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17 Attorneys for Plaintiffs

18 UNITED STATES DISTRICT COURT
19 DISTRICT OF NEVADA

20 THOMAS S. TAORMINA, et al.,)
21)
22 Plaintiffs,)
23)
24 vs.)
25)
26 STOREY COUNTY, NEVADA,)
27)
28 Defendants.)

3:11-CV-00645-RCJ-VPC

JOINT CASE MANAGEMENT REPORT

January 18, 2012

1 **Nature of Case**

Plaintiffs applied for, and were granted, a building permit for two amateur radio communications masts on their ten-acre homestead. Sometime later the county issued a stop work order. Plaintiffs claimed that the zoning ordinance was preempted on its face by federal and

1 state law, and filed for declaratory relief, seeking an order that required building permits be issued
2 as a matter of right. This Court denied declaratory relief and ruled that the county may require a
3 special use permit for amateur radio communications masts under Storey County Code §
4 17.62.10. Plaintiffs applied for building permits for two additional amateur radio communications
5 masts, and a special use permit, in accordance with this Court's Order in the preceding related
6 case, for all four amateur radio antenna support structures (the two permitted under the original
7 building permit subject to the stop work order, and two additional masts) on their ten-acre
8 homestead. Staff recommended that the Planning Commission should recommend the issuance
9 of a special use permit. After a public hearing, the Planning Commission, with factual findings,
10 voted unanimously to recommend that the County Commission should issue a special use permit.
11 In accordance with the vote of the Planning Commission, with a few modifications, staff then
12 recommended to the County Commission that the County Commission should issue a special use
13 permit. The County Commission, with no findings, voted unanimously to deny the special use
14 permit.
15
16
17

18 Plaintiffs now return to this Court and allege that the building permit for the two
19 communications masts for which a building permit was issued has vested, and that county code §
20 17.62.010 is preempted by federal and state law as applied in this case, because the application
21 for a special use permit has been wrongly denied.
22

23 2. Principal Dispute(s)

24
25 **Factual Disputes.** At this time, the parties anticipate that it will be possible to agree on a
26 statement of undisputed facts adequate for the Court to resolve the legal questions before the
27 Court.
28

1 **Legal Disputes.** The parties dispute whether the prior granting of a building permit for
2 two communications masts, coupled with substantial change of position, expenditures, or
3 incurrence of obligations under the building permit issued, caused rights to vest under Nevada
4 law, precluding the county from later issuing a stop work order. Additionally, the parties further
5 dispute whether Plaintiffs relied to their detriment on the grant of a building permit later subject
6 to a stop work order.
7

8 The parties dispute whether the county has made the factual findings required by *Howard*
9 *v. City of Burlingame*, 937 F2d 1376, 1380 (9th Cir. 1991).
10

11 The parties dispute whether the county has engaged in the negotiation required by
12 *Howard v. City of Burlingame*, 937 F2d 1376, 1380 (9th Cir. 1991).
13

14 The parties dispute whether the county, in denying a special use permit for amateur radio
15 communications masts, has reasonably accommodated the Taorminas need for the
16 communications that he/she desires to engage in as required by federal (47 CFR § 97.15(b)) and
17 state law (NRS 278.02085).
18

19 The parties dispute whether the county, in denying a special use permit, has engaged in
20 the minimum practicable regulation required by federal (47 CFR § 97.15(b)) and state law (NRS
21 278.02085) for the construction of amateur radio communications masts.
22

23 The parties dispute whether the county's ordinance is preempted federal (47 CFR §
24 97.15(b)) and state law (NRS 278.02085) as applied.
25

26 **3. Jurisdiction**

27 Jurisdiction over Plaintiffs' federal claims is based on 28 U.S.C. §§1331 (original
28 jurisdiction for a "federal question") and 1337 (original jurisdiction "arising under any act
regulating commerce"). Declaratory relief as requested herein is authorized by virtue of 28 USC

1 §2201 *et seq.* (declaring rights “in a case of actual controversy within its jurisdiction”) and
2 F.R.Civ.P. 57 - Declaratory Judgments.

3
4 Jurisdiction over Plaintiffs’ state law claims is based on 28 U.S.C. §1367 (supplemental
5 jurisdiction) because such claims are so related to claims in this action within the original
6 jurisdiction of this Court that they form part of the same case or controversy under Article III of
7 the United States Constitution.
8

9 **4. Parties Not Served**

10 Does 1-10 have not been served, as their identity is unknown to Plaintiffs.

11 **5. Additional Parties**

12 Plaintiffs do not expect to join additional parties, or otherwise amend the pleadings
13 (except to name such Doe parties as may be discovered).
14

15 **6. Contemplated Motions**

16 **a. Plaintiffs’ Motions**

17 **i. Summary Judgment**

18 Plaintiffs plan to move for Summary Judgment, pursuant to Rule 56, Fed. R. Civ. P. As
19 Plaintiffs contend there are no genuine disputes as to any material facts, Plaintiffs anticipate this
20 motion will decide all of Plaintiffs’ claims, including vested rights, detrimental reliance,
21 reasonable accommodation, and preemption as applied.
22

23 **7. Pending Motions**

24 To waive LR IA 10-2, so that Fred Hopengarten, Esq., may be permitted to continue
25 representation begun in the prior litigation, and again be admitted *pro hac vice*, under the
26 supervision of Brian M. McMahon, Esq., of Reno. This motion was filed November 16, 2011.
27
28

1 More than fourteen (14) days having passed, see LR 7-2, no opposition has been filed. Unless this
2 motion is granted, Plaintiffs' ability to continue will be materially impaired.

