

Exhibit A.2

Exhibit A.2

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10 Attorneys for the Plaintiff,
 THOMAS S. TAORMINA

11
 12
 13
 14 UNITED STATES DISTRICT COURT
 15 DISTRICT OF NEVADA
 16

17
 18 THOMAS S. TAORMINA,

19 Plaintiff,

20 vs.

21 STOREY COUNTY,

22 Defendant

CV 3: 09- CV- 21

23
 24 **COMPLAINT SEEKING DECLARATORY AND INJUNCTIVE RELIEF**
 25

26 ///

27 ///

28 ///

1 Plaintiff, THOMAS S. TAORMINA, by and through his attorneys, Brian M. McMahon,
2 Esq., of McMahon Law Offices, Ltd., and Fred Hopengarten, Esq., of the District of Columbia
3 Bar, hereby complain and allege as follows:

4 **Jurisdiction and Venue**

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

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

11
12 2. The FCC was created by, and its regulations and orders are authorized by The
13 Communications Act, 47 USC §151 *et seq.* The Plaintiff is an FCC-licensed radio amateur
14 asserting federal preemption of the maximum height for an antenna under the Storey County
15 Code.
16

17 3. This Court has subject matter jurisdiction over this claim for relief by virtue of 28 USC
18 §§1331 (original jurisdiction for a "federal question"), and 1337 (original jurisdiction "arising
19 under any act regulating commerce"). Declaratory relief as requested herein is authorized by
20 virtue of 28 USC §2201 (declaring rights "in a case of actual controversy within its jurisdiction")
21 and F.R.Civ.P. 57 - Declaratory Judgments. The Court has supplemental jurisdiction over the
22 Plaintiff's state law claim arising under NRS 278.02085, by virtue of 28 USC §1367
23 (supplemental jurisdiction that is part of the same controversy).
24

25 4. Venue lies in this district by virtue of 28 U.S.C. §1391(b)(1) ("where any defendant
26 resides") and (2) ("a substantial part of the property . . . is situated"), because the defendants
27
28

1 reside or are otherwise located in this judicial district, the property is in Storey County, and the
2 claims asserted arose here

3 **Background**

4 5. Having been told by Storey County authorities since 1997 that no building permits
5 were necessary for amateur radio antenna systems, the Plaintiff constructed, without permits,
6 four antenna structures in excess of 45 feet in height at his home, on more than 10 acres, in
7 Virginia City Highland Ranches. As a result of a Stop Work Order in 2008, Plaintiff applied for
8 buildings permits. Storey County Code ("SCC") §17.12.044, limits accessory structures to
9 "forty-five (45) feet in height." The County has refused to issue a building permit to the Plaintiff
10 for amateur radio station antenna structures exceeding that height. The Plaintiff submits that the
11 ordinance is, on its face, illegal as an unvarying maximum height, inherently incapable of
12 meeting the "reasonable accommodation" and "minimum practicable regulation" requirements of
13 both federal law, 47 CFR § 97.15(b), and state law NRS 278.02085. SCC §17.12.044 is
14 preempted and a building permit should issue.
15
16
17

18 **Parties**

19 6. Plaintiff is natural person who resides at, and owns, with his wife, who is also an
20 amateur radio operator, the property located at 370 Panamint Road, Virginia City Highland
21 Ranches, Storey County, Nevada.

22 7. Plaintiff is a non-commercial, FCC- licensed amateur (also known as "ham") radio
23 operator and station owner. He holds an Extra Class Amateur Radio operator license, call-sign
24 K5RC. His wife holds call-sign K7AFO.
25

26 8. Defendant Storey County is a county and political subdivision existing under the laws
27 of the State of Nevada, and located in Storey County, Nevada.
28

Statement of Facts

1
2 9. Since 1997, when he and his wife purchased the property, Plaintiff has resided in the
3 E10-HR Estates zone of Storey County, on more than 10 acres of land.

4 10. Amateur radio station antenna structures are accessory uses customarily incident to a
5 residence, and permitted in the E10-HR Estates zone.

6
7 11. Among his other uses, Taormina assists Storey County with state, local and federal
8 public service activities, including, but not limited to, the Storey County Local Emergency
9 Planning Committee (LEPC) and Homeland Security functions, as well as Nevada and national
10 emergency communications services, including the Amateur Radio Emergency Service (ARES)
11 and the Radio Amateur Civil Emergency Service (RACES). He is the appointed ARES and
12 RACES Communications Officer for Storey County. Taormina has a fifty-year history of public
13 service in communications to the communities in which he resides.
14

15 12. From approximately June of 1997 through October of 2007, Taormina repeatedly
16 offered to apply for building permits as he erected a series of ham radio station antenna
17 structures. Each time, he was told by the Storey County Building Department (“the Building
18 Department”) that no building permits were required for ham radio towers.
19

20 13. On or about April 25, 2008, Larry Prater, P.E. (Nevada) provided Taormina
21 structural drawings for two towers of 120’ and 195’ in height that were proposed to replace two
22 existing towers of 50’ and 40’ in height. As a courtesy, those drawings were delivered by e-mail
23 to Dean Haymore, Building and Planning Department Manager (“Haymore”). Haymore
24 responded, again by telephone, that building permits were not required.
25

26 14. In a telephone conversation on June 22, 2008, Haymore stated that it would be “a
27 good idea” to apply for building permits to replace two existing towers.
28

1 15. On June 24, 2008, the Plaintiff requested a building permit to erect two amateur
2 radio station antenna structures, 120 feet and 195 feet in height above ground respectively.
3 Building Permit #8354 was issued on June 27, 2008. See Exhibit A.

