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VC Highlands, NV 89521-7430
May 20, 2012

Storey County Commissioners, Pat Whitten, Bill Maddox
Storey County, NV

To All,

Please make this letter part of the Public Record.

The following comments are directed to the following item listed on the agenda for the May 21, 2012 meeting of the County Commissioners:

THE FOLLOWING ITEM WILL BE HEARD AT 2:00 P.M.

*DISCUSSION/POSSIBLE ACTION: Possible approval of settlement agreement between Thomas & Midge Taormina and Storey County regarding their application and determination of Special Use Permit 2011-010 for purposes of allowing, constructing and/or limiting multiple amateur radio antenna support structures with heights in excess of 45 feet on their property located at 370 Panamint Road, Highland Ranches, Storey County, Nevada. Possible action may also provide for allowing, constructing and/or limiting similar support structures of 45 feet or less and may alter the earlier Board of Commissioners determination made on June 7, 2011.

Summary

A. The County's refusal to provide me with a copy of the Taormina Settlement Agreement is a violation of NRS 241.020.

B. The Staff Recommendations Summary for SUP 2011-010 is deeply flawed.

Details

A. The County's refusal to provide me with a copy of the Taormina Settlement Agreement is a violation of NRS 241.020.

I explained the requirements of NRS 241.020 in my email of April 18, 2012. In short, if you are going to take action on a document, the document must be provided to a member of the public who requests the document, and it must be provided at the same time it is given to the Commissioners. I made the required request in my April 18 email, which I have attached. Although only two of the recipients did me the courtesy of acknowledging my email, one of them was Commissioner Hess, so that should be sufficient. (I hope more of you read this letter.)

1. The Staff Recommendations Summary is not the Settlement Agreement.
2. It would not be credible if you assert that the Staff Recommendations Summary could have been properly made without having the Settlement Agreement.

3. If you want to assert that the Settlement Agreement was given to the Planning Department but not to the County Commissioners, that assertion would also not be credible.

4. However, if you want to make that assertion anyway, then as of this writing (the day before the scheduled Monday May 21 meeting) the Commissioners have not seen the Settlement Agreement and, even if you give it to them (and me) tomorrow morning, there is not enough time for them (or me) to properly read it.

If the County Commissioners approve the Settlement Agreement without having had time to properly read it, it makes the County look corrupt.

5. If you insist on approving the Settlement Agreement tomorrow I ask that you also decide that Taormina may not act on it (by working on the towers or by incurring expense) until the Office of the Attorney General of Nevada finishes its investigation of my complaint that the Storey County Commissioners violated NRS 241.020. (If the Commissioners approve the Settlement Agreement at tomorrow's meeting then, later that day, I will file a complaint with the Office of the Attorney General of Nevada under NRS 241.037, NRS 241.039, and NRS 241.040.)

6. You should consider that in Document 29 **Minutes of Proceedings** the Court ordered, "The terms of the settlement agreement are placed on the record." The Court did not order that the settlement agreement would be sealed. Therefore, the settlement agreement will eventually be made available to the public anyway whether you do it or not.

What do you think the Court will do when it finds out that, in approving the Settlement Agreement, you violated Nevada law?

If the Court doesn't care, then it will set up an interesting conflict of Nevada sovereignty vs. the U.S. Courts. Do you really want that?

(I think the Court will care.)

Therefore, you should consider continuing the matter of approving the Settlement Agreement until a future meeting and:

- a. Provide the Settlement Agreement to the public at least several days before the meeting.
- b. Have the future meeting at a time when more people can attend. For example, 6 pm instead of 2 pm.

Continuing the matter will also give you time to fix the more serious flaws in the Staff Recommendations Summary (and to release the Full Recommendations instead of only a Summary.)

B. The Staff Recommendations Summary for SUP 2011-010 is deeply flawed.

The following are my comments on the Staff Recommendations Summary. The sections are not necessary in order.

Staff Recommendation Summary	My Comments
<p>13. Lighting.</p> <p>Any outdoor lighting shall be installed and operated in accordance with Chapter 8.02 of the Storey County Code ("Dark Skies"). No support structure or antennas applied thereto shall be constructed or altered to a height that would necessitate Federal Aviation Administration (FAA) <u>beacon lighting</u>. There shall be no direct or indirect illumination of or on any tower or antenna system. The FAA shall be the responsible agency for requiring, or not requiring, beacon lighting or other signaling devices to be applied to the structures.</p>	<p>The FAA describes several types of lights, such as:</p> <ol style="list-style-type: none"> 1. Steady burning (L-810) lights. 2. Red flashing (L-864) beacon. 3. Medium intensity flashing white light. <p>See FAA ADVISORY CIRCULAR AC 70/7460-1K Obstruction Marking and Lighting</p> <p>Only one type of lighting is characterized as a beacon.</p> <p>The County's section only addresses beacon lighting (such as Red Flashing Beacon) and leaves out Steady Burning Lights and the infamous Flashing White Light.</p> <p>This section should explicitly say that if the FAA requires that a tower be lighted in any way, either now or in the future, then the tower must be reduced in height to where lighting is not required. If that is not possible then the tower must come down.</p>

