

Jed Margolin  
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1981 Empire Rd.  
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VC Highlands, NV 89521-7430  
May 30, 2012

Office of the Attorney General of Nevada  
100 North Carson Street  
Carson City, Nevada 89701-4717

Dear Sir or Madam,

**1.** This is a Complaint under NRS 241.040(4) **Open Meeting Law** against the Storey County Board of Commissioners for violating NRS 241.020(5) and NRS 241.020(6) by refusing to give me a copy of a document they discussed (and acted on) at their May 21, 2012 meeting. I had requested the document in an email dated April 18 ([See Exhibit 1](#)) and again in an email dated May 20, 2012 ([See Exhibit 2](#)). As a resident of Storey County I have standing to file this Complaint, assuming such standing is required.

**2.** This written Complaint (with references) is accompanied by a DVD containing the references as well as an html version of this Complaint with active links to the references, all of which are on the DVD. The reproduction of the recording of the May 21 meeting is only on the DVD.

### **Background**

**3.** This Complaint arises from a legal action brought by Mr. Tom Taormina (“Taormina”) against Storey County in U.S. District Court for the District of Nevada, *Thomas S. Taormina and Midge A. Taormina v. Storey County, Nevada and Does 1-10* (Case #3:11-cv-00645-LRH -VPC, filed 09/06/2011). Taormina brought the action when the Storey County Board of Commissioners denied his Application for a Special Use Permit to erect two ham radio towers 195’ in height to accompany his six existing towers, where the two tallest existing towers were already 140’ feet in height. ([See Exhibit 3](#) at 8 – Minutes of County Commissioners Meeting June 7, 2012. The minutes were approved without changes at the July 5 Commissioners meeting.)

**4.** In a January 30, 2012 hearing of the Taormina lawsuit the Court observed that “this is a political as well as a legal issue” and expressed its desire that the issue be settled by negotiation.

**5.** A Settlement Conference was held on April 16, 2012. The Court’s **Minutes of Proceedings** ([See Exhibit 4](#)) state:

MINUTES OF PROCEEDINGS – Settlement Conference held on 4/16/2012 before Magistrate Judge Valerie P. Cooke. Crtrm Administrator: *Rosemary Damron*; Pla Counsel: *Fred Hopengarten*; Def Counsel: *Brent Kolvet*; Court Reporter/FTR #: *FTR 4:51:51 – 5:10:26*; Time of Hearing: *9:00 a.m. – 5:10:26 p.m.*; Courtroom: *1*. Also present for this proceeding in addition to Mr. Hopengarten, Mr. Taormina and Mr. Kolvet are Mr. Kershaw, Chairman, Storey County Commission; Mr. Whitten, Storey County Manager; Mr. Maddox, District Attorney for Storey County; Mr. Osborne, Storey County Planner; and Mr. Hamlin, on behalf of the insurance carrier. The Court and parties conducted settlement negotiations in chambers. The parties reached a settlement agreement. The terms of the settlement as outlined on the record are subject to approval by the Storey County Commission at a duly noticed public meeting. The parties have a binding settlement agreement. This Court retains jurisdiction over the terms of the settlement pending the filing of the stipulation of dismissal. Assuming this case is on Storey County's agenda for the vote in May, a stipulation and order for dismissal shall be submitted by Monday, June 18, 2012. If this matter is not on the May agenda for approval by Storey County, counsel will submit a notice to the court. The terms of the settlement agreement are placed on the record. The recording of this proceeding is sealed. IT IS SO ORDERED. Settlement documents are due by 6/18/2012. **(no image attached)** (Copies have been distributed pursuant to the NEF – RD) (Entered: 04/17/2012)

{Emphasis added}

- 6.** The Agenda for the May 21, 2012 includes, for the section starting at 2 pm ([See Exhibit 5](#) at 3):

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.

{Emphasis Added}

- 7.** The Information Packet for the May 21 meeting was released to the Public on or about May 16, 2012. This was approximately five days before the meeting and approximately a full month after the settlement conference. The Information Packet contains a document titled **Storey County Commissioners' Office and Planning Division Staff Recommendation Summary** (“Staff Recommendation Summary”)

This is reproduced as [Exhibit 6](#). There are no other documents in the Information Packet that pertain to Taormina. (The full Information Packet is 73 pages long and will not be reproduced here. However, it is available on the Storey County Web site at: [http://www.storeycounty.org/clerk/Agendas/052112\\_Packet.pdf](http://www.storeycounty.org/clerk/Agendas/052112_Packet.pdf)

The Staff Recommendation Summary starts on page 68.

**8.** The meeting of the Storey County Board of Commissioners was held as scheduled on May 21, 2012. The meeting was recorded on video. A few days after the meeting I obtained a copy of it.

There is a sound system in the courtroom to record what people say. Each Commissioner and those who sit at the Commissioners' table have a microphone in front of each of them.

There is another microphone at the lectern used by members of the public to make comments.

However, sometimes people don't use it. They might stand near the podium instead of in front of it. And sometimes people speak from their seats. Although the Commissioners Meetings are run in an orderly fashion, they are also generally interactive as long as people behave themselves. (In case they don't, Sheriff Antinoro will remind them to behave. He is also there to give the regular report on the Sheriff's Department.)

However, although the Courtroom is a grand old courtroom, the acoustics are terrible. Using a general microphone to mic the audience would not work. So when people speak from their seats the microphone system picks them up at very low levels and with considerable reverberation.

The video came in three files in Windows Media Video format.

Since I am only interested in the audio and I want it to be as audible as possible this is what I did:

- a. I stripped the audio from the wmv files.
- b. I normalized the levels.
- c. I manually adjusted the levels of different segments. (The levels from the audience lectern are too hot, and the levels when people speak from their seats is too low.)
- d. I used a general compression function to compress the audio a little.
- e. I converted the files to mp3 format. (They can be played on a computer and in an mp3 player.)

Therefore, although I am attaching the video files along with the processed audio files, if you want to hear what was said, listen to the processed audio files.

Because of the length of the meeting the recording was divided into three parts.

File 1 contains the part of the meeting that started at 1 pm. It starts with public comments and then goes on to the discussion of the Vista Towers Application for a Special Use Permit for a Cell Phone Tower. (It is approved.) Then, on to the budget. As part of its budget slashing actions (Storey Count is broke, just like everyone else) they decide to close the County's only library despite impassioned pleas not to.

File 2 (which starts at 2 pm) is devoted entirely to the discussion of the Taormina Settlement Agreement. However, it ends with a short recess. The actual vote is in File 3.

File 3 starts with the Commissioners' vote to approve the Taormina Tower Agreement. Then it continues with other matters until DA Maddox asks the Commissioners to revisit the Taormina Settlement Agreement vote to fix some perceived problem with it.

I have made a file (File 2a) which contains all of the original File 2 plus the segments from File 3 that pertain to the Settlement Agreement. This way, if you are only interested in the Settlement Agreement you only have to play one file.

I have made an index of the meeting recording. That index is [Exhibit 7](#).

### **Complaint**

**9.** My complaint here against Storey County is that the Board of Commissioners approved the Taormina Settlement Agreement at the May 21 meeting without providing a copy of it to me, or any other member of the public, even though I had properly requested it.

Storey County asserts that the document titled Staff Recommendation Summary (which was provided to the public) is the Taormina Settlement Agreement.

For the following reasons, the Staff Recommendation Summary is not a Settlement Agreement.

A Settlement Agreement is a contract. See *Jones v. Suntrust Mortgage*, 128 Nev., Advance Opinion 18, Nevada Supreme Court, No. 57748, April 26, 2012, at page 4, last paragraph. ([Exhibit 8](#))

A settlement agreement is a contract, and thus, must be supported by consideration in order to be enforceable. *May*, 121 Nev. at 672, 119 P.3d at 1257. Consideration is the exchange of a promise or performance, bargained for by the parties. *Pink v. Busch*, 100 Nev. 684, 688, 691 P.2d 456, 459 (1984) (citing Restatement (Second) of Contracts § 71(1), (2) (1981)). If the settlement agreement is reduced to a writing signed by the party that it is being enforced against, or by his or her attorney, then it is enforceable under DR 16.4 See *Resnick v. Valente*, 97 Nev. 615, 616-17, 637 P.2d 1205, 1206 (1981) (reversing a district court's enforcement of a settlement agreement when the agreement was not reduced to a signed writing or entered in the court minutes following a stipulation).

In particular see *May v. Anderson*, No. 42204, September 22, 2001 – NV Supreme Court, No. 42204.

(Reproduced as [Exhibit 9](#)) From page 2:

Because a settlement agreement is a contract, its construction and enforcement are governed by principles of contract law.[1] Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration.[2] With respect to contract formation, preliminary negotiations do not constitute a binding contract unless the parties have agreed to all material terms.[3] A valid contract cannot exist when material terms are lacking or are insufficiently certain and definite.[4] A contract can be formed, however, when the parties have agreed to the material terms, even though the contract's exact language is not finalized until later.[5] In the case of a settlement agreement, a court cannot compel compliance when material terms remain uncertain.[6] The court must be able to ascertain what is required of the respective parties.[7]

**a.** The Staff Recommendation Summary is not signed by the two parties (Storey County and Tom & Midge Taormina) or their representatives. Indeed, the Staff Recommendation Summary is not signed by anyone. The Staff Recommendation Summary does not even contain the name of the person or persons who wrote it. It says only “Prepared by Storey County staff and legal counsel.”

Since the Staff Recommendation Summary is not a valid contract it cannot be the Settlement Agreement.

**b.** Since the Staff Recommendation Summary is characterized as a **Summary** there must be another document that it is summarizing. That document has not been produced.

At the May 21, 2012 meeting of the Storey County Board of Commissioners I asked what the Staff Recommendation Summary was a summary of. Exhibit 10 is the recording of that segment of the meeting, which I have characterized as File 2a. Hear [Exhibit 10](#) at 00:33:55. The County refused to answer.

**c.** I made my first comments at the meeting in [Exhibit 10](#) at 00:02:40 where I told the Commissioners that they were violating the Open Meeting law by not providing me with a copy of the Tower Agreement.

Gary Schmidt (Candidate for Nevada State Assembly) was at the meeting. Mr. Schmidt is an expert on the Open Meeting Law, and explained the Law to the Commissioners. Hear [Exhibit 10](#) at 00:15:48. When the Commissioners responded to the public comments they responded through Mr. Kolvet, the attorney hired by the County’s insurance carrier. Mr. Kolvet responded to Mr. Schmidt, not to me. Hear [Exhibit 10](#) at 00:18:12.

“Yah, ah, like Mr. Schmidt I’m familiar with that section as well, and what it requires is that if there is a document that you’re voting on it be presented at the hearing. There is no document other than the document which is contained in your packet which is the Storey County Commission Staff Recommendation Summary. The conditions that are outlined in that Summary are the conditions that were negotiated and agreed to. The condition of the agreement is that if this Special Use Permit is approved then the lawsuit goes away. If it doesn’t get approved today, then the lawsuit continues. There’s nothing secret about the rest of the settlement. Those are the terms. These eighteen conditions that are listed in your Summary are the conditions of the Settlement.

At 00:20:25 Chairman Kershaw ends with, “Going on from here, if there’s something from the District Attorney that you feel that we need to do differently or…”

DA Maddox says, emphatically,

No, no, there is no meeting violation, because this is the Agreement. And the only other document that’ll be prepared as a result of this, if this is approved, if the Special Use Permit is approved, is I will make a memorandum of these conditions which will be filed with the County Recorder, and basically the memorandum will be exactly what’s in Subsection 4. It will just be a memorandum that sets forth all these conditions and it will be filed with the County Recorder, so there is no violation of the Open Meeting Law.

Several things are apparent:

**i.** “The condition of the agreement is that if this Special Use Permit is approved then the lawsuit goes away.”

That’s not in the Staff Summary, so it can’t be the Settlement Agreement.

**ii.** “There’s nothing secret about the rest of the settlement.”

Even if the **rest** of the Settlement Agreement isn’t secret, it must mean that somewhere there **is** the rest of the Settlement Agreement. Then, even if the Summary **is** the Settlement Agreement, it’s not the complete Settlement Agreement. Why isn’t the Settlement Agreement complete? What are they hiding? The Commissioners are not voting on the complete Settlement.

**iii.** “If it doesn’t get approved today, then the lawsuit continues.”

Why did it have to be approved that day? Wouldn’t that be spelled out in the Settlement Agreement? This revelation was a surprise. What other surprises (secrets) are in the Settlement Agreement which, since it is not written down, is a verbal agreement, not a written agreement. If Brent hasn’t learned that **Tom** embellishes his memory of conversations and draw preposterous inferences from them, then he hasn’t read the Record of this case. What else will **Tom** decide was in the (verbal) Settlement Agreement?

If part of the Settlement Agreement is a verbal agreement, the County has not made the audio recording of that part available to the public. Thus, they have approved the Settlement Agreement in violation of the Open Meeting Law.

(And isn’t it the U.S. District Court’s intent that the Settlement Agreement be completely written down?)

**iv.** The County says that another of the terms of the Settlement Agreement is that both sides will bear their own costs. [Exhibit 10](#) at 00:34:33.

That is not in the Staff Recommendation Summary, either, so the Staff Recommendation Summary is not a Settlement Agreement.

**v.** After The Board of Commissioners approved the Motion I asked them what it was they had approved. They were evasive and did not give a real answer. Hear [Exhibit 10](#) at 00:40:19.

