

Exhibit 1

Exhibit 1



It Seems to Us

David Sumner, K1ZZ – dsumner@arrrl.org
ARRL Chief Executive Officer

Restrictive Covenants

“The problem with restrictive covenants is that in growing areas of the country there is no way to avoid them.”

A radio station, amateur or otherwise, is only as effective as its antenna. From the days of the earliest experimenters right up to the present time, amateurs’ desires for the best possible skyhook have not always been welcomed by our neighbors and our communities.

Most of us prefer to have a station — perhaps not our only station — in our home. There is ample case law establishing that an amateur station is a reasonable and normal accessory use of residential property. While land use is regulated at the local level, it is well established that the regulation of interstate and foreign communication by wire or radio is in the federal sphere.

At the request of the ARRL, in 1985 the FCC asserted limited federal preemption of state and local regulation of amateur station antenna structures. The principle, called “PRB-1” because at the time the Amateur Radio Service was in the purview of the Private Radio Bureau, is now written into §97.15(b) of the FCC Rules: “State and local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority’s legitimate purpose.”

PRB-1 has been of great assistance to countless amateurs in dealing with their local land use agencies. However, in 1985 the FCC was not persuaded that it had the authority to preempt private land use regulations such as covenants, conditions and restrictions (CC&Rs). In theory the purchaser of real estate that is subject to CC&Rs accepts them voluntarily; if you don’t like them you don’t have to buy the property. At that time it was still possible in most of the country to find housing that was not subject to CC&Rs, so it could be argued that their impact on Amateur Radio was not a federal issue.

Unfortunately, since then CC&Rs have spread like invasive species. For five years beginning in 1996 the ARRL went to the FCC with the argument that the effect of applying PRB-1 to government but not to private land use regulation was to deprive the residents of areas blighted by CC&Rs of adequate emergency communications facilities. Ultimately we were told that the FCC would take corrective action only if instructed to by Congress.

So we went to Congress. As we predicted on this page in September 2001, it wasn’t easy — but after a decade of patient effort we achieved success on an important first step. A section of Public Law 112-96, signed by President Obama on February 22, 2012, required the FCC in consultation with the Office of Emergency Communications in the Department of Homeland Security to complete a study on the uses and capabilities of Amateur Radio communications in emergencies and disaster relief, including identifying “impediments to enhanced Amateur Radio Service communications and recommendations regarding the removal of such impediments.” The statute specifically identifies “the effects of unreasonable or unnecessary private land use restrictions on residential

antenna installations” as an example of such an impediment. A report on the findings of the study is due to be submitted to the House and Senate Commerce Committees by August 17.

On April 2 the FCC opened a proceeding to gather information for its study. The Commission posed 16 questions, ten dealing with the importance of amateur emergency communications and six with impediments to enhanced communications. In response the ARRL submitted a 128-page filing that documents the importance of what we do in providing communications relating to disasters, severe weather, and other threats to lives and property and discusses in great detail the impediments presented by private land use regulations. The filing includes 91 examples of restrictive covenants, most of which either prohibit Amateur Radio antennas or make them subject to the arbitrary whims of an Architectural Control Committee or some other body and many of which are illegal as written. Also included are 43 case studies that document the real-world experiences of amateurs in 21 states who have tried to live with CC&Rs but have ended up with unsatisfactory antennas or none at all. These examples were drawn from more than 870 responses to requests for input from ARRL members and other amateurs.

Citing estimates by the Community Associations Institute (CAI), the ARRL filing notes that in 2011 there were 314,200 association-governed communities with 62.3 million residents — figures that have more than doubled since 1990. In 2005 CAI concluded that “more than four in five housing starts during the past five to eight years have been built as part of an association-governed community.” The result is that in the areas of the country with the fastest population growth it is virtually impossible to avoid restrictive covenants when purchasing a home. Clearly, what might have been regarded as a state or local issue in 1985 is a national issue today and requires a federal solution.

When the FCC reports to Congress we are hopeful that its recommendations will reflect the reality that is illustrated by the ARRL filing. We are also hopeful that — unless the FCC is persuaded to act on its own — the committees of jurisdiction will use the report to develop legislation along the lines of §207 of the Telecommunications Act of 1996, which instructed the FCC to prohibit restrictions on terrestrial and satellite television receiving antennas. The Commission later expanded the resulting provision to include antennas for fixed wireless broadband access.

The FCC has the authority as well as the obligation to see that all of its Amateur Radio licensees are treated equitably. The evidence is clear that with so many millions of Americans having no choice to do otherwise, it is sound public policy to extend the benefits of the Commission’s time-tested PRB-1 limited preemption policy to those who must live subject to private land use regulations.

Exhibit 2

Exhibit 2

MINUTES OF ARRL EXECUTIVE COMMITTEE
Number 497
Denver, Colorado – September 29, 2012

Pursuant to due notice, the Executive Committee of the American Radio Relay League, Inc. met at 8:30 AM MDT Saturday, September 29, 2012 at the Renaissance Denver Hotel, Denver, Colorado. Present were committee members President Kay Craigie, N3KN, in the Chair; First Vice President Rick Roderick, K5UR; Chief Executive Officer and Secretary David Sumner, K1ZZ; and Directors Cliff Ahrens, KØCA, Jim Fenstermaker, K9JF, George R. Isely, W9GIG, Brian Milesosky, N5ZGT, and Dr. David Woolweaver, K5RAV. Also present were Second Vice President Bruce Frahm, KØBJ and General Counsel Christopher D. Imlay, W3KD.

President Craigie led the meeting in a moment of silence in remembrance of Joel Kleinman, N1BKE, Michael Owen, VK3KI, and Sid May, ET3SID.

1. On motion of Dr. Woolweaver, the agenda for the meeting was adopted as distributed in draft form. The main items listed are:
 1. *Consideration of agenda for the meeting*
 2. *President's report*
 3. *Chief Executive Officer's report*
 4. *FCC/regulatory items*
 5. *Antenna/RFI cases*
 6. *Other legal matters*
 7. *International matters*
 8. *Organizational matters*
 9. *Review of pending action items including work in progress by committees*
 10. *Approval of conventions*
 11. *Affiliation of clubs*
 12. *Recognition of new Life Members*
 13. *Other business*

2. President Craigie summarized her recent activities on behalf of the ARRL. She has attended three ARRL conventions since the July Board Meeting and is looking forward to the National Convention in October. She will participate in an experimental Atlantic Division electronic "virtual convention" on November 10.

3. Mr. Sumner reported on the severe loss that Amateur Radio has suffered with the sudden death of IARU Region 3 Chairman and Wireless Institute of Australia President Michael Owen, VK3KI, just six weeks prior to the Region 3 Conference to be held in Ho Chi Minh City, Vietnam. He noted that International Affairs Vice President Jay Bellows, KØQB was unable to be in Denver because of his obligation to attend a meeting of the IARU Region 2 Executive Committee as a Director of the regional organization. Mr. Sumner also reported on upcoming retirements from the Headquarters staff. He distributed a strawman draft of legislative objectives for the 113th Congress for

consideration by the Executive Committee in the coming weeks; a recommended set of objectives is to be offered to the Board for consideration at its January 2013 meeting.

4. FCC/Regulatory items

4.1. Action items

4.1.1. Mr. Imlay led a discussion of needed improvements in the visibility of FCC enforcement efforts in the Amateur Radio Service. For example, the list of enforcement actions on the new FCC website has not been updated since the website went live in April 2011. Curiously, the list on the old website was updated after that although it has not been updated since March 2012. The problem repeatedly has been called to the attention of the Enforcement Bureau leadership who say they are also frustrated that this has not been corrected. It was agreed that fact-finding and contact with the Enforcement Bureau will continue, with resort to the Commissioners' offices if there is no improvement.

4.1.2. The committee discussed the FCC report to Congress entitled *Uses and Capabilities of Amateur Radio Service Communications in Emergency and Disaster Relief* (GN Docket No. 12-91). It was agreed that the next step is to prepare a summary of the extensive document that the ARRL submitted in response to the FCC's request for input, for use in taking our case to Congress after the November elections.

4.1.3. As instructed by the Board at Minute 51 of its January 2012 meeting, the committee reviewed the National Broadband Plan (NBP) Committee Report to consider possible revisions/updates. The amateur allocation that currently appears to be at greatest risk is 3400-3500 MHz. Because the amateur allocation of that band (as well as of others in the frequency range of the greatest interest to mobile broadband interests) is on a secondary basis to federal government radiolocation it was agreed that consultations with the federal government interests should be pursued. It was also agreed that a review of the NBP Committee Report will be a standard agenda item for every Executive Committee. While the review is a responsibility of the full committee it was agreed that a subgroup of the Executive Committee will be formed, to be supplemented by knowledgeable volunteers and staff, with the objective of ensuring that adequate attention is paid to the review on an ongoing basis.

4.1.4. Mr. Imlay presented an early draft of a petition for rule making to seek domestic implementation of the international amateur allocations below 500 kHz. After discussion, on motion of Mr. Isely it was voted to proceed as soon as possible with a petition to implement the 472-479 kHz allocation.

