

Exhibit L

Exhibit L

Exhibit L  
Letter from Atty Hopengarten to DDA Grant, 8/29/08

**Fred Hopengarten**  
*Attorney at Law*  
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Admitted only in DC and ME

August 29, 2008

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

[lgrant@storeycounty.org](mailto:lgrant@storeycounty.org)

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

Dear Atty. Grant:

After sending my letter dated August 25 to you earlier today (August 28, 2008), I have received your letter to Atty. McMahon dated August 27, and your letter to me, dated August 28. In other words, our letters have crossed in the e-mail. Your letters were substantive and worthy of further discussion. I am very grateful for them, as, to date, my client and I have been working somewhat in the dark, receiving varied, and conflicting information.

Thank you for your letters.

**Authority Cited is Both Controlling and Published**

You have written that you are not convinced “that the “authority” provided is either controlling or persuasive. Unpublished federal district court decisions, and the like, are simply not convincing.”

Sadly, until August 28th, I had not provided you with controlling law in your jurisdiction. But, as Nevada is a 9<sup>th</sup> Circuit state, I must say that the *Howard v. Burlingame* decisions are, at the least, both published and controlling.

The published federal district court case is *Howard v. Burlingame*, 726 F. Supp. 770 (USDC, N.D. Calif., 1989). The published and controlling 9<sup>th</sup> Circuit Court case may be found at 937 F. 2d 1376 (9<sup>th</sup> Cir., 1991), wherein, at fn5, the Court wrote: “**(O)rdinance[s] which establish absolute limitations on antenna height . . . are . . . facially inconsistent with PRB-1.**”

Other published cases with similar holdings are:

*Bodony v. Village of Sands Point*, 681 F. Supp. 1009 (E.D.N.Y. 1987), holding "partial summary judgment is granted to the extent of declaring the 25 foot height limitation contained in section 352, para. 1 on the antenna system (an "accessory building") proposed by Bodony as void as it affects Bodony as an amateur extra class licensee for the licensed premises."

*Izzo v. River Edge*, 843 F.2d 765 (3d Cir. 1988), holding that PRB-1 would have preemptive effect with respect to a 35-foot maximum height limitation, and a federal court need not abstain. "The effectiveness of radio communication depends on the height of antennas." *Id.* at 768.

*Pentel v. City of Mendota Heights*, 13 F.3d 1261 (8th Cir. 1994), holding that "Courts . . . may preempt a local ordinance [that] bans [or imposes an unvarying height restriction on amateur radio antennas. See *Evans v. Board of County Comm'rs*, 752 F. Supp. 973, 867-77 (D. Colo. 1990); *Bulchis v. City of Edmonds*, 671 F. Supp. 1270, 1274 (W.D.Wash. 1987)."

*Palmer v. City of Saratoga Springs*, 180 F. Supp.2d 379, at 384 (N.D.N.Y. 2001), holding:

There are two ways PRB-1 may preempt a local ordinance. First, a local regulation "may be preempted on its face." *Pentel*, 13 F.3d at 1263. For instance, a city's zoning ordinance that banned or imposed an unvarying height restriction on amateur radio antennas would be facially invalid in light of PRB-1. See *id.*(citing *Evans v. Board of County Comm'rs of County of Boulder, Co.*, 752 F.Supp. 973, 976-77 (D.Colo.1990); and *Bulchis v. City of Edmonds*, 671 F.Supp. 1270, 1274 (W.D.Wash.1987)). Here, section 24-12.15 of the City of Saratoga Springs Zoning Ordinance is not facially preempted by PRB-1 because it neither bans nor imposes an unvarying height restriction on amateur radio antennas. While the ordinance does restrict antennas to 20 feet in height, width or depth, the statute provides that antennas that exceed those dimensions are permitted upon issuance of special use permit.

Second, PRB-1 preempts a local regulation where a city fails to *apply* a local ordinance in a manner which reasonably accommodates amateur communications. See *Pentel*, 13 F.3d at 1263-64 (emphasis added) (citations omitted). Accordingly, "a local regulation that impairs amateur radio communications is preempted as applied if the city has not crafted it to accommodate reasonably amateur communications while using the minimum practicable regulation [necessary] to accomplish the local authority's legitimate purpose." *Id.* (internal quotation marks and citation omitted).

I hope that these citations to controlling and published law will prove helpful, and the idea that somehow Mr. Taormina relies upon obscure and unavailable decisions can be banished from our discussions.

In any event, perhaps it is instructive to consider the words of *McMillan v. City of Rocky River*, 748 F. Supp. 1241 (N.D. Ohio 1990), holding that a 30-foot maximum height bylaw was preempted as applied to that radio amateur, and writing:

It is a cardinal rule that a court must first look to the language of the statute itself to determine the legislative intent . . . . If that inquiry reveals that the statute conveys a meaning which is clear, unequivocal and definite, at that point the interpretive effort is at an end and the statute must be applied accordingly. . . . The Sixth Circuit has also stated that in the absence of state authority, federal courts must be "guided by applicable principles of state law and by relevant decisions of other jurisdictions."

[The Supreme Court of Ohio] has long held that statutes imposing restrictions on the use of private property must be strictly construed. . . . All doubts should be resolved in favor of the free use of private property rather than in favor of restrictions on such use.

Statutes or ordinances which impose restrictions upon the use of private property will be strictly construed and their scope cannot be extended to include limitations not therein clearly prescribed.

In determining the permitted use of property under a zoning classification in which terms and language therein are not otherwise defined, the common and ordinary meaning of these terms and language must be considered, liberally construing the terms and language in favor of the permitted use so as not to extend the restrictions to any a limitation of use not [Internal citations omitted.]

If the Office of the District Attorney holds the opinion that the law of the 9<sup>th</sup> Circuit does not control, and that decisions interpreting the federal law contained within NRS 278.02085 are not persuasive, it would be useful to our discussion for me to learn the basis of these opinions. In other words, how do you read the Storey County Code, and what court decisions does your office rely on?