4 16. On July 3, 2008 and July 16, 2008 Shannon Gardner, Building Inspector, and on July
5 8, 2008, Dean Haymore, Building and Planning Department Manager, performed in-process
6 inspections and issued compliant Interim Inspection Reports for construction work being
7 performed on these two permitted towers and for work being performed on other existing towers.
8 The report of July 16, 2008, stated that "Storey County is now of the opinion that a special use
9 permit is required for the construction of towers over 45' in height." See Exhibit B.
10

11 17. On or about July 17, 2008, the Building Department issued a Stop Work Order
12 precluding the erection of the two structures and prohibiting further work on other existing
13 station antenna structures. Also included in the Stop Work Order was citation to SCC §
14 15.12.010, and an order requiring Taormina to file retroactive building permit applications for all
15 existing antenna structures. See Exhibit C.
16

17 18. As a result of the Stop Work Order, Taormina retained counsel to assist him in
18 obtaining all necessary permits for antenna systems at the site.
19

20 19. On August 14, 2008, Taormina filed a building permit application for four existing
21 towers more than 45 feet in height. See Exhibit D. This application included approximately 101
22 pages of supporting documentation including citations of how the applications did comply with
23 all applicable Storey County Codes, descriptions and engineering for of the antenna systems,
24 compliance documents for all applicable wind loading and environmental issues, visual impact
25 on neighboring homes, justification for quantity and heights of supports and antennas, describing
26 fully the law of the limited federal preemption of the Storey County Codes, support from
27
28

1 neighbors and more than 21 exhibits demonstrating compliance with all applicable law,
2 requesting building permits as a matter of right.

3 20. NRS 278.02327 requires the Building Department, within three working days after
4 receiving an application for a building permit, to accept the application or return the application
5 if it finds that the application is incomplete. Nonetheless, at no time has the Building Department
6 accepted or returned the applications, nor has it granted or denied the building permits requested
7 on August 14, 2008.

9 21. Since August 14, 2008, there has been substantial correspondence, exchanging views
10 on the relevant law, between Taormina's counsel and the Office of the Storey County District
11 Attorney, regarding the Building Department's refusal to remove the Stop Work Order and allow
12 the construction of antenna systems to progress. The County has been fully informed of its
13 obligations under Federal and state law, with citations to case law, when considering Taormina's
14 building permit applications.

16 22. On August 27, 2008, the Storey County District Attorney wrote that Storey County
17 Code §17.12.044 requires a special use permit for the erection of the proposed antenna systems.
18 The County has acted capriciously and outside the Storey County Codes in demanding that a
19 Special Use Permit is required. Storey County was reminded that Federal Law 47 CFR §
20 97.15(b) requires, in relevant part, that:

22 *State and local regulation of a station antenna structure . . . must constitute the*
23 *minimum practical regulation to accomplish the state or local authority's*
24 *legitimate purpose. See PRB-1, 101 FCC 2d. 952 (1985) for additional details.*

25 23. The Nevada Legislature has mandated counties, including Storey County, to comply
26 with 47 CFR § 97.15 and FCC Order PRB-1, 101 FCC 2d. 952:

27 *Amateur Radio. Limitations on restrictions on amateur service communication;*
28 *limitations on regulation of station antennae structures; exception.*

1. *A governing body shall not adopt an ordinance, regulation or plan or take any other action that precludes amateur radio service communication or that in any other manner does not conform to the provisions of 47 CFR § 97.15 and the limited pre-emption entitled "Amateur Radio Pre-emption, 101 FCC 2d. 952 (1985)" as issued by the Federal Communications Commission.*
2. *If a governing body adopts an ordinance, regulation or plan or takes any other action that regulates the placement, screening or height of a station antennae structure based on health, safety or a set of considerations, the ordinance, regulation, plan or action must: (a) Reasonably accommodate amateur service communications; and (b) constitute the minimum level of regulation practical to carry out the legitimate purpose of the governing body.*

24. The Storey County Code zoning ordinance, which purports to limit the height of amateur radio structures to an absolute and unvarying maximum height of 45 feet, on its face and as applied by Defendants, prohibits the Plaintiff from erecting various antenna systems necessary for the effective communications he desires.

