

Exhibit A

Exhibit A


Exhibit A
Building Permit History as of November 15, 2008

#	Name, Brand, Model	Height Support Structure	Width of Antenna(s)	Length of Antenna(s)	Building Department Action	Date
1	40 Meter Rohn 45G (Erected 1997)	140'	43'	47'	Stop Work Order	7/17/08
					Application to Bldg Dept.	8/14/08
					Application Pending	9/30/08
2	20 Meter Rohn 25G (Erected 1998)	85'	37'	47'	Stop Work Order	7/17/08
					Application to Bldg Dept.	8/14/08
					Application Pending	9/30/08
3	Rohn HBX-32	32'	32	37'	Permit 8416 Granted; Code Compliance Completion Report Received	9/16/08
						9/24/08
4	160 Meter Rohn 25G (Erected 2007)	110'	None	None	Stop Work Order	7/17/08
					Application to Bldg Dept.	8/14/08
					Application Pending	9/30/08
5	VHF Trylon 1245	40'	8'	20'	Permit 8417 Granted; Code Compliance Completion Report Received	9/16/08
						9/24/08
6	20 Meter Rohn 45G (Erected 2007)	140'	22'	44'	Stop Work Order	7/17/08
			37'	43'	Application to Bldg Dept.	8/14/08
					Application Pending	9/30/08
7	15 Meter Custom Monopole (Under Construction)	120'	25'	36'	Application to Bldg Dept.	6/15/08
					Permit 8354 Granted; Code Compliance Reports Issued	6/27/08
					Stop Work Order	7/3, 7/7, 7/16
						7/17/08
8	80 Meter Custom Monopole (Under Construction)	195'	18'	36'	Application to Bldg Dept.	6/15/08
			66'	76'	Permit 8354 Granted; Code Compliance Reports Issued	6/27/08
					Stop Work Order	7/3, 7/7, 7/16
						7/17/08

Exhibit B

Exhibit B

Exhibit B
Building Permit Issued for New Construction
of 120' and 195' Supports, 6/27/08

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:
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'. <i>If you require further information, please call (775) 847-0966.</i>		
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 RVW FEE: \$72.31	SIGNS: \$
STD T-FOUNDATION: Lin 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 @ \$ 5.62 = \$: \$: \$
SYN/COMP DECKS: Sq Ft @ \$ 9.96 = \$: \$: \$
WOOD DECK: Sq Ft @ \$12.00 = \$	PARK TAX: \$: \$
BASEMENT: Sq Ft @ \$15.54 = \$	TOTAL PERMIT FEE: \$183.51	
TOTAL VALUATION: \$5,000.00	<input type="checkbox"/> PLAN REVIEW ONLY	Check #: 6566
<input checked="" 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 C

Exhibit C

Exhibit C
In-Process Compliance Inspection Report, 7/3/08

Storey County Building Department

P O Box 526 ~ VIRGINIA CITY, NV 89440 ~ (702) 847-0966

Permit #: 211

Requested: 7/2/08

COMPLIANCE INSPECTION REPORT

Ready: 7/3/08

Property Identification:	Address	Area	Lot / Blk
	<u>370 Parawint 003-431-18</u>	<u>VR</u>	<u>37</u>

Owner: <u>Thorning</u>	Contractor/ Sub-Contractor: <u>OB</u>
------------------------	--

INSPECTION(S) REQUESTED:

1. Footing Stemwall Ready to Pour Concrete - Forms in, UFER Ground, Reinf. Stl. In-Place
2. Floor Joists - Mud Sill, J-Bolts and Blocking In as Required; Rough Plumbing Installed
3. Roof Sheet Nailing - Nail Spacing and Sheathing Spacing
4. Framed Complete - Plumbing thru roof, Elect. Boxes in, Wire Pulled, Heating, Gas Piping, Roof Shingled, Siding On, Dry In
5. Insulation a. Batts b. Blown - CERTIFICATION Required
6. Sheet Rock Nailing
7. 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:

- A. Meets ALL Requirements for this INSPECTION C. Non-Compliance - Builder Will Comply Without Delay
 B. Substitutions or Deviations D. Non-Compliance - Builder Does NOT Intend to Comply
 E. Dwelling is habitable, however the following corrections MUST be completed by _____

Comments: Anchors for guy wires of existing towers and tower relocation
Concrete to be poured in excavated holes with anchor eyelets
as per design
Tower base for relocation of existing tower = Base with
rebar as per design
PASS, OK to pour

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.