As you know, Mr. Taormina's posture is that SCC §17.12.044 is void as a result of NRS 278.02085, insofar as, when applied to amateur radio antenna systems, it purports to limit those systems to "forty-five (45) feet in height." I understand that the Office of the District Attorney holds the opinion that §17.12.044 is "neither facially preempted nor 'as applied' preempted by PRB-1." Letter of August 27, 2008. But what I do not understand is the idea that SCC §17.62.020 authorizes special permits for amateur radio antenna systems at heights greater than 45 feet in the E Estates Zone, an idea expressed in your letter of August 2, 2008, thereby saving SCC §17.12.044 from the fate of being void. Can you help me better understand this position?

### **SCC §17.62.020 is Limited and Does Not Apply**

SCC §17.62.020 provides that "(r)adio, television and other communication transmitters and towers" "may be permitted only in zones that allow said usage per the granting of a special use permit." **This requires us to see if "(r)adio, television and other communication transmitters and towers" require a special use permit in the Applicant's zone.**

SCC §17.40.025, which governs the E Estates Zone, provides that there are only three uses subject to securing a special use permit: " A. Public buildings, . . . ; B. Licensed child care

facilities . . . C. One detached family guest home . . .” Amateur radio antenna systems, at any height, are not listed.

Remembering that ordinances which impose restrictions on private property must be strictly construed, could you explain to me how SCC §17.62.020 and SCC §17.40.025 require a special permit for amateur radio antenna systems in the E Estate Zone? What am I missing?

### **Introducing SCC §17.40.020(B) – a Novel Idea**

Your letter of August 28, 2008 includes: “More importantly, SCC 17.40.020(B) provides that accessory use structures which are more than sixty (60) feet in length require a special use permit. Clearly, the Taorminas’ antennae [*sic*] are in excess of this limit.” This is the first time that I’ve seen any reference in any correspondence to §17.40.020.

It is not at all “clear” that all of the Taormina antennas are “more than sixty (60) feet in length.” No antenna proposed for frequencies higher than 14 MHz is more than 60 feet in length. Frankly, this means MOST of their antennas. Antennas for 20, 15, and 10 meters (14 MHz, 21 MHz, and 28 MHz respectively) have longest elements lengths approximately 36, 25 and 18 feet. In addition, no boom for any of those antennas is longer than 60 feet.

There is more to be discussed about SCC §17.40.020, but insofar as we are discussing the great majority of antennas, most do not exceed 60 feet in length.

In attempting to narrow the scope of disagreement, would your office be willing to allow the grant of building permits immediately for antenna support structures less than 45 feet tall, with antennas less than 60 feet in length? I’d like to remove controversies from the table if they are not controversies.

### **History – Three Applications for Building Permits Have Been Filed**

In your letter of August 28, 2008, you have written: “In the years since they purchased their property, they have proceeded to erect approximately eight (8) towers for antennae [*sic*] and not once have they applied for a building permit to do so.”

The statement is false because Mr. Taormina has now three times applied for building permits. Yes, those applications were made in 2008, and came about as the result of a change in advice from the Building Department, as well as guidance from counsel – Atty. McMahan and me. But the facts belie the statement. If you have not seen any of the paperwork on items mentioned below, please let me know, as I would be happy to provide copies.

One application, for two ham radio towers, was granted by Permit No. 8354, dated June 27, 2008. Building inspections were completed on July 3, and July 8. The July 8<sup>th</sup> inspection notes that a variance will be required for towers over 45’. Do I understand that this variance requirement is no longer the position of the County? I think it very important to our

discussions to know whether the County's position is that towers over 45 feet in height require a variance, or a special use permit.

A second application was stamped in at the Storey County Building Department on July 25, 2008. It was for two towers less than 45 feet in height. Action on this application should be ministerial, and I expect those building permits will be forthcoming. Could you explain why the permit for those two antenna support structures, each less than 45 feet in height, has not yet been granted?

A third application was filed on August 13, 2008, and was intended to provide everything that was required to legalize all proposed antenna support structures over 45 in height. Referring to this application in your letter of August 27, you write: "The copy of the building permit application attached to Mr. Hopengarten's letter of August 13<sup>th</sup> 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." This understanding is not correct. I am glad that you wrote this, so that the misunderstanding can be cleared up.

Most building codes, including the UBC and the document it relies on for structural requirements (TIA-EIA-222), refer to "towers" as "antenna support structures." The reason is that antenna support structures may be lattice towers (guyed or self-supporting), monopoles (this Applicant has proposed two), utility poles, etc. So the generic term is "antenna support structure." The phrase does not relate only to the foundation. The Application of August 13 was for foundations, antenna support structures and antennas.

I would conclude that an application for a building permit for each and every antenna support structure has been submitted. If I am wrong, please do let me know.

### **History – Prior Advice from the County Was Wrong**

In your letter of August 28, 2008, you wrote: "Mr. and Mrs. Taormina have consistently ignored their obligations under the County Code, even as to the application for a building permit, . . ." Not true.

As it appears on page 12 of the Supplement accompanying the Building Permit Applications of August 13, 2008, at footnote 4:

From 1997 until July, 2008, the Applicant has been repeatedly verbally informed by the Storey County Building Department that his towers "did not need permitting," and were "grandfathered" into the 1999 Building Code revisions.

Frankly, I see little purpose in accusing the Taorminas of past guilt, especially where, upon inquiry, they were misinformed by the Building Department. I hope these cross-accusations can be eliminated from the dialogue as we go forward. There is no profit in embarrassing those who misinformed the Taorminas. Could we just get past this issue and go forward from where we are today, with the building permit applications now submitted?

### **History – The HRPOA CC&Rs are Irrelevant**

You write that I may not be aware of a claim that the HRPOA once ordered the Taorminas “to remove or reduce in height all but one (1) antennae [*sic*]<sup>1</sup> as non-conforming.”