Relief Sought

WHEREFORE, plaintiff requests relief as follows:

1. That this Court issue a declaratory judgment:
That the zoning ordinance is, on its face and as applied to plaintiff, inconsistent with, and preempted by, federal and state law, and is therefore void, without force or effect; and/or,
2. That this Court preliminarily and permanently enjoin and restrain defendants from further interference with plaintiff's plans to erect and maintain the proposed amateur radio antenna system; and/or
3. That, recognizing the demonstrated hostility to Plaintiffs, and that remand to the County Building Department will be a fruitless exercise, this Court enjoin the County from failing to issue all necessary permits for the

1 construction of the antenna systems sought, or order the issuance of all
2 necessary permits forthwith.

3 4. Such further relief as the Court deems just and proper.
4
5
6

7 AFFIRMATION PURSUANT TO NRS 239B.030

8 The undersigned does hereby affirm that the preceding document does not contain the
9 Social Security Number of any person.
10

11 DATED this 15th day of January, 2009.

12 Attorneys for Plaintiff

13 McMAHON LAW OFFICES, LTD.

14 
15

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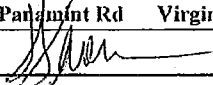
Index to Exhibits

- | | |
|-----------|---|
| Exhibit A | Storey County Building Department Permit No. 8354 |
| Exhibit B | Storey County Building Department Code Compliance Inspection Report |
| Exhibit C | Storey County Building Department Stop Work Order |
| Exhibit D | Storey County Building Department Permit Application |

Exhibit A

Exhibit A

Exhibit A

Permit No. 8354	Storey County Building Dept. P O Box 526 Virginia City Nevada 89440 ~ (775) 847-0966		Date 6/27/08
RESIDENTIAL			
WORK DESCRIPTION: Erection of two Ham Radio Towers			
WORK LOCATION ADDRESS: 370 Panamint RD			AREA: VR
APN: 003-431-18	ZONE:	FLOOD:	LOT / BLK: 37
OCCUPANCY or INTENDED USE:			
ESTIMATED WORK COMMENCEMENT DATE: 6/27/08		ESTIMATED COMPLETION DATE: 6/27/09	
MOBILE HOME / TRAVEL TRAILER:	MAKE:	MODEL:	
	YEAR:	SIZE:	SERIAL #:
SCHOOL TAX RECEIPT #: <i>When required, pay \$500 to Storey County Clerk at Courthouse</i>	SPECIAL CONDITIONS:		
CONTRACTOR: Owner Builder	PHONE:		
ADDRESS:	NV LIC #:	Exp.	Limit: \$
	SC LIC #:	Exp:	
ALL MATERIALS USED FOR THIS PROJECT SHOULD BE RECEIVED IN STOREY COUNTY AND THE VALUE REPORTED AS 'COUNTY-OF-DELIVERY' ON THE NEVADA DEPARTMENT OF TAXATION FORM TXR-01.01 'SALES/USE TAX RETURN'. If you require further information, please call (775) 847-0966.			
OWNER / Permittee (Print): Tom Taormina		PHONE: 847-7929	
ADDRESS (Mailing): 370 Panamint Rd Virginia City Highlands, NV 89521			
OWNER SIGNATURE: 	AUTHORIZED BUILDER / AGENT:		
LIVING AREA: Sq Ft @ \$61.10 = \$	BLDG FEE: \$111.25	PLOT PLAN: \$	
CONCRETE SLAB: Sq Ft @ \$16.10 = \$	PLAN RWV FEE: \$72.31	SIGNS: \$	
STD T-FOUNDATION: Ln Ft @ \$25.00 = \$	ELECTRICAL: \$	SPEC INSP: \$	
GARAGE: Sq Ft @ \$19.48 = \$	MECHANICAL: \$	Temp TRAILER: \$	
FINISHED GARAGE: Sq Ft @ \$23.21 = \$	PLUMBING: \$	STOVE / Fireplace: \$	
WOOD DECKS: Sq Ft @ \$ 6.62 = \$: \$: \$	
SYN/COMP DECKS: Sq Ft @ \$ 9.96 = \$: \$: \$	
WOOD DECK: Sq Ft @ \$12.00 = \$	PARK TAX: \$: \$	
BASEMENT: Sq Ft @ \$16.64 = \$	TOTAL PERMIT FEE: \$183.51		
TOTAL VALUATION: \$5,000.00	<input type="checkbox"/> PLAN REVIEW ONLY	Check #: 6561	
<input type="checkbox"/> Est. Cost <input type="checkbox"/> Actual Contract	<input type="checkbox"/> FULL PERMIT	Receipt #: 10337	

Permission is hereby granted to do the work described in this application and ONLY in accordance with the Rules, Regulations, and Ordinances of the County of Storey. Inspection MUST be called for within 180 days of issuance of permit or permit is void. Permit may be renewed for 50% of the original "Permit Fee"

State 'Health Certification', if required, is the responsibility of the "Permittee".