7/3/08
 Inspection Date

[Signature]
 Signature of Inspector

Exhibit D

Exhibit D

Exhibit D In-Process Compliance Inspection Report, 7/8/08

Storey County Building Department
P O Box 526 - VIRGINIA CITY, NV 89440 - (702) 847-0966

Permit #: 0107
Requested: 7/7
Ready: 7/7

COMPLIANCE INSPECTION REPORT

Property Identification:	Address <u>370 Parvumite</u>	Area <u>VR</u>	Lot / Blk <u>37</u>
Owner:	<u>Taormina, Tom</u>	Contractor/ Sub-Contractor:	<u>O/B</u>

INSPECTION(S) REQUESTED:

1. <input type="checkbox"/> Footing <input type="checkbox"/> Stemwall <input checked="" type="checkbox"/> Ready to Pour Concrete - Forms in, UFER Ground, Reinf. Sll. 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:

- A. Meets ALL Requirements for this INSPECTION C. Non-Compliance - Builder Will Comply Without Delay
 B. Substitutions or Deviations D. Non-Compliance - Builder Does NOT Intend to Comply
 E. Dwelling is habitable, however the following corrections MUST be completed by _____

Comments: 3 Footing for guide are 5' by 5' by 5 Foot Deep
With Rebar cage to be set on job site. Obtain more date footing
with 40' casing with cage rebar as required per plans
OK to your footing AT OR RIGHT PER WAITING
for VARIANCE FOR TOWERS OVER 45'

12:45 PM

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 July 2008 Inspection Date [Signature] Signature of Inspector

Exhibit E

Exhibit E

Exhibit E
In-Process Compliance Inspection Report, 7/16/08

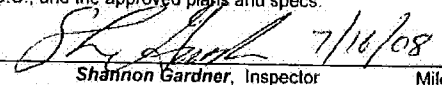
Storey County Building Department P O Box 526 - VIRGINIA CITY, NV 89440 ~ (702) 847-0966		Permit #: 8354
		Requested: 7/15/08
CODE COMPLIANCE INSPECTION REPORT		Ready: 7/16/08
Site Address: 370 Panamint APN #003-431-18		Area: HR
Owner: Taormina		Lot / Blk: 37
Contractor: OB		
INSPECTION(S) REQUESTED:		
1. <input type="checkbox"/> Footing <input type="checkbox"/> Stemwall <input type="checkbox"/> Ready to Pour Concrete - Forms in, UFER Ground, Reinf. Sl. 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 <u>this</u> 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 F

Exhibit F

Exhibit F
Unknown Complainant Called OSHA, 7/17/08

State of Nevada
DIVISION OF INDUSTRIAL RELATIONS
Occupational Safety and Health Enforcement Section
Inspection Checklist (3)

NRS 618.315, 618.325, NAC 618.6434 and NV Operations Manual Chapter II, page 16, A. 5

Employer / General Managing Contractor Name: Tom Trabum

Date: 7/17/08 Time: 1:50

The Closing Conference - Explain the following:

- 1. Any violation(s) observed during the inspection.
- 2. Violations of the Standard, along with reasonable abatement procedures and time. Abatement Date(s): NO VIOLATIONS
- 3. Posting requirements for Citation(s) and/or Notice of Violation(s). (3 day minimum)
- 4. Referral of potential safety/health problems to other agencies. YES NO
- 5. Proposed citations.
- 6. The citation preface contains information about the employer's rights (Informal Conference, Post Contest, and Review Board).
- 7. Follow-up inspections (Repeat, Failure to Abate, and Willful Citations).
- 8. Safety Consultation and Training
- 9. Employer Survey Form.

The above items were discussed with:

Check here if by telephone: _____

EMPLOYER REPRESENTATIVE

Name: Tom Trabum  Title: Homeowner
Print and Sign

EMPLOYEE REPRESENTATIVE

Name: _____ Title: _____
Print and Sign

OSHES REPRESENTATIVE

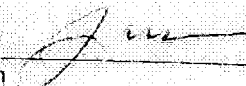
Name: John LaFrance  Title: SHR
Print and Sign

Exhibit G

Exhibit G

Exhibit G
Stop Work Order, 7/17/2008



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
370 Panamint Road
Virginia City Highlands, NV 89521

July 17, 2008

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.