3 **8. Status of Related Cases**

4 There are no related cases *pending*. However, Case # 3:09-CV-00021-LRH-VPC, decided by
5 U.S.D.J. Hicks, held the Storey County Code was not preempted on its face, and that Plaintiffs
6 should apply for a special use permit under Storey County Code § 17.62.010, holding that:
7

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

14 Plaintiffs applied and the County denied the special use permit requested, denying all
15 amateur radio communications masts requested. This lawsuit resulted.

16 **9. Necessary Discovery**

17 **a. Plaintiffs' Planned Discovery**

18 **i. Requests for Admission**

19 Plaintiffs will serve at least one set of Requests for Admissions.
20

21 **ii. Written Interrogatories**

22 Plaintiffs will serve at least one set of interrogatories.
23

24 **iii. Requests for Production or Inspection**

25 Plaintiffs will serve at least one set of Requests for Production.
26

27 **iv. Depositions**

28 At this time, Plaintiffs do not plan to take any depositions.

///

1 **a. Defendant's Planned Discovery**

2 **i. Requests for Admission**

3 Defendant may serve at least one set of Request for Admissions

4 **ii. Written Interrogatories**

5 Defendant may serve at least one set of interrogatories.

6 **iii. Requests for Production or Inspection**

7 Defendant may serve at least one set of Requests for Production.

8 **iv. Depositions**

9 Defendant may wish to depose Mr. Taormina.

10 **b. Suggested Revisions to Discovery Limitations**

11 Plaintiffs propose that up to 35 written interrogatories be approved by the Court,
12 pursuant to Rule 33, Fed. R. Civ. P.

13 **c. Hours Permitted for Each Deposition**

14 N/A

15 **10. Discovery of Electronically Stored Information ("ESI")**

16 Plaintiffs will require Defendants to produce any relevant e-mail, text messaging, Twitter
17 transmissions, etc., among the county commissioners, between any county commissioner and
18 county staff, between any planning commissioner and staff, between any planning commissioner
19 and county commissioner, between any planning commissioner and member of the public, and
20 between any county commissioner and member of the public.

21 ///

22 ///

1 **11. Claims of Privilege or Work Product**

2 Counsel shall exert their best efforts to identify documents or material protected by the
3 attorney-client privilege or the work-product doctrine prior to the disclosure of any such
4 documents or material.
5

6 **12. Proposed Discovery Plan**

7 See accompanying Joint Discovery Plan.

8 **13. Jury Trial**

9 No jury trial has been requested.
10

11 **14. Estimated Length of Trial**

12 Four days.

13 **15. Case Management Conference**

14 The parties will bring their calendars to the case management conference.
15

16 **16. Proposed Scheduling Order**

17 The parties have included the required language in their proposed scheduling order.
18

19 **17. Settlement Prospects**

20 Plaintiffs believe the prospects for settlement are poor. The parties have been represented
21 by counsel since 2008, administrative hearings before the Planning Commissioners and the
22 County Commissioners have been held, and this controversy has previously come before this
23 Court. Notwithstanding these facts, since Plaintiffs' initial claim in 2008 of rights under 47 CFR §
24 97.15(b) (2006) and NRS 278.02085, and despite the fact that the Plaintiffs have repeatedly
25 pointed out the county's legal obligations under federal law, including the obligations to
26 negotiate, as well as to apply the minimum practicable regulation with regard to the amateur
27
28

1 radio masts requested, no negotiation has ever been authorized by the County
2 Commissioners. The Commission's denial of the special use permit results in a denial of
3 the protected amateur radio communications to be engaged in by Plaintiffs.

4 **18. Misc. Matters**

5 N/A
6

7
8 Respectfully submitted,

9 Dated: January 18, 2012.

10 McMAHON LAW OFFICES, LTD.

11 FRED HOPENGARTEN, Esq.

12 //s// Brian M. McMahon

13 By _____

14 Brian M. McMahon
15 Attorneys for Plaintiffs
16 Thomas S. Taormina and
17 Midge A. Taormina

18 Dated: January 18, 2012.

19 THORNDAL ARMSTRONG DELK
20 BALKENBUSH & EISINGER

21 //s// Brent T. Kolvet

22 By: _____

23 Brent T. Kolvet, Esq.
24 Attorney for Defendant,
25 STOREY COUNTY

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I hereby certify that I am an employee of McMahon Law Offices, Ltd., and that on the 18th day of January, 2012, I served a true and correct copy of the attached foregoing document by:

- Depositing for mailing, in a sealed enveloped, U.S. Postage prepaid, at Reno, Nevada
- Personal Delivery
- Facsimile
- Federal Express/Airborne Express/Other Overnight Delivery
- Reno-Carson Messenger Service

addressed as follows:

Brent T. Kolvet, Esq.
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///ss/// Jennifer Hall

Jennifer Hall, Paralegal