uncontested facts. The public is invited to examine these documents, and to verify the law and engineering. That would quickly separate fact

from opinion. Some are enclosed below, others are available from the County Building Department

February 26, 2011

#### Document Links

Building Department Staff Report - February 18 version contains known errors. Next revision will be posted.

[Special Use Permit Application](#)

[SUP Application Exhibit](#) (Large File)

[Supplement to Original Building Permit Application, 8/2008](#)

[Need for Height Study, 8/2008](#)

[Information about PRB-1 - Federal Preemption Regarding Ham Radio Towers](#)

#### Opposing Views

One Resident of the Highlands has taken a dissenting view of the towers and the SUP request. In the interest of full disclosure, his opinions are available at:

[http://www.jmargolin.com/towers/tom\\_index.htm](http://www.jmargolin.com/towers/tom_index.htm)