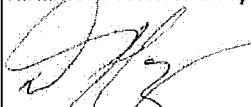
Violation 2: Owner has not submitted an application to the Storey County Planning Department for a variance or received an approval for the height of the radio tower(s) that exceed(s) 45 feet.

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 F 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, belfries, 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

Exhibit H

Exhibit H

Exhibit H
Post-Construction Application for 32' and 40' Supports, 7/25/08

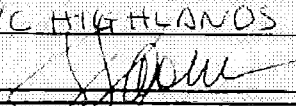
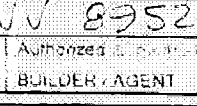
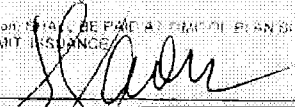
<small>SCBD Control #:</small>	Storey County Building Dept. P.O. Box 526 Virginia City NV 89440	<small>Received</small> 7/25/08
<input checked="" type="checkbox"/> Residential PERMIT APPLICATION <input type="checkbox"/> Comm/Indr		
<small>WORK DESCRIPTION</small> AMATEUR RADIO ANTENNA SUPPORT STRUCTURES		
<small>WORK LOCATION ADDRESS</small> 370 PANAMINT RD		<small>AREA</small> HIR
<small>LOTS</small> 37	<small>APNS</small> 003.43-18	<small>ZONING</small> EIC-HIR
<small>OCCUPANCY</small> N/A	<small>CONSTRUCTION TYPE</small> STEEL	<small>FLOOD ZONE</small> C
		<small>SETBACKS</small> 30-45-15
		<small>SUF1</small> < 4.0
<small>RECEIVED by BUILDING DEPT.</small>	<small>Grading Plan</small> <input type="checkbox"/> Yes <input type="checkbox"/> No	<small>Topographic Underlay</small> <input type="checkbox"/> Yes <input type="checkbox"/> No
	<small>Sewer/Water Will Serve</small> <input type="checkbox"/> Yes <input type="checkbox"/> No	<small>Fire & Life Safety APF</small> <input type="checkbox"/> Yes <input type="checkbox"/> No
		<small>Owner/Builder Signature Form(s)</small> <input type="checkbox"/> Yes <input type="checkbox"/> No
	<small>Architectural Approval Letter</small> <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> C/B	<small>PHONE</small>	
<small>ADDRESS</small>	<small>NV LIC #</small>	
<small>City ST Zip</small>	<small>SC LIC #</small>	
<small>24-hr JOB Contact</small>	<small>Cell</small>	
<small>CONTRACTOR</small>	<small>PHONE</small>	
<small>ADDRESS</small>	<small>NV LIC #</small>	
<small>City ST Zip</small>	<small>SC LIC #</small>	
<small>24-hr JOB Contact</small>	<small>Cell</small>	
<small>CONTRACTOR</small>	<small>PHONE</small>	
<small>ADDRESS</small>	<small>NV LIC #</small>	
<small>City ST Zip</small>	<small>SC LIC #</small>	
<small>24-hr JOB Contact</small>	<small>Cell</small>	
If applying as Owner/Builder - MUST Complete "Owner Builder Affidavit of Exemption" per NRS 624.031(4)		
<small>OWNER / Permittee (Print)</small> TOM TAORMINA	<small>PHONE</small> 847-7929	
<small>ADDRESS (Mailing)</small> 370 PANAMINT RD	<small>CELL</small> 846-7068	
	VC HIGHLANDS NV 89521	
<small>OWNER Signature</small> 	<small>Authorized Signature</small> 	RECEIVED
<small>Comments</small>		<small>DATE</small> JUL 25 2008
SEE ATTACHED DOCUMENTS		Storey County Building
TOTAL VALUATION: \$ 1,800-		
	<input checked="" type="checkbox"/> <small>Est. Cost</small>	<input type="checkbox"/> <small>Actual Contract</small>
<small>PLAN REVIEW \$</small> 5	<small>CHECK #</small>	<small>RECEIPT #</small>
<small>Note: PLAN CHECK FEE - Based on total valuation. THIS FEE MUST BE PAID AT TIME OF PLAN SUBMITTAL. Additional fees will be assessed during the Permit Application Process. PERMIT FEE(S) PAID PRIOR TO PERMIT ISSUANCE.</small>		
<small>Application Completed by</small> 		<small>Date</small> 7/25/08