4.1.5. Mr. Imlay informed the committee that the FCC is expected soon to release a Notice of Proposed Rule Making dealing with examination element credit for expired licensees, remote proctoring of examinations, and the ARRL petition (RM-11625) to allow amateur use of Time Domain Multiple Access (TDMA) emissions. The NPRM is expected to raise significant policy questions that will require consideration by the full

Board of Directors. It was agreed that the Executive Committee will prepare an outline of the pros and cons of each item for circulation to the Board as a basis for discussion.

4.2. Status update/reporting items

4.2.1. Mr. Imlay reported that in response to an *ex parte* submission to the FCC by Current Group, LLC regarding the ARRL's petition for reconsideration in the BPL proceeding, ET Docket No. 04-37, the ARRL has submitted its own *ex parte* rebuttal of Current's arguments.

4.2.2. The committee reviewed the status of RM-11666, a petition to permit the operation of unlicensed, short-range vehicular radar systems in the 77-81 GHz band. Except for 77.5-78 GHz, where the amateur and amateur-satellite services are the only primary services, the 77-81 GHz band is already allocated to radiolocation on a primary basis. An agenda item for the 2015 World Radiocommunication Conference is to consider a worldwide primary allocation to the radiolocation service for automotive applications at 77.5-78 GHz, taking into account incumbent services as well as services operating in the adjacent bands, with the objective of global or regional harmonization.

The committee was in recess for luncheon from 11:52 AM until 1:05 PM.

4.2.3. No new developments have been reported with respect to the PAVE PAWS radar systems operating in the 420-450 MHz band in Northern California and Cape Cod, Massachusetts. Amateurs using the 420-440 MHz band may experience brief, intermittent interference from AirMOSS Earth observation radars operating from aircraft.

4.2.4. FCC action is still awaited on three challenges by the ARRL of irregularities related to the ReconRobotics video and audio surveillance device that operates in the 430-448 MHz band. One ARRL complaint that pointed out serious mistakes in the Technical Coordination Body (TCB) grant of equipment authorization to the device has been "under review" by the Office of Engineering and Technology since January 2011.

4.2.5. International Traffic in Arms Regulations (ITAR) include provisions mandated by Congress that place US satellite manufacturers at a competitive disadvantage and also prevent amateurs in the US from collaborating on satellite designs with their colleagues in other countries. The ARRL is monitoring developments that may point toward a resolution of the problem.

4.2.6. An FCC Notice of Proposed Rule Making to implement the Final Acts of the 2007 World Radiocommunication Conference is expected to be released soon. It may include other allocation issues and related rule updates.

4.2.7. The FCC's RF exposure regulations have not been reviewed in many years, in part because the FCC does not consider itself to be the expert agency on health effects. The current regulations are based on studies conducted 20 years ago. There is a proceeding, ET Docket No. 03-137, that has been open and pending without action for

almost a decade. A document to advance the proceeding reportedly is on circulation at the FCC and may be released soon.

4.3. Mr. Imlay reviewed briefly several FCC proceedings on which there had been no action since the July Board Meeting.

5. Antenna/RFI cases

5.1. Mr. Imlay reported on a case of exorbitant fees being demanded by the Town of LaGrangeville, New York to process an application for an antenna permit.

6. There were no other legal matters to be brought to the attention of the committee.

7. There were no international matters reported to the committee, other than those mentioned in Mr. Sumner's report at agenda item 3.

8. Organizational matters

8.1. Mr. Sumner reported that the first ARRL elections to be conducted by electronic voting would begin on Monday, October 1 in the Hudson and Northwestern Divisions. Full Members in the two divisions with valid email addresses in the ARRL membership records will receive an email instructing them how to vote on a website. The other Full Members will receive a paper ballot but will have the option of voting via the website if they wish to do so. He noted that preparations for the elections have gone smoothly.

8.2. Mr. Sumner distributed a guide to the forums and other activities scheduled for the 2012 ARRL National Convention to be held October 12-14 in Santa Clara, California.

8.3. Mr. Sumner reported the results of extensive research by ARRL Meeting Planner Lisa Kustosik, KA1UFZ, into suitable venues for the 2013 Annual Meeting of the Board of Directors in New Orleans. The staff recommendation of the Renaissance New Orleans Pere Marquette Hotel was accepted.

8.4. President Craigie reported on the status of discussions with the National Frequency Coordinators Council (NFCC) concerning a new Memorandum of Understanding between the two organizations and distributed the latest draft of a possible MOU. On motion of Mr. Isely, the President was authorized to send the draft to NFCC with an appropriate cover letter.

8.5. President Craigie presented the report of the Centennial Celebration Committee. A Centennial logo has been developed by staff and adopted for use. Suggestions for activities have been solicited and a number of ideas have been offered for consideration by the committee. Planning for the Centennial National Convention in Hartford is proceeding. The Executive Committee discussed the timing of the 2014 Second Board Meeting and concluded that it probably would have to be held right after the National

Convention. There are ongoing discussions of how the Centennial might be celebrated at other conventions throughout the year.

9. Mr. Sumner distributed a chart listing past Board actions on which work has been completed since the July Board Meeting, and those on which work is ongoing. There was a discussion of how task assignments are given to Advisory Committees and the need for clear and timely communication. On motion of Mr. Ahrens the Ad Hoc Microwave Band Planning Committee, which had completed its work, was given a new task of reviewing the band plans for the 5 GHz and 10 GHz bands with a target date for completion of July 2013.

10. On motion of Mr. Fenstermaker the holding of the following ARRL conventions was approved:

2012

Connecticut State, October 7, Meriden, CT

Microwave Update (Specialty), October 18-21, Santa Clara, CA

Atlantic Division (Virtual), November 10

2013

Quartzfest (Specialty), January 15-25, Quartzsite, AZ

Georgia ARES (Specialty), January 19, Forsyth, GA

Mississippi State, January 25-26, Jackson, MS

Oklahoma Section, March 8-9, Claremore, OK

Louisiana State, April 20, Monroe, LA

Central States VHF Society Conference (Specialty), July 25-27, Elk Grove Village, IL

W9DXCC (Specialty), September 20-21, Elk Grove Village, IL

11. On motion of Mr. Isely the affiliation of the following clubs was approved (Category 1 unless otherwise indicated):

Allied Auxiliary Forces Communications Group NFP, Decatur, IL

Central Virginia Repeater Association, Barboursville, VA

Franklin Township Emcom Operators Club, Franklinville, NJ

Georgia Contest Group, Stockbridge, GA (Category 2)

HacDC Amateur Radio Club, Washington, DC

KL7NWR Amateur Radio Club, Homer, AK

New Mexico Search & Rescue Support Team, Albuquerque, NM

Suwannee Amateur Radio Club, Live Oak, FL

Texas Adventist Emergency Communication, Keene, TX

The ARRL now has 2,314 active affiliated clubs. Category 1: 2,107; Category 2: 59; Category 3: 134; Category 4, 14.

12. On motion of Mr. Ahrens the committee recognized 199 recently elected Life Members and instructed the Secretary to list their names in *QST*.

13. In other business, the committee discussed possible approaches to legislative representation for the 113th Congress and tasked Mr. Sumner with negotiating a one-year agreement with Chwat & Company. Options for legislative representation, including how increased activity might be funded, will be explored in 2013. Budgeting of division expenses was also discussed briefly.

There being no further business, on motion of Dr. Woolweaver the meeting was adjourned at 4:24 PM.

Respectfully,

David Sumner, K1ZZ
Secretary

Exhibit 3

Exhibit 3



QST

DEVOTED ENTIRELY TO AMATEUR RADIO

November 2012 WWW.ARRL.ORG

Reaching for the Stars with Radio

QST reviews:

57 | Array Solutions AIMultif
Vector Impedance Analyzer

61 | DZKit HT-7
40 Meter AM Handheld

Page 75

Inside:

32 | Build an Inexpensive
HF Power Attenuator

37 | See PSK31 Up Close

46 | Try a Simple Transmitter
for 40 or 80 Meters

50 | Extend Your Remote
Antenna Tuner to 160 Meters

81 | Distracted Driving
and Amateur Radio

Exhibits - 23

Official Journal of

ARRL The national association for



S. Khrystine Keane, K1SFA, k1sfa@arrl.org

FCC Releases Congressionally Mandated Study on Amateur Radio

While the FCC noted that radio amateurs provide a valuable service to their communities, it failed to address specific land use restrictions that face amateurs, such as CC&Rs.

In response to a February 2012 Congressional directive, on August 20 the FCC released its findings on Amateur Radio's role in emergency and disaster communications and the impact of private land use regulations on the amateur community's ability to provide such communications. Entitled *Uses and Capabilities of Amateur Radio Service Communications in Emergencies and Disaster Relief: Report to Congress Pursuant to Section 6414 of the Middle Class Tax Relief and Job Creation Act of 2012*, this report contains the FCC's "review of the importance of emergency Amateur Radio Service communications relating to disasters, severe weather and other threats to lives and property in the United States; and recommendations for enhancements in the voluntary deployment of Amateur Radio operators in disaster and emergency communications and disaster relief efforts; and recommendations for improved integration of Amateur Radio operators in the planning and furtherance of initiatives of the federal government." Congress also required "that the study identify impediments to enhanced Amateur Radio Service communications and provide recommendations regarding the removal of such impediments."