**vi.** After that, the Board of Commissioners went on to other business so I left the meeting. However, after approximately 20 minutes DA Maddox interrupted the Commissioners and asked to revisit the Motion to Approve. (I have appended it to File 2a. Hear [Exhibit 10](#) at 00:41:10. This time, they specifically approved the Special Use Permit without explicitly saying it was the Settlement Agreement. However, their reasons for doing this are unclear since the Agenda item specifically says:

Possible approval of settlement agreement between Thomas and 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.

The County's previous statements say the Special Use Permit and the Settlement Agreement are the same, and they did not take that back in the revision and second vote on the motion.

**10.** Unfortunately, time is of the essence in this matter. According to the Order of the U.S. District Court, "a stipulation and order for dismissal shall be submitted by Monday, June 18, 2012." Once that is filed, Taormina may immediately begin to act on it by starting to erect his new towers and incurring substantial expense.

I will note that the U.S. District Court has not adjudicated this matter. The case did not go to trial. The case was not decided on its merits. There was no judgment in the case. The U.S. District Court only provided the place and time for a negotiation and time spent by the Magistrate Judge to preside over the negotiation. There is nothing in the public record to indicate otherwise.

Therefore, it is reasonable to believe that the County's actions are still governed by Nevada law (especially the Open Meeting Law) and that the Attorney General of Nevada may bring an action against Storey County in an appropriate Nevada District Court. The Attorney General might want to consider filing for an emergency Stay



to prevent irreparable harm from occurring and to give the Office of the Attorney General time to conduct an investigation.

The Attorney General might also want to consider asking the U.S. District Court to order a stay of its own proceedings in order to give the Office of the Attorney General time to conduct its investigation. If the U.S. District Court refuses, it must be considered an unconstitutional usurpation of Nevada's state's rights.

**11.** To put the matter in perspective, this is not about a few antenna towers out in the middle of nowhere where no one will see them. These towers are at the main entrance to the Virginia City Highlands and Highland Ranches. Most of our residents use that entrance when leaving and entering the community. It is where our mail shed is, which is where our mailboxes are.

This picture shows how Taormina's towers and antenna already loom over the mail shed (middle left of the picture). Two of the towers are already 140' high. The County's actions will allow him to put up two more towers, one of which will be 170' feet high. (The towers are much more obvious to the eye than they are in a picture, at least with my camera, in this picture taken in September 2011. And when printed out on a monochrome printer they are almost invisible. Therefore, I have added rectangles around the towers and antennas.)





**12.** There is another issue here, the malfeasance and possible criminal misconduct by Storey County officials.

The County has repeatedly tried to soften its surrender to Taormina (“the insurance company made us do it”) by assuring County residents that the towers will come down if the Taorminas sell their property. For example, hear [Exhibit 10](#) at 00:36:11.

This can only be inferred from Staff Recommendation Summary section 3:

**3. No transfer of Rights.**

This SUP is personal to the Permit Holders and shall belong exclusively to Thomas and/or Midge Taormina and the real property applicable to this SUP so long as Thomas and/or Midge Taormina reside for a material part of each year on the property. This SUP shall not be transferrable.

And from section 7:

**7. Abandonment/Closure/Reclamation.**

Any antenna support structure out of operation for longer than (12) consecutive months shall be deemed abandoned. 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. 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.

The Staff Recommendation Summary does not explicitly say that the towers must come down if the Taorminas leave.

I pointed out to the Storey County Commissioners in my email of May 20, 2012 that the County cannot enforce section 7. (See [Exhibit 2](#))

And what can the County do anyway?

If Tom leaves the County (and leaves the towers up) he will be out of the County’s reach.

So they put a lien on his house which has either already been sold or has been foreclosed on by the mortgage company.

The only way for this section to have teeth is to require either:

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.

The County ignored my suggestions for making Section 7 enforceable.

During the May 21 meeting the County insisted that Taormina would be required to take the towers down if he left, until it turned out “no, not really” because that duty could fall to a subsequent owner. Hear [Exhibit 10](#) at 00:36:23.

I asked who would be required to take the towers down.

Mr. Kolvet answered, “The owner of the property, Mr. Taormina, if he still owns it. If not, the owner.

(Hear [Exhibit 10](#) at 00:37:11)

The reason the County’s statements and actions are fraudulent is in Staff Recommendations Summary Section 8:

#### **8. Finding of Necessity to Local Jurisdiction.**

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 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.

{Emphasis added}

Consider the following very plausible scenario:

- a. Taormina sells his property to another ham (who else would buy it?), leaving the towers up.
- b. Taormina has left the County (perhaps even the State) so he is out of the County’s reach.
- c. The County tells the new owner/ham to take the towers down.
- d. The new owner/ham refuses and files a Declaratory Judgment action in U.S. District Court (just like Taormina did).

e. What the new owner/ham has, that Taormina did not have, is Section 8 (“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.”) Under FCC Rules PRB-1 the County has no defense for its actions, so the towers stay up. As long as the property is passed from ham to ham the towers will stay up indefinitely.

When Section 8 appeared in the Staff Recommendation Summary many of us asked, “why is that there?” Storey County resident Cynthia Kennedy asked that question at the May 21 meeting. Hear [Exhibit 10](#) at 00:23:27.

Storey County Executive Pat Whitten gives an answer ([Exhibit 10](#) at 00:24:44) which is full of bravado, and entirely unconvincing.

The result of Section 8 is that, while the County is loudly asserting that the towers will eventually come down, they have given subsequent owners of the property the legal tools to make sure that does not happen. It’s legal sabotage.

Therefore, I am formally asking the Attorney General of Nevada to conduct an investigation into how Tom Taormina and his attorneys (Fred Hopengarten and Brian McMahon) have been able to corrupt Storey County officials and staff as well as Brent Kolvet (the attorney hired by the County’s insurance carrier to handle the case).

Respectfully submitted,

/Jed Margolin/

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Jed Margolin

Virginia City Highlands, Nevada

# Exhibit 1

# Exhibit 1

**Jed Margolin**

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**From:** "Jed Margolin" <jm@jmargolin.com>  
**To:** <commissioners@storeycounty.org>; <bkershaw@storeycounty.org>; <bsjovangen@storeycounty.org>; <ghess@storeycounty.org>; <pwhitten@storeycounty.org>; <scda@storeycounty.org>  
**Sent:** Wednesday, April 18, 2012 9:30 PM  
**Subject:** Request for Notice of Future Meeting of the County Commission

Dear All.

**A.** As per NRS 241.020 please send me (via email) notice of the Storey County Commissioners meeting at which the Taormina Settlement Agreement is on the agenda.

**B.** In particular, as per NRS 241.020(5) and NRS 241.020(6) please send me (via email) a copy of the Taormina Settlement Agreement as soon as it is provided to the members of the Storey County Commission.

NRS 241.020(5)

5. Upon any request, a public body shall provide, at no charge, at least one copy of:

- (a) An agenda for a public meeting;
- (b) A proposed ordinance or regulation which will be discussed at the public meeting; and
- (c) Subject to the provisions of subsection 6, any other supporting material provided to the members of the public body for an item on the agenda, except materials:
  - (1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement which relates to proprietary information;
  - (2) Pertaining to the closed portion of such a meeting of the public body; or
  - (3) Declared confidential by law, unless otherwise agreed to by each person whose interest is being protected under the order of confidentiality.

NRS 241.020(6)

6. A copy of supporting material required to be provided upon request pursuant to paragraph (c) of subsection 5 must be:
- (a) If the supporting material is provided to the members of the public body before the meeting, made available to the requester at the time the material is provided to the members of the public body; or

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Note that "members of the public body" means the County Commissioners.

If you do not intend to comply with NRS 241.020 or if you intend to assert that the Taormina Settlement Agreement is subject to NRS 241.020(5)c(1),(3) then kindly do me the courtesy of

telling me now, so that I may explore my own personal legal options in this matter.

Sincerely yours,

Jed Margolin  
1981 Empire Rd.  
VC Highlands, NV



**Jed Margolin**

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**From:** "Greg Hess" <ghess@storeycounty.org>  
**To:** "jm" <jm@jmargolin.com>  
**Sent:** Wednesday, April 18, 2012 9:35 PM  
**Attach:** ATT00402.txt  
**Subject:** Read: Request for Notice of Future Meeting of the County Commission  
Your message was read on Wednesday, April 18, 2012 9:35:50 PM (GMT-08:00) Pacific Time (US & Canada).

**Jed Margolin**

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**From:** "Holli Kiechler" <hkiechler@storeycounty.org>  
**To:** "jm" <jm@jmargolin.com>  
**Sent:** Thursday, April 19, 2012 6:10 AM  
**Attach:** ATT00412.txt  
**Subject:** Read: Request for Notice of Future Meeting of the County Commission  
Your message was read on Thursday, April 19, 2012 6:10:59 AM (GMT-08:00) Pacific Time (US & Canada).

## Exhibit 2

## Exhibit 2

Jed Margolin  
Phone: 775-847-7845

1981 Empire Rd.  
Email: [jm@jmargolin.com](mailto:jm@jmargolin.com)

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><b>13. Lighting.</b></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"> <li>1. Steady burning (L-810) lights.</li> <li>2. Red flashing (L-864) beacon.</li> <li>3. Medium intensity flashing white light.</li> </ol> <p>See FAA ADVISORY CIRCULAR AC 70/7460-1K <b>Obstruction Marking and Lighting</b></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**

[Go to next page]



Staff Recommendation Summary	My Comments
<p><b>7. Abandonment/Closure/Reclamation.</b></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"> <li>1. The insurance policy include liability for taking the towers down; or</li> <li>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.</li> </ol>

Staff Recommendation Summary	My Comments
<p><b>10. Setbacks.</b></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><b>15. Antenna Support Structures – Limitations and Height.</b></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.

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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"> <li>1. He keeps the existing towers that are no more than 45’ high.</li> <li>2. He keeps the existing 140’ towers.</li> <li>3. The 110’ tower is reduced to no more than 45’ high but he gets a new 120’ tower.</li> <li>4. The existing 85’ tower is reduced to no more than 45’ high but he gets a new 170’ tower.</li> </ol> <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><b>8. Finding of Necessity to Local Jurisdiction.</b></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"> <li>1. Tom completely failed to show that his towers are in the public convenience or welfare. He didn’t even try.</li> <li>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.)</li> </ol>

<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><b>1. Special Use.</b></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=AFQjCNGEKDMPOrfSkzvnvIokn4h1Cdnlgw&cad=rja](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=AFQjCNGEKDMPOrfSkzvnvIokn4h1Cdnlgw&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](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/



## Exhibit 3

## Exhibit 3

# STOREY COUNTY COMMISSION MEETING

TUESDAY, JUNE 7<sup>TH</sup>, 2011 1:00 P.M.

DISTRICT COURTROOM

26 SOUTH B STREET, VIRGINIA CITY, NEVADA

## MINUTES

BOB KERSHAW  
CHAIRMAN

BILL MADDOX  
DISTRICT ATTORNEY

GREG "BUM" HESS  
VICE-CHAIRMAN

BILL SJOVANGEN  
COMMISSIONER

VANESSA DU FRESNE  
CLERK-TREASURER

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### Roll Call.

**Present:** Sheriff Gerald Antinoro, Fire Chief Hames, Vice-Chairman Greg Hess, Chairman Bob Kershaw, Administrative Officer Holli Kiechler, District Attorney Bill Maddox, Commissioner Bill Sjovangen and County Manager Pat Whitten.

**CLOSED SESSION 1:00 P.M.** Closed meeting pursuant to NRS 288.220(4) for the purpose of conferring with the County's management regarding labor negotiations.

### CALL TO ORDER AT 1:00 P.M.

The meeting was called to order by The Chair at 1:06 P.M.

**Motion:** Move to closed meeting to confer with County Management regarding labor negotiations pursuant NRS 288.220(4), **Action:** Approve, **Moved** by Vice-Chairman Hess, **Seconded** by Commissioner Sjovangen.

**Vote:** Motion carried by unanimous vote (**summary:** Yes=2).

Session closed with recording devices off.

### BREAK

The Chair called for a recess at 1:50 P.M.

**Roll Call.**

**Present:** Sheriff Gerald Antinoro, Recorder Jen Chapman, Director of IT James Deane, Director of Community Services Deny Dotson, Comptroller Hugh Gallagher, Director of Community Development Dean Haymore, Vice-Chairman Greg Hess, Chairman Bob Kershaw, Administrative Officer Holli Kiechler, District Attorney Bill Maddox, Senior Planner Austin Osborne, Bailiff Josh Rothschild, Commissioner Bill Sjovangen and County Manager Pat Whitten.

**CALL TO ORDER AT 2:00 P.M.**

The standard open Commission meeting was reconvened by the call of the Chair at 2:07 P.M.

County Manager Pat Whitten disclosed the relationship of AFSCME Union President Tobi Whitten as his daughter and stated that the benefits under that contract usually mirror his and Administrative Officer Holli Kiechler in their unrepresented positions. He also disclosed Sheriff employees Keith Kiechler as Holli's husband and Bart Lambert as her brother.

**DISCUSSION/POSSIBLE ACTION:** Approval of modifications and extension of the Agreement between Storey County (Employer) and the Storey County Employee's Association (Union) also referred to as AFSCME Local Union.

Mrs. Kiechler said the AFSCME negotiation was very thorough with language clean up and fiscal items were discussed. The contract is up for a 2 year renewal at an increase of \$20,867.09.