By: 
 Storey County Building Department Rev 02-11-04

Assessor Dept

Fire Dept

Sheriff Dept

Exhibit B

Exhibit B

Exhibit B

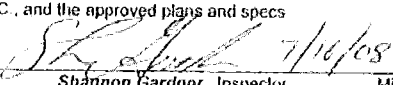
Storey County Building Department		Permit #: 8354
P O Box 526 - VIRGINIA CITY, NV 89440 - (702) 847-0966		Requested: 7/15/08
CODE COMPLIANCE INSPECTION REPORT		
Ready: 7/16/08		
Site Address: 370 Panamint APN #003-431-18		Area HIR
		Lot / Blk 37
Owner: Taormina	Contractor: OB	
INSPECTION(S) REQUESTED:		
1. <input type="checkbox"/> Footing <input type="checkbox"/> Stemwall <input type="checkbox"/> Ready to Pour Concrete - Forms in, UFER Ground, Reinf. Stl. In-Place		
2. <input type="checkbox"/> Floor Joists - Mud Sill, J-Bolts and Blocking In as Required, Rough Plumbing Installed		
3. <input type="checkbox"/> Roof Sheet Nailing - Nail Spacing and Sheathing Spacing		
4. <input type="checkbox"/> Framed Complete - Plumbing thru roof, Elect Boxes in, Wire Pulled, Heating, Gas Piping, Roof Shingled, Siding On, Dry In		
5. <input type="checkbox"/> Insulation a. <input type="checkbox"/> Batts b. <input type="checkbox"/> Blown - CERTIFICATION Required		
6. <input type="checkbox"/> Sheet Rock Nailing		
7. <input type="checkbox"/> Ready to Occupy - a. Sheetrock Finished b. Plumbing c. Electrical d. Heating and e. Grading All Completed		
<input type="checkbox"/> Electrical <input type="checkbox"/> Electric Service Connections <input type="checkbox"/> Fuel Burning Stove <input type="checkbox"/> Mechanical <input type="checkbox"/> Excavation & Grading <input type="checkbox"/> Demolition <input type="checkbox"/> Plumbing <input type="checkbox"/> Foundation <input type="checkbox"/> Exterior Gas		
- REINSPECTIONS -		
NOTE: It shall be the duty of the person doing the work authorized by a permit to notify the Building Department that such work is ready for inspection and to provide access to and means for Proper Inspection of such work. A re-inspection fee will be assessed for each inspection when such Portion of work for which inspection is called is not complete or when corrections called for are not made.		
Condition of Construction at this Inspection:		
<input type="checkbox"/> A. Meets ALL Requirements for this INSPECTION <input type="checkbox"/> C. Non-Compliance - Builder Will Comply Without Delay <input type="checkbox"/> B. Substitutions or Deviations <input type="checkbox"/> D. Non-Compliance - Builder Does NOT Intend to Comply <input type="checkbox"/> E. Dwelling is habitable, however the following corrections MUST be completed by		
Comments: <i>Inspection of Concrete Base and Anchors for New Towers.</i> Owner has been advised that Storey County now is of the opinion that a Special Use Permit is required for the construction of towers over 45' in height, that towers are defined as structures in Storey County Code and therefore are subject to set-back requirements. A Special Use Permit has not been applied for at this time. Owner has been advised that continued construction of tower components is at own risk, and that the erection of towers over 45' in height with anchors encroaching set-backs may not be approved by Storey County Officials.		
New Tower Base @ North side of Home = Depth and width according to engineered plans. Rebar cage according to engineered plans. Grounding for tower according to engineered plans.		
Tower Anchors for 2 New Towers = Depth and width according to engineered plans. Rebar cages according to engineered plans. Two of the anchors inspected are located adjacent to the property lines as identified and encroach upon set-backs required for structures.		
CERTIFICATION - I certify that I have inspected the above property and have reported herein all conditions observed at this time and date to be in variance with any Storey County Ordinances, the U.B.C., and the approved plans and specs 7/16/08 8:00 a.m.		
Inspection Date/Time		 Shannon Gardner, Inspector Mileage: 49791

Exhibit C

Exhibit C

Exhibit C

Storey County Building Department

P O Box 526 ~ Virginia City NV 89440 ~ (775) 847-0966 ~ Fax (775) 847-0935 ~
scbd@storeycounty.org

STOP WORK ORDER
by Storey County Building Official

Issued to: Tom Taormina July 17, 2008
370 Panamint Road
Virginia City Highlands, NV 89521

Project #1: CONSTRUCTION OF AND ALTERATION OF HAM RADIO TOWER(S)

The stop work order is hereby issued for failure to comply with Storey County Ordinance 15.12.010.

15.12.010 Building Permit Required. It is unlawful for any person, corporation, municipal corporation, association, club, business trust, estate, or any group or combination thereof to erect, construct, relocate, or alter any sign, building, or structure within the county without first obtaining a building permit from the building official.

Violation 1: Owner is altering existing tower and has not secured the appropriate application, plans, engineering and/or obtained a Building Permit for said work.


Violation 2: Owner has not submitted an application to the Storey County Planning Department for a variance or received an approval for the height of the radio tower(s) that exceed(s) 45 feet.