Exhibit I

Exhibit I

Exhibit I
Post-Construction Application for
140', 85', 110' and 140' Supports, 8/14/08

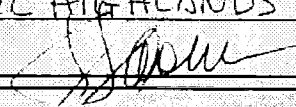
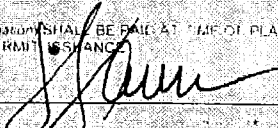
SCBD Control #:	Storey County Building Dept. P O Box 526 Virginia City NV 89440	Received
PERMIT APPLICATION		
<input checked="" type="checkbox"/> Residential <input type="checkbox"/> Comm/Indr		
WORK DESCRIPTION AMATEUR RADIO ANTENNA SUPPORT STRUCTURES		
WORK LOCATION ADDRESS 370 PANAMINT RD		AREA HR
CITY 37	APN/SI CC3-43-18	ZONING E10-HR
OCCUPANCY N/A	CONSTRUCTION TYPE STEEL	FLOOD ZONE C
		SETBACKS 30-45-15
		SQ FT < 4.0
RECEIVED by BUILDING DEPT:	Grading Plan: <input type="checkbox"/> Yes <input type="checkbox"/> No	Topographic Underlay: <input type="checkbox"/> Yes <input type="checkbox"/> No
	Fire & Life Safety APF: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Owner/Builder Signature Forms: <input type="checkbox"/> Yes <input type="checkbox"/> No
	Sewer/Water: Will Serve <input type="checkbox"/> Yes <input type="checkbox"/> No	Architectural Approval Letter: <input type="checkbox"/> Yes <input type="checkbox"/> No
A Nevada Licensed CONTRACTOR and SWPP Report is Required for ALL Commercial and/or Industrial Projects		
CONTRACTOR C/B	PHONE	RECEIVED AUG 14 2008 Storey County Building
ADDRESS	NV LIC #	
City ST Zip	SC LIC #	
24-hr JOB Contact	Cell	
CONTRACTOR	PHONE	
ADDRESS	NV LIC #	
City ST Zip	SC LIC #	
24-hr JOB Contact	Cell	
CONTRACTOR	PHONE	
ADDRESS	NV LIC #	
City ST Zip	SC LIC #	
24-hr JOB Contact	Cell	
If applying as Owner/Builder – MUST Complete "Owner Builder Affidavit of Exemption" per NRS 624.031(4)		
OWNER - Permittee (Print) TOM TAORMINA	PHONE 847-7929	
ADDRESS (Mailing) 370 PANAMINT RD	CELL 846-7068	
	VC HIGHLANDS NV 89521	
OWNER 	Authorized BUILDER AGENT	
Comments SEE ATTACHED DOCUMENTS		
TOTAL VALUATION: \$ 14,000.		
PLAN REVIEW \$	CHECK #	RECEIPT #
<small>Note: PLAN CHECK FEE Based on total valuation SHALL BE PAID AT TIME OF PLAN SUBMITTAL. Adjustment (if any) can be made during the Permit Valuation PERMIT FEE(S) PAID PRIOR TO PERMIT ISSUANCE.</small>		
Application Completed by 		Date 8/14/08

Exhibit J

Exhibit J

Exhibit J
Letter from Atty Hopengarten to DDA Grant, 8/25/08

Fred Hopengarten
Attorney at Law
*Six Willarch Road * Lincoln, MA 01773-5105*
*781/259-0088 * FAX 419/858-2421 * e-mail: hopengarten@post.harvard.edu*

Admitted only in DC and ME

August 25, 2008

Office of the District Attorney
Attn: Laura Grant, Deputy District Attorney
P.O. Box 496
Virginia City, NV 89440

lgrant@storeycounty.org

In re: 370 Panamint Road, VC Highlands, APN 003-43-18

Dear Atty. Grant:

I understand from Atty. Brian McMahon, that there may be some lingering issues which may not have been adequately emphasized or addressed in our submission on behalf of the Applicant, Mr. Taormina. I'd like to address those concerns.