**Motion:** Approve of modifications and extension of the Agreement between Storey County (Employer) and the Storey County Employee's Association (Union) also referred to as AFSCME Local Union, **Action:** Approve, **Moved by** Vice-Chairman Hess, **Seconded by** Commissioner Sjovangen.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 2).

Vice-Chairman Hess thanked Tobi Whitten and Gerrie Honea for their time and effort spent in the negotiation process.

**DISCUSSION/POSSIBLE ACTION:** Approval of modifications and extension of the Agreement between Storey County (Employer) and the Storey County Sheriff's Office Employee's Association (Union) also referred to as OE3 Local Union.

Mrs. Kiechler stated that this group had not bargained in a while which resulted in about 24 of the 28 articles being changed. The negotiations resulted in a

savings of \$73,595.04. Vice-Chairman Hess thanked Keith Kiechler for his time and efforts in negotiating the contract that hadn't been scrutinized in 5 years.

**Motion:** Approve of modifications and extension of the Agreement between Storey County (Employer) and the Storey County Sheriff's Office Employee's Association (Union) also referred to as OE3 Local Union, **Action:** Approve, **Moved by** Commissioner Sjovangen, **Seconded by** Vice-Chairman Hess.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 2).

**DISCUSSION/POSSIBLE ACTION:** Approval of Memorandum of Understanding between Storey County (Employer) and the Storey County Firefighters Association (Union) also referred to as IAFF Local 4227.

Mrs. Kiechler said they were unable to bargain due to deadline issues. They have instead entered into a Memorandum of Understanding that increases salaries for a change of \$37,500. Mr. Whitten thanked Fire Chief Hames.

**Motion:** Approve Memorandum of Understanding between Storey County (Employer) and the Storey County Firefighters Association (Union) also referred to as IAFF Local 4227, **Action:** Approve, **Moved by** Vice-Chairman Hess, **Seconded by** Commissioner Sjovangen.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 2).

## PLEDGE OF ALLEGIANCE

The Chair led those present in the Pledge of Allegiance.

## PUBLIC COMMENT

Brett Tyler, Board Member of the Washoe Storey Conservation District, gave an update on the Community Garden. He distributed a map and stated that they have had a lot of community support and donations. The area has been graded, there is dirt and they have a lead on fencing. Vice-Chairman Hess stated that Troy Regas and Sara have given time, equipment, rock and dirt to the project.

Darren McKay, Community Chest Youth Development & Prevention Coordinator, stated that they are very happy with the Community Garden and walking trail. He has been working with Hillside students at the After School Exercise Program. He voiced concerns from students in Virginia City regarding the skate park. They need a new location and plan to bring a student committee in front of The Board to discuss.

Troy Regas, a property owner in Rainbow Bend, has noticed more people out walking now with the path. He is happy to help with the Community Garden and also thanked Connie Butts and wished her well on her pending departure.

Mark Joseph Phillips, a Storey County resident, spoke of the May 16<sup>th</sup> minutes in regards to the discussion of zero net proceeds from mining and projections of zero proceeds. He stated that the Recorder's office has information available on mining permits and fees and the Planning Department has information on mining and exploration applications.

### **CONSENT AGENDA**

(All matters listed under the consent agenda are considered routine, and may be acted upon by the Board of County Commissioners with one action, and without an extensive hearing. Any member of the Board or any citizen may request that an item be taken from the consent agenda, discussed, and acted upon separately during this meeting. The Commission Chair reserves the right to limit the time allotted for each individual to speak. )

**Approval of Agenda for June 7, 2011**  
**Approval of Minutes from May 3, 2011**  
**Approval of Minutes from May 16, 2011**

**Correspondence** - Staff Recommendation Summary regarding Union Contracts. Picture of Lockwood Community Garden submitted by Brett Tyler. E-mail from Pat Whitten regarding Taormina Antenna Towers Alternative Motion F. POOL/PACT brochure. January 9, 2009 letter regarding nuisance complaint. Buddy Morton display board presentation explanation.

**Approval of Claims** - Payroll May 27, 2011 & Warrants May 20, 2011 and June 3, 2011

**Approval of Maps** - none

**Approval of Assessor corrections to the Tax Roll** - none

**Approval of Treasurer's Report** - April 2011

**Approval of Planning Commission Minutes** - none

**Approve New and/or Revised County Policies** - none

**Approve Western Nevada HOME Consortium Interlocal Agreement.**

**Approval of Resolution 11-328 to augment the 2010/2011 budget of Storey County General Fund.**

**Approval of Resolution 11-329 to augment the 2010/2011 budget of Storey Fire Fund**

**Approve First Reading, add Cabaret License to existing, Greg Sutherland, Silver Dollar Saloon.**

**Approve First Reading, Out of County License to Martin Wellman, Protect A Home.**

**LICENSING BOARD:**

**FIRST READINGS:**

- 1. DMC, Inc. dba MOODY WEISKE** – Contractor / 103 Keystone Avenue ~ Reno
- 2. RENO TILE & MARBLE, INC.** – Contractor / 1660 Clifford ~ Reno
- 3. WILLIAMS SCOTSMAN, INC.** – Contractor / 4911 Allison Parkway ~ Vacaville, CA
- 4. THE ROASTING HOUSE – HB / 4770 Livery Road**
- 5. MISSOURI PACKAGING SVCS, INC.** – Contractor / 400 West St. Eunice ~ Fulton, MO
- 6. ADRIANA’S ANTIQUES – HB / 2589 Keystone Circle, VC**
- 7. GROVES FISCHER, INC** – Contractor / 7788 White Fir Street ~ Reno
- 8. GSI COMMERCE SOLUTIONS, INC. –General / 2777 USA Parkway, TRI**
- 9. CHICKEN HAWK TRANSPORT – Transportation / 235 London, TRI**
- 10. DTS TOW, INC.** – General / 3051 Deer Run Road ~ Carson City, NV

**END OF CONSENT AGENDA**

**Motion:** Approve Consent Agenda, **Action:** Approve, **Moved by** Vice-Chairman Hess, **Seconded by** Commissioner Sjovangen.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 2).

**DISCUSSION:** Committee/Staff Reports

Community Development Director Dean Haymore

1. Benco Dental will hold their Grand Opening on August 10, 2011.

Recorder Jen Chapman

1. Recorded maps are being integrated into the indexing system for public access on the internet in the next couple of months.

Assessor Jana Seddon

1. Assessor Bill SB249 passed which will allow for electronic filings of veteran exemptions and continues the 2% tech fund for 2 more years which will help all areas keep up with technology and produce updated GIS maps.
2. There were 3 cases brought to the State Board of Equalization in which none were granted a change in value.

Community Services Director Deny Dotson

1. The Sprectre Challenge will take place on June 18-19 on the Truck Route. They added a parade and exotic car show of over 100 cars.
2. It is a struggle each year to put on a great Fireworks Show. Facebook ranks Virginia City in the Top 10 places to watch fireworks.

Canyon GID Manager Connie Butts

1. Introduced her replacement, Mitch Andreini, who has 27 years of experience at Sierra Pacific.

County Manager Pat Whitten

1. Welcomed Mitch Andreini and stated that he “has huge shoes to fill”.
2. Expanded on the Assessors Tech fund and how it benefits all County Departments. He thanked Ms. Seddon for her generosity.
3. Suggested cancelling the second meeting in July due to conferences.
4. The Legislature has closed with no anticipation of a special session. The anticipated impact of \$246,000 is down to about \$60,885.

**DISCUSSION/POSSIBLE ACTION:** Carol Ingalls - Acceptance of renewal proposal from Nevada Public Agency Insurance Pool (POOL) and approval for payment from fiscal year 2011-2012 funds.

Carol Ingalls and her associate Doug Smith of POOL/PACT, announced that the renewal of the County property and liability insurance is holding at a 4% increase. There were small changes in property values and exposures such as emergency runs and volunteer EMT's. Mr. Whitten complimented Carol and Doug for their amazing analysis of our needs.

**Motion:** Approve renewal proposal from Nevada Public Agency Insurance Pool (POOL) and approval for payment from fiscal year 2011-2012 funds, **Action:** Approve, **Moved by** Vice-Chairman Hess, **Seconded by** Commissioner Sjovangen.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 2).

**DISCUSSION/POSSIBLE ACTION: Colleen Sievers – Bureau of Land Management:** Presentation/Update on the proposal to reduce site safety hazards at the United Comstock Merger Mill at American Flat. This presentation also includes information on the public review and comment process for the project's DRAFT Environmental Assessment, identification of historic properties along with the BLM process for compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, and an opportunity to ask questions.

Colleen Sievers, Project Manager with BLM in Carson City, gave a brief update on American Flat Mill. She explained the purpose of Section 106 of the National Historic Preservation Act and submitted a handout. Chairman Kershaw questioned where funding for any action might come from. Ms. Sievers stated that funding would be figured into BLM's budget. Several people did attend a Public Meeting at the BLM office and more written comments are encouraged. Mr. Whitten suggested the County sign on as a consulting party with Austin Osborne as the primary contact. Storey County would then be at the table deciding on the mitigation.

No Action, Discussion Only.

**DISCUSSION/POSSIBLE ACTION:** Second Reading, Out of County License to Paul K. Singh, John F. de Podesta and Thomas Kloster, Primus Telecommunications, Inc.

Sheriff Antinoro asked to continue the item until he could further review.

**Motion:** Continue Second Reading, Out of County License to Paul K. Singh, John F. de Podesta and Thomas Kloster, Primus Telecommunications, Inc., **Action:** Approve, **Moved by** Vice-Chairman Hess, **Seconded by** Commissioner Sjovangen.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 2).

**DISCUSSION/POSSIBLE ACTION:** Second Reading, On-Sale Liquor License to Comstock Mining Inc., Gold Hill Hotel (change of officers/directors).

Sheriff Antinoro said the background check is completed and asked for approval.

**Motion:** Approve Second Reading, On-Sale Liquor License to Comstock Mining Inc., Gold Hill Hotel (change of officers/directors), **Action:** Approve, **Moved by** Commissioner Sjovangen, **Seconded by** Vice-Chairman Hess.



**Vote:** Motion carried by unanimous vote (**summary:** Yes = 2).  
The Chair called for a recess at 2:49 P.M.

Reconvened by call of The Chair at 3:04 P.M.

**DISCUSSION/POSSIBLE ACTION:** Approve, Amend, Ignore, Reject, or Remand the action recommended by the Planning Commission in regards to the Application for Special Use Permit (SUP Application No. 2011-010) of Thomas Taormina. Item continued from the May 3 meeting of the Board of County Commissioners

Chairman Kershaw stated that this is a continuance of a previously heard item and asked that only new public comment is made. Senior Planner Austin Osborne stated that at the County Commission meeting of May 3<sup>rd</sup>, 2011, a timeline of actions was requested for further review. A staff timeline from 1997 to present was presented along with supporting documents such as building permits, building permit applications, emails and letters of correspondence. Mr. Osborne explained the submitted Enclosures with specific notes to Enclosure #5 as a timeline submitted by Tom Taormina's legal Council, Fred Hopengarten. County Manager Whitten submitted a suggested Alternative Motion F and asked for further clarification of "a relative". Mr. Hopengarten stated that he had no disputes to any of the dates in the timeline and asked to pass Motion F.

Chairman Kershaw asked for any additional Public Comment. Buddy Morton, a Virginia City Highlands resident, presented his own timeline. He wished for the laws to be enforced and all violations be fined. Mr. Morton continued to explain his presentation listing dates, events and violations involving the towers as well as a nuisance complaint that he had filed himself. He asked why a fence and a sidewalk are taxed but the towers are not. Mr. Morton asked for a written document stating that the Commissioners will address all the violations from the past 14 years. He then publically submitted another nuisance complaint. A round of applause followed from the audience.

Jed Margolin, a Virginia City Highlands resident, questioned the new negotiation to permit a relative, not just Tom or Midge Taormina, to keep the towers. He expressed concern that if the County doesn't give Mr. Taormina what he wants, he will sue the County again which will cost the County money. Mr. Margolin compared this situation to the Cordevista project where the County has the right to control its own destiny.

Kathleen Stormoen, a Virginia City Highlands resident, added information on the taxing of personal property and spoke of the permit process. She spoke of safety issues and encroaching on neighboring property.

Vice-Chairman Hess expressed his discomfort with how the towers were erected and the total disregard for neighbors. He would rather not have any towers obstructing the view of the entrance to the Highlands but may entertain a few 45 foot towers. Commissioner Sjovangen said it appears that everyone involved made errors.

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

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 3).

District Attorney asked to be authorized to negotiate with Mr. Hopengarten that as long as a Federal Case is started within 60 days, the County Codes won't be enforced.

#### **LICENSING BOARD:**

##### **SECOND READINGS:**

1. **DAVIS COMPANY, INC.** - Contractor / 2485 Sutro Street, Reno
2. **HARDESTY'S GENERAL REPAIR** - Contractor / 120 N. Main Street, Yerington
3. **COMSTOCK NITES** - Nonprofit / 76 North C Street, VC
4. **AM POWER SYSTEMS** - Home Business / 340 Prospector Road, MT
5. **ENVIRONMENTAL PROTECTION SERVICES** - Contractor / 3579 Hwy 50 E, Carson City
6. **KEITH SHAMBLIN CONSTRUCTION, INC.** - Contractor / 128 Hillcrest Circle, Dayton
7. **E CONKLIN RESTORATION** - Contractor / 46 Hardy Drive, Sparks
8. **SIERRA PAINTING, INC.** - Contractor / 265 Golden Lane, Reno
9. **JACKSON QUALITY DRYWALL** - Contractor / 2528 Business Parkway, Suite B, Minden
10. **SCHLUTER SYSTEMS, L.P.** - General / 100 Germany Circle, TRI

Mr. Haymore asked to continue Schluter Systems as they are still building.