You are quite right. I was unaware of such a claim. But is there a purpose to discussing some claim of transgression from the last century? The Taorminas are in conformance now.

The CC&Rs were addressed in the Supplement to the Building Permit Application, submitted on August 13, from which I produce here this excerpt:

the Highland Ranches Property Owner’s Association has gone on record with their acknowledgement that the CC&R’s do not apply in this case.

I spoke with Bill Lewis earlier today about [permission of the Architectural Committee as necessary for the antennae] and he assured me that the Committee does not consider that it has authority over the radio antennae.

Memorandum from Laura Grant, Deputy District Attorney, July 1, 2008, at 2.

See also an undated memorandum from Howard H. Depew, P.E., Chairman Architectural Committee, Virginia City Highlands Ranches Property Owners Association, included as **Exhibit P**, which states: “I have reviewed the existing association CC&Rs and find nothing which prevents erection, limits tower size, or the quantity of these structures on a member’s property.”

Atty. Grant, I am confused, and solicit your help. I have asked a number of questions within this letter. I would really like to narrow the issues between my client and the county.

Sincerely,



Fred Hopengarten  
D.C. Bar # 114124

C: Tom Taormina, K5RC  
Brian M. McMahon, Esq. [brian@mcmahonlaw.org](mailto:brian@mcmahonlaw.org)

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<sup>1</sup> In the engineering world, the plural of antenna is antennas. In any event, one (1) of them would not be an antennae, but rather an antenna. As you and I will be writing a lot about these things, I hope you will accept this nomenclature suggestion in the spirit of good will that it is offered.

Exhibit M

Exhibit M



**Exhibit M**  
**Building Permit 8416 Issued for 32' Tower, 9/16/08**

Permit No. <b>8416</b>	<b>Storey County Building Dept.</b> P O Box 526 Virginia City Nevada 89440 ~ (775) 847-0966	Date <b>9/16/08</b>
<b>RESIDENTIAL</b>		
WORK DESCRIPTION: <b>Erection of amateur radio antenna support structures - 32'</b>		
WORK LOCATION ADDRESS: <b>370 Panamint RD</b>		AREA: <b>JIR</b>
APN: <b>003-431-18</b>	ZONE:	FLOOD:
Special Note: This tower is pre-existing. It was installed in the 1990's. No Permits were requested or issued, therefore, no inspections were completed on the foundation or the guy wires. Storey County Building Department assumes no liability for the safety of this tower.		LOT/BLK: <b>37</b>
The Ten Acres Property Owner's Association Chairman submitted a letter stating that they addressed concerns raised by some association members over the erection of this tower. Per Howard Depew, he reviewed the current association CC&R's and found nothing which prevents erection, limits tower size or the quantity of these structures on a member's property (see attached letter).		
ESTIMATED WORK COMMENCEMENT DATE: <b>9/16/08</b>		ESTIMATED COMPLETION DATE: <b>3/16/09</b>
MOBILE HOME / TRAVEL TRAILER:	MAKE:	MODEL:
	YEAR:	SIZE:
		SERIAL #:
SCHOOL TAX RECEIPT # <i>If then required, pay \$500 to Storey County Clerk at Courthouse</i>	SPECIAL CONDITIONS:	
CONTRACTOR: <b>Owner / Builder</b>		PHONE:
ADDRESS:	NV LIC #:	Exp:
	SC LIC #:	Exp:
<p align="center"><b>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'.</b>  <i>If you require further information, please call (775) 847-0966.</i></p>		
OWNER / Permittee (Print): <b>Tom Taormina</b>		PHONE: <b>847-7929</b>
ADDRESS (Mailing): <b>370 Panamint Rd Virginia City Highlands, NV 89521</b>		
OWNER SIGNATURE: <i>[Signature]</i>	AUTHORIZED BUILDER / AGENT:	
LIVING AREA: Sq Ft @ \$61.10 = \$	BLDG FEE: \$35.70	PLOT PLAN: \$
CONCRETE SLAB: Sq Ft @ \$16.10 = \$	PLAN RVW FEE: \$23.21	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 @ \$ 6.62 = \$	: \$	: \$
SYN/COMP DECKS: Sq Ft @ \$ 9.96 = \$	: \$	: \$
WOOD DECK: Sq Ft @ \$12.00 = \$	PARK TAX: \$	: \$
BASEMENT: Sq Ft @ \$15.64 = \$	<b>TOTAL PERMIT FEE: \$58.91</b>	
TOTAL VALUATION: <b>\$900.00</b>	<input type="checkbox"/> PLAN REVIEW ONLY	Check #:
<input type="checkbox"/> Est. Cost <input type="checkbox"/> Actual Contract	<input checked="" type="checkbox"/> FULL PERMIT	Receipt #:

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 60% of the original 'Permit Fee'.  
**State 'Health Certification', if required, is the responsibility of the "Permittee".**