I have attached a part of FAA ADVISORY CIRCULAR AC 70/7460-1K **Obstruction Marking and Lighting.**

The complete advisory can be found at:

[http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/b993dcdfc37fcdc486257251005c4e21/\\$FILE/AC70_7460_1K.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/b993dcdfc37fcdc486257251005c4e21/$FILE/AC70_7460_1K.pdf)

or Google: **FAA ADVISORY CIRCULAR AC 70/7460-1K**

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Staff Recommendation Summary	My Comments
<p>7. Abandonment/Closure/Reclamation.</p> <p>Any antenna support structure out of operation for longer than (12) consecutive months shall be deemed abandoned. <u>All antenna support structures and antennas shall be taken down at the Permit Holders' expense within 180 days of abandonment or as otherwise determined by a plan which is mutually acceptable to Storey County and the Permit Holders and submitted to be filed with Storey County Community Development.</u> Under no circumstances shall Storey County, its officers, or representatives bear any cost or responsibility for the deconstruction, disassembly, or removal of any antenna support structure or reclamation.</p>	<p>The "or" can be interpreted (in a legal sense) as being inclusive so that both conditions must be met. (There is a similar problem with the use of the word "and" in a legal sense.)</p> <p>(This is the type of argument that lawyers are paid to make. I'm doing it for free.)</p> <p>If the County and the Permit Holders (Tom) can't agree on a plan to take the towers down then they don't have to be taken down.</p> <p>The County says 180 days. Taormina says 180 years. They don't agree. The Towers stay.</p> <p>And what can the County do anyway?</p> <p>If Tom leaves the County (and leaves the towers up) he will be out of the County's reach.</p> <p>So they put a lien on his house which has either already been sold or has been foreclosed on by the mortgage company.</p> <p>The only way for this section to have teeth is to require either:</p> <ol style="list-style-type: none"> 1. The insurance policy include liability for taking the towers down; or 2. Tom post a bond with enough money to cover taking the towers down including the possibility of unexpected conditions encountered when taking the towers down.

Staff Recommendation Summary	My Comments
<p>10. Setbacks.</p> <p>In accordance with Section 17.40.050 of the Storey County Code, minimum setbacks for each tower shall be as follows: (a) front yard, 30 feet; (b) rear yard, 40 feet; and (c) side yards, 15 feet. The minimum setback requirement shall apply to antenna support structures, antennas, foundation pads, and buildings. Reduced setbacks for guy wires, anchor points, and other appurtenances of the tower system shall be subject to the approval of the Storey County Building Department. Existing approved guy wire anchor(s) and associated guy wire foundation(s) shall be allowed to remain at their existing location(s) so long as they are located entirely within the Permit Holders property.</p>	<p>This does not seem to provide for the possibility (remote that it is) that a tower could fall down intact onto his neighbor's property.</p> <p>It is also possible (and not so remote) that a tower could suffer a catastrophic collapse, break up, and pieces (including pieces of the antennas) could be launched onto his neighbors' property and through their houses.</p>

Staff Recommendation Summary	My Comments
<p>15. Antenna Support Structures – Limitations and Height.</p> <p>The following indicates the number and type of amateur radio antenna support structures (towers) that are permitted under this SUP. At no time during the duration of this SUP shall additional amateur radio antenna support structures be permitted on the property, including antenna support structures at, below, or above 45' in height. The Permit Holders shall be permitted to repair, remove, add to, modify, and maintain antennas upon each support structure in accordance with the provisions of this SUP without modifying or amending this SUP or applying for a new SUP. Building Permit requirements shall still apply in accordance with the Storey County Code. Antennas as well as fasteners and other holding devices placed upon the support structures shall not be designed or placed such as to violate the specific provisions or the letter and spirit of the regulations under this SUP.</p>	<p>This is the really bad part.</p> <p>What would the SUP approved by the Planning Commission in March 2011 have given him?</p> <p>See the minutes of the March 3, 2011 Planning Commission meeting starting on page 8.</p> <p>The motion says he would have been limited to four existing towers. But what four towers?</p> <p>The Staff Report Section XI (page 20) refers in Proposed Motion A and Proposed Motion B to "the four (4) existing . . . towers applicable to this SUP."</p> <p>The "four towers" do not include the existing towers less than 45'.</p> <p>Therefore, there would have been six towers.</p> <p>From the Staff Report of March 3, 2011 (page 5) the four existing towers greater than 45' were:</p> <p>_____</p>