Violation 3: Owner has failed to comply with the following Storey County Ordinance:

17.12.044 Height of buildings. In the R-1, R-2, E, A, PUD, and T zones, no building, manufactured building or manufactured home shall exceed a height of three stories or thirty-five feet, whichever is higher, except as may be allowed by special use permit. The requirements of this section shall not apply to church spires, bellfries, cupolas, domes, chimneys or flagpoles. Radio, television and other communication masts may extend not more than forty-five feet above grade level, provided that the same may be safely erected and maintained at such height in view of surrounding conditions and circumstances.

Project #2: CONSTRUCTION OF TWO HAM RADIO TOWERS OVER 45 FT

Violation 4: Owner has not submitted an application to the Storey County Planning Department for a variance or received an approval for the height of the radio tower that exceeds 45 feet.

 17 July 2008

Dean Haymore, Building Official

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Exhibit D

Exhibit D

Exhibit D

<small>SWPP Control -</small>	Storey County Building Dept. P.O. Box 526 Virginia City, NV 89440	<small>Received</small>
PERMIT APPLICATION		
<input checked="" type="checkbox"/> Residential	<input type="checkbox"/> Comm/Indr	
<small>WORK DESCRIPTION</small> AMATEUR RADIO ANTENNA SUPPORT STRUCTURES		
<small>PROPERTY ADDRESS</small> 370 PANAMINT RD	<small>AREA</small> H12	
<small>LOT #</small> 37	<small>APPLICANT</small> EIC-HIC	<small>PERMIT #</small> 30-45-15
<small>APPLICANT</small> N/A	<small>CONSTRUCTION TYPE</small> STRL	<small>PERMIT TYPE</small> C
<small>RECEIVED BY BUILDING DEPT</small>	<small>DESIGNED BY</small>	<small>ENGINEER</small>
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
<small>SEWER/STORM PERMITS</small>	<small>Architectural Agency Letter</small>	
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	
A Nevada Licensed CONTRACTOR and SWPP Report is Required for ALL Commercial and/or Industrial Projects		
<small>CONTRACTOR</small> 3/13	<small>PHONE</small>	
<small>ADDRESS</small>	<small>NV LIC #</small>	
<small>CITY/ST/ZIP</small>	<small>REG LIC #</small>	
<small>OWNER/BLDR Contact</small>	<small>DATE</small>	
<small>CONTRACTOR</small>	<small>PHONE</small>	RECEIVED
<small>ADDRESS</small>	<small>NV LIC #</small>	AUG 14 2008
<small>CITY/ST/ZIP</small>	<small>REG LIC #</small>	
<small>OWNER/BLDR Contact</small>	<small>DATE</small>	Storey County Building
<small>CONTRACTOR</small>	<small>PHONE</small>	
<small>ADDRESS</small>	<small>NV LIC #</small>	
<small>CITY/ST/ZIP</small>	<small>REG LIC #</small>	
<small>OWNER/BLDR Contact</small>	<small>DATE</small>	
If applying as Owner/Builder - MUST Complete "Owner Builder Affidavit of Exemption" per NRS 624.031(4)		
<small>OWNER - Permittee (Print)</small> TOM TORMINA	<small>PHONE</small> 847-7729	
<small>ADDRESS (Print)</small> 370 PANAMINT RD VE HIGHLANDS NV 89521	<small>CITY</small> 846-1068	
<small>OWNER SIGNATURE</small> <i>[Signature]</i>	<small>BLDR AGENT</small>	
SEE ATTACHED DOCUMENTS		
TOTAL VALUATION: \$ 14,000.		
<small>PLAN CHECK FEE</small> \$	<small>CHECK #</small>	<small>PERMIT FEE</small>
<small>PLAN CHECK FEE PERMITTED</small>	<small>PERMIT FEE</small>	<small>PERMIT #</small>
<small>Application Completed by</small> <i>[Signature]</i>	<small>Date</small> 8/14/08	

Exhibit A.3

Exhibit A.3

1 Brent T. Kolvet, Esq.
State Bar No. 1597
2 Thorndal, Armstrong, Delk, Balkenbush & Eisinger
6590 S. McCarran, Suite B
3 Reno, Nevada 89509
Attorneys for Defendant
4 STOREY COUNTY

5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA

7
8 THOMAS S. TAORMINA, Plaintiff,
9 vs.
10 STOREY COUNTY, Defendant.
11

CASE NO. 3:09-CV-00021-LRH-VPC

**ANSWER TO COMPLAINT SEEKING
DECLARATORY AND INJUNCTIVE
RELIEF**

12
13 COMES NOW Defendant, Storey County, by and through its attorneys, Thorndal,
14 Armstrong, Delk, Balkenbush & Eisinger, and in answer to Plaintiff's Complaint, hereby admits,
15 denies, and alleges as follows:

16 **FIRST DEFENSE**

17 **I**

18 Defendant is without sufficient knowledge or information with which to form a belief as
19 to the truth of the allegations contained in Paragraphs 1, 2, 3, 6, 7, 9, 11, 12, 13, 14, 18 and 19 of
20 Plaintiff's Complaint, and upon such basis denies said allegations.