Concern: A radio amateur cannot require the County to grant a permit for everything he wants.

Response: The statement is false, for failing to state the whole of the law concerned.

Briefly stated, the law is that the County must "reasonably accommodate" amateur radio communications (NRS 278.02085 and 47 CFR §97.15(b)), and in particular, "the communications that he/she desires to engage in." PRB-1 at ¶25. SCC §17.12.044, which purports to limit accessory structures to "forty-five (45) feet in height" is void (NRS 278.02085), as a firm, fixed, maximum height. "Ordinance[s] which establish absolute limitations on antenna height . . . are . . . facially inconsistent with PRB-1."

Amateur radio antenna systems are an ordinary accessory use of a residential property. For example, *Smith v. Board of County Commr's, Co. of Bernalillo* 137 N.M. 280, 110 P.3d 496 (Supreme Ct. of N.M., 2005) Slip Opinion at <http://www.supremecourt.nm.org/cgi-bin/dnloadit.cgi/pastopinion/05sc-012.wpd>, (accessed August 25, 2008), 2005 WL 791994, holds:

{25} Our review of cases from other states supports Plaintiff's belief that **amateur radio antennas are generally considered customarily incidental to residential use without adding a reasonableness inquiry.** See, e.g., *Town of Paradise Valley v. Lindberg*, 551 P.2d 60, 61-62 (Ariz. Ct. App. 1976) (holding that the erection of a ninety-foot

amateur radio tower in conjunction with a homeowner's hobby as a ham radio operator is a permissible accessory or incidental use); *Skinner v. Zoning Bd. of Adjustment*, 193 A.2d 861, 863-64 (N.J. Super. Ct. App. Div. 1963) (upholding a 100-foot radio antenna tower used as a hobby as an accessory use customarily incidental to the enjoyment of a residential property); *Dettmar v. County Bd. of Zoning Appeals*, 273 N.E.2d 921, 922 (Ohio Ct. Com. Pl. 1971) (finding that **even an unusual customarily incidental use is permissible unless specifically excluded by a zoning restriction**). [*Emphasis added.*]

Neighbors do not determine what is customarily incidental to a particular homeowner's use of his property. *Lindberg*, 551 P.2d at 62; *Dettmar*, 273 N.E.2d at 922 (use customarily incidental "does not limit the use to the incidental activity chosen by the neighbors").

After removing the void height limit of SCC §17.12.044, you are left with "Radio, television and other communication masts may extend . . . , provided that the same may be safely erected and maintained at such height . . ." Note that §17.12.044 specifically permits plural "masts." So safety is the only permissible consideration for this application, and it has not been questioned at any point.

Finally, FCC Order DA 99-2569 (1999), <http://wireless.fcc.gov/services/amateur/prb/prb1999.html>, holds that:

7. . . . PRB-1 decision precisely stated the principle of "reasonable accommodation". In PRB-1, the Commission stated: "Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose." **Given this express Commission language, it is clear that a "balancing of interests" approach is not appropriate** in this context.

...

9. . . . [W]e believe that PRB-1's guidelines brings (*sic*) to a local zoning board's awareness that **the very least regulation necessary** for the welfare of the community must be the aim of its regulations **so that such regulations will not impinge on the needs of amateur operators** to engage in amateur communications. [*Emphasis added.*]

The proper conclusion is that it is not necessary to decide whether other radio amateurs, with other needs, in other zones within this county, on smaller parcels, are entitled to the building permits for which applications have been submitted in this matter. **"PRB-1 requires a site-specific, antenna-specific, array-specific, operations-specific, ordinance-specific, and city action-specific analysis. PRB-1 at p. 7."** [Referring to PRB-1 paragraphs 24 and 25.] *Snook v. City of Missouri City, Texas*

No. 03-cv-243, 2003 U.S. Dist. LEXIS 27256, 2003 WL 25258302 (USDC S.D. Tex., Aug. 27, 2003, Hittner, J.) (the Order, Slip Opinion, 63 pp.). See also the Final Judgment, Slip Opinion, 2 pp. Also available at: (PACER citation) https://ecf.txsd.uscourts.gov/cgi-bin/login.pl?387442335892775-L_238_0-14:03-cv-00243_Snook v. _City_of_Missouri, (S.D.