- a. Towers 1 and 2 (45' lattice): These structures exist as of the date of this SUP, are permitted to remain at or below 45', and shall otherwise remain unaltered from their current state, including height (unless reduced), width, shape, mass, and surface color/treatment.
- b. Tower 3 (45' lattice): This structure exists as an 85' antenna support structure as of the date of this SUP. It shall be reduced to a total height at or below 45', shall remain a lattice structure, and shall remain at its current width, shape, mass, and surface color/treatment.
- c. Towers 4 (45' lattice): This structure exists as a 110' antenna support structure as of the date of this SUP. It shall be reduced to a total height at or below 45', shall remain a lattice structure, and shall remain at its current width, shape, mass, and surface color/treatment.
- d. Tower 5 (120' monopole): This structure shall be permitted as proposed in SUP Application No. 2011-010, Building Permit Application No. 8354, and the PE stamped engineered plans submitted to the Community Development Department, and shall remain at or below 120' in height.
- e. Towers 6 and 7 (140' lattice): These structures exist as of the date of this SUP, are permitted to remain at or below 140' in height, and shall otherwise remain unaltered from their current state, including height (unless reduced), width, shape, mass, and surface color/treatment.
- f. Tower 8 (175' monopole): This structure shall remain similar in width, shape, and mass as proposed in SUP Application No. 2011-010 and Building Permit Application No. 8354; however, it shall be limited to a total height at or below 175'. Submitted engineered plans for the previously proposed 195' support structure shall be amended as necessary for reduced height and submitted to the Community Development Department for approval.

Tower 1 (140 feet) - This structure was installed in 1997. It has had successive iterations of antenna arrays installed on it. This tower is guyed in four places to concrete guy anchors. This structure was installed prior to adoption of Title 17 of the Storey County Code; thus this structure should be considered as a “non-conforming use” as defined by Chapter 17.06 therein. The structure must comply with applicable local building codes, as demonstrated by plans submitted by a Nevada licensed structural engineer.

Tower 2 (85 feet) -This structure was installed in 1998. It has had successive iterations of antenna arrays installed on it. This tower is guyed at four levels to concrete anchors. Similar to Tower 1, this structure was installed prior to adoption of Title 17 of the County Code and needs to be treated in accordance with the “non-conforming use” provisions. The local building code and certificate of engineering will need to apply as well.

Tower 3 and 4 (110 feet and 140 feet, respectively) – Tower 3 is a radiating antenna structure and Tower 4 is similar in design to Tower 1. Both were installed in 2007 and are guyed at three levels to concrete anchors. Tower 3 is proposed to be moved north- east to relieve the close proximity to the parcel’s western boundary. In accordance with sections 17.12.044 and 17.62.010 of the County Code the special use permit process will apply to these structures.

What is Tom getting now?

1. Tower 1 and Tower 2 – existing towers no more than 45’ high.
2. Tower 3 - The existing 85’ tower will be reduced in height to no more than 45’ high.
3. Tower 4 – The existing 110’ tower will be reduced in height to no more than 45’ high.
4. Tower 5 – Tom gets a new 120’ tower.
5. Tower 6 and Tower 7 – Tom gets to keep the two existing 140’ towers
6. Tower 8 – Tom gets a new 175’ tower

	<p>What is the final tally?</p> <ol style="list-style-type: none"> 1. He keeps the existing towers that are no more than 45' high. 2. He keeps the existing 140' towers. 3. The 110' tower is reduced to no more than 45' high but he gets a new 120' tower. 4. The existing 85' tower is reduced to no more than 45' high but he gets a new 170' tower. <p>How is this a compromise?</p> <p>It isn't. This is a sellout.</p>
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Staff Recommendation Summary	My Comments
<p>8. Finding of Necessity to Local Jurisdiction.</p> <p>In accordance with section 17.62.010 of the Storey County Code and applicable FCC regulations Storey County finds that the Amateur Radio facility is used partly for the convenience and necessity of the local jurisdiction and community. Accordingly, the Permit Holders shall collaborate with Storey County to develop a mutually acceptable plan by which county-owned emergency radio communications repeater antenna(s) may be installed and operated on one or more antenna support structures applicable to this SUP (as compatible with all amateur radio equipment thereon or proposed to be placed thereon) and by which necessary ground support equipment may be placed and operated within the property of Tom and Midge Taormina. This condition of approval recognizes that Storey County shall be responsible for all costs for acquiring, installing, maintaining, operating (i.e., utility costs), and repairing the county-owned antennas, ground support equipment, and other appurtenances, including any</p>	<p>This section is a moral outrage.</p> <p>The County has twisted Storey Code Section 17.62.010 into something that it is not.</p> <p>Section 17.62.010 says:</p> <hr/> <p>Certain uses may be permitted by the board of county commissioners in zones in which they are not permitted by this title where such uses are deemed <u>essential or desirable for the public convenience or welfare</u>. The procedure for filing of applications, filing fees, public hearings, findings and appeals shall be the same as provided for variances in Chapter 17.60 of this title.</p> <hr/> <ol style="list-style-type: none"> 1. Tom completely failed to show that his towers are in the public convenience or welfare. He didn't even try. 2. Now the County has twisted this to be for the "convenience of the local jurisdiction" and to justify this they say they want to use Tom's towers for an emergency communications repeater. They already have their own and they will have the use of the cell phone tower after it is approved (unless Tom's supporters manage to block it.)