21 **II**

22 Defendant admits the allegations contained in Paragraphs 4, 8, 15, 16, 17 and 23 of
23 Plaintiff's Complaint.

24 **III**

25 Defendant denies the allegations contained in Paragraphs 5, 10, 20, 21, 22 and 24 of
26 Plaintiff's Complaint.

27 **SECOND DEFENSE**

28 Plaintiff's Complaint on file herein fails to state a claim against Defendant upon which

1 relief can be granted.

2 **THIRD DEFENSE**

3 The applicable ordinances of Storey County are reasonable and necessary to the public's
4 health, safety and welfare.

5 **FOURTH DEFENSE**

6 It has been necessary for Defendant to employ the services of an attorney to defend this
7 action, and a reasonable sum should be allowed Defendant as and for attorney's fees, together
8 with its costs expended in this action.

9 **FIFTH DEFENSE**

10 The acts alleged to have been wrongfully done by Defendant were, in fact, accomplished
11 by Defendant by authority of license given to Defendant by Plaintiff.

12 **SIXTH DEFENSE**

13 Plaintiff, with full knowledge of all the facts connected with or relating to the transaction
14 alleged in the Complaint, ratified and confirmed in all respects the acts of Defendant by
15 accepting the benefits to Plaintiff accruing from such acts.

16 **SEVENTH DEFENSE**

17 Defendant's alleged actions or omissions were taken with due care in the execution of the
18 statutes and regulations, and, therefore, Defendant is statutorily immune from this action.

19 **EIGHTH DEFENSE**

20 Defendant's alleged actions or omissions occurred in the exercise or performance of
21 discretionary functions and duties, and, therefore, Defendant is statutorily immune from this
22 action.

23 **NINTH DEFENSE**

24 Pursuant to NRCPC Rule 11, as amended, all possible affirmative defenses may not have
25 been alleged herein insofar as sufficient facts were not available to Defendant after reasonable
26 inquiry upon the filing of Defendant's Answer, and therefore, Defendant reserves the right to
27 amend this Answer to allege additional affirmative defenses if subsequent investigation so
28 warrants.

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WHEREFORE, Defendant prays:

1. That Plaintiff's Complaint be dismissed with prejudice and that he take nothing thereby;
2. That Defendant be awarded a reasonable attorney's fee and costs of suit; and
3. For such other and further relief as this Court deems just and proper.

DATED this 25th day of March, 2009.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By: /s/ Brent T. Kolvet

Brent T. Kolvet, Esq.
State Bar No. 1597
6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509
Attorneys for Defendant
Storey County

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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and that on this date I caused the foregoing **ANSWER TO COMPLAINT SEEKING DECLARATORY AND INJUNCTIVE RELIEF** to be served via the United States District Court’s CM/ECF Electronic Filing program on all parties to this action and by placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada, fully addressed as follows:

Brian M. McMahon, Esq.
McMahon Law Offices, Ltd.
3715 Lakeside Drive, Suite A
Reno, NV 89509-5239
Phone: 775-348-2701
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E-Mail: hopengarten@post-harvard.edu
Attorneys for Plaintiff
Thomas S. Taormina

DATED this 25th day of March, 2009.

/s/ Mary C. Wilson
An employee of Thorndal, Armstrong,
Delk, Balkenbush & Eisinger

Exhibit A.4

Exhibit A.4

AFFIDAVIT OF THOMAS TAORMINA

STATE OF NEVADA §
 §
COUNTY OF STOREY §

BEFORE ME, the undersigned authority, on this day personally appeared Thomas Taormina, who is personally known to me and after being by me duly sworn, according to law and upon his oath, stated as follows:

1. My name is Thomas Taormina. I am over 21 years of age, have never been convicted of a crime and am fully competent to make this affidavit. I have personal knowledge of the facts stated herein. The statements in this affidavit are all true and correct.
2. The home and 10 acre parcel at 370 Panamint Road, Virginia City Highland Ranches, Nevada, has been my primary and only residence since May, 1997.
3. My home is in the E10-HR Estates Zone of Storey County.
4. I hold an Amateur Extra Class license issued by the FCC, call-sign K5RC.
5. At the behest of the then-Sheriff of Storey County (and now County Manager), Pat Whitten, I gradually became involved in an effort to organize ham radio operators in Storey County to provide backup emergency radio communications for the County's Sheriff and Fire Departments. I subsequently, joined the Storey County Local Emergency Planning Committee (LEPC) when it formed, and I am currently an active member of that Committee. Over the ensuing years since the early 2000's, I have been appointed the Emergency Coordinator for Storey County by the Amateur Radio Emergency Service¹ (ARES) and the Radio Officer for Storey County by the Radio Amateur Civil Emergency Service² (RACES). I have also completed FEMA IS-100 and IS-200 Emergency Planning Training as part of my commitment to LEPC.
6. I have equipment and antennas at my home for high frequency (HF) and very high frequency (VHF) stations to support Storey County in times of public emergencies and communications interruptions. This communications capability, including an emergency power generator, can keep us in reliable communications with emergency responders, ARES, RACES, Red Cross and the National Weather Service within the continental United States. If needed, I am equipped to communicate world-wide. There is also a 440 MHz repeater installed at my home, dedicated to use for emergency communications. At the moment, the repeater antenna is at 75', which is sub-optimum for communications with hand-held radios in Storey and surrounding counties. It cannot cover large parts of the region.
7. For more than fifty years, I have been a volunteer for ARES and RACES in the communities where I have lived. On many, many occasions I have provided communications for my neighbors and communities to send and receive health and welfare messages to families and friends across the Country when conventional communications