Tex. 2003); (Internet) http://www.arrl.org/FandES/field/regulations/PRB-1_Pkg/Snook%20KB5F%20Decision%20&%20Order%2034.pdf (*Emphasis supplied.*)

Concern: There is an issue of numerosity – this may not be a reasonable application of the concept of an ordinary accessory use.

Response: “Amateur radio antennas are generally considered customarily incidental to residential use without adding a reasonableness inquiry.” But “even an unusual customarily incidental use is permissible unless specifically excluded by a zoning restriction.” (Smith, *ibid.*, with internal citations) See also *Evans v. Burruss*, <http://www.courts.state.md.us/opinions/coa/2007/1a07.pdf> (MD Court of Appeals, 2007), last visited August 26, 2008, holding that a grant of a building permit for four 190’ towers, was a ministerial act, revoking a stop work order. Notice to abutters was not required.

Concern: The County may require a special permit proceeding.

Response: There is no authority for such a requirement to be found in the SCC.

This subject was covered in the Supplement to the Building Permit Application, repeated here:

No Special Use Permit Required

It may be argued that SCC §17.62.020 requires a special use permit for these amateur radio antenna systems, under §17.62.020 I, because they are radio transmitters and towers. But that is not what §17.62.020 says. It reads:

Chapter 17.62 SPECIAL USES Section No (17.62.020) Special use permits.

The following uses may be permitted only in zones that allow said usage per the granting of a special use permit. This excludes the I-S special industrial zone and PUD planned unit development or subdivision zone: A. City, county, state and federal enterprises, including buildings, facilities and uses; B. Educational institutions, including elementary, middle and high schools whether public, private or parochial; C. Establishments or enterprises involving large assemblages of people or automobiles, including amusement parks, circuses, carnivals, expositions, fairgrounds, race tracks, recreational and sports centers, whether temporary or permanent; D. Golf courses, golf driving ranges and country clubs; E. Hospitals, sanitariums and rest homes; F. Libraries, museums and private clubs; G. Parks, playgrounds and community facilities; H. Public utility or public service buildings, structures and uses; I. Radio, television and other communication transmitters and towers; J. Sewer plants or sewage disposal facilities; K. Wild animal maintenance. (Ord. 159 § 2(part), 1999)

A closer reading of §17.62.020 is required. It says that a special use permit is required ONLY if the use IN THAT ZONE requires a

special use permit. This requires us to look at the uses which require a special use permit in the E Estates zone. To find out what those uses may be, we look to §17.40.025.

Chapter 17.40 E ESTATES ZONE
Section No (17.40.025)
Uses subject to permit.

The following additional uses may be permitted subject to securing a special use permit [from the BOCC] as provided for in Chapter 17.62 of this title: A. Public buildings, . . . ; B. Licensed child care facilities . . . C. One detached family guest home . . .

Radio, television and other communication transmitters and towers are not listed. **As ordinary accessory uses to a residential dwelling, the Applicants' antenna systems do not require a special use permit.**

Concern: The proper place for an installation like this is an industrial zone.

Response: The position of a radio amateur in the permitting process is uniquely enhanced by a Congressional finding that "reasonable accommodation should be made for the effective operation of amateur radio **from residences**, private vehicles and public areas, and that regulation at all levels of government should facilitate and encourage amateur radio operation as a public benefit." Public Law 103-408, § 1 (3), October 22, 1994 (*Emphasis added*).

Concern: The cases cited in the Applicant's Supplement are not precedent in Nevada.

Response: This is untrue for two reasons.

First, Nevada's statute **NRS 278.02085 Amateur radio** specifically adopts "the provisions of 47 C.F.R. § 97.15 and the limited preemption entitled "Amateur Radio Preemption, 101 F.C.C. 2d 952 (1985)" as issued by the Federal Communications Commission." An ordinance that "does not conform to the provisions of" those laws is void.