<p>associated financial burden by the Permit Holders, but Storey County shall not be assessed any -fee or other charge for said use of the tower and facility. Storey County will insure that any County-owned equipment placed upon exterior portions of the facility shall comply with the visual design requirements under this SUP.</p>	<p>The County is insane. If they were to install an emergency communications repeater on Tom’s towers he would hold the system hostage to gain even more concessions from the County.</p> <p>And, in an emergency, the system on Tom’s towers is unlikely to work.</p> <p>Depending on such a system to work in an actual emergency is criminal negligence.</p> <p>I want to know who in the County is planning on using Tom’s towers for an emergency repeater system, and I want him fired.</p>
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And, finally, there is this bizarre section.

Staff Recommendation Summary	My Comments
<p>1. Special Use.</p> <p>SUP No. 2011-010 shall be for the purpose of erecting and maintaining amateur radio antenna support structures pursuant to the settlement agreement between Thomas and Midge Taormina (the "Permit Holders") and Storey County and the SUP approval by the Board of Storey County Commissioners for the property located at 370 Panamint Road (APN 003 431-18), Highland Ranches, Storey County, Nevada (the "Property"). <u>Issuance of this SUP does not convey property rights of any sort or any exclusive privilege, nor does it authorize any injury to persons or property, any invasion of other private rights, or any infringement of state or local laws or regulations.</u></p>	<p>1. It looks to me that the Staff Recommendation Summary does convey property rights to Tom. The property rights are the right to have the new and old (non-conforming) towers.</p> <p>2. Now look at the phrase, <u>“nor does it authorize any injury to persons or property, any invasion of other private rights, or any infringement of state or local laws or regulations.”</u></p> <p>Why is that there?</p> <p>Who is that directed to?</p> <p>Since it includes “any infringement of state or local laws or regulations” it must be directed to Tom, since Tom is the one who has openly flouted local laws and regulations (the Tower Ordinance) in the past.</p> <p>Why is it necessary to say that Tom is not authorized to commit “any injury to persons or property, ... “ ?</p> <p>Is the County afraid that Tom will use the staff recommendations as permission to go around shooting the people who opposed him?</p>

And one last thing.

Tom's Resume starts out: http://www.google.com/url?sa=t&rct=j&q=cv-04-305-tuc-rcc&source=web&cd=2&ved=0CCkQFjAB&url=http%3A%2F%2Fwww.expertwitness.lexvisio.com%2Fresumes%2Fexpert%2F5685_TT_CV_1111.pdf&ei=k6qdT_a8JabSiAL0vN2EAQ&usg=AFQjCNGEKDMPOrfSkzrvkIokn4h1Cdnlgw&cad=rja

(See also http://www.expertwitness.lexvisio.com/expert/5685/125/516-517/1/IA/Product_Liability-Tom_Taormina_CMC_CMQ_OE--The_Taormina_Group_Inc-Virginia_City-Nevada)

With a unique perspective from having worked with more than 600 companies in his 41-year career, Tom Taormina brings a rare talent for precision problem diagnosis, strategic thinking and outstanding written and verbal communications skills to any organization or litigation team. His forte is assessing if, and how effectively, organizations are following their own manufacturing and quality practices and if they comply with required statutory, regulatory and industry standards.

600 companies are a lot of companies. Did Tom ever work for the County's insurance carrier (PoolPact or ASC), for example, as a consultant or as an expert witness?

It is an obvious question to ask.

Tom's company seems to have something to do with managing and preventing liability for other companies.

From the Web site for Tom's company, the Taormina Group, he says (<http://www.taorminagroup.com/about.html>)

As an accomplished author, [Foreseeable Risk](#) is his eleventh book. It shares extensive experiential data with enlightened litigators for dominating the outcome of products liability and organizational negligence litigation.

(And he certainly has dominated this process, hasn't he?)

So, does Tom have an association with the County's insurance carrier (either currently or in the past)?

And, BTW, on May 17 I filed a request for a copy of the County's contract with the Nevada Public Agency Insurance Pool.

It looks like I am being ignored again.

Sincerely yours,

/Jed Margolin/