**Motion:** Continue Second Readings of Licensing Board Item #10, Schluter Systems, **Action:** Approve, **Moved by** Commissioner Sjovangen, **Seconded by** Vice-Chairman Hess.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 2).

Mr. Haymore asked to approve Item #1 through Item #9.

**Motion:** Approve Second Readings of Licensing Board Items #1 through #9,

**Action:** Approve, **Moved by** Commissioner Sjovangen, **Seconded by** Vice-Chairman Hess.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 2).

#### **BOARD COMMENT**

None

#### **ADJOURNMENT**

The meeting was adjourned by call of The Chair at 3:52 P.M.

Respectfully submitted by:

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Jessie Fain  
Storey County Deputy Clerk-Treasurer

*Please note that these minutes have not yet been approved and are subject to revision at the next meeting. These minutes are presented in a summary format and are not verbatim.*

# Exhibit 4

# Exhibit 4

**United States District Court  
District of Nevada (Reno)  
CIVIL DOCKET FOR CASE #: 3:11-cv-00645-LRH -VPC**

Taormina et al v. Storey County, Nevada  
Assigned to: Judge Larry R. Hicks  
Referred to: Magistrate Judge Valerie P. Cooke  
Case: 3:09-cv-00021-LRH-VPC  
Cause: 28:2201 Declaratory Judgement

Date Filed: 09/06/2011  
Jury Demand: None  
Nature of Suit: 950 Constitutional – State Statute  
Jurisdiction: Federal Question

**Plaintiff****Thomas S Taormina**represented by **Fred Hopengarten**

Six Willarch Road  
Lincoln, MA 01773  
781-259-0088  
Fax: 419-858-2421  
Email: [hopengarten@post.harvard.edu](mailto:hopengarten@post.harvard.edu)  
**ATTORNEY TO BE NOTICED**

**Brian M McMahon**  
McMahon Law Offices, Ltd.  
3715 Lakeside Drive, Suite A  
Reno, NV 89509  
775-348-2701  
Fax: 775-348-2702  
Email: [brian@mcmahonlaw.org](mailto:brian@mcmahonlaw.org)  
**ATTORNEY TO BE NOTICED**

**Plaintiff****Midge A Taormina**represented by **Fred Hopengarten**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Brian M McMahon**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

V.

**Defendant****Storey County, Nevada**represented by **Brent T. Kolvet**  
Thorndal Armstrong Delk, et al  
6590 South McCarran Blvd  
Suite B  
Reno, NV 89509  
Email: [mwilson@thorndal.com](mailto:mwilson@thorndal.com)  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
09/06/2011	<u>1</u>	COMPLAINT <i>SEEKING DECLARATORY AND INJUNCTIVE RELIEF</i> against Storey County (Filing fee \$ 350 receipt number 0978-2107110), filed by Midge A Taormina, Thomas S Taormina. Certificate of Interested Parties due by 9/16/2011. Proof of service due by 1/4/2012. (Attachments: # <u>1</u> Civil Cover Sheet) (McMahon, Brian) (Entered: 09/06/2011)
09/07/2011		Case assigned to Chief Judge Robert C. Jones and Magistrate Judge Valerie P. Cooke. (WJ) (Entered: 09/07/2011)

09/07/2011	<u>2</u>	NOTICE by Plaintiffs Midge A Taormina, Thomas S Taormina re <u>1</u> Complaint, <i>NOTICE OF EXHIBITS TO THE COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF PART ONE</i> (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B-D, # <u>3</u> Exhibit E-H, # <u>4</u> Exhibit I, # <u>5</u> Exhibit J, # <u>6</u> Exhibit J CONTINUED, # <u>7</u> Exhibit J CONTINUED)(McMahon, Brian) (Entered: 09/07/2011)
09/07/2011	<u>3</u>	NOTICE by Plaintiffs Midge A Taormina, Thomas S Taormina re <u>1</u> Complaint, <u>2</u> Notice (Other), Notice (Other). <i>NOTICE OF EXHIBITS TO THE COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF PART TWO</i> (Attachments: # <u>1</u> Exhibit K, # <u>2</u> Exhibit K CONTINUED, # <u>3</u> Exhibit K CONTINUED, # <u>4</u> Exhibit K CONTINUED, # <u>5</u> Exhibit K CONTINUED, # <u>6</u> Exhibit L-N, # <u>7</u> Exhibit O, # <u>8</u> Exhibit O CONTINUED, # <u>9</u> Exhibit P-Q)(McMahon, Brian) (Entered: 09/07/2011)
09/07/2011	<u>4</u>	NOTICE OF RELATED CASES 3:09-CV-00021-LRH-VPC by Plaintiffs Midge A Taormina, Thomas S Taormina. (McMahon, Brian) (Entered: 09/07/2011)
09/07/2011	<u>5</u>	CERTIFICATE of Interested Parties filed by Midge A Taormina, Thomas S Taormina that identifies all parties that have an interest in the outcome of this case.. (McMahon, Brian) (Entered: 09/07/2011)
09/13/2011	<u>6</u>	PROPOSED SUMMONS to be issued, filed by Plaintiffs Midge A Taormina, Thomas S Taormina. (McMahon, Brian) Modified on 9/14/2011 <b>Issued 9/14/2011</b> (DRM). (Entered: 09/13/2011)
09/14/2011	<u>7</u>	SUMMONS Issued as to Storey County, Nevada. (DRM) (Entered: 09/14/2011)
09/27/2011	<u>8</u>	SUMMONS Returned Executed by Midge A Taormina, Thomas S Taormina. Storey County, Nevada served on 9/27/2011, answer due 10/18/2011. (McMahon, Brian) (Entered: 09/27/2011)
10/27/2011	<u>9</u>	ANSWER to <u>1</u> Complaint, filed by Storey County, Nevada. Certificate of Interested Parties due by 11/6/2011. Discovery Plan/Scheduling Order due by 12/11/2011.(Kolvet, Brent) (Entered: 10/27/2011)
10/28/2011	<u>10</u>	NOTICE PURSUANT TO LOCAL RULE IB 2-2: In accordance with 28 USC § 636(c) and FRCP 73, the parties in this action are provided with a link to the "AO 85 Notice of Availability, Consent, and Order of Reference – Exercise of Jurisdiction by a U.S. Magistrate Judge" form on the Court's website – <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> . <b>Consent forms should NOT be electronically filed.</b> Upon consent of all parties, counsel are advised to manually file the form with the Clerk's Office. <b>(no image attached)</b> (DRM) (Entered: 10/28/2011)
11/16/2011	<u>11</u>	CERTIFICATE of Interested Parties filed by Storey County, Nevada. There are no known interested parties other than those participating in the case. (Kolvet, Brent) (Entered: 11/16/2011)
11/16/2011	<u>12</u>	MOTION for Leave to Appear Pro Hac Vice. <i>to waive LR IA 10-2, Permitting Counsel to Continue Representation</i> Attorney: Fred Hopengarten. by Plaintiffs Midge A Taormina, Thomas S Taormina. Motion ripe 11/16/2011. (McMahon, Brian) (Entered: 11/16/2011)
12/27/2011	<u>13</u>	MINUTE ORDER IN CHAMBERS of the Honorable Magistrate Judge Valerie P. Cooke, on 12/27/2011. By Deputy Clerk: LGM. A Case Management Conference is set for 1/30/2012 at 10:00 AM in Reno Courtroom 1 before Magistrate Judge Valerie P. Cooke. The parties shall jointly file a case management report by no later than the close of business on <b>Thursday, January 19, 2012</b> . See the attached order for specifications. (Copies have been distributed pursuant to the NEF – LGM) (Entered: 12/27/2011)
01/18/2012	<u>14</u>	PROPOSED Discovery Plan/Scheduling Order filed by Plaintiffs Midge A Taormina, Thomas S Taormina <i>Pursuant to FRCP Rule 26(F) and Local Rule 26-1(e)</i> . (McMahon, Brian) (Entered: 01/18/2012)
01/18/2012	<u>15</u>	JOINT CASE MANAGEMENT REPORT in compliance with <u>13</u> <del>NOTICE</del> by Plaintiffs Midge A Taormina, Thomas S Taormina <i>Joint Case Management Report</i> (McMahon, Brian) <i>Modified on 1/19/2012 event correction &amp; link added.</i> (BLG).

		(Entered: 01/18/2012)
01/19/2012	16	<del>NOTICE TO COUNSEL PURSUANT TO LOCAL RULE IA 10-2. Counsel Fred Hopengarten, Esq. to comply with completion and electronic filing of the Designation of Local Counsel and Verified Petition. For your convenience, click on the following link to obtain the form from the Court's website— <a href="http://www.nvd.uscourts.gov/Forms.aspx">www.nvd.uscourts.gov/Forms.aspx</a>. Counsel is also required to register for the Court's Case Management and Electronic Case Filing (CM/ECF) system and the electronic service of pleadings. Please visit the Court's website <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> to register Attorney(s). Verified Petition due by 3/4/2012.</del> <b>(no image attached)</b> (BLG) Modified on 1/19/2012 rescinded and stricken see (#17). (BLG). (Entered: 01/19/2012)
01/19/2012	17	NOTICE of Docket Correction to (# 16 ) Notice for Designation of Local Counsel & Verified Petition as to Fred Hopengarten Requirement is hereby <b>RESCINDED AND STRICKEN</b> pending decision of Plaintiffs <u>12</u> MOTION for Leave to Appear Pro Hac Vice. <i>to waive LR IA 10-2, Permitting Counsel to Continue Representation as to Fred Hopengarten, Esq. (no image attached)</i> (BLG) Modified on 1/19/2012 corrected typo. (BLG). (Entered: 01/19/2012)
01/30/2012	<u>18</u>	SCHEDULING ORDER re <u>14</u> Proposed Order : Discovery due by 4/23/2012. Motions due by 5/22/2012. Proposed Joint Pretrial Order due by 6/20/2012. Signed by Magistrate Judge Valerie P. Cooke on 1/30/2012. (Copies have been distributed pursuant to the NEF – DRM) (Entered: 01/31/2012)
01/30/2012	<u>19</u>	MINUTES OF PROCEEDINGS – Case Management Conference held on 1/30/2012 before Magistrate Judge Valerie P. Cooke. Crtrm Administrator: <i>LGM</i> ; Pla Counsel: <i>Brian McMahon and (By telephone) Fred Hopengarten</i> ; Def Counsel: <i>Brent Kolvet</i> ; Court Reporter/FTR #: <i>9:59:35 – 10:12:46</i> ; Time of Hearing: <i>9:59 a.m.</i> ; Courtroom: <i>1</i> ; The Court notes it is the District Court who will decide Mr. Hopengarten's motion for leave to appear pro hac vice <u>12</u> . The Court approves the parties' proposed discovery plan and scheduling order <u>14</u> . <b>Calendar Call</b> set for <b>8/20/2012 08:30 AM</b> in Reno Courtroom 6 before Chief Judge Robert C. Jones. <b>Trial</b> set for <b>8/28/2012 09:00 AM</b> in Reno Courtroom 6 before Chief Judge Robert C. Jones. A Case Management Conference is set for <b>3/12/2012 at 11:00 AM</b> in Reno Courtroom 1 before Magistrate Judge Valerie P. Cooke. Counsel shall file a joint or separate case management report by no later than the close of business on <b>Thursday, March 8, 2012</b> . IT IS SO ORDERED. (Copies have been distributed pursuant to the NEF – LGM) Modified on 2/1/2012 to reflect there is no jury demand in this case. (LGM) (Entered: 02/01/2012)
02/22/2012	<u>20</u>	REPLY to Response to <u>12</u> MOTION for Leave to Appear Pro Hac Vice. <i>to waive LR IA 10-2, Permitting Counsel to Continue Representation</i> Attorney: Fred Hopengarten. ; filed by Plaintiffs Midge A Taormina, Thomas S Taormina. (Attachments: # <u>1</u> Exhibit 1)(McMahon, Brian) (Entered: 02/22/2012)
02/23/2012	<u>21</u>	<b>STRICKEN PER ORDER <u>24</u></b> NOTICE by Plaintiffs Midge A Taormina, Thomas S Taormina <i>EXPERT DISCLOSURE; FRCP RULE 26</i> (McMahon, Brian) Modified on 3/15/2012 (LGM). (Entered: 02/23/2012)
02/28/2012	<u>22</u>	JOINDER <i>JOINT SUPPLEMENT TO STATUS CONFERENCE</i> filed by Plaintiffs Midge A Taormina, Thomas S Taormina. (McMahon, Brian) (Entered: 02/28/2012)
03/09/2012	<u>23</u>	Joint STATUS REPORT by Plaintiffs Midge A Taormina, Thomas S Taormina. (McMahon, Brian) (Entered: 03/09/2012)
03/12/2012	<u>24</u>	MINUTES OF PROCEEDINGS – Case Management Conference held on 3/12/2012 before Magistrate Judge Valerie P. Cooke. Crtrm Administrator: <i>LGM</i> ; Pla Counsel: <i>Brian McMahon and (By telephone) Fred Hopengarten</i> ; Def Counsel: <i>Brent Kolvet</i> ; Court Reporter/FTR #: <i>11:00:30 – 11:09:42</i> ; Time of Hearing: <i>11:00 a.m.</i> ; Courtroom: <i>1</i> ; The Court advises the motion to waive LR IA 10-2 concerning Mr. Hopengarten remains under submission to the District Court. Plaintiffs' expert disclosure <u>21</u> is STRICKEN. A settlement conference is set for April 17, 2012 at 9:00 a.m. The deputy court clerk is directed to issue the standard order scheduling settlement conference. THEREAFTER, the deputy court clerk advises counsel of a conflict with April 17, 2012, provides additional dates, and