Second, Nevada is in the Ninth Federal Circuit, which has written that "(o)rdinance[s] which establish absolute limitations on antenna height . . . are . . . facially inconsistent with PRB-1." *Howard v. City of Burlingame*, 937 F.2d 1376, fn5 (9th Cir., 1991).

Concern: The Storey County height restriction of §17.12.044 is a valid safety restriction.

Response: "(T)he ordinance itself does not address the reasons for the restriction." Memorandum from Laura Grant, Deputy District Attorney, to Dean Haymore, Director,

Storey County Planning, July 1, 2008. Lacking a reason for the restriction, failing to specifically address amateur communications, as well as failing to represent the minimum practicable regulation, it is impossible to claim that §17.12.044 was “crafted” with the requirements of the law in either its legislative history or on its face. PRB-1 requires that “local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations **must be crafted** to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose.” **Federal preemption of state and Local Regulations Pertaining to Amateur Radio Facilities** (PRB-1)

<http://wireless.fcc.gov/services/index.htm?job=prb-1&id=amateur&page=1> (Last visited August 26, 2008) (*Emphasis added.*) Failing the “must be crafted” test, under NRS 278.02085 Amateur radio, §17.12.044 is void.

Concern: “(L)imiting tower heights does not unreasonably impinge on amateur service communications.”

Response: The Applicant’s Supplement, at pages 32-34 fully replies to this concern by noting that firm, fixed and unvarying, maximum height zoning ordinances are preempted, and, in Nevada, void.

One small comment. Amateur radio communications need not be justified solely on the basis of emergency communications, despite the Applicant’s pride in his own preparations to be of service in emergencies. The amateur service has five reasons that justify the special protections it receives from the Congress, the FCC and the State of Nevada. See 47 CFR §97.1, Basis and purpose:

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

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

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

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

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

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

As a courtesy to the Planning Commission and to the Office of the District Attorney, I enclose full text copies (most recent first) cases and a law review article, with an annotation.

1. *Evans v. Burruss*, 401 Md.586, 933 A. 2d 872,
<http://www.courts.state.md.us/opinions/coa/2007/1a07.pdf> (MD Court of Appeals, 2007), last visited August 26, 2008
 - *Four 190' towers. The issuance of a building permit is a ministerial act.*
2. *Smith v. Board of County Commr's, Co. of Bernalillo*, 137 N.M. 280, 110 P.3d 496 (Supreme Ct. of N.M., 2005) Slip Opinion at
<http://www.supremecourt.nm.org/cgi-bin/dnloadit.cgi/pastopinion/05sc-012.wpd>,
(accessed August 25, 2008), 2005 WL 791994.
 - *Two 140' towers. No "reasonableness" test for an accessory use*
3. Reasonable Accommodation of Amateur Radio Communications by Zoning Authorities: The FCC's PRB-1 Preemption, 37 Conn. L.Rev., 321 (2004)
 - *A survey law review article.*
4. *Chevester v. Town of Whately*, Superior Court, Franklin ss., Civil Action No. 03-00002, Hillman, J., November 22, 2004.
 - *A 35' maximum height preempted for a 140' tower. Building permit reinstated.*
5. *Snook v. City of Missouri City, Texas*, No. 03-cv-243, 2003 U.S. Dist. LEXIS 27256, 2003 WL 25258302 (S.D. Tex. Aug. 27, 2003, Hittner, J.) (the Order, Slip Opinion, 63 pp.). Also the Final Judgment, Slip Opinion, 2 pp.
 - *Recent and detailed examination of case law by a Fed Dist Ct Judge*
6. *Palmer v. City of Saratoga Springs*, 180 F. Supp. 2d 379 (N.D.N.Y., 2001)
 - *Detailed examination of case law by a Fed Dist Ct Judge*
7. *Brower v. Indian River County Code Enforcement Board*, No. 91-0456 CA-25 (June 23, 1993), 1993 WL 228785 (Fla.Cir.Ct.).
 - *Preemption of an illegal bylaw despite construction without a building permit.*
8. *Bodony v. Sands Point*, 681 F. Supp. 1009 (E.D.N.Y., 1987)
 - *Preemption of a local bylaw. \$60,000 in legal fees awarded to radio amateur.*

Each of the cases considers fixed maximum heights for amateur radio antenna systems and finds them void or unenforceable. None of the cases upholds a maximum height comparable to the maximum height found in the Storey County Code (or any firm, fixed and unvarying, maximum height). If it would be useful to the Planning Commission and the District Attorney, I would be pleased to provide full text copies of more cases, all with comparable holdings.