"There are many positive things included in the FCC report to Congress," said ARRL Regulatory Information Manager Dan Henderson, N1ND. "We are pleased that the Commission highlighted the existing Amateur Radio infrastructure to provide disaster and time-critical communications. It also recognized the flexibility of the Amateur Service in working with federal, state, local and tribal emergency service agencies to supplement existing communications. The affirmation of the value that Amateur Radio brings to the communities across the country is underscored by the suggestion that 'DHS work with state, local, and tribal authorities so they may develop disaster area access or credentialing policies for trained amateur operators, including a means for documenting their qualifications...'"

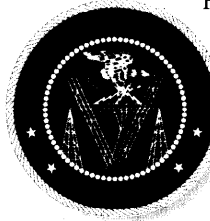
While the FCC did hold Amateur Radio in a positive light in its discussion of emergency Amateur Radio Service communications, the FCC report was not as favorable in the portion of the study that addressed impediments to enhanced Amateur Radio Service communications. In the comments provided to the FCC as it prepared the study, the ARRL — as well as numerous individuals — cited the proliferation of specific land use restrictions, such as deed restrictions and homeowners associations covenants, that prohibit the erection of even modest Amateur Radio antennas.

The ARRL cited that such restrictions now apply to tens of millions of homes and condominiums. In communities across every state, these restrictions make it nearly impossible to find suitable living arrangements that would also allow amateurs to participate effectively in providing support communications. The FCC disagreed with that assessment, stating "...our review of the record does not indicate that amateur operators are unable to find homes that are not subject to such restrictions. Therefore, at this time, we do not see a compelling reason for the Commission to revisit its previous determinations that pre-emption should not be expanded to CC&Rs."

When considering any current rules that serve as impediments to enhanced Amateur Radio Service communications, the report did agree with the ARRL's position, stating that "Commission rules that may be an impediment to enhanced Amateur Service emergency communications can, as the ARRL notes, be considered through the Commission's rule-making process. Consequently, we do not believe that Congressional action is necessary to address any of these issues."

In the report, the FCC recommended that "DHS consult with the public safety, emergency management and Amateur Radio emergency communications associations and groups to identify training opportunities that

will support better utilization of Amateur Radio operators for emergency communications, and to solicit views on how Amateur Radio capabilities could be further incorporated into response plans or initiatives. We also recommend that the OEC [Office of Emergency Communications] include these recommendations in the NECP [National Emergency Communications Plan]."



Henderson noted that it is significant that the FCC recommends efforts be continued by DHS to facilitate the training and utilization of Amateur Radio across the emergency and disaster response spectrum — from the public sector through to the various groups and organizations that provide support communications via the Amateur Service, including ARES, RACES, MARS or locally organized support groups: "When served agencies and amateur groups plan and train cooperatively, it only enhances our abilities to serve our communities and the public."

With the delivery of the FCC's report to Congress, the ARRL will determine its next step in its efforts to find relief for amateurs who live under unduly restrictive private land use regulations. "Our review of the FCC report shows that there is a lot to be done if amateurs living in deed-restricted properties are to receive even the limited relief amateurs enjoy under the Commission's PRB-1 ruling or the limited relief given to deed-restricted properties given by the FCC's OTARD ruling," Henderson said. "This means continuing the ARRL's efforts on Capitol Hill and continuing to seek a Congressional directive to the Commission to extend those limited preemptions to include prohibition of effective Amateur Radio antennas and support structures that are imposed by private land use restrictions. The FCC report to Congress is not the final action in this fight; it merely lays the groundwork for the next steps to be taken by the ARRL."

Exhibit 4

Exhibit 4

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THOMAS S. TAORMINA and)

MIDGE A. TAORMINA)

Plaintiffs,)

vs.)

Case No:

STOREY COUNTY, NEVADA, and DOES)

1-10,)

Defendants.)

COMPLAINT SEEKING DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, THOMAS S. TAORMINA, and MIDGE A. TAORMINA, by and through their attorneys, Brian M. McMahon, Esq., of McMahon Law Offices, Ltd., and Fred Hopengarten, Esq., of the District of Columbia Bar, hereby complain and allege as follows:

Jurisdiction and Venue

1
2
3 1. This is an action for declaratory and injunctive relief presenting a federal question
4 arising under 47 C.F.R. § 97.15(b)(2006), a regulation of the Federal Communications
5 Commission ("FCC"), and FCC Opinion and Order PRB-1, *Federal Preemption of State and Local*
6 *Regulations Pertaining to Amateur Radio Facilities*, 101 FCC 2d 952, 50 Fed. Reg. 38813
7 (September 25, 1985) ("PRB-1"). PRB-1 may be found at the following URL:

8
9 <http://wireless.fcc.gov/services/index.htm?job=prb-1&id=amateur&page=1>.

10
11 2. This complaint seeks a ruling from this Court that the County failed to fulfill its
12 obligations under 47 CFR §97.15(b), NRS 278.02085, and the requirements set forth by the
13 Ninth Circuit Court of Appeals in *Howard v. Burlingame*, 937 F. 2d 1376, 1380 (9th Cir. 1991).

14
15 3. In addition to other remedies, the Plaintiffs seek to have this Court declare that
16 Building Permit No. 8354 is valid, and that special use permits, as well as building permits, for
17 radio communications masts should be granted in accordance with the original application.

18
19 4. The FCC was created by, and its regulations and orders are authorized by, The
20 Communications Act, 47 USC §151 *et seq.* The Plaintiffs are FCC-licensed radio amateurs
21 asserting federal preemption of the maximum height for an antenna under the Storey County
22 Code.

23
24 5. This Court has subject matter jurisdiction over this claim for relief by virtue of 28
25 USC §§1331 (original jurisdiction for a "federal question"), and 1337 (original jurisdiction
26 "arising under any act regulating commerce"). Declaratory relief as requested herein is authorized
27 by virtue of 28 USC §2201 *et seq.* (declaring rights "in a case of actual controversy within its
28 jurisdiction") and F.R.Civ.P. 57 - Declaratory Judgments.

1 they would have representative capacity over Storey County directly or indirect through building
2 departments, planning commissions or other boards of governance. Accordingly, upon
3 determining the true and accurate designation of said DOE DEFENDANTS, the Plaintiffs will
4 amend to include specific allegations against specific defendants.

5
6 **Background**

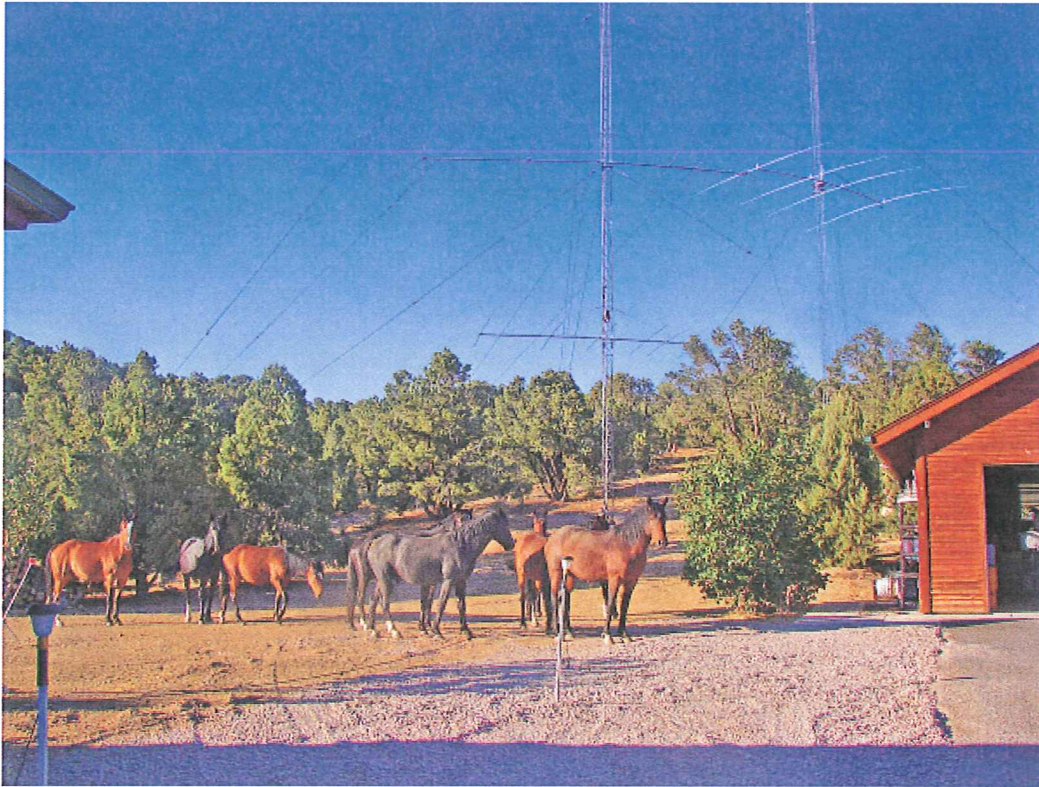
7 12. The dates and events relevant to this action are contained in a timeline presented
8 by County Staff to the County Commissioners at the hearing of June 7, 2011. **Exhibit A**,
9 incorporated herein by reference. Except for its lack of completeness, the County's timeline is
10 otherwise uncontested by the Taorminas.
11