		requests that counsel advise which dates they are available to schedule a settlement conference in this action. (Copies have been distributed pursuant to the NEF – LGM) (Entered: 03/15/2012)
03/28/2012	<u>25</u>	STIPULATION <i>Regarding Settlement Conference</i> by Plaintiffs Midge A Taormina, Thomas S Taormina. (McMahon, Brian) (Entered: 03/28/2012)
04/03/2012	26	MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Robert C. Jones, on 4/3/2012. IT IS ORDERED that this case is reassigned to Judge Larry R. Hicks for all further proceedings. Chief Judge Robert C. Jones no longer assigned to case. All further documents must bear the correct case number 3:11-cv-645-LRH-VPC. <b>(no image attached)</b> (Copies have been distributed pursuant to the NEF – BLG) (Entered: 04/03/2012)
04/06/2012	<u>27</u>	ORDER APPROVING <u>25</u> Stipulation. IT IS ORDERED that pending a decision from the Court on Mr. Hopengarten's <i>Motion to Waive LR IA 10-2, Permitting Counsel to Continue Representation</i> , Mr. Hopengarten will appear in lieu of Mr. McMahon, as counsel for the TAORMINAS at the Settlement Conference. If there is no ruling on the <i>Motion</i> before April 16, 2012, the parties will reschedule the Settlement Conference with the Court. Signed by Magistrate Judge Valerie P. Cooke on 4/3/2012. (Copies have been distributed pursuant to the NEF – KO) (Entered: 04/06/2012)
04/10/2012	<u>28</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Larry R. Hicks, on 4/10/2012. Ps <u>12</u> Motion to Waive LR IA 10-2, Permitting Counsel to Continue Representation is GRANTED. Attorney Fred Hopengarten may continue to represent Ps without filing in this matter a verified petition for permission to practice in this case only by attorney not admitted to the Bar of this court and designation of local counsel. (Copies have been distributed pursuant to the NEF – PM) (Entered: 04/10/2012)
04/16/2012	29	MINUTES OF PROCEEDINGS – Settlement Conference held on 4/16/2012 before Magistrate Judge Valerie P. Cooke. Crtrm Administrator: <i>Rosemary Damron</i> ; Pla Counsel: <i>Fred Hopengarten</i> ; Def Counsel: <i>Brent Kolvet</i> ; Court Reporter/FTR #: <i>FTR 4:51:51 – 5:10:26</i> ; Time of Hearing: <i>9:00 a.m. – 5:10:26 p.m.</i> ; Courtroom: <i>I</i> . Also present for this proceeding in addition to Mr. Hopengarten, Mr. Taormina and Mr. Kolvet are Mr. Kershaw, Chairman, Storey County Commission; Mr. Whitten, Storey County Manager; Mr. Maddox, District Attorney for Storey County; Mr. Osborne, Storey County Planner; and Mr. Hamlin, on behalf of the insurance carrier. The Court and parties conducted settlement negotiations in chambers. The parties reached a settlement agreement. The terms of the settlement as outlined on the record are subject to approval by the Storey County Commission at a duly noticed public meeting. The parties have a binding settlement agreement. This Court retains jurisdiction over the terms of the settlement pending the filing of the stipulation of dismissal. Assuming this case is on Storey County's agenda for the vote in May, a stipulation and order for dismissal shall be submitted by Monday, June 18, 2012. If this matter is not on the May agenda for approval by Storey County, counsel will submit a notice to the court. The terms of the settlement agreement are placed on the record. The recording of this proceeding is sealed. IT IS SO ORDERED. Settlement documents are due by 6/18/2012. <b>(no image attached)</b> (Copies have been distributed pursuant to the NEF – RD) (Entered: 04/17/2012)



# Exhibit 5

# Exhibit 5

# STOREY COUNTY COMMISSION MEETING

MONDAY, MAY 21<sup>ST</sup>, 2012 1:00 P.M.

DISTRICT COURTROOM

26 SOUTH B STREET, VIRGINIA CITY, NEVADA

## AGENDA

BOB KERSHAW  
CHAIRMAN

BILL MADDOX  
DISTRICT ATTORNEY

GREG "BUM" HESS  
VICE-CHAIRMAN

BILL SJOVANGEN  
COMMISSIONER

VANESSA DU FRESNE  
CLERK-TREASURER

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\*CALL TO ORDER AT 1:00 P.M.

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

### CONSENT AGENDA

(All matters listed under the consent agenda are considered routine, and may be acted upon by the Board of County Commissioners with one action, and without an extensive hearing. Any member of the Board or any citizen may request that an item be taken from the consent agenda, discussed, and acted upon separately during this meeting. The Commission Chair reserves the right to limit the time allotted for each individual to speak. )

\* Approval of Agenda for May 21, 2012

\*Approval of Minutes for May 1, 2012

\* Correspondence

\*Approval of Claims

\*Approval of Maps

\*Approval of Assessor correction to the Tax Roll

\*Approval of Treasurer's Report

\*Approval of Planning Commission Minutes - May 5, 2012

**2012-014 SPECIAL USE PERMIT:** By Kuffner/Vista Towers (Virginia City Highlands)

Applicant is requesting a Special Use Permit for APN 003-101-66, 21485 Saddleback Rd, Virginia City Highlands, to install and operate an 85' Stealth "Monopine" Commercial Wireless Communications Tower capable of accommodating up to four wireless carriers.

**Motion:** Approval of Application with all conditions from the Staff Report and to include the changes discussed and requested by the Planning Commissioners (refer to Planning Commission Minutes dated May 3, 2012), **Action:** Approve, **Moved** by Virgil Bucchianeri, **Seconded** by John Harrington.

**Vote:** Motion carried by unanimous roll call vote (summary: Yes = 5).

**2012-016 SPECIAL USE PERMIT:** By Keri Lamorey (Mark Twain)

Special Use Permit request for a home occupation dog training and grooming business and for the keeping of large domestic animals (sheep and goats) beyond the maximum number allowed at 558 Sutro Springs Rd. (APN 003-274-08).

**Motion:** Approval of the Special Use Permit to operate a home occupation business, inclusive of day-use training for 7 dogs, and the keeping of 20 pygmy goats and/or pygmy sheep, inclusive, for personal pleasure and use in association with the home occupation business. All conditions from the staff report with changes requested by the Planning Commission will apply (document given to the Commissioners).

Agenda, **Action:** Approve, **Moved** by Lydia Hammack, **Seconded** by Laura Kekule.

**Vote:** Motion carried by unanimous roll call vote (summary: Yes = 5).

**Motion:** Move this Special Use Permit application on to the County Commissioners before the approval of the Planning Commission Minutes, **Action:** Approve, **Moved** by Lydia Hammack, **Seconded** by Bret Tyler.

**Vote:** Motion carried by roll call vote (summary: Yes = 5).

**\*Approve New and/or Revised County Policies**

**\*LICENSING BOARD:**

**FIRST READINGS**

- 1.NORM'S ENVIRONMENTAL SOLUTIONS** – Contractor / 3670 Pershing Lane  
~ Washoe Valley
- 2.FAWCETT ELECTRIC** – Contractor / 565 Highway 339 ~ Yerington
- 3.CASHMAN EQUIPMENT COMPANY** – Contractor / 3300 St. Rose Parkway ~  
Henderson
- 4.LAILA FOODS dba SUBWAY RESTAURANT** – General / 420 USA Parkway  
~ #102
- 5.WASTING ARROWS** – General / 1501 Satellite Drive ~ Sparks
- 6.FULCRUM SIERRA BIOFUELS, LLC** – General / 222A East Sydney

**TRI**

**TRI**

- 7.HIGH DESERT RACING ASSOCIATION – General. 420 USA Parkway ~ #104**  
**8.COWBOY COMIC (THE) – General / 2731 Kayne Avenue ~ Minden (C Street)**  
**STAR BUILDERS – Contractor / 3935 Rainier Court ~ Reno**

**TRI  
VC**

**END OF CONSENT AGENDA**

**\*DISCUSSION/POSSIBLE ACTION:** Final Budget Hearings for FYE 2012/2013.

**\*RECESS TO CONVENE AS THE NRS 473 STOREY COUNTY FIRE PROTECTION DISTRICT BOARD**

**\*DISCUSSION/ACTION:** Final Budget Hearings for FYE 2012/2013 for the NRS 473 Fire Protection District.

**\*ADJOURN TO CONVENE AS THE NRS 474 STOREY COUNTY FIRE PROTECTION DISTRICT BOARD**

**\*DISCUSSION/ACTION:** Final Budget Hearings for FYE 2012/2013 for the NRS 474 Fire Protection District.

**\*ADJOURN TO CONVENE AS THE STOREY COUNTY WATER AND SEWER BOARD**

**\* DISCUSSION/ACTION:** Final Budget Hearings for FYE 2012/2013 for the Water and Sewer services in Virginia City, Gold Hill and Silver City.

**\*ADJOURN TO RECONVENE AS THE STOREY COUNTY BOARD OF COMMISSIONERS**

**\*DISCUSSION/POSSIBLE ACTION:** Final Budget Hearings for FYE 2012/2013.

***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.

**\* LICENSING BOARD**

**SECOND READINGS:**

1. **SHANK EXCAVATION & CONSTRUCTION** – Contractor / 450 Lovitt Lane  
~ Reno
2. **ROADSHOWS, INC.** – General / 601 Kuenzli Street ~ Reno
3. **VIRGINIA CITY PARANORMAL** – Home Business / 55 North R Street (Rear)  
~ Virginia City
4. **NORTON CONSULTING, LLC** – General / 1977 Glendale Avenue ~ Sparks
5. **MCELROY CONSTRUCTION** – Contractor / 200 Virgil Drive ~ Sparks
6. **THE DIAMOND DUCHESS** – General / 145 South C Street, Suite A VC
7. **TAHOE FENCE COMPANY, INC.** – Contractor / 36 Brown Drive ~  
Moundhouse
8. **OLD VIRGINIA CITY ANTIQUES** – General / 145 South C Street VC
9. **MARNEY HANSEN** – Home Business / 191 South B Street VC
10. **CONCO STORAGE, LLC** – General / 2777 USA Parkway TRI
11. **L & H CONCRETE** – Contractor / 3550 Pyramid Highway ~ Sparks
12. **OXBORROW TRUCKING, INC.** – Transportation / 905 East Mustang MCC
13. **SILVER STATE MINERALS, LLC** – Transportation / 905 East Mustang MCC
14. **WESTERN NEVADA TRANSPORT** – Transportation / 905 East Mustang MCC

**BOARD COMMENT**

**ADJOURNMENT**

**ANY ITEM MARKED WITH AN \* MAY BE ACTED UPON BY THE BOARD NOTICE:**

- Anyone interested may request personal notice of the meetings.
- Agenda items must be received in writing by 12:00 noon on the Monday of the week preceding the regular meeting. For information call (775) 847-0969.
- Items may not necessarily be heard in the order that they appear.
- Time limits on Public Comment will be at the discretion of the Chairman of the Board. Please limit your comments to two minutes.
- Storey County recognizes the needs and civil rights of all persons regardless of race, color, religion, gender, disability, family status, or nation origin.

**Notice to persons with disabilities:** Members of the public who are disabled and require special assistance or accommodations at the meeting are requested to notify the Commissioners' Office in writing at PO Box 176, Virginia City, Nevada 89440.

In accordance with Federal law and U.S. Department of agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, religion, age, disability (Not all prohibited bases apply to all

programs.) To file a complaint of discrimination write to USDA, Director, Office of civil rights, 1400 Independence avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or 202-6382 (TDD). USDA is an equal opportunity provider, employer, and lender.

The TTY, VCO voice carry over) or HCO hearing carry over) number is 800-326-6868; voice only 800-326-6868. Check the customer Guide section of your telephone book under Services for Individuals with a Hearing or Speech Disability.

### **CERTIFICATION OF POSTING**

I, Vanessa DuFresne, Clerk to the Board of Commissioners, do hereby certify that I posted, or caused to be posted, a copy of this agenda at the following locations on or before May 15, 2012; Virginia City Post Office, Storey County Courthouse, Virginia City Fire Department, Six Mile Canyon Fire Department, Virginia City Highlands Fire Department and Lockwood Fire Department.

By \_\_\_\_\_  
Vanessa DuFresne, Clerk-Treasurer

# Exhibit 6

# Exhibit 6

# **Approval of Settlement Agreement with Taormina's**



# Storey County Commissioners' Office

Drawer 176  
Virginia City, NV 89440  
(775) 847-0968

Storey County Courthouse  
26 South B Street, Virginia City

Commissioners@StoreyCounty.org  
www.StoreyCounty.org  
Fax: (775) 847-0949

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## Storey County Commissioners' Office and Planning Division Staff Recommendation Summary

**I. Meeting Date:** May 21, 2012

**II. Agenda Item:** DISCUSSION / POSSIBLE ACTION: Possible approval of settlement agreement between Thomas and 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.

**III. Staff Recommendation:** In accordance with the Settlement Agreement between the plaintiff Thomas and Midge Taormina and the defendant Storey County on April 16, 2012, county staff recommends the following motion for approval of SUP Application No. 2011-010. The conditions of the SUP listed below should accompany and become part of that motion. The motion for approval, in accordance with said settlement, should apply to amateur radio antenna support structures at, below, and over 45 feet in height.