By: *[Signature]*  
 Storey County Building Department  
 Rev 02-11-04

Assessor Dept

Fire Dept

Sheriff Dept

Exhibit N

Exhibit N

**Exhibit N**  
**Building Permit 8417 Issued for 40' Tower, 9/16/08**

<b>Permit No.</b> 8417	<b>Storey County Building Dept.</b> P O Box 526 Virginia City Nevada 89440 ~ (775) 847-0966	<b>Date</b> 9/16/08
<b>RESIDENTIAL</b>		
<b>WORK DESCRIPTION:</b> Erection of amateur radio antenna support structure - 40'		
<b>WORK LOCATION ADDRESS:</b> 370 Panamint RD		<b>AREA:</b> HR
<b>APN:</b> 003-431-18	<b>ZONE:</b>	<b>FLOOD:</b>
		<b>LOT/BLK:</b> 37
<small>Special Note: This tower is pre-existing. It was installed in the 1990's. No Permits were requested or issued. Therefore, no inspections were completed on the foundation or the guy wires. Storey County Building Department assumes no liability for the safety of this tower. The Ten-Acres Property Owner's Association Chairman submitted a letter stating that they addressed concerns raised by some association members over the erection of this tower. Per Howard Depew, he reviewed the current association CC&amp;R's and found nothing which prevents erection, limits tower size or the quantity of these structures on a member's property (see attached letter).</small>		
<b>ESTIMATED WORK COMMENCEMENT DATE:</b> 9/16/08		<b>ESTIMATED COMPLETION DATE:</b> 3/16/09
<b>MOBILE HOME / TRAVEL TRAILER:</b>	<b>MAKE:</b>	<b>MODEL:</b>
	<b>YEAR:</b>	<b>SIZE:</b>
		<b>SERIAL #:</b>
<b>SCHOOL TAX RECEIPT #</b> <small>When required, pay \$500 to Storey County Clerk at Courthouse</small>		<b>SPECIAL CONDITIONS:</b>
<b>CONTRACTOR:</b> Owner / Builder		<b>PHONE:</b>
<b>ADDRESS:</b>	<b>NV LIC #:</b>	<b>Exp:</b> <b>Limit \$</b>
	<b>SC LIC #:</b>	<b>Exp:</b>
<b>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'.</b> <i>If you require further information, please call (775) 847-0966.</i>		
<b>OWNER / Permittee (Print):</b> Tom Taormina		<b>PHONE:</b> 847-7929
<b>ADDRESS (Mailing):</b> 370 Panamint Rd Virginia City Highlands, NV 89521		
<b>OWNER SIGNATURE:</b>	<b>AUTHORIZED BUILDER / AGENT:</b>	
<b>LIVING AREA:</b> Sq Ft @ \$61.10 = \$	<b>BLDG FEE:</b> \$35.70	<b>PLOT PLAN:</b> \$
<b>CONCRETE SLAB:</b> Sq Ft @ \$16.10 = \$	<b>PLAN RWV FEE:</b> \$23.21	<b>SIGNS:</b> \$
<b>STD T-FOUNDATION:</b> Ln Ft @ \$26.00 = \$	<b>ELECTRICAL:</b> \$	<b>SPEC INSP:</b> \$
<b>GARAGE:</b> Sq Ft @ \$19.48 = \$	<b>MECHANICAL:</b> \$	<b>Temp TRAILER:</b> \$
<b>FINISHED GARAGE:</b> Sq Ft @ \$23.21 = \$	<b>PLUMBING:</b> \$	<b>STOVE / Fireplace:</b> \$
<b>WOOD DECKS:</b> Sq Ft @ \$ 6.62 = \$	\$	\$
<b>SYN/COMP DECKS:</b> Sq Ft @ \$ 9.96 = \$	\$	\$
<b>WOOD DECK:</b> Sq Ft @ \$12.00 = \$	<b>PARK TAX:</b> \$	\$
<b>BASEMENT:</b> Sq Ft @ \$15.64 = \$	<b>TOTAL PERMIT FEE: \$58.91</b>	
<b>TOTAL VALUATION: \$900.00</b>	<input type="checkbox"/> PLAN REVIEW ONLY	<b>Check #:</b>
<input type="checkbox"/> Est. Cost <input type="checkbox"/> Actual Contract	<input checked="" type="checkbox"/> FULL PERMIT	<b>Receipt #:</b>

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 O

Exhibit O

**Exhibit O**  
**Completion Report Issued for 32' Tower, 9/24/08**

<b>Storey County Building Department</b> P O Box 526 - VIRGINIA CITY, NV 89440 - (702) 847-0966		Permit #: 8416
<b>CODE COMPLIANCE INSPECTION REPORT</b>		Requested: 9/23/08
Ready: 9/24/08		
Site Address: 370 Panamint APN #003-431-18	Area: IIR	Lot / Blk 37
Owner: Taormina, Tom	Contractor: OB	
<b>INSPECTION(S) REQUESTED:</b>		
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 - <b>CERTIFICATION Required</b>		
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
<b>~ REINSPECTIONS ~</b>		
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 checked="" type="checkbox"/> <b>A. Meets ALL Requirements for this INSPECTION</b> <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>Final on 32' tall radio antenna</i>		
<b>Tower appears to be no more than 32' in height, OK</b>		
<b>Anchors and all components are within the set-backs required for structures, OK</b>		
<b>Engineering report has been delivered to Building Dept.</b>		
<b>PASS, No further inspection required.</b>		
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.		
9/24/08 3:25 p.m.  9/24/08		

Exhibit P

Exhibit P



**Exhibit P**  
**Completion Report Issued for 40' Tower, 9/24/08**


<b>Storey County Building Department</b> P O Box 526 - VIRGINIA CITY, NV 89440 - (702) 847-0966		Permit #: 8417  Requested: 9/23/08  Ready: 9/24/08
<b>CODE COMPLIANCE INSPECTION REPORT</b>		
Site Address: 370 Panamint APN #003-431-18		Area: HR Lot / Blk: 37
Owner: Taormina, Tom		Contractor: OB
<b>INSPECTION(S) REQUESTED:</b>		
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		
<b>~ REINSPECTIONS ~</b>		
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 checked="" type="checkbox"/> <b>A. Meets ALL Requirements for this INSPECTION</b> <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>Final on 40' tall radio antenna</i>  Tower appears to be no more than 40' in height, OK Anchors and all components are within the set-backs required for structures, OK Engineering report has been delivered to Building Dept.  PASS, No further inspection required.		
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. 9/24/08 3:25 p.m.		
 9/24/08		

Exhibit Q

Exhibit Q



Exhibit Q  
Letter from Atty Hopengarten to DDA Grant, 9/19/08

***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

September 19, 2008

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

[lgrant@storeycounty.org](mailto:lgrant@storeycounty.org)

*By e-mail*

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

Dear Atty. Grant:

There may be some confusion between us with respect to the nomenclature and measurements for amateur radio antennas. When last I wrote to you, I discussed SCC §17.40.020. This section of the ordinance discusses height, width and length. It is important to be sure we are all using the same nomenclature.