12 13. Tom and Midge Taormina ("Plaintiffs" or "the Taorminas") also submitted a
13 timeline. It displayed more events than the County's. **Exhibit B**, incorporated herein by
14 reference. In an e-mail to the County Commission, dated June 6, 2011 (**Exhibit C**, incorporated
15 herein by reference), the County Manager stated that County staff proposed no challenge to the
16 statements exhibited in applicant's summary timeline, saying: "Staff believes in the strong
17 probability that these events did occur on or about the dates provided by the applicant and
18 recommends you to consider them as factual in order to assess the overall timeline of events."
19
20

21 14. The Taorminas are licensed radio amateurs. From 1997 until June 2008, they
22 erected a variety of radio communications masts on their 10-acre parcel. During that time, the
23 position of the Storey County Building Department was that no building permits were required
24 for such structures.
25
26
27
28

1 15. Plaintiffs reside on land designated as “open range” which is defined in NRS
2 568.355, as “unenclosed land outside of cities and towns upon which cattle, sheep or other
3 domestic animals by custom, license, lease or permit are grazed or permitted to roam.”
4

5 16. This is a photograph of wild horses roaming on Plaintiffs’ land:



19 17. This is a photograph looking East across Panamint Road (the street on which
20 Plaintiffs reside) depicting the neighborhood:
21
22
23
24
25
26
27
28



12 The circle calls attention to the Plaintiffs' residence.

13 18. The Covenants, Conditions and Restrictions of the Highlands Ranches
14 subdivision allow radio communications masts and are not an element of this litigation.

15 19. The Taorminas have two radio communications masts less than 45 feet in height
16 for which building permits have been granted and inspections completed, and about which there
17 is no controversy. Those masts were not an element of the Taorminas' special use permit
18 application, described below, and they are not an element of this litigation.

19 20. In May 2008, the Taorminas were notified by the Storey County Building
20 Department that they would be required to file a building permit application for two proposed
21 monopole radio communications masts of 120 feet and 195 feet in height.

22 21. Storey County Building Permit No. 8354 was granted on June 27, 2008 for the two
23 monopole radio communications masts. **Exhibit D**, incorporated herein by reference.

24 22. On receipt of the building permit, work commenced and concrete foundations
25 were poured for the monopole structures. The Storey County Building Department performed
26
27
28

1 compliance completion inspections and approved the foundation work. The inspector found “all
2 conditions observed at this time and date to be in variance (*sic*) with any Storey County
3 Ordinances...” **Exhibit E**, incorporated herein by reference.

4 23. As the inspection report is a printed form, used for all County inspections, and
5 allows construction to continue, it is self-evident the form is intended to mean that all conditions
6 are in **compliance**, not **variance**. **Exhibit A** at line “7/2008,” item F (in which the Community
7 Development Department described the event as “signed off inspection report”).
8

9 24. The photographs of **Exhibit F**, incorporated herein by reference, depict the
10 foundations with monopole bases installed, as they were at the time of the second compliance
11 inspection, on July 16, 2008.

12 25. Twenty days after the building permit was issued, on July 17, 2008, the County
13 issued a stop work order. Confounded by a stop work order, the Taorminas retained counsel.
14 Over the ensuing months, they exchanged correspondence with the County Deputy District
15 Attorney about the applicable law, especially 47 CFR § 97.15(b) and NRS 278.02085.
16

17 26. After the issuance of the building permit, and before the issuance of the stop work
18 order, the Taorminas incurred significant costs for tower components, antennas, cabling,
19 connectors and other expensive hardware. See **Exhibit G**, incorporated herein by reference.
20

21 27. Having reached an impasse with the County on the law, the Taorminas filed Case
22 No: 3: 09-CV-00021-LRH-VPC in this Court (“*Taormina I*”).
23

24 28. The Taorminas have faced a wide variety of frustrations presented to them by the
25 County. In *Taormina I*, the Taorminas provided to this Court an uncontested list of the
26 inconsistent positions taken by the County during the life of this controversy to that point.
27

28 **Exhibit H**, incorporated herein by reference. Reviewing that history, this Court wrote: “The

1 court is sympathetic to Plaintiff's frustration with the county's inconsistent interpretation of its
2 zoning ordinances." *Taormina I*, Order at 9. Actions by the County since that opinion have only
3 served to exacerbate the Taormina's frustrations. See **Exhibit B**, the timeline of the events since
4 1996 leading up to this litigation.

5
6 29. In its Order of June 17, 2010, the Court ruled:

7 An individual seeking to build a structure that exceeds the height limits identified
8 in section 17.12.044 may seek a special use permit under chapter 17.62. As
9 discussed above, section 17.62.010 authorizes the board of county commissioners
10 to permit certain uses in zones in which the uses are not otherwise permitted
11 where such uses are "deemed essential or desirable for the public convenience or
12 welfare."

13 30. Furthermore, the Court ruled that Plaintiffs' "as applied" claim was not yet ripe for
14 decision:

15 Because the county has not had the opportunity to apply its zoning regulations,
16 the court cannot determine whether the county has reasonably accommodated
17 the Plaintiff's amateur communications. Thus, until Plaintiff[s] appl[y] for a
18 special use permit, and the county has the opportunity to review the request, the
19 court must deny Plaintiff[s'] as applied challenge to the zoning regulations.

20 31. Judgment on the Motion for Summary Judgment was entered on June 21, 2010.

21 32. In accordance with the Court's decision, on December 29, 2010, the Taorminas
22 applied for a special use permit, with voluminous accompanying detail, under Storey County
23 Code § 17.62.010.

24 33. The text of Storey Code § 17.62.010 reads:

25 Certain uses may be permitted by the board of county commissioners in zones in
26 which they are not permitted by this title **where such uses are deemed** essential
27 or **desirable for the public convenience or welfare**. The procedure for filing of
28 applications, filing fees, public hearings, findings and appeals shall be the same as
provided for variances in Chapter 17.60 of this title. (*Emphasis added.*)

34. The text of 47 U.S.C. § 303 reads, in part:

1 [T]he Commission from time to time, as public convenience, interest, or necessity
2 requires, shall . . . (l)(1) Have authority to prescribe the qualifications of station
3 operators, to classify them according to the duties to be performed, to fix the
4 forms of such licenses, and to issue them to persons who are found to be qualified
5 by the Commission . . .

6 35. The text of 47 C.F.R. § 97.1, Basis and purpose, reads:

7 The rules and regulations in this part are designed to provide an amateur radio
8 service having a fundamental purpose as expressed in the following principles:

9 (a) Recognition and enhancement of the value of the amateur service to the
10 public as a voluntary noncommercial communication service, particularly with
11 respect to providing emergency communications.

12 (b) Continuation and extension of the amateur's proven ability to contribute to
13 the advancement of the radio art.

14 (c) Encouragement and improvement of the amateur service through rules
15 which provide for advancing skills in both the communication and technical
16 phases of the art.

17 (d) Expansion of the existing reservoir within the amateur radio service of
18 trained operators, technicians, and electronics experts.

19 (e) Continuation and extension of the amateur's unique ability to enhance
20 international goodwill.

21 36. The text of Public Law 103-408 (J.Res., 103d Congress, 1994) reads:

22 **SECTION 1. FINDINGS AND DECLARATIONS OF CONGRESS.**

23 Congress finds and declares that—

24 (1) radio amateurs are hereby commended for their contributions to technical progress in
25 electronics, and for their emergency radio communications in times of disaster;

26 (2) the Federal Communications Commission is urged to continue and enhance the
27 development of **the amateur radio service as a public benefit** by adopting rules and
28 regulations which encourage the use of new technologies within the amateur radio
service; and

(3) reasonable accommodation should be made for the effective operation of amateur
radio from residences, private vehicles and public areas, and that **regulation at all levels
of government should facilitate and encourage amateur radio operation as a public
benefit.** (*Emphasis added.*)

<http://thomas.loc.gov/cgi-bin/query/D?c103:1:./temp/~c103axha51:> , or
[http://frwebgate.access.gpo.gov/cgi-
bin/getdoc.cgi?dbname=103_cong_bills&docid=f:sj90enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=103_cong_bills&docid=f:sj90enr.txt.pdf).

1
2 Before The Storey County Planning Commission, March 3, 2011

3 37. On February 18, 2011, the County Building Department issued a Staff Report that
4 examined the special use permit application of the Taorminas, reported the Department's
5 findings, and made recommendations for granting of a special use permit. The Department
6 subsequently issued a "Revised List of Recommended Conditions of Approval," dated March 3,
7 2011. **Exhibit I**, incorporated herein by reference. Both were presented to the Storey County
8 Planning Commission at its meeting of March 3, 2011.
9

10
11 38. Aesthetics are not a consideration under Storey County Code § 17.62.010.