**PROPOSED MOTION:** Based on findings and compliance with all conditions and stipulations imposed in accordance with the Settlement Agreement between the SUP Applicant and Storey County, staff moves to recommend that the Board of Storey County Commissioners approve SUP Application No. 2011-010 and include in that motion all conditions of the SUP listed in Section IV of this summary report.

**IV. Conditions of SUP Approval.** All of the following conditions of Special Use Permit (SUP) No. 2011-010 shall be met to the satisfaction of Storey County Community Development Department staff, unless otherwise noted:

### 1. Special Use.

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"). 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.

**2. Required Permits and Licenses.**

If not already done, the Permit Holders shall apply for all required permits and licenses, including building and fire permits as may be necessary, for the project within twelve (12) months from the date of final approval of SUP No. 2011-010. All applications for permits or licenses will be processed expeditiously. In the event that the amateur radio licenses for Thomas and Midge Taormina expire for a period of 30 days or more, the associated antenna support structures shall be deemed abandoned and taken down in accordance with Condition No. 7 (Closure and Reclamation) of this SUP.

**3. No transfer of Rights.**

This SUP is personal to the Permit Holders and shall belong exclusively to Thomas and/or Midge Taormina and the real property applicable to this SUP so long as Thomas and/or Midge Taormina reside for a material part of each year on the property. This SUP shall not be transferrable.

**4. Indemnification/Insurance.**

The Permit Holders agree to hold Storey County, its officers, and representatives harmless from the costs and responsibilities associated with any damage or liability to persons or property and any/all other claims now existing or which may occur as a result of construction and maintenance under this SUP. The Permit Holders shall maintain satisfactory liability insurance for all aspects of this operation under SUP No. 2011-010 for a minimum amount of \$1,000,000.00 (one million dollars) and provide proof thereof to Storey County prior to the issuance of a building permit pursuant to the SUP.

**5. Emergency Telephone Contact.**

Any persons located on the premises in connection with maintenance, repairs, or other work to the amateur radio system and associated antenna support structures shall be made aware to dial Storey County **Emergency Services Direct-Connect 775.847.0950 (in lieu of 9-11)** when dialing emergency service from **cellular telephone. Emergency 9-11 still applies to landline telephones.**

**6. Emergency Management Plan.**

A comprehensive emergency management plan shall be developed by the Permit Holders and submitted to the Storey County Emergency Management Department for review and approval prior to securing rights to the SUP. The plan shall include, but not be limited to, the following in case of failure of one or more amateur radio antenna support structures and related appurtenances: (1) Permit Holders emergency contact phone number(s); (2)

emergency contact procedure, including for Dispatch 9-1-1, Storey County Emergency Direct-Connect 775.847.0950, and Fire and Emergency Management Departments; (3) documenting and reporting; (4) post structure failure management, cleanup, reclamation, and material disposal; (5) electrical system shut-down procedure; (6) disclosure and management of hazardous materials (e.g., asbestos) or other conditions (e.g., radiation), if applicable; and (7) post structure failure damage reporting and treatment of affected neighboring properties.

**7. Abandonment/Closure/Reclamation.**

Any antenna support structure out of operation for longer than (12) consecutive months shall be deemed abandoned. 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. 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.

**8. Finding of Necessity to Local Jurisdiction.**

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 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.

**9. Plans Submittal.**

If not done already, the Applicants shall provide Storey County Community Development Department site plans, drawn to scale, which shall include dimensions of existing and proposed antenna support structures, including guy wires and anchor points, as applicable, setback dimensions, and driveway dimensions. It is hereby noted that all necessary plans appear to have been submitted to Storey County; if not, the Permit Holders and Storey County hereby agree to work together in good faith to get all necessary plans submitted as required by the Storey County Code and this SUP.

**10. Setbacks.**

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.

**11. Restrictions on Mounted Devices; Anti-climbing Required.**

The amateur radio antenna support structures shall be used exclusively for yagi array and wire amateur radio antennas. Except for antennas or other devices used for the exclusive use of the residence on the property, the antenna support structures shall not support common-carrier cellular telephone or any other commercial purpose antenna or device. The antenna support structures shall not be used to support other items not related to amateur radio operations. Anti-climbing devices shall be installed at each antenna support structure to protect the public.

**12. Noise.**

Power generator(s) shall comply with Storey County Code, Chapter 8.04 and Storey County Code, § 17.40.070. Nonetheless, any generator(s) on the property shall only operate during power outages and/or during routine recharge and maintenance intervals. Maintenance/recharge operation shall be limited to three thirty-minute intervals per week and shall take place on weekdays (Monday thru Friday) between the hours of 11:00 a.m. and 3:00 p.m. Other maintenance and repair of the facility, except during emergencies, shall be limited to 9:00 a.m. and 5:00 p.m. during said weekdays.

**13. Lighting.**

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) beacon lighting. 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.

**14. Visual Impact.**

All exterior finishes for each antenna support structure, including additional antenna support structures as applicable to the approved SUP, shall be non-reflective, dull in appearance, and

gray in color (with a hue similar to that of the oxidized galvanized steel antenna support structures existing on-site) in order to facilitate blending with the backdrop terrestrial and sky environment. The existing and additional galvanized steel lattice antenna support structures may remain uncoated and exposed to the natural environment (as determined safe by the engineered design) in order to retain their naturally occurring dull gray exterior.

**15. Antenna Support Structures – Limitations and Height.**

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.

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.

**16. Electrical Distribution and Controls.**

The location, routing, and alignment of exterior electrical and communication controls, associated wiring, and power lines shall be approved by Storey County Building Department, when applicable.

**17. Compliance.**

The Permit Holders shall be responsible for maintaining the premises and managing operations in accordance with all conditions and stipulations set forth by SUP 2011-010 and all other federal, Nevada statutes, and Storey County codes and regulations. Failure to comply with the requirements herein shall elicit a written warning to the Permit Holders by Storey County on the first and second offense. A third offense shall warrant Storey County to revoke the SUP. Storey County shall reserve the right to conduct periodic reviews of the Permit Holders compliance with all conditions and stipulations of the SUP.

**18. SUP Conditions Recording.**

This SUP approval, inclusive of all conditions of approval, shall be recorded with the Office of the Storey County Recorder to accompany the deed for the real property owned by Thomas and Midge Taormina and applicable to this SUP.

Prepared by Storey County staff and legal counsel

## Exhibit 7

## Exhibit 7

**Meeting of the Storey County Board of Commissioners on May 21, 2012**

Index produced by Jed Margolin 5/28/2012

The following are my index and my characterizations. Please listen to the actual recording.

[File 1](#) – 46.9 Mbytes 51:19

Times are referenced to the file time.

00:00:00 Call to Order

00:00:07 Pledge of Allegiance

00:01:30 Public Comment – Gunther Prosser, resident of the Lockwood River District. The County is expanding their park (an expansion they don't want) but is not maintaining the existing park (which they do want). The County pushed on.

00:04:46 Vista Towers Application for a Special Use Permit for a Cell Phone Tower was removed from the Consent Agenda.

00:05:42 Items on Consent Agenda approved

00:05:50 Vista Towers Application for a Special Use Permit for a Cell Phone Tower.

00:05:52 Austin Osborne, Storey County Senior Planner

00:15:46 John Schmoker, Highlands resident – There is a better location for the cell phone tower.

00:17:59 Question from Commissioners

00:18:00 Commissioners approve SUP with the provision that Vista Towers have at least two contacts with carriers.

00:19:25 Budget Hearings

00:19:25 Pat Whitten, County Manager

00:28:17 Public Comments – Patrick Flanagan – Please don't close the Library

00:32:32 Public Comments – Mark Joseph Philips – Please don't close the Library

00:35:59 Public Comments – Gary Schmidt (Candidate for Nevada State Assembly) – Please don't close the Library

00:38:10 Commissioners discuss the Library in view of the County's other priorities. They decide that Libraries are obsolete, anyway, so they later vote to defund it

00:41:38 Pat Whitten, County Manager – More Budget Matters



00:51:19 Recess until 2 pm

[File 2a](#) – 40.5 Mbytes 44:16

00:00:00 Call Back to Order

00:00:14 Taormina Tower Agreement

00:00:41 Brent Kolvet, attorney hired by the County’s insurance carrier to defend the County in Tom’s lawsuit.

00:02:40 Public Comments – Jed Margolin, Highlands Resident – You are violating Nevada’s Open Meeting law because you have not made the Tower Agreement available to the Public.

00:06:05 Public Comments – Kathleen Storemeon, Highlands resident – Tom and Midge knowingly violated the Law. The County has spent money on this case but not one cent in prosecuting the guilty. Law-abiding Tax-paying citizens have been ignored. A commission should be set up to investigate the County’s actions. She requested a 60 day delay, so that “Property owners could arrange legal counsel.” That request was denied.

00:08:19:00 Public Comments – Buddy Morton, Highlands resident – Are these towers being taxed? He also requested a 60 day delay so property owners can arrange their own legal counsel. He wanted a list of parties involved in the negotiation. He also wanted the original documentation provided for the towers looked at again because it appears that they were signed off by an out-of-state engineer. Tom broke the law, the towers were erected illegally, so how can the Commissioners let him keep them?

00:12:14 Public Comments – Cynthia Kennedy –

The County, especially the Building Department, admits that it made mistakes. When IRS employees give you incorrect information about the tax law, too bad for you. Why is this any different?

Why did Tom get almost everything he wanted?

When the Commissioners denied Tom’s application for a Special Use Permit they failed to give a reason, and it really hurt the County in this lawsuit. At that meeting, why didn’t Judge Maddox (DA Maddox) lean over and advise the Commissioners to give a reason?

Tom was allowed to be his own expert witness on ham radio and towers in this case. Who was the County’s expert witness on ham radio and towers in this case?

The company applying for a SUP to put in a Cell Phone Tower has jumped through hoops to work with the County and the Homeowners Association. Why is Tom being given carte blanche to do what he wants?

00:15:48 Public Comments – Gary Schmidt (Candidate for Nevada State Assembly) is an expert on the Open Meeting Law, and explains the Law to the Commissioners.

00:18:12 Brent Kolvet continues to assert the fiction that the Staff Recommendations Summary is the Taormina Tower Agreement. Chairman Kershaw asked Brent to comment on Mr. Schmidt's statement about the Open Meeting Law. Brent said,

“Yah, ah, like Mr. Schmidt I'm familiar with that section as well, and what it requires is that if there is a document that you're voting on it be presented at the hearing. There is no document other than the document which is contained in your packet which is the Storey County Commission Staff Recommendations Summary. The conditions that are outlined in that Summary are the conditions that were negotiated and agreed to. The condition of the agreement is that if this Special Use Permit is approved then the lawsuit goes away. If it doesn't get approved today, then the lawsuit continues. There's nothing secret about the rest of the settlement. Those are the terms. These eighteen conditions that are listed in your Summary are the conditions of the Settlement.

My comments here:

1. “The condition of the agreement is that if this Special Use Permit is approved then the lawsuit goes away.”

That's not in the Staff Summary, so it's not the Settlement Agreement.

2. “There's nothing secret about the rest of the settlement.”

Even if the **rest** of the Settlement Agreement isn't secret, it must mean that somewhere there **is** the rest of the Settlement Agreement. Then even if the Summary **is** the Settlement Agreement, it's not the complete Settlement Agreement. Why isn't the Settlement Agreement complete? The Commissioners are not voting on the complete Settlement.

3. “If it doesn't get approved today, then the lawsuit continues.”

Why does it have to be approved today? Wouldn't that be spelled out in the Settlement Agreement? This revelation was a surprise. What other surprises (secrets) are in the Settlement Agreement which, since it is not written down, is an oral agreement, not a written agreement. If Brent hasn't learned that **Tom** embellishes his memory of conversations and draw preposterous inferences from them, then he hasn't read the Record of this case. What else will **Tom** decide was in the (oral) Settlement Agreement?

Isn't it the Court's intent that the Settlement Agreement be completely written down?

Note that Brent answered Mr. Schmidt, not me. I asked “What is the Staff **Summary** a **Summary** of?” I guess we will never know.

00:19:30 Chairman Kershaw says what he really thinks about Tom. It's honest. It's refreshing. It's way too late.

00:20:25 Chairman Kershaw ends with, “Going on from here, if there's something from the District Attorney that you feel that we need to do differently or...”

DA Maddox says, emphatically, “No, no, there is no meeting violation, because this is the Agreement. And the only other document that’ll be prepared as a result of this, if this is approved, if the Special Use Permit is approved, is I will make a memorandum of these conditions which will be filed with the County Recorder, and basically the memorandum will be exactly what’s in Subsection 4. It will just be a memorandum that sets forth all these conditions and it will be filed with the County Recorder, so there is no violation of the Open Meeting Law.”

Then he says who was at the Settlement Conference, which we already know from the Court Record.

00:21:55 Pat Whitten promises he will look into the tax issue brought up by Buddy.

00:22:35 Commissioner Hess also says what he really thinks about Tom. He is puzzled why Tom is being allowed to get away with this, but he will do what Brent (the attorney hired by the insurance carrier) advises the County to do.

00:23:27 Cynthia Kennedy (from the audience) asks about the section regarding the value of Tom’s station in emergencies.

00:24:42 Pat Whitten gives a lame answer.