**Nomenclature**

For your convenience, I attach two exhibits. One shows the parts of an antenna system, and gives those parts names (Exhibit I – Antenna Nomenclature). The other shows the height, width and length of an antenna system which is the subject of the Taormina application for a building permit (Exhibit II – Height, Width and Length of Structure #6: 20 Meter Rohn 45G).

**§17.40.020**

SCC §17.40.020 uses the concepts of height, width and length. §17.40.020 A. regulates the height of a residence. §17.40.020 B. regulates the width and length of an accessory use. There is no basis to believe that dimensions described as “wide” or “long” refer to height.

**Chapter 17.40 E ESTATES ZONE**

**Section No (17.40.020)**

**Permitted uses.**

The following uses are permitted in the E estates zone: Single-family dwellings which shall be of a permanent nature. No permanent site built

structure shall be less than eight hundred square feet for a one bedroom structure, one thousand square feet for a two bedroom structure, or one thousand two hundred square feet for a three bedroom structure. No residence shall be higher than three stories or thirty-five feet in **height**. B. Accessory uses customarily incident to the above uses and located on the same lot or parcel, including but not limited to, a private garage with a capacity of not more than four automobiles; private stables, garden houses, playhouses, greenhouses, enclosed swimming pools, tool-houses, well-houses, woodsheds, storage sheds and hobby shops. Any accessory use structure over forty-eight feet **wide** or over sixty feet **long** shall require a special use permit. *(Emphasis supplied.)*

Only one of the Taormina antennas proposed is "more than sixty (60) feet in length." Antennas for 40, 20, 15, and 10 meters (7 MHz, 14 MHz, 21 MHz, and 28 MHz respectively) have longest element lengths of approximately 42, 36, 25 and 18 feet. In addition, no boom for any of those antennas is longer than 60 feet.

Now let us convert to specifics. I refer you to the **Supplement** submitted on August 13, **Exhibit F**.

#	Name	Antennas >48' wide?	Antennas >60' long?
1	40 Meter Rohn 45G - 140'	NO	NO
2	20 Meter Rohn 25G - 85'	NO	NO
3	Rohn HBX-32 Tower - 32'	NO	NO
4	160 Meter Rohn 25G - 110'	NO	NO
5	VHF Trylon 1245 - 40'	NO	NO
6	20 Meter Rohn 45G - 140'	NO	NO
7	15 Meter Monopole - 120'	NO	NO
8	80 Meter Monopole - 195'	YES and NO	YES and NO

*Note: Antenna Support Structure #8 will have two antenna systems. One antenna system proposed uses antennas that are 65.6' x 75.5'. The other antenna system has dimensions less than 48' wide and 60' long.*

Will your office agree that no special use permit is required for antennas less than 48' wide and 60' long?

Sincerely,



Fred Hopengarten  
D.C. Bar # 114124

C: Tom Taormina, K5RC  
Brian M. McMahon, Esq. [brian@mcmahonlaw.org](mailto:brian@mcmahonlaw.org)