1. Sponsored by the national organization for amateur radio, the American Radio Relay League.
2. RACES is affiliated with the Department of Homeland Security.

- channels were overloaded or interrupted.
8. In May 2008, I took delivery of the subassemblies for a 120' rotating monopole and a 195' rotating monopole for use as ham radio antenna support structures. These structures were stored at the bottom of our driveway, in full public view.
 9. The 195' support, besides being used for larger antenna arrays, was to be the new home for the 440 MHz repeater antenna that would greatly expand the coverage of mobile to mobile, or handi-talkie, communications during emergency events. I discussed these plans with Building Official Haymore and County Manager Whitten at the Spring 2008 Local Emergency Planning Committee meeting. I was informed that the County did not have any need to receive building permit applications for these structures.
 10. On or about June 6, 2008, as a courtesy, I emailed a copy of a design document for the two rotating monopoles, "wet stamped" by a professional engineer, to the Building Department.
 11. On or about June 18, 2008 we began digging holes for the two monopoles. On or about June 22, 2008 I received a phone call from Building Official Haymore inquiring as to what we were doing. His office had received a complaint about the construction work. After a brief discussion, I volunteered to apply for a building permit and did so.
 12. On or about June 23, 2008, I received a visit from the Storey County Sheriff's Department. A Deputy was dispatched in response to a complaint filed by a neighbor. We discussed the sequence of events and he advised that I wait to continue work after the building permit was granted. I complied.
 13. On June 27, 2008, building permit 8354 was issued for the 120' and 195' monopoles and work resumed. I received a number of subsequent visits from Storey County Deputies in response to complaints from neighbors. The Deputies informed me that their reports would indicate that I was operating in full compliance with the building permits.
 14. On July 3, 2008, Building Inspector Shannon Gardner conducted pre-pour³ inspections of footings and guy anchors for the two monopoles and guy anchors for existing towers. He issued an Interim Inspection Report of Compliance. He cited only Building Permit 8354 on the Report. I discussed with Inspector Gardner the scope of the additions and changes we were planning for existing structures. There was never a mention of needing building permits for existing antenna support structures. The Interim Inspection Report covered all footings.
 15. On July 8, 2008, Building Official Haymore conducted another pre-pour inspection of the remaining holes and issued an Interim Inspection Report giving permission to pour an additional six footings and guy anchors. There was, again, no mention of need for an additional building permit. However, the following note was included on the Report: "OK to pour footing at on risk per waiting for variance for towers over 45'." (*Sic.*) This was the first time I had heard the term "variance" in regard to antenna support structures. I searched the Storey County Code and discovered that "variances" were required in situations when a boundary is too close, construction requirements could not be met or some other instance of needing approval to violate

3. Before concrete footings can be poured, the Building Department must inspect the hole and rebar construction for compliance and issue an Interim Compliance Report to proceed.

- existing codes⁴. “Variance” was not the right concept for the Interim Inspection Report. Nonetheless, I didn’t intend to violate the County Code while building my ham radio antennas.
16. On July 9, 2008, I had a chance discussion with County Manager Pat Whitten. I asked for his opinion of what had changed in the last few days that led to the “variance” footnote on my inspection report. He was unaware of any new or different requirements and suggested that I talk with Building Official Haymore.
 17. I contacted Building Official Haymore on July 10, 2008. He informed me that he had ongoing complaints about my construction work, and had asked the District Attorney’s office to advise him on how to proceed in this matter. He furnished to me a copy of a memo he had received from Deputy DA Laura Grant, dated July 1, 2008.
 18. The memo reads, in part: “In Mr. Taormina’s case, your department has apparently already issued building permits for the towers he wishes to build (200’ and 135’). As such, it would appear to me that you have waived the height limitations set out in SCC §17.12.044. Aside from the precedent-setting aspects of such a waiver, it would appear to me that the County is entitled to enforce its height limits as being in full compliance with NRS 278.02085 and 47 CFR §97.15⁵.” At this point I contacted counsel to sort this out and represent me as necessary.
 19. My attorneys advised me that antennas are a permitted use on my land, and that antenna support structures are permitted as a matter of right in the E-10 HR Zone. They also informed me that my antennas did not require a Variance under SCC § 17.40 (no limit on height of a non-residence structure), nor were they eligible for Special Use Permits (SUP’s) under SCC § 17.62 (uses permitted only with a Special Use Permit).
 20. On July 16, 2008, Building Inspector Gardner arrived to inspect the completed concrete work. He brought with him an Interim Compliance Report that had already been filled in (typed) before he arrived. It contains the following wording: “Owner has been advised that Storey County now is of the opinion that a Special Use Permit is required for the construction of towers over 45’ in height, that the towers are defined as structures in the Storey County Code and are therefore subject to setback requirements. A Special Use Permit has not been applied for at this time. Owner has been advised that continued construction of tower components is at own risk and that the erection of towers over 45’ . . . may not be approved by Storey County Officials.”
 21. The next day, July 17, 2009, Building Official Haymore presented me with a Stop Work Notice covering construction of and alteration of ham radio tower(s), and construction of two towers over 45’.
 22. I immediately complied with the Stop Work Order and ceased all work.
 23. My attorneys spent the next month researching the issues raised in the Stop Work Order, and the memo from DDA Grant dated 7/1/2009.
 24. On July 25, 2008, I submitted building permit applications for two towers that were