00:26:08 Katherine Storemeon (from the audience) asks how Brent was chosen and asks, again, if the citizens will be given time to get their own attorney.

00:28:25 DA Maddox makes the extraordinary admission that, at the July meeting when the Commissioners denied Tom’s Application for Special Use permit, he should have stopped the Commission and made them make findings. He said they have made changes so it won’t happen again, and that he will be tough about it.

He then says he could not have represented the County in this issue because the insurance carrier had that right. He did not address Katherine’s question of how Brent was selected.

Then he promises that, with his new policy of being tough, he will be tough about telling people to sit down.

You really should listen to this part with DA Maddox.

00:32:30 Buddy Morton asks Brent if he saw his timeline. (I asked Brent if he has seen the Towers.) Brent says that he read the entire Record, and yes, he has seen the towers.

00:33:55 Jed Margolin (that’s me) asks again why the Staff Recommendations Summary is called a Summary, and what is it a Summary of? They won’t answer and say I am simply engaging in argument.

I tell them that they have no way of enforcing the section that says if Tom and Midge leave they have to take the towers down.

Brent gives a lame answer.

I manage to make the statement:

The fact is that Tom has figured out the System.

Sue the County, the County settles, and you get most of what you want.

And he can do this as many times as he wants.

He will be able to get anything he wants from the County.

So, how long before he gets to put up a 1000' tower?

A 1000' tower will require a high intensity white flashing light on the top,  
and will be visible from Reno, maybe even downtown Reno.

And then everyone will know that Tom is the King of Storey County.

Brent gives another lame answer.

00:37:20 The Commission breaks for five minutes

00:37:28 The Commission reconvenes. Chairman Kershaw asks for any additional discussion or comments from the Commissioners or Staff, and for a Motion.

There is some discussion and some comments.

Then, after talking about Tom, Commissioner Hess makes the Motion to approve "his SUP." Commissioner Sjovangen seconds the motion.

00:39:30 The Commission votes unanimously to approve the Settlement Agreement.

00:40:19 I ask from the audience, "Excuse me, what is it that you just approved?"

I keep getting lame answers and I keep asking the question, "What is it that you just approved?"

Finally,

Me: You approved the Settlement Agreement?

Chairman Kershaw: Yes, that's what I just said."

00:41:00 Pat Whitten continues. (File 3 at 00:03:33)

00:41:10 DA Maddox interrupts during a discussion of something else to ask the Commissioners to make the Tower Agreement Motion clearer(?) and vote on it again. They do that. (File 3 at 00:19:57)

And they approve it again, only this time they make it clear that they are approving the Special Use Permit. It's a restatement of **Staff Recommendation Summary** Section III Staff Recommendation **Proposed Motion**.

Based on findings and compliance with all conditions and stipulations imposed in accordance with the Settlement Agreement between the SUP Applicant and Storey County, the Board of Storey County  
Appendix - 62

Commissioners approves SUP Application No. 2011-010 and include in that motion all conditions of the SUP listed in Section IV of this summary report.

00:22:35 The Board adjourns and reconvenes as the NRS 473 Storey County Fire Protection District Board.

[File 3](#) – 39.2 Mbytes 42:52

[I appended this part to File 2a]

00:00:00 The Commission reconvenes. Chairman Kershaw asks for any additional discussion or comments from the Commissioners or Staff, and for a Motion.

There is some discussion and some comments.

Then, after talking about Tom, Commissioner Hess makes the Motion to approve “his SUP.” Commissioner Sjovangen seconds the motion.

00:02:03 The Commission votes unanimously to approve the Settlement Agreement.

00:02:52 I ask from the audience, “Excuse me, what is it that you just approved?”

I keep getting lame answers and I keep asking the question, “What is it that you just approved?”

Me to Chairman Kershaw: You approved the Settlement Agreement?

Chairman Kershaw: Yes, that’s what I just said.”

00:03:33 Pat Whitten continues with the budget.

00:19:57 DA Maddox interrupts during a discussion of something else to ask the Commissioners to make the Motion clearer(?) and vote on it again. They do that.

00:22:31 And they approve it again, only this time they make it clear that they are approving the Special Use Permit. It’s a restatement of **Staff Recommendation Summary** Section III Staff Recommendation **Proposed Motion**.

Based on findings and compliance with all conditions and stipulations imposed in accordance with the Settlement Agreement between the SUP Applicant and Storey County, the Board of Storey County Commissioners approves SUP Application No. 2011-010 and include in that motion all conditions of the SUP listed in Section IV of this summary report.

00:22:35 The Board adjourns and reconvenes as the NRS 473 Storey County Fire Protection District Board.

00:22:50 Pat Whitten continues.

00:24:40 The Board adjourns and reconvenes as the NRS 474 Storey County Fire Protection District Board.

- 00:24:51 Pat Whitten continues.
- 00:33:58 The Board adjourns and reconvenes as the Storey County Water and Sewer Board.
- 00:34:10 Pat Whitten continues.
- 00:36:58 The Board adjourns and reconvenes as the Storey County Board of Commissioners.
- 00:39:20 Chairman Kershaw relates a meeting with Nevada Nako(?) to discuss Storey County getting its fair share of the sales tax that Amazon (whose distribution center is in Storey County) will be collecting on its Internet sales. (Most of Storey County has Reno zip codes for mailing addresses. As a result, sales tax collected in these areas goes to Washoe County. Storey County has been asking the Post Office to assign zip codes to Storey County for years but they refuse.)
- 00:40:28 The Board adjourns.

These are the raw video files with the original audio, some of which is not very audible.

Video File 1 (wmv, 71 MBytes): [12h59m9s.wmv](#)

Video File 2 (wmv, 51.5 Mbytes): [14h04m21s.wmv](#)

Video File 3 (wmv, 59 Mbytes): [15h00m24s.wmv](#)

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# Exhibit 8

# Exhibit 8

128 Nev., Advance Opinion 18

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL W. JONES; AND ANALISA  
A. JONES,  
Appellants,  
vs.  
SUNTRUST MORTGAGE, INC.,  
Respondent.

No. 57748

**FILED**

APR 26 2012

TRACEY A. LINDSEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

Appeal from a district court order denying judicial review in a foreclosure mediation matter. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Affirmed.

Terry J. Thomas, Reno,  
for Appellants.

Snell & Wilmer LLP and Leon F. Mead II, Cynthia L. Alexander, and  
Kelly H. Dove, Las Vegas,  
for Respondent.

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BEFORE THE COURT EN BANC.

OPINION

By the Court, GIBBONS, J.:

In this appeal, we consider whether a signed agreement resulting from Nevada's Foreclosure Mediation Program (FMP) constitutes an enforceable settlement agreement. We conclude that when an agreement is reached as a result of an FMP mediation, the parties sign



the agreement, and it otherwise comports with contract law principles, the agreement is enforceable under District Court Rule 16.<sup>1</sup> Therefore, we affirm the district court's order denying the Joneses' petition for judicial review.

### FACTS AND PROCEDURAL HISTORY

In 2006, appellants Michael W. Jones and Analisa A. Jones purchased a home in Sparks with a loan from Home Mortgage Direct Lenders. Home Mortgage Direct Lenders allegedly assigned the note and deed of trust to respondent SunTrust Mortgage, Inc.<sup>2</sup> The Joneses later defaulted on their mortgage. After receiving a notice of default and election to sell, the Joneses elected to participate in the FMP provided for in NRS 107.086.

SunTrust's attorney, the Joneses' attorney, and Mr. Jones attended the mediation in person, and a representative for SunTrust participated in the mediation by telephone. At the mediation, SunTrust produced uncertified copies of the original deed of trust, the original note, and the endorsement of the note to SunTrust. SunTrust also produced an

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<sup>1</sup>DCR 16 states:

No agreement or stipulation between the parties in a cause or their attorneys, in respect to proceedings therein, will be regarded unless the same shall, by consent, be entered in the minutes in the form of an order, or unless the same shall be in writing subscribed by the party against whom the same shall be alleged, or by his attorney.

<sup>2</sup>SunTrust did not provide copies of any assignments at the foreclosure mediation.

automated valuation of the Joneses' home that an online company generated without an in-person inspection of the home. SunTrust did not submit copies of any assignments. Despite SunTrust's failure to produce any assignments or certified copies of the other documents, the parties resolved the pending foreclosure by agreeing to a short sale of the Joneses' home, if accomplished within a specified time period. The mediator's statement sets forth that the parties agreed to the following terms:

14 days from 11/12/10, borrower will return short-sale package of documents to lender, including listing agreement for sale of the property. On or after 1/16/2011, lender shall have the right to seek a certificate from the FMP to proceed with foreclosure regardless of the status of the pending short sale. Borrower shall still have the right to make a short sale up to the time of foreclosure[.]

SunTrust's attorney, the Joneses' attorney, and Mr. Jones all signed the mediator's statement agreeing to execute the terms of the short sale.<sup>3</sup>

Following the mediation, SunTrust twice mailed a short-sale package to the Joneses, but the Joneses never returned the short-sale documents and instead filed a petition for judicial review in the district court. The Joneses requested that the district court impose sanctions against SunTrust because SunTrust violated NRS 107.086 and the Foreclosure Mediation Rules (FMRs) by failing to provide the required

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<sup>3</sup>While Ms. Jones was not present at the mediation, the Joneses do not argue that their attorney was not authorized to bind her to the agreement. To the extent that the Joneses suggest their attorney provided incompetent representation, the Joneses waived this argument by failing to raise it before the district court. See Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

documents and mediating in bad faith. After conducting a hearing on the petition, the district court denied the petition, finding that the Joneses entered into an enforceable short-sale agreement and therefore waived any claims under NRS 107.086 and the FMRs. The district court order allowed SunTrust to seek a certificate from the FMP to proceed with the foreclosure against the Joneses based on the terms of the short-sale agreement. This appeal followed.

### DISCUSSION

The short-sale agreement is an enforceable settlement agreement

The Joneses argue that the short-sale agreement with SunTrust is not enforceable because the agreement lacks consideration and SunTrust failed to comply with NRS 107.086 and the FMRs.

When reviewing whether the parties to a foreclosure mediation reached an enforceable settlement agreement, we must “defer to the district court’s findings unless they are clearly erroneous or not based on substantial evidence.” May v. Anderson, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005). “Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.” Whitemaine v. Aniskovich, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008). We review a “district court’s decision regarding the imposition of sanctions for a party’s participation in the Foreclosure Mediation Program under an abuse of discretion standard.” Pasillas v. HSBC Bank USA, 127 Nev. \_\_\_, \_\_\_, 255 P.3d 1281, 1286 (2011).

A settlement agreement is a contract, and thus, must be supported by consideration in order to be enforceable. May, 121 Nev. at 672, 119 P.3d at 1257. Consideration is the exchange of a promise or performance, bargained for by the parties. Pink v. Busch, 100 Nev. 684, 688, 691 P.2d 456, 459 (1984) (citing Restatement (Second) of Contracts §


71(1), (2) (1981)). If the settlement agreement is reduced to a writing signed by the party that it is being enforced against, or by his or her attorney, then it is enforceable under DCR 16.<sup>4</sup> See Resnick v. Valente, 97 Nev. 615, 616-17, 637 P.2d 1205, 1206 (1981) (reversing a district court's enforcement of a settlement agreement when the agreement was not reduced to a signed writing or entered in the court minutes following a stipulation).

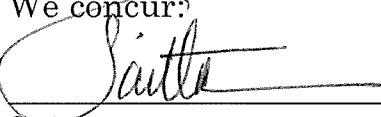
Substantial evidence supports the district court's finding that the mediator's statement containing the written short-sale terms, signed by all parties, including Mr. Jones and the attorney representing the Joneses, constitutes an enforceable settlement agreement. First, the short-sale agreement was supported by consideration. In exchange for the Joneses' agreement to a short sale, SunTrust agreed to suspend the foreclosure proceedings against the Joneses for two months. If the short sale was not accomplished within the two-month period, SunTrust could proceed with the foreclosure, but the Joneses maintained the right to conduct a short sale until the time of the foreclosure sale. Second, since we conclude that the district court properly found that the settlement agreement was enforceable, and the terms of the agreement allowed SunTrust to seek a certificate and pursue foreclosure if the short sale was not accomplished within a specified time, the Joneses' claim that the foreclosure cannot proceed based on alleged violations of NRS 107.086 and the FMRs lacks merit. The parties expressly agreed to the foreclosure in the event that the short sale did not take place. Therefore, the district


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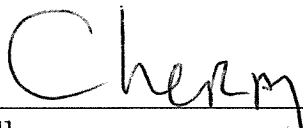
<sup>4</sup>If a participant in the FMP appears at a mediation by telephone, the party must provide a copy of the settlement agreement with his or her signature to the mediator in order to ensure compliance with DCR 16.

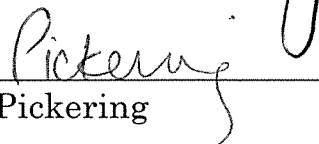
court did not abuse its discretion by refusing to impose sanctions against SunTrust. Accordingly, we affirm the district court's order.<sup>5</sup>

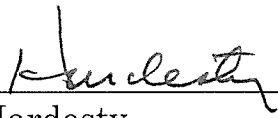
  
\_\_\_\_\_, J.  
Gibbons

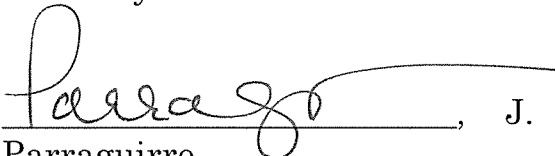
We concur:  
  
\_\_\_\_\_, C.J.  
Saitta

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

<sup>5</sup>In their opening brief, the Joneses request that this court take judicial notice of a Department of Business and Industry order, which does not involve the parties in this appeal. Also, in its answering brief, SunTrust asks this court to strike portions of the opening brief. Having considered the requests, and in light of NRAP 27(a)(1), requiring an application for an order or other relief to be made by motion, we deny both requests.