The question which must be asked, of course, would be: Is there a reason to expect a different outcome should litigation be required in the matter before the County? In considering the question, I urge the County to consider the consistency of the holdings overall. I would also urge the Board to consider the Court's award of \$60,000 in attorney's fees (the Village's maximum insurance coverage at the time—1987) in the Bodony case.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Hopengarten". The signature is stylized and cursive.

Fred Hopengarten
D.C. Bar # 114124

C: Tom Taormina, K5RC
Brian M. McMahon, Esq. brian@mcmahonlaw.org

Enclosures: As listed above

Exhibit K

Exhibit K

Exhibit K
Letter from DDA Grant to Atty McMahon, 8/27/08



DISTRICT ATTORNEY
STOREY COUNTY

HAROLD SWAFFORD

August 27, 2008

Brian M. McMahon, Esq.
McMahon Law Offices, LTD.
3715 Lakeside Drive, Suite A
Reno, Nevada 89509

RE: Taormina Antenna Issue

Dear Mr. McMahon:

Thank you for providing me with the very extensive information relating to your client's desire for a building permit to erect two (2) amateur radio antennae. As promised, I have reviewed all of it, including legal research of the cases cited and others.

As I told you by telephone, I am not convinced that the "authority" provided is either controlling or persuasive. Unpublished federal district court decisions, and the like, are simply not convincing.

Storey County Code 17.12.044 is neither facially preempted nor "as applied" preempted by PRB-1. Provisions are incorporated within this County's Code for the application for, and issuance of, special use permits relating to otherwise nonconforming uses, such as amateur radio antennae over forty-five (45) feet in height. Your client has failed to make such an application upon the premise that: (1) he is not required to so apply; and, (2) PRB-1 prevents the County from any interference with his hobby.

In my review of the history of Mr. Taormina's antennae, I have learned that, in addition to his failure to obtain building, or special use, permits for the approximately eight (8) radio antennae on his lot, he failed to gain the approval of the architectural committee of the Highlands Ranchos Property Owners Association (HRPOA) as was required. The architectural guidelines in effect as part of the conditions, covenants and restrictions (CC&Rs) as of 1998 (one year after your client's purchase), forbid the placement of any antennae on the property which is more than fifteen (15) feet in height above the roof of the dwelling. In fact, on at least one (1) occasion Mr. Taormina was ordered to remove (or reduce in height) all but one of the antennae as nonconforming. Mr. Taormina did neither.

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In fact, he erected even more antennae thereafter, again without so much as a modicum of compliance with the governing bodies.

The copy of the building permit application attached to Mr. Hopengarten's letter of August 13th should be able to be granted as it only relates to preparation of the antenna support system. We understand this to be preparation of the foundation for the tower. Any other work contemplated, such as the erection of antennae and towers over 45 feet in height, will require Mr. Taormina to apply for a special use permit.

Mr. Taormina has flouted the laws of this County and the dictates of his homeowners association for many years. He now demands, via counsel, "reasonable accommodation" of his desire to add yet more antenna towers to his already substantial "farm." The County acknowledges its obligation to afford reasonable accommodation, however it has never been asked to do so; neither in the past nor present. Much of this could have been addressed several years ago if he had only made the proper applications. Instead, he must now deal with a situation of his creation.

Storey County is more than willing to work with your client in achieving his goals for his hobby, but it will be necessary to approach this matter within the law. We would be amenable to a conference between County building officials, myself, you and your client (following the proper application for a special use permit) if he is willing to work through the proper channels to achieve his ends. Further, it will be necessary to engage the Planning Commission in the discussion, with the appropriate public hearings. It will also be necessary to evaluate Mr. Taormina's need for the number of antennae already upon his property, another matter which could have been addressed previously had he made the proper applications for such placement over the years.

I look forward to discussing this matter with you further. Please feel free to contact me at any time.

Very truly yours,



LAURA LOUISE GRANT
Deputy District Attorney

CC: Dean Haymore
Pat Whitten