Exhibit R

Exhibit R

## Exhibit R Antenna Nomenclature

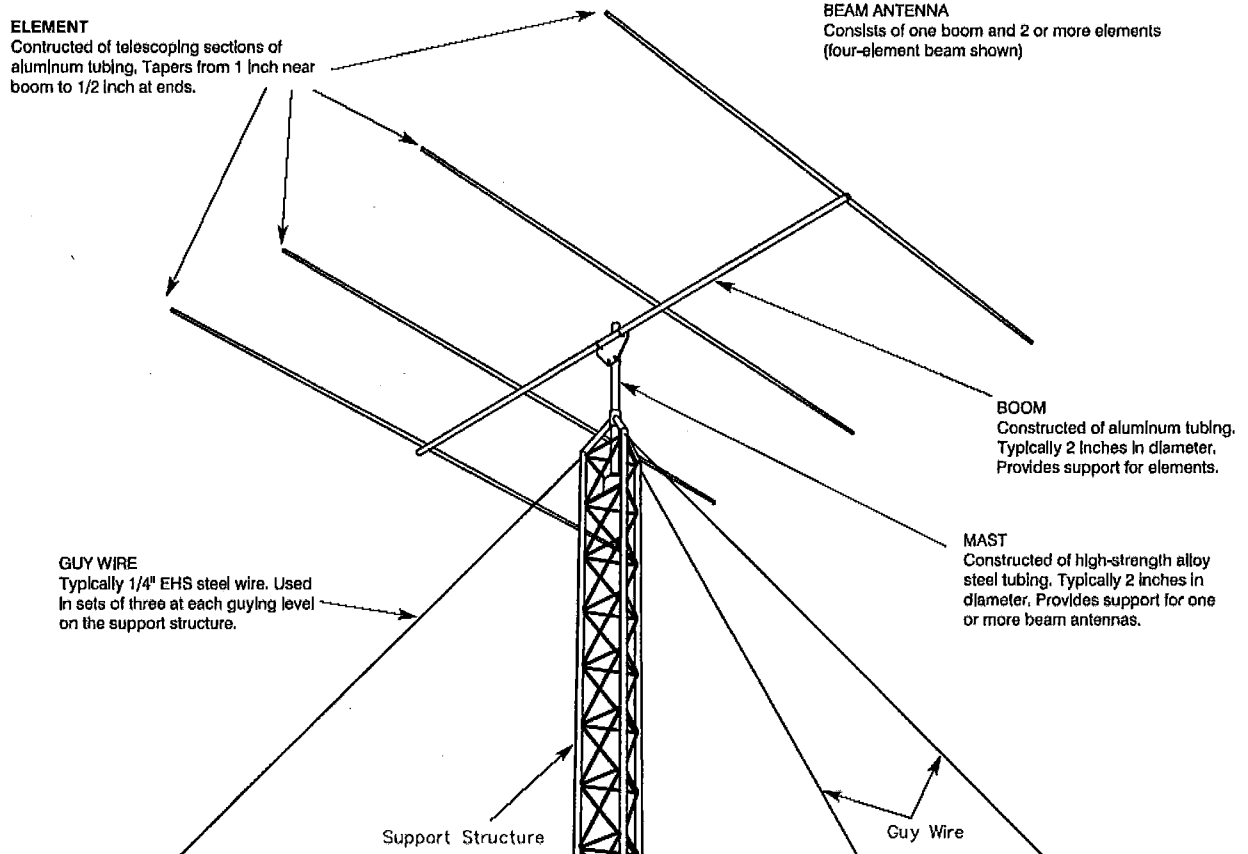


Exhibit S

Exhibit S

Exhibit S

Height, Width and Length of Structure #6: 20 Meter Rohn 45G

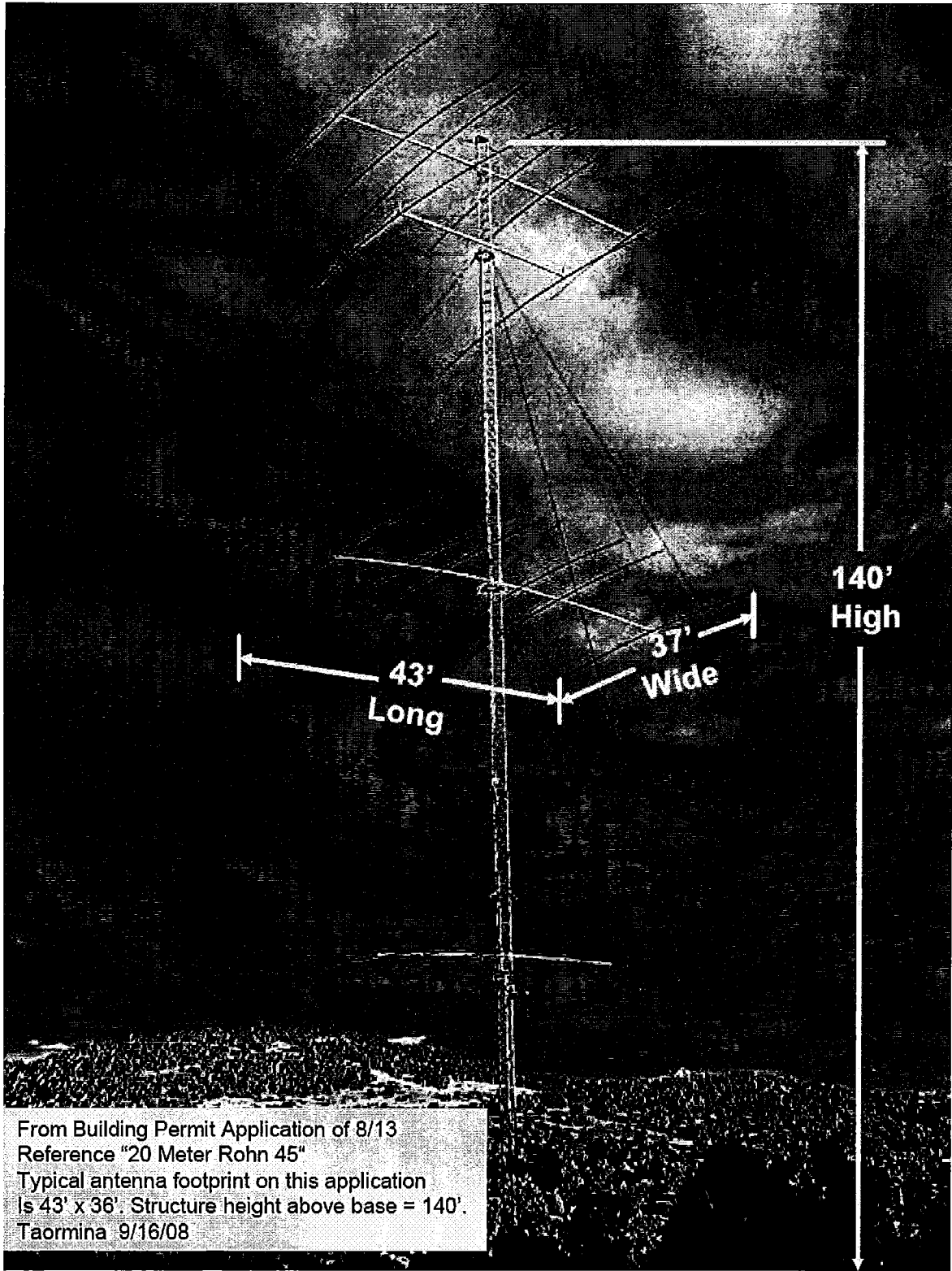


Exhibit T

Exhibit T

Exhibit T  
Letter from Atty McMahon to DDA Grant, 9/22/08

**McMahon Law Offices, Ltd.**  
ATTORNEYS AT LAW

Brian M. McMahon  
Anne M. Langer

-----  
[brian@mcmahonlaw.org](mailto:brian@mcmahonlaw.org)  
[alanger@mcmahonlaw.org](mailto:alanger@mcmahonlaw.org)

3715 Lakeside Drive, Ste A  
Reno, Nevada 89509  
(775) 348-2701  
FAX (775) 348-2702

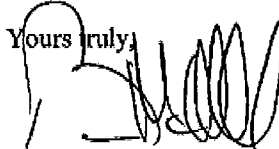
September 22, 2008

Via U.S. Mail & E-mail - lgrant@storeycounty.org  
Storey County District Attorney's Office  
Attn: Laura Grant, Deputy District Attorney  
PO Box 496  
Virginia City, NV 89440

RE: 370 Panamint Road, Virginia Highlands, APN 003-43-18

Dear Ms. Grant:

Enclosed please find correspondence from Fred Hopengarten, Esq. in the above referenced matter for your review and comment.