12 39. Though distributed in advance, it is the practice of County Staff to issue reports
13 dated the same day as the hearing. In the Staff Report of March 3, the Building Department
14 acknowledged the existence of towers erected prior to 2008. Section 3.3 states that access to the
15 Taorminas' communication system "may prove to be beneficial and desirable for the public
16 convenience and welfare during times of Emergency Operations Command and extended power
17 or emergency communication outages." This statement was later repeated in the Staff Report to
18 the County Commission, dated May 3, 2011, **Exhibit J**, Section 3.3 at 9. The entirety of Exhibit
19 K is incorporated herein by reference.
20
21

22 40. The Staff Report of March 3 also finds that the proposed structures will "impose
23 minimal to no impacts on the surrounding area" (Section 4.4) and will not cause a noise problem
24 (Section 4.5). These findings were later repeated to the County Commission. *Id.*, Section 4.4 at
25
26 13.
27
28

1 41. At Figure 6, in its Staff Report of March 3, the Planning Department finds:
2 “[T]here appears to be adequate travel space for emergency vehicles and other equipment.” This
3 finding was later repeated to the County Commission. *Id.*, Figure 7 at 14.

4 42. In Section V, Land Use Compatibility & Project Alternatives, of the Staff Report
5 of March 3, the Planning Department also finds: “While the existing amateur radio antenna
6 towers are in fact visible to the neighboring areas, they do not appear to cause detriment or
7 otherwise impact the ‘quality of life’ that presently exists in the residential area.” This finding was
8 later repeated to the County Commission. *Id.*, Section V at 14.

9 43. Section V of the Staff Report of March 3 further states that the Planning
10 Department staff “recommends that the applicant is granted a special use permit to operate the
11 amateur radio communications facility.” This finding was later repeated to the County
12 Commission. *Id.*, Section V at 15.

13 44. At Section XI, at page 20 of the Staff Report of March 3, 2011, “[i]n accordance
14 with findings under *Taormina v. Storey County*, federal and state regulations, and those included
15 in this report,” the Planning Department recommended that the Planning Commission approve
16 one of two options, both of which would grant a special permit for four radio communications
17 masts.

18 45. On March 3, 2011, the special use permit application was heard in open session
19 before the Storey County Planning Commission. At that session, the Planning Department
20 recommended the grant of a Special Permit. The planning commissioners voted to recommend
21 approval of a special use permit for four existing radio communications masts. This completed the
22 Planning Commission’s role, and the matter was forwarded to the County Commission for a
23 decision. **Exhibit J**, Section I at 1.

1
2 Before the Storey County Commissioners, May 3, 2011

3 46. In preparation for the hearing before the Storey County Commission, the
4 Planning Department issued a Staff Report dated May 3, 2011, which recommended the grant of
5 a special use permit, with conditions, in concurrence with the vote of the Planning Commission.
6

7 Exhibit J, incorporated herein by reference.

8 47. In its Report to the County Commissioners (and as it had reported to the
9 Planning Commission), Staff wrote:

10
11 Mr. Taormina serves as the Emergency Coordinator for the local Amateur Radio
12 Emergency Service, a national volunteer organization, and the Radio Amateur
13 Civil Emergency Service, created by the Federal Emergency Management Agency
14 and the Federal Communications Commission. These services are affiliated with
the Department of Homeland Security [reference to an exhibit omitted], and the
American Red Cross. . . .

15 In accordance with the above, access to the amateur radio communication system
16 by key staff may prove to be beneficial and desirable for the public convenience
17 and welfare during times of Emergency Operations Command and extended
power or emergency communication outages.

18 Exhibit J, Section 3.3 (Benefit to Storey County) at 8-9.

19 48. Though aesthetics are not a consideration for the County Commission under §
20 17.62.010, Staff repeated its previous finding for the Planning Commission, stating: "The lattice
21 framework with its exposed and dulled finish blends relatively well with the sky and surrounding
22 mountain backdrop . . ." *Id.*, Section 4.2 (Visual Impacts (towers)) at 10.
23

24 49. To the County Commission, Staff repeated its previous finding for the Planning
25 Commission, stating: "The existing and proposed amateur radio antenna towers . . . should
26 require no FAA signal lighting or applied coloration." *Id.*, Section 4.3 at 13.
27

28 50. In its Report to the County Commission, Staff found:

1 There has been no reported interference with emergency and non-emergency
2 communications related to existing amateur radio operation. . . . It must be noted,
3 however, that the regulation and enforcement of any form of interference
4 resulting from amateur radio systems is entirely within the jurisdiction of the
5 Federal Communications Commission (FCC). No local jurisdiction may impose or
6 enforce regulations related thereto. All complaints related to alleged interference
7 from the amateur radio system must be submitted directly to the FCC.

8 *Id.*, Section 4.6 (Electromagnetic Interference) at 13.

9 51. Repeating its report to the Planning Commission, Staff also found:

10 While the existing amateur radio antenna towers are in fact visible to the
11 neighboring areas, they do not appear to cause detriment or otherwise impact the
12 “quality of life” that presently exists in the residential area. The two proposed
13 monopole towers, exclusively, in accordance with the recommended conditions of
14 approval, also do not appear to cause substantial aesthetic impacts to the area.

15 *Id.*, Section V. (Land use Compatibility & Project Alternatives) at 14.

16 52. The Staff position from its report to the Planning Commission was repeated:

17 “[S]taff recommends that the applicant is granted a special use permit to operate the amateur
18 radio communications facility . . .” *Id.*, Section V. (Land use Compatibility & Project
19 Alternatives) at 15.

20 53. As it did in its report to the Planning Commission, Staff again found that:

21 The proposal appears to comply with the provisions of the Storey County Master
22 Plan. Emergency communications during times of power failure may be enhanced
23 by the amateur ham radio operation making the proposal consistent with
24 provisions on the Ma[s]ter Plan for Emergency Response and Planning. No
25 provisions of the Master Plan prohibit the use.

26 *Id.*, Section VIII. (Master Plan) at 15.

27 54. The properties to the North, East, South, and West, as well as the subject
28 property, are all 10-acre parcels in the HR-10 (Highland Ranches-10 acre minimum lot size)
zone. *Id.*, Section VIII. (Master Plan) chart at 16.

1 55. Staff provided a copy of *Howard v. Burlingame*, 937 F2d 1376 (9th Cir. 1991), to
2 the County Commission as its Exhibit B to the Staff Report, just as it had provided a copy of that
3 case to the Planning Commission. *Id.*, Enclosed Exhibits, at 20.
4

5 56. In advance of the hearing before the Storey County Commission, the Taorminas
6 provided a supplementary document to the Building Department, the County Manager, the
7 District Attorney, and the County Commission, answering questions that arose at the Planning
8 Commission hearing. **Exhibit K**, incorporated herein by reference.
9

10 57. On May 3, 2011, the special use permit application was heard in open session
11 before the Storey County Commission. The Commission voted to continue action on the
12 application, and requested additional information from staff and the Taorminas on the history of
13 the application, as well as a photo simulation from the Taorminas.
14

15
16 **Before the Storey County Commissioners, June 7, 2011**
17

18 58. Fulfilling the request made by the County Commissioners at the May 3 meeting,
19 on June 6, 2011, the Taorminas submitted to the County Manager a detailed timeline of events
20 from 1997 to date. **Exhibit B**.
21

22 59. Despite repeated requests by the Taorminas, as well as statements by Staff in the
23 Report to the Planning Commission of March 3, as well as in the Staff Report to the County
24 Commission of May 3, that negotiation is *required*, there was no negotiation with the Taorminas
25 on the height or number of radio communications masts – not by the County Manager, the
26 Planning Commission, the Community Development Director, the Senior Planner, the District
27 Attorney (nor any staff member), nor by the County Commission.
28

1 60. From May 15 to June 6, 2011, there was no contact from the County, even
2 though, as the Staff report to the Planning Commission, and the Staff report to the County
3 Commission pointed out, the decision of the Ninth Circuit Court of Appeals in *Howard v.*
4 *Burlingame*, 937 F2d 1376, 1380 (9th Cir. 1991), requires the County to: “consider the
5 application, make factual findings, and attempt to negotiate a satisfactory compromise with the
6 applicant.”
7

8 61. On June 3, 2011, the Taorminas conveyed to the Building Department staff, the
9 County Manager and the District Attorney that even though it was the eve of the planned
10 County Commission meeting, the Taorminas were still prepared to enter into good-faith
11 negotiations with the County Commissioners.
12

13 62. The County Manager’s e-mail to the Commissioners of June 6, 2011 states that
14 the expression that “federal rulings . . . *require* the Governing Board to “attempt to negotiate a
15 compromise with the applicant” in order to “reasonably accommodate amateur radio antenna
16 towers” is consistent with staff’s understanding of PRB-1. (*Emphasis in original.*) **Exhibit L**,
17 incorporated herein by reference.
18

19 63. Through staff, as well as at a meeting on June 6, 2011 with the Building
20 Department, County Manager and County District Attorney, the Taorminas pointed out again
21 that there had never been any negotiations about the number or height of radio communications
22 masts with the County Commission or with any agent for the Commission.
23

24 64. Nonetheless, in a letter dated June 6, 2011, the Taorminas submitted a
25 compromise proposal to Staff and the Commission, known as Motion F, to reduce the number of
26 requested masts from six to five, and reduce the height of the tallest structure proposed from 195
27 feet to 175 feet. See **Exhibit C**, incorporated herein by reference.
28

1 65. Motion F reads:

2 **ALTERNATIVE: MOTION F:** In accordance with the recommendation of the
3 Community Development Department that this use is in accordance with section
4 17.62.010 (see letter of April 28, 2011), to grant a Special Use Permit for Planning
5 Case No. 2011-010, allowing the Applicant to maintain *three existing amateur radio*
6 *antenna lattice towers (not to exceed 140, 140 and 110 feet in height) and to install two*
7 *monopole towers for which building permit # 8354 has previously been granted (not to*
8 *exceed 175 and 140 feet in height). "Existing" contained herein means that each*
9 *permitted tower will remain at or lower than its current height and at or less than*
10 *its structure face. This motion allows the permit holder to move the permitted*
11 *towers around the property, so long as there are no more than five antenna*
12 *support structures greater than 45 feet in height, and each tower remains in*
13 *compliance with the limitations of this Special Use Permit, and the applicable*
14 *Storey County Building Code, including setbacks and noise requirements for the*
15 *use of an emergency power generator. This Special Use Permit shall be valid only*
16 *so long as Mr. or Mrs. Taormina, or a close family member (such as brother, sister,*
17 *son, daughter, niece, nephew) is a resident at the location.*

18 (Emphasis in original.)