4. On at least four separate occasions, Building Inspector Gardner has walked the property lines and verbally opined that there were no violations of setback requirements.

5. NRS 278.02085 and 47 CFR §97.15(b) provide for a limited federal preemption in matters concerning ham radio structures.

- below the 45' height limitation in SCC §17.12.044. This request was for antenna support structures that had been installed in 1999 and 2003.
25. Building Permits 8416 and 8417 were issued on September 16, 2008, for the two structures that are less than 45 feet in height. Building Inspector Shannon Gardener signed off the two towers as complete on September 24, 2008.
 26. I next prepared building permit applications for antenna support structures over 45' in height -- towers of 140' (two), 85' and 110' that had been erected between 1998 and 2007. The applications were accompanied by a) detailed descriptions of the structures and their histories (17 Pages), and b) an 80-page supplement containing extensive documentation of the justification for the application, and c) a 22-page Needs Assessment demonstrating the technological reasons for the heights, quantity and configurations of the various antennas.
 27. Despite NRS 278.02327, requiring that a Nevada governing body accept or return a building permit application within three working days, to date, my pending building permit applications have neither been accepted nor returned by the Storey County Building Department.
 28. I cannot find a requirement in the County Code for a Special Use Permit for amateur radio antenna systems over 45 feet in height (it appears to have been invented by the County). Nor are Special Use Permits listed as available for such antenna systems. Furthermore, I have repeatedly told County officials that both state and federal law prohibit firm, fixed and absolute, maximum heights for amateur radio antenna systems. Nonetheless, the County continues to insist that a Special Use Permit Application must be filed.
 29. In response to letters presenting my legal position, the County's written response was that the law cited in those letters was "neither persuasive, nor authoritative."
 30. Recently, the County has claimed that the County Code prohibits accessory structures over 60 feet long. While the Code does say that, I do not know if this means that length is now equal to height in the opinion of the Deputy District Attorney, or if I can't have my existing antenna support structures that are over 45' in height because a new antenna support structure is proposed that will have one antenna greater in width than 60 feet. (I suppose that if this is that case, they would grant the building permit for the antenna support structure, but try to forbid an antenna more than 60 feet wide, despite the discussion of dimensions in the relevant preemptions, but that is not what they have done.)
 31. If the problem, in the mind of the Deputy District Attorney, is that I intend to have an antenna greater in length than 60 feet, she ignores the requirements of 47 CFR §97.15(b) and NRS 278.02085 which preempt not only height, but also "dimensions."
 32. In January 2009, the County notified me of an upcoming nuisance proceeding, for which a date has been set, but the hearing postponed pending the outcome of this litigation.
 33. It is my position that, safety considerations aside⁶, 47 CFR §97.15(b) and NRS 278.02085

6. No safety issues are alleged by the County, because there is no potential for damage to anyone else's property should any or all structures fail catastrophically.

void firm, fixed and unvarying maximum height or dimension regulations for amateur radio antenna support structures or antennas at my home. The building permits for my two new structures should be reinstated, and the building permit application for the four structures greater than 45-feet in height should be granted.

34. As Plaintiff, I have been involved as a non-commercial, FCC-license, amateur radio operator holding an extra class amateur radio license. At all relevant times, I have and remain a resident of Storey County.
35. I have been involved in the process of working with Storey County to obtain building permits for antenna structures located on my property.
36. I have read the Complaint, Exhibit accompanying, the Motion for Summary Judgment, Exhibits A.1-Z. I have involved in the development of the material and information found therein.
37. I have read the contents of the Exhibits, my Affidavit, and believe all to be true and accurate to the best of my personal knowledge.
38. If asked to testify in Court, I would assert the documents, materials and information attached as Exhibits A.1-Z as well as the allegations in the Complaint and the Motion for Declaratory Relief.

Further Affiant sayeth not.



Thomas Taormina

SUBSCRIBED AND SWORN TO BEFORE ME on this ___ day of _____, 2009.

Notary Public in and for the State of Nevada