Yours truly,  
  
Brian M. McMahon, Esq.

BMM;jh

cc: Mr. Tom Taormina



Exhibit U

Exhibit U

Exhibit U  
Letter from DDA Grant to Atty McMahon, 9/30/08

DISTRICT ATTORNEY  
STOREY COUNTY

HAROLD SWAFFORD

September 30, 2008

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

RE: Taormina, 370 Panamint Road

Dear Mr. McMahon:

I am in receipt of your, and Attorney Hopengarten's, letters of September 22, 2008. I have reviewed both and respond below.

Firstly, I responded directly to Attorney Hopengarten's earlier letter out of professional courtesy. However, I cannot consider him to be "attorney of record," therefore I will, in future, rely upon you to keep him informed of events should you so desire.

Secondly, I believe that your client has been informed that the two (2) building permits he requested for tower/antenna structures less than sixty feet (60') were granted so as to begin bringing the structures on his property within the law. As you have previously been told, he may have a permit to remove the structure which presently encroaches on a neighboring property. The issue of re-erecting on another area of Taormina's property must be addressed under the code.

Lastly, the battle of semantics and/or definitions in previous correspondence of Attorney Hopengarten is neither intimidating nor influential to the ultimate outcome of your client's desires for radio towers/antennae on his property. Storey County Code Section 17.40.020 is quite clear with regard to "accessory use" structures; a special use permit is required for any structure over sixty feet (60') long. It matters naught whether the antennae themselves are less than 60', only that the entire structure must be less than 60' or require the property owner to apply for a special use permit, *through the ordinary*

P.O. BOX 496 • 911 SR 341 • VIRGINIA CITY, NEVADA 89440  
(775) 847-0964 • FACSIMILE (775) 847-1007

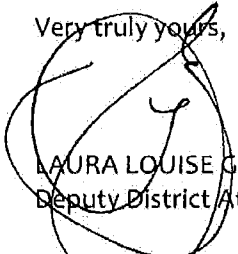
Page 2  
September 30, 2008

*process of the laws of Storey County.* Mr. Taormina has not done so prior to erection of the existing structures on his property and now must suffer the consequences of his decisions so that he may make his property, and its structures, comply with the law.

The County is well aware of the limited pre-emption of the Federal Communications Commission and Nevada Revised Statutes. Our ordinances are minimally configured and do not necessarily violate the spirit, or letter, of those laws. Your client, however, has never partaken of the required steps over the years. I can well imagine that, at this point in time, he might feel that the County is being unreasonable. This is, however, completely untrue. Thus far the County has been given scant opportunity by Mr. Taormina to address his hobby. In the event that he wishes to move forward in this matter it will be necessary for him to follow the laws of this County and make the appropriate applications so that the County may address the issues and ensure that it is fulfilling its obligations to the community.

Please feel free to contact me should you so desire.

Very truly yours,



LAURA LOUISE GRANT  
Deputy District Attorney

CC: Dean Haymore  
Pat Whitten

Exhibit V

Exhibit V

Exhibit V  
Letter from Atty McMahon to DA Swafford, 10/14/08

[McMahon Letterhead]

Harold Swafford, Esq.  
District Attorney for Storey County  
PO Box 496  
Virginia City, NV 89440

Dear Atty. Swafford:

It has just recently come to my attention that the property where your residence is located, 21380 Saddleback Road, is approximately 540 yards from the property occupied by Tom Taormina, 370 Panamint Road. Mr. Taormina has several applications for building permits presently filed with the Storey County Building Department and I am informed by Dean Haymore, Building Official, that his office has been instructed by your office that they cannot discuss the matter with me, or with the applicant, Mr. Taormina.

As I understand it, the construction, should it be permitted, is line-of-sight from your house, and clearly visible. Your home is two lots away and just across the street.

The Nevada Rule of Professional Conduct (<http://www.leg.state.nv.us/courtrules/RPC.html>) with respect to Conflict of Interest reads:

Rule 1.7. Conflict of Interest: Current Clients.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client; or

(2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Furthermore, I refer you to Rule 1.11:

Rule 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees.

...

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) The disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) Written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

...

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) Is subject to Rules 1.7 and 1.9;

Given the proximity of your home, the visibility of the project, Rules 1.7 and 1.11, I suggest that your office, and not just you, has a conflict of interest.

I refer you to NRS 41.0344, which reads:

**NRS 41.0344 Employment of special counsel by chief legal officer or attorney of political subdivision.**

LIABILITY OF AND ACTIONS AGAINST THIS STATE, ITS AGENCIES AND POLITICAL SUBDIVISIONS

Legal Representation

The chief legal officer or attorney of a political subdivision may employ special counsel whose compensation must be fixed by the governing body of the political subdivision if he determines at any time prior to trial that it is impracticable or could constitute a **conflict of interest** for the legal services to be

rendered by him. Compensation for special counsel must be paid by the political subdivision.