19 66. Even though visual impact is not a consideration in the language of Storey
20 County Code § 17.62.010, at the request of County Staff, the Taorminas submitted accurate
21 photo simulation renderings to the County Commission. **Exhibit M**, incorporated herein by
22 reference.

23 67 The continuance of the special use permit application was heard at the County
24 Commissioner's meeting of June 7, 2011. The Taorminas and staff each presented timelines
25 (**Exhibits A and B**). The difference between the two timelines is that the Taormina timeline
26 includes matters which the staff was unable to confirm or deny.

27 68. Senior Planner Osborne confirmed that the Community Development
28 Department had examined the timeline submitted by the Taorminas and, except for events
which the Building Department could not confirm or deny from its own records, the Building

1 Department had no disagreement with any of the items in the Taormina timeline. He also
2 reinforced the Building Department's staff recommendation to approve four existing structures.

3 69. Senior Planner Osborne also read and offered the Taorminas' compromise
4 proposal as Motion F for consideration by the Commission.
5

6 70. In his presentation to the County Commission, counsel for the Taorminas pointed
7 out that there had never been any negotiation on the number or height of radio communications
8 masts, and that a hearing, where the Commission controls the agenda and timing, is no
9 negotiation.
10

11 71. At no time did any member or representative of the County Commission attempt
12 to negotiate the number or height of radio communications masts with the Taorminas.

13 72. At no time did the Commissioners discuss Motion F.

14 73. At the end of the public comments, the County Commission voted. The decision
15 of the County Commission reads, in full:
16

17 **Motion:** Maintain all existing amateur HAM radio towers which have received
18 approved Storey County building permits and deny those which have not been
19 erected with an approved building permit, in no case will any tower exceed 45 feet
20 in height, and to deny SUP 2011-010 and the owner of property should be in
21 compliance with this within 90 days and if the house sells, forecloses or the
22 passing, only towers with permits may stay, **Action:** Approve, **Moved by**
23 Commissioner Sjovangen, **Seconded by** Vice-Chairman Hess and Chairman
24 Kershaw.

25 See **Exhibit N**, incorporated herein by reference.

26 74. The decision of the County Commission rejected the recommendations of the
27 County Staff and denied a special use permit for any amateur radio antenna support structures
28 (radio communications masts). This decision contains neither findings nor reasoning for the
denial of the special use permit.

1 75. The minutes of the meeting of the County Commission were approved on July 5,
2 2011, making the decision of the County Commission final. This action is timely filed.

3
4 **The County Did Not Reasonably Accommodate**

5
6 76. Though the Taorminas repeatedly emphasized the Ninth Circuit's requirement for
7 negotiation, and the Staff acknowledged this requirement, both in its report to the Planning
8 Commission and in its report to the County Commission, Staff never made an offer to negotiate,
9 and never did negotiate with the Taorminas on the subjects of the number and heights of radio
10 communications masts, despite repeated requests by the Taorminas to do so.

11
12 77. Through Staff, including the County Manager and the District Attorney, as well
13 as at the meeting of June 6, and the hearing of June 7, the Taorminas pointed out that there had
14 yet never been any negotiations with the County Commission on the subjects of the number and
15 heights of radio communications masts.

16
17 78. At no time did any member of the Storey County Commission negotiate with the
18 Taorminas.

19 79. The Commission never discussed Motion F, the Taorminas' compromise proposal.

20
21 80. The Planning Commission recommendation for a special use permit allowing four
22 radio communication masts was not approved.

23 81. None of the staff recommendations to grant a special use permit was approved.

24
25 82. The decision of the County Commissioners was to deny the special use permit
26 application in its entirety, in any form. See **Exhibit N** at 8.

27
28 83. Inherent in 47 CFR § 97.15(b), and NRS 278.02085 is the concept that radio
amateurs must be allowed antennas adequate for effective communications.

1 84. The FCC has held that antenna height is important to effective radio
2 communications.

3 Because amateur station communications are only as effective as the antennas
4 employed, antenna height restrictions directly affect the effectiveness of amateur
5 communications. Some amateur antenna configurations require more substantial
6 installations than others if they are to provide the amateur operator with the
7 communications that he/she desires to engage in. For example, an antenna array
for International amateur communications will differ from an antenna used to
contact other amateur operators at shorter distances.

8 Memorandum Opinion and Order (FCC 85-506), **Federal Preemption of State and Local**
9 **Regulations Pertaining to Amateur Radio Facilities**, FCC Order PRB-1 at ¶ 25, 101 FCC 2d
10 952, 50 Fed. Reg. 38813 (September 25, 1985),
11 <http://wireless.fcc.gov/services/amateur/prb/index.html> (last visited August 18, 2011) (the
12 foundation Order for 47 CFR § 97.15(b).

13
14 85. The Taorminas defined and presented their needs for effective communications in
15 a document entitled “Needs Analysis,” provided with their initial building permit application of
16 August 2008. It was prepared by an electrical engineer, using software developed by the US
17 Navy and the Voice of America for short-wave and VHF communications. It was provided to the
18 Planning Commission, and to the County Commission, as Exhibit F to the Planning
19 Department’s staff reports. **Exhibit J** at 20.

20
21 86. The County Commission has failed to reasonably accommodate the needs of the
22 Taorminas for the communications that they desire.

23
24 87 By letter of February 28, 2011, including a copy of the Order from the U.S.
25 District Court that followed *MacMillan v. City of Rocky River*, 748 F. Supp. 1241 (N.D. Ohio),
26 counsel for the Taorminas brought to the attention of the County that municipal immunity can
27
28

1 be removed when a special permit granting authority defies the requirements of the law. **Exhibit**
2 **O**, incorporated herein by reference.

3 88. By email dated June 6, 2011, counsel for the Taorminas again reminded the
4 County of its obligation to engage in good-faith negotiations, and further, that the Taorminas
5 reaffirmed their willingness for a compromise. **Exhibit P**, incorporated herein by reference.
6

7 89. The County Commissioners had full knowledge of the requirements of the law, as
8 the matter had been extensively briefed in the litigation before this Court, was the subject of a
9 staff report to them, and was brought to their personal attention at the two hearings.
10

11 90. As a result of a failure to negotiate, and a failure to reasonably accommodate the
12 Taorminas' demonstrated communications needs, in the face of the requirements of the law,
13 especially 47 CFR § 97.15(b) and NRS 278.02085, and the Ninth Circuit's instructions in
14 *Howard v. Burlingame* (which law was presented to staff well in advance, discussed by this Court
15 in *Taormina I*, and included in the staff reports to both the Planning Commission and the County
16 Commission), as well as discussion at both sessions of the hearing before the County
17 Commission, the County Commission has demonstrated that it has no intention of obeying the
18 requirements of the law.
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DETRIMENTAL RELIANCE AND VESTED RIGHTS

1
2 91. In *Taormina I*, this Court wrote: “Plaintiff has not presented any
3 evidence suggesting that he reasonably relied on the granting of his building permits to his
4 detriment.” *Taormina I*, Document 19, Order, at 8, fn 6. The reason that no evidence was
5 initially submitted to the Court was that the only matter for consideration by the Court at the
6 time was whether the ordinance was legal on its face, in light of 47 CFR § 97.15(b) and NRS
7 278.02085.
8

9 92. “Because Plaintiff’s ‘as applied’ claim was not ripe for review at the time of the
10 judgment, its dismissal will not bar Plaintiff from challenging the Storey County regulations as
11 applied to him in the future.” *Taormina I*, Document 24, Order, at 3. As we are now in the “as
12 applied” portion of the litigation, the time has come to consider the Taorminas’ theory of
13 detrimental reliance to affirm the validity of the building permit.
14
15

16 93. The Taorminas relied to their detriment on the grant of the building permit that
17 was later subject to a stop work order. Between the grant of the building permit and the stop
18 work order they met every test under Nevada law for detrimental reliance, spending more than
19 \$65,000 in construction costs. See **Exhibit G** submitted to the County Commission at its hearing
20 of June 17, 2011.
21

22 94. The Supreme Court of Nevada has stated Nevada law on vested rights:

23
24 The general rule is that any substantial change of position, expenditures, or
25 incurrence of obligations under a building permit entitles the permittee to
complete the construction and use the premises for the purpose authorized . . .