# Exhibit 9

# Exhibit 9

**Supreme Court of Nevada.****MAY v. ANDERSON**

**Gilda MAY, Individually; and Wade May, Individually and as Special Administrator for the Estate of Sebora Marie May, Appellants, v. Curtis Clint ANDERSON; Curtis L. Anderson; Darlene Anderson; and California Casualty Indemnity Exchange, Respondents.**

**No. 42204.**

**-- September 22, 2005**

Before ROSE, GIBBONS and HARDESTY, JJ.

Hall Jaffe & Clayton, LLP, and Michael R. Hall, Las Vegas; Harris & Schwartz and Ralph A. Schwartz, Las Vegas, for Appellants. Pearson, Patton, Shea, Foley & Kurtz, P.C., and Michele A. Kiraly and W. Randolph Patton, Las Vegas, for Respondents.

**OPINION**

In this case, all parties agreed to the essential terms of a release in reaching a global settlement, but three parties later refused to execute the release document. We therefore consider whether the essential terms of a release are a material part of a settlement agreement, without which the settlement agreement is never formed, or whether the release's terms are inconsequential in determining whether the parties have reached a settlement agreement. We conclude that the release's essential terms are material and therefore required for an enforceable settlement agreement to exist. However, what is an essential release term necessarily varies with the nature and complexity of the case. Because a settlement contract is formed when the parties have agreed to its material terms, even though the exact language is finalized later, a party's refusal to later execute a release document after agreeing upon the release's essential terms does not render the settlement agreement invalid.

**FACTS**

On January 21, 2001, respondent Curtis Clint Anderson (Curtis) was driving a vehicle owned by his parents, respondents Darlene and Curtis L. Anderson (the Andersons), when he lost control, causing a rollover accident. Sebora Marie May, Angela Baffa, Peter Budahl, and Shemeela Sherow were passengers in the car. All of the passengers sustained injuries; Sebora Marie May's were fatal.

The Andersons were insured by California Casualty Indemnity Exchange (CCIE). Their policy covered liability for injuries up to \$100,000 per person and \$300,000 per occurrence.

All parties hired separate counsel shortly after the accident. Gilda and Wade May, individually, and Wade May as special administrator for the estate of Sebora Marie May (the Mays), hired attorney Ralph Schwartz. With the Mays' consent, Schwartz commenced negotiations for a global settlement of all the claims against Curtis and the Andersons arising out of the accident. CCIE offered to pay the full policy limit of \$300,000 to the injured parties in exchange for a general release of all claims and a covenant not to sue. Schwartz agreed.

On September 5, 2001, Schwartz faxed a letter to the other parties' counsel, stating:

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It is my understanding that we have reached an equitable division of Curtis Anderson's policy limits as follows:

If the above distribution of settlement funds is acceptable, please sign below and return via fax to my office as soon as possible so that I may submit it to [the Andersons' attorney].

The other attorneys signed and returned the letter to Schwartz. Schwartz then faxed the signed letters to Curtis' and the Andersons' attorney. On one of the fax cover sheets, Schwartz wrote that he had attached the parties' consents to the distribution of the policy limits, and he requested that the Andersons' attorney immediately forward the release and settlement drafts.

The Andersons' attorney then sent letters to Peter's, Angela's and Shemeela's attorneys, along with Schwartz, confirming the settlement amount and including a full, final, and general release of all claims. Peter, Angela and Shemeela executed the documents and received payment from CCIE.

The Mays, however, refused to execute the documents or accept payment. The form of the general release was unacceptable to them because: (1) it did not contain an admission of liability by Curtis, and (2) it extinguished all claims and rights against Curtis and all persons who might have culpability or liability for the accident. Wade May acknowledged that he had authorized Schwartz to negotiate a settlement with the Andersons but never agreed to release Curtis, in part, because he felt such a release could jeopardize any possibility of convincing the police to prosecute Curtis for his daughter's death.

Unable to resolve the disagreement over the release document's final language, the Mays filed an action in district court against Curtis and the Andersons, alleging wrongful death and negligence. Curtis and the Andersons answered, asserting that the claim was settled and seeking specific performance of the settlement agreement. Additionally, CCIE, relying on the settlement agreement, interpleaded the balance of the insurance proceeds.

Following a bench trial, the district court found that Schwartz had authority to bind the Mays and that CCIE had offered to settle the claims by paying the full insurance proceeds for a general release of all claims and a covenant not to sue. Additionally, the district court determined that the execution of a release document was not necessary to enforce an otherwise valid settlement agreement. Consequently, the district court determined that the parties had entered into a legally enforceable settlement agreement providing for a general release of all claims and entered judgment in accordance with the proposed settlement. The Mays appeal.

## DISCUSSION

Whether the essential terms of a release constitute a material term of a settlement agreement is a matter of first impression in Nevada.

Because a settlement agreement is a contract, its construction and enforcement are governed by principles of contract law.<sup>1</sup> Basic contract principles require, for an enforceable contract, an offer and acceptance, meeting of the minds, and consideration.<sup>2</sup> With respect to contract formation, preliminary negotiations do not constitute a binding contract unless the parties have agreed to all material terms.<sup>3</sup> A valid contract cannot exist when material terms are lacking or are insufficiently certain and definite.<sup>4</sup> A contract can be formed, however, when the parties have agreed to the material terms, even though the contract's exact language is not finalized until later.<sup>5</sup> In the case of a settlement agreement, a court cannot compel compliance when material terms remain uncertain.<sup>6</sup> The court must be able to ascertain what is required of the respective parties.<sup>7</sup>

Contract interpretation is subject to a de novo standard of review.<sup>8</sup> However, the question of whether a contract exists is one of fact, requiring this court to defer to the district court's findings unless they are clearly erroneous or not based on substantial evidence.<sup>9</sup>

There is little doubt that release terms are generally thought to be material to any settlement agreement.<sup>10</sup> The majority of courts have held that the essential terms of a release are necessary to a settlement agreement's formation and that the parties have not reached a settlement when the release terms are still in dispute.<sup>11</sup> However, what is considered an "essential term" of a release varies with the nature and complexity of the case and must, therefore, be determined on a case-by-case basis.<sup>12</sup>



In a Florida case, *Nichols v. Hartford Insurance Co. of the Midwest*,<sup>13</sup> the parties agreed that there would be a release but failed to discuss whether it would include indemnification language. The court stated, “ ‘Where the language of a release is disputed and the parties fail to reach an agreement as to the character, nature, or type of release to be used, an essential element of the agreement is not established.’ ”<sup>14</sup> The court went on to recognize that not all of the details of the release need to be absolutely decided so long as the parties agree upon the essential terms; in that case, the indemnification language constituted an essential term.<sup>15</sup>

Likewise, in *Bontigao v. Villanova University*,<sup>16</sup> the court determined that a settlement agreement was not enforceable, even though the parties had agreed upon the settlement amount and negotiated over many of its terms, because the scope of the release remained an unresolved material term.<sup>17</sup>

We agree with the *Nichols* and *Bontigao* courts that an enforceable settlement agreement cannot exist when the parties have not agreed to the essential terms of the release because these provisions constitute a material term of the settlement contract. Release terms are not a mere formality. They are an important reason why a party enters into a settlement agreement. If the prevention of future litigation is one of the primary goals of a settlement, the essential terms of the release needed to achieve that goal are material to the settlement agreement.

Although some courts have stated that the terms of a release are inconsequential in determining whether the parties have reached an agreement, these cases are either distinguishable from the instant case or treat a release as a mere formality. For example, in *Earnest & Stewart, Inc. v. Codina*,<sup>18</sup> a case involving offers of judgment, the court held that “the dismissal and releases referred to in the offer [of judgment] were not ‘conditions’ of the settlement, but rather mechanical and legally inconsequential means of effecting it. They thus should be regarded as mere surplusage, the existence of which should not affect substantial rights.”<sup>19</sup> *Earnest* is not analogous to this case. Unlike the effect of the pre-litigation settlement agreement here, once a case has been filed in court, the bar to relitigating that case after an offer of judgment has been accepted does not depend on the terms of a release but rather on the claim preclusion effect of *res judicata*.<sup>20</sup>

Here, the parties agreed upon the essential terms of the release. The district court found that CCIE made an offer to pay the full policy proceeds in exchange for a general release of all claims and a covenant not to sue. Schwartz had authority to negotiate on behalf of the Mays and accepted the offer in writing. The finalized release document prohibiting the Mays from pursuing any action, not just against the Andersons, but also against Curtis and all other parties who could be liable for the tragic accident, merely reiterates the release terms of the accepted settlement agreement.<sup>21</sup> Regardless of the release document's language, however, since the parties agreed upon the essential terms of the release, i.e., all claims, an enforceable settlement agreement exists. The fact that the Mays refused to sign the proposed draft release document is inconsequential to the enforcement of the documented settlement agreement.<sup>22</sup> The district court was able to determine what was required of the respective parties under the release terms of the settlement agreement and properly compelled compliance by dismissing the Mays' action. Accordingly, we affirm the district court's judgment.

#### FOOTNOTES

- <sup>1.</sup> *Reichelt v. Urban Inv. & Dev. Co.*, 611 F.Supp. 952, 954 (N.D.Ill.1985).
- <sup>2.</sup> *Keddie v. Beneficial Insurance, Inc.*, 94 Nev. 418, 421, 580 P.2d 955, 956 (1978) (Batjer, C.J., concurring).
- <sup>3.</sup> *M & D Balloons, Inc. v. Courtaulds, PLC*, No. 90-C-834, 1990 WL 186077, \*3 (N.D.Ill. Nov.21, 1990).
- <sup>4.</sup> *Matter of the Estate of Kern*, 107 Nev. 988, 991, 823 P.2d 275, 277 (1991); *Richards v. Oliver*, 162 Cal.App.2d 548, 328 P.2d 544, 552 (1958).
- <sup>5.</sup> *Higbee v. Sentry Ins. Co.*, 253 F.3d 994, 998 (7th Cir.2001).
- <sup>6.</sup> *Chappell v. Roth*, 353 N.C. 690, 548 S.E.2d 499, 500 (2001).
- <sup>7.</sup> *Richards*, 328 P.2d at 552.
- <sup>8.</sup> *Diaz v. Ferne*, 120 Nev. 70, 73, 84 P.3d 664, 665-66 (2004); *Grand Hotel Gift Shop v. Granite St. Ins.*, 108 Nev.

811, 815, 839 P.2d 599, 602 (1992).

[9.](#) James Hardie Gypsum, Inc. v. Inquipco, 112 Nev. 1397, 1401, 929 P.2d 903, 906 (1996), overruled on other grounds by Sandy Valley Assocs. v. Sky Ranch Estates, 117 Nev. 948, 955 n. 6, 35 P.3d 964, 968-69 n. 6 (2001).

[10.](#) See Inamed Corp. v. Kuzmak, 275 F.Supp.2d 1100, 1125 (C.D.Cal.2002).

[11.](#) Cheverie v. Geisser, 783 So.2d 1115, 1119 (Fla.Dist.Ct.App.2001); Kohn v. Jaymar-Ruby, Inc., 23 Cal.App.4th 1530, 28 Cal.Rptr.2d 780 (1994); Doi v. Halekulani Corp., 276 F.3d 1131, 1138 (9th Cir.2002); Abbott Laboratories v. Alpha Therapeutic Corp., 164 F.3d 385, 388 (7th Cir.1999); Bontigao v. Villanova University, 786 F.Supp. 513, 515-16 (E.D.Pa.1992).

[12.](#) See Giovo v. McDonald, 791 So.2d 38, 40 (Fla.Dist.Ct.App.2001).

[13.](#) 834 So.2d 217, 218-19 (Fla.Dist.Ct.App.2002).

[14.](#) Id. at 220 (quoting Cheverie, 783 So.2d at 1119).

[15.](#) Id. at 219.

[16.](#) 786 F.Supp. 513 (E.D.Pa.1992).

[17.](#) Id. at 515-16.

[18.](#) 732 So.2d 364 (Fla.Dist.Ct.App.1999).

[19.](#) Id. at 366.

[20.](#) See Willerton v. Bassham, 111 Nev. 10, 17-18, 889 P.2d 823, 827-28 (1995); In re Connaught Properties, Inc., 176 B.R. 678 (Bankr.D.Conn.1995); Bayou Fleet, Inc. v. Alexander, 234 F.3d 852 (5th Cir.2000); Ghiringhelli v. Riboni, 95 Cal.App.2d 503, 213 P.2d 17 (1950); Wheeler v. Trefftz, 228 Cal.App.2d 271, 39 Cal.Rptr. 507 (Ct.App.1964).

[21.](#) See, e.g., Russ v. General Motors Corp., 111 Nev. 1431, 1435-39, 906 P.2d 718, 720-23 (1995).

[22.](#) Hagrish v. Olson, 254 N.J.Super. 133, 603 A.2d 108, 110 (1992).

HARDESTY, J.

ROSE and GIBBONS, JJ., concur.

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# Exhibit 10

# Exhibit 10

The Video and Audio files for the May 21, 2012 meeting of the Storey County Board of Commissioners are on the DVD.