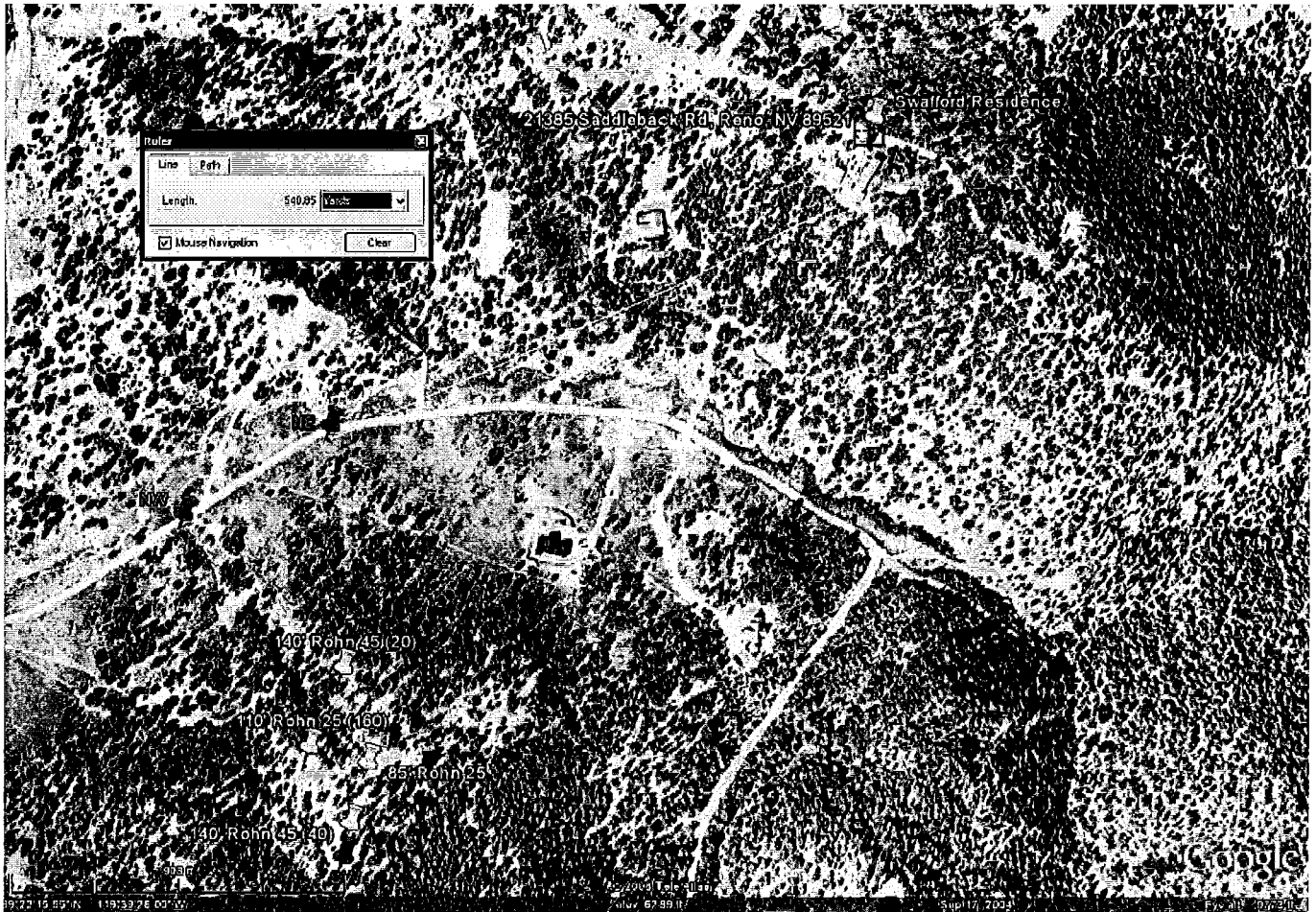
I further refer you to Exhibit A, an aerial photograph of your neighborhood, which shows that Mr. Taormina's antenna system is clearly visible across the valley in which the roadway which runs between your homes is located.

I suggest that neither you, nor anyone in your office, may appropriately represent the county in this matter and ask that you recuse yourself and your office. I request that you invoke **NRS 41.0344** and employ special counsel in the matter of applications for building permits at 370 Panamint Road.

Sincerely,

[McMahon signature block]

Enclosure: Exhibit A – Aerial map showing the proximity of the two properties, and the visibility from one to the other.



Approximate Distance Between Property Lines – Taormina and Swafford – 9/30/2008

540 Yards



Exhibit W

Exhibit W

Exhibit W  
Letter from DA Swafford to Atty McMahon, 10/30/08



DISTRICT ATTORNEY  
STOREY COUNTY

HAROLD SWAFFORD

RECEIVED

NOV 07 2008

McMahon Law Offices, LTD.

Brian McMahon  
Attorney at Law  
3715 Lakeside Drive, Suite A  
Reno, Nevada 89509 - 5239

October 30, 2008

Dear Brian;

I read with interest your letter dated October 27, 2008, and am writing to advise you that after a review of the statutes and rules you discuss I will not recuse myself, my Deputy or my office from representing Storey County in the matter involving your client, Thomas Taormina.

You first cite Rule 1.7 "Conflict of Interest: Current Clients." This rule is inapplicable to the instant situation. The rule deals with representing present, or former, clients that have an interest adverse to some other client presently or formerly represented by the Storey County District Attorney. Your client, Thomas Taormina, has not been represented by Harold Swafford or Laura Grant (the present District Attorney and Deputy District Attorney of Storey County) or by anyone employed by the District Attorney before I took office on January 1, 2003. The District Attorney and/or his Deputy are presently representing Storey County against Mr. Taormina, who has been, and still is attempting to violate and/or evade the application of Storey County and Nevada Ordinances and Statutes. Clearly, Rule 1.7 has no relevance to the present issue.

You next cite Rule 1.11. This rule is inapplicable insofar as you cite Rule 1.11 (a), (b), and (c), which deal with "former government lawyers." Rule 1.11 (d) refers to a lawyer "currently" serving as a public officer or employee. This lawyer is subject to Rules 1.7 and 1.9. As shown, above, since neither the District Attorney nor his Deputy has represented Mr. Taormina neither Rule 1.7 nor 1.9 is applicable. Likewise, paragraph (2) of Rule 1.11(d) is not on point because neither the District Attorney nor his Deputy "participated in a matter" while in private practice which is presently at issue concerning Mr. Taormina's radio antennae.