26 *Reno v. Nevada First Thrift*, 100 Nev. 483, 487 (1984).
27
28

1 95. The Storey County Deputy District Attorney conceded that the Nevada
2 rule on vested rights applied to this case when she wrote to the Director of the Storey
3 County Planning Department:

4 In Mr. Taormina's case, your department has apparently already issued building
5 permits for the towers he wishes to build. . . . As such, it would appear to me that
6 you have waived the height limitations set out in SCC § 17.12.044.

7 **Exhibit Q**, incorporated herein by reference, at 2-3.

8 96. Under Nevada law, the building permit for the two monopoles was granted, rights
9 have vested, and the stop work order is invalid. See *Reno v. Nevada First Thrift, op.cit.*

10 97. **Exhibit E**, at Figure 5 of the County's Staff Report, shows a photo of the
11 monopoles subject to the Stop Work Order, in sections and on the ground, awaiting erection.

12 98. This Court should rule that the building permits are valid, and enjoin the County
13 from enforcement action to prevent the completion of construction for those two radio
14 communication masts.
15
16

17
18 **REQUEST FOR RELIEF**

19 As a result of the need to return to this Court for this "*as applied*" phase of litigation,
20 Plaintiffs respectfully request that:
21

22 (1) This Court order that Building Permit No. 8354 (for two monopoles) is valid.

23 (2) This Court order the County to revoke its Stop Work Order, and further to order
24 the Commission to grant the special use permit as applied for.
25

26 (3) In the alternative, this Court order the County Commission to adopt Motion F
27 (see **Exhibit P**) and cause the Building Department to issue all appropriate accompanying
28 building permits.

1 (4) For its complete failure to reasonably accommodate the communications needs of
2 the Taorminas, despite requirements of law well known to them, this Court should strip the
3 individual Commissioners of their municipal immunity, and grant a motion to allow for damages
4 to be brought against the individual commissioners, as well as the County, jointly and severally
5 for attorneys' fees and costs incurred in the prosecution of these actions.
6

7 (5) For its complete failure to reasonably accommodate the Taorminas'
8 communications needs, despite requirements of law well known to them, this Court should allow
9 reasonable attorneys' fees.
10

11 (6) This Court should rule that rights under Building Permit No. 8354 for the
12 "Erection of two Ham Radio Towers" (radio communications masts), granted on June 27,
13 2008 (see **Exhibit D**) have matured, due to the doctrine of detrimental reliance.
14

15 (7) This Court should rule that rights to Building Permit No. 8354 have vested, the
16 building permit is valid, and the Stop Work Order, as it applies to this building permit is invalid.
17

18 (8) Such injunctive relief as necessary to mandate the Storey County Commission
19 follow this court's orders and prohibit the Story County Commission from further acts
20 inconsistent with this court's orders prohibiting such acts.
21

22 (9) This Court should order such other and further relief and remedies as justice and
23 equity require.
24

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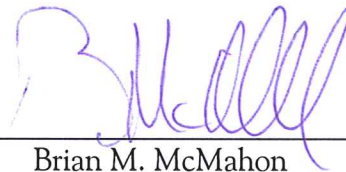
Dated: September ⁶ , 2011.

Respectfully submitted,

McMAHON LAW OFFICES, LTD.

FRED HOPENGARTEN

By



Brian M. McMahon
Attorneys for Plaintiffs
Thomas S. Taormina and
Midge A. Taormina

Exhibit 5

Exhibit 5

**Report of the Amateur Radio Legal Defense and Assistance Committee
The American Radio Relay League
2011 Annual Meeting of the Board of Directors**

Committee Members: Director Cliff Ahrens, K0CA, Chairman; Director Frank Fallon, N2FF; Vice Director Mike Raisbeck, K1TWF; Vice Director Jim Tiemstra K6JAT; Vice Director Marty Woll N6VI; General Counsel Christopher Imlay, W3KD; and Jim O'Connell, W9WU.

Committee Activities

This committee 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 Antenna Defense Fund.

As previously reported to the board, the committee received and approved a funding request to assist Alec Zubarau WB6X, of Palmdale, California, in litigation with the city concerning his antenna and support structure. WB6X prevailed in the trial court, which vacated the City's revocation of his tower permit. The City appealed the trial court's decision. Zubarau cross-appealed the court's denial of his request to invalidate portions of the City's Zoning Code and to declare portions of the ordinance unenforceable as preempted by Federal law. General Counsel Imlay prepared and filed an *amicus curiae* brief on behalf of the ARRL in support of WB6X's claims. Imlay also assisted Volunteer Counsel Len Shaffer WA6QHD with the oral argument before the California Court of Appeals, on November 2, 2010. On January 6, 2011, the appellate court requested additional briefing on an issue raised by the court. General Counsel Imlay is working with attorney Shaffer on this filing which is due January 10, 2011. Counsel are awaiting a decision from the appellate court.

As previously reported to the board, the committee has received a preliminary inquiry from attorney and ARRL Volunteer Counsel Fred Hopengarten K1VR, who is representing Tom Taormina K5RC in a suit against Storey County, Nevada. In the suit, K5RC seeks a declaration that portions of the county's zoning code are preempted by state and federal law, and requests that the court order the county to withdraw a stop work order and issue the requested building permits. This committee will consider any request for funding which may be forthcoming.

General Counsel Imlay is monitoring an administrative appeal involving Ryan Caines KX3C, in Charlotte, North Carolina. An active North Carolina Volunteer Counsel is handling the administrative appeal. Apparently, a granted permit for a tower over 70 feet was cancelled after the tower went up and local residents complained. North Carolina has a PRB-1 statute which requires that a city or county must reasonably accommodate Amateur Radio antennas or support structures of 90 feet or less in height.

The committee worked with Dan Henderson to include information about the purpose and funding guidelines of the Legal Defense Fund on the ARRL Web site. See: <http://www.arrl.org/arldac>

West Gulf Director David Woolweaver K5RAV requested input from the committee concerning a proposal he is considering submitting to the Programs and Services Committee to operate an ARRL reflector for only Volunteer Counsel, to establish a VC only secure web site for briefs and other legal documents, and to have a Webinar on Amateur Radio related legal issues for Volunteer Counsel. Several committee members shared comments with Director Woolweaver.

There are no other matters presently pending before the committee.

Cliff Ahrens, K0CA
Chairman

Exhibit 6

Exhibit 6

Jed Margolin

From: "Jed Margolin" <jm@jmargolin.com>
To: <n3kn@arrl.org>
Sent: Wednesday, March 23, 2011 7:47 AM
Subject: Fw: K5RC Tower Issue

Dear Kay,

Are you planning to respond to my email of March 14?

73,

Jed Margolin
 WA2VEW

=====

----- Original Message -----

From: [Jed Margolin](#)
To: n3kn@arrl.org
Sent: Monday, March 14, 2011 9:15 AM
Subject: K5RC Tower Issue

Dear Kay.

We are having a problem up here in Storey County, Nevada. My community is 22 miles SE of Reno, and five miles down the road from Virginia City. If you have seen the old TV show Bonanza, you have heard of Virginia City. It's where the Cartwrights usually went when they had business to do.

Tom Taormina, K5RC, is making a real nuisance of himself and is giving Ham Radio a black eye.

He has five towers, the tallest of which is 140 feet, and wants to install two more towers, both 195 feet. It's in a residential area.

The Storey County Code limits ham towers to 45 feet. Towers higher than that require a Special Use Permit.

Tom refused to apply for a Special Use Permit and sued the County instead, in U.S. District Court for the District of Nevada *Thomas S. Taormina v. Storey County* Case 3:09-cv-00021-LRH-VPC Filed 01/15/09.

He lost, but the case was only about whether he had to follow the law and apply for a Special Use Permit.

He has now done that. The Planning Commission decided he could keep his existing towers but could not put up the 195 foot towers.

The issue is very controversial, if not downright vicious. While he has some support within the community, most of his support comes from outside the County. Some comes from outside Nevada, especially from Texas and California.

I am been a licensed ham for more than 49 years. I am against his new towers because, for one thing, he has used bogus technical arguments to justify his need for the new towers.

He has consistently stressed that he needs the new towers to provide reliable communications with China in the event of an emergency, with the quality of communications at the level that Voice of America strives for in its short wave broadcasts.

The fact is, he wants the new towers to improve his scores for his real passion, contesting. He is, indeed, a world class contester.

I don't have anything against contesting. I do have something against lying.

(For local emergencies, Tom did have a 70cm repeater but he took it down and will not put it back up unless it is on a 195 ft tower.)

I have posted the documents in the case on my server at:

http://www.jmargolin.com/towers/tom_index.htm

Tom's Web site is <http://k5rc.cc> (If you mouse over the links to his documents you will see that they go to my server.)

Tom is still trying to mislead people. His Web site says:

On March 3rd, the first hurdle was passed when the Storey County Planning Commission voted to approve our Special Use Permit, with conditions. The conditions are under review.

This process has several more steps and will likely not be finalized until late April. Please stay tuned for updates.

What the Planning Commission did was accept the Staff Report recommendation:

PROPOSED MOTION B: Based on findings and compliance with all conditions and stipulations stated forth in this report, staff moves to recommend that the Storey County Planning Commission approve Case No. 2011-010 to maintain the four (4) existing amateur ham radio antenna towers applicable to this SUP in accordance with the limitations set forth hereby and deny installation of any additional towers on the property located at 370 Panamint Road (APN 003-431-18), Highland Ranches, Storey County, Nevada.

The Planning Commission decided to adopt Motion B but added language to clarify that towers are subject to the 45 foot height limit for towers and not the 35 foot height limit under the ordinance about structures. I don't have the exact wording that they added.

The next step is for the County Commissioners to accept or reject the Planning Commission's recommendation.

There is an article in the Virginia City News that accurately reports on the meeting:

<http://virginiacitynews.com/tempest-over-vchighlands-towers-erupts-at-meeting-p3694-1.htm>

My reason for contacting you directly is that Tom has used the ARRL logo on the document:

Supplemental Information For an Amateur Radio Facility Accompanying an Application For a Special Use Permit - December 30, 2010:

http://www.jmargolin.com/towers/pc/101229_K5RC_Ant_App_SUP_v15.pdf

- a.** Does Tom have permission to use the ARRL logo for his case?
- b.** Has the ARRL given its official support to Tom in his case?
- c.** Tom's attorneys are Brian M. McMahon, Esq., Reno, NV and Fred Hopegarten, Esq., Lincon, MA. Is the ARRL giving financial support to Tom in his case, either directly or indirectly?

Fred, Esq., Lincoln MA was at the March Planning Commission meeting. It must have cost a bundle to have him fly out here. Is ARRL paying him?

And, BTW.

After this case got started, this is what Tom's friends in Texas (The Texas DX Society, Houston TX) wrote about it in their September 2008 issue of **The Bullsheat** starting at the bottom of page 3:

The Virginia City Highlands antenna wars continue with General Taormina K5RC directing the troops in full battle mode. It now turns out that another traitor ham in the neighborhood is a ring leader in the "stop K5RC" movement! Ugh! He has apparently gotten copies of Tom's building permit applications and crafted some poorly written rebuttals to the Deputy DA's office. The DDA now says that she is not going to grant building permits for the exist-ing towers because Tom ignored the "law" all these years by not obtaining building permits. Tom is now seeking injunctive relief from the arbitrary and capricious actions of this small-time politician. Tom says, "it appears that we are still QRX on major tower work. Even though we have enough compelling legal arguments to be the USS Enterprise doing battle with a dinghy, this is shaping up to be a time consuming and costly battle." Latest update: "Despite yeoman's effort by K1VR and the local attorney, the Deputy DA is making no meaningful concessions at this point. Last week, she was steadfast that the 45' height limit was enforceable and that I would have to apply for a special use permit for each tower. That was challenged and is no longer at the top of the hit parade (although it is still not resolved). Then, I was accused of flaunting (her words) my antennas by ignoring the County requirement for building permits and for violating the CC&R's prior to 2003. This has all been explained in writing to her and we have a solid case for why we are right, but no concession yet. Today, she added another ridiculous piece to the mix saying that the antennas themselves had to be less than 45' x 60' because that number is in a statue relating to buildings. Fred responded to that this afternoon with the mes-sage that only the 80M beams are larger and WHY THE H*** HASN'T SHE GRANTED THE REMAINING PERMITS? Bottom line is that this drama is apparently going to continue for weeks to come." Keep Tom in your thoughts and prayers concerning this issue since it affects all of us regardless of locale.

He defamed me, and he defamed my County.

I exchanged some cordial emails with Steve Smothers (W9DX). Well, mine were cordial. But the result was that they removed the offensive article from their newsletter. See

<http://www.tdxs.net/bs2008/Sep08.pdf>

When I was licensed in 1961 there was something called the Amateur's Code. Whatever happened to that?

If ARRL is, indeed, supporting Tom in his case you have chosen a very poor poster-child for Ham Radio rights.

73,

Jed Margolin, WA2VEW
Virginia City Highlands, NV

Exhibit 7

Exhibit 7

Jed Margolin

From: "Kay Craigie" <n3kn@verizon.net>
To: "Jed Margolin" <jm@jmargolin.com>
Sent: Wednesday, March 23, 2011 8:36 AM
Subject: RE: K5RC Tower Issue

I have acknowledged receipt of your e-mail, and that is all the response I intend to make. 73 - Kay N3KN

Exhibit 8

Exhibit 8

November 27, 2012

HUFF
POST TECH

Drones, Balloons May Help In Next Hurricane, Beaming Wi-Fi From The Sky

Posted: 11/15/2012 8:08 pm EST Updated: 11/16/2012 10:48 am EST



Call it Wi-Fi from the sky.

As Hurricane Sandy battered the Northeast, power outages wreaked havoc on telecommunications networks, [knocking out wireless service for thousands of cell phone users](#).

If a future hurricane triggers similar failures, regulators say they have a potential solution. It has the hallmarks of science fiction: floating wireless antennas from balloons or drones.

The Federal Communications Commission is exploring the use of such airborne technology to restore communications after disasters. Beaming 3G or Wi-Fi signals from the sky may be especially useful to emergency responders in the immediate aftermath of a hurricane, when repair crews are unable reach damaged equipment because roads and bridges are impassible, experts said.

"It sounds futuristic, but the technology is absolutely there," said Daniel M. Devasirvatham, a chief technology officer at Science Applications International Corp.

This spring, the Federal Communications Commission [asked for public comments](#) on the potential for deploying wireless networks via small drones or weather balloons, saying it could "further strengthen and enhance the security and reliability of the nation's communications infrastructure."

"We know this technology can work," FCC Chairman Julius Genachowski said in a statement in May.

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Genachowski added it "would have been remarkably useful" after Hurricane Katrina, when dozens of 911 call centers were inoperable and more than 3 million customers lost telephone service.

Though not as severe, the damage to telecommunications networks after Hurricane Sandy was significant. After the storm, about 20 percent cell towers across 10 states failed, [leaving thousands of customers unable to make cell phone calls for days](#). Some 911 service was also disrupted after the storm. Wireless companies said they used portable cell towers on wheels, known as COWS, as temporary backups. But deploying wireless signals through the air could restore emergency communications more quickly, especially in hard-to-reach areas, experts said.

For years, the military has used drones and balloons to create communications networks in remote places. The Federal Emergency Management Agency has recently flown single-engine planes with broadband antennas to provide backup emergency communications after wildfires in Texas, the earthquake in Virginia, and ice storms in Kentucky, [according to Vincent Boyer, a telecommunications manager for FEMA](#).

But commercial wireless providers like AT&T and Verizon have never used such technology to serve customers after a disaster. And there are still many questions about how it would be implemented.

A drone, for example, would need to comply with federal aviation regulations. And wireless providers are concerned that floating wireless equipment could interfere with signals at cell phone towers that are still operating.

Exhibits - 61

[In a filing with the FCC](#), the CTIA, which represents the wireless industry, said deploying airborne telecommunication equipment "risks doing more harm than good" unless there is coordination between public safety agencies, wireless providers, and owners of broadcast licenses.

In addition, some say the potential of balloons or drones to restore widespread communications failures is limited.

"If you had outages extending for 20 or 30 miles, these technologies don't have enough range to bridge that gap," said Mitchell Lazarus, an attorney who represents telecom companies.

But Steve Gittlin, vice president of investor relations at AeroVironment, a drone manufacturer, said his company's battery-powered drones could be outfitted with wireless equipment and used by emergency responders to communicate if wireless coverage failed. The company's smaller drones are the size of a backpack and fly below 500 feet, he said.

Gittlin said the company is developing a larger drone -- which has the wingspan of a Boeing 757 -- that would fly at 60,000 feet and potentially provide wireless coverage across more than 600 miles.

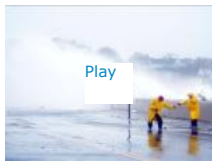
"You could cover the northeastern United States with one of these aircrafts," Gittlin said.

Jerry Knoblach, chief executive of Space Data Corp., which provides balloons that deliver telecommunications services for the military, said his company's technology also could deliver service across a 600-mile area.

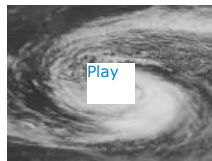
The balloons, filled with hydrogen or helium, soar about 65,000 feet high and carry telecommunications equipment about the size of a shoebox. The balloons comply with FAA regulations because they weigh less than 12 pounds, Knoblach said. They typically last 24 hours before the batteries run out or thin air causes them to burst, sending the equipment parachuting to the ground. Knoblach said his company is testing whether its balloons could provide broadband Internet to public safety officers after disasters.

After a hurricane like Sandy, Knoblach said his company's wireless service would likely have been overloaded if thousands of customers tried to connect at the same time. Still, AT&T and Verizon could install their equipment inside one of his balloons and allow first responders or a limited number of customers to communicate in an emergency, he said.

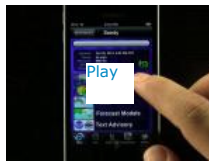
"It would be enough capacity for public safety officers and 911 calls," Knoblach said. "It could save a lot of lives."



Why Do We 'Check In' to Hurricane Sandy?



Innovation At NWS: National Hurricane Center Pinpoints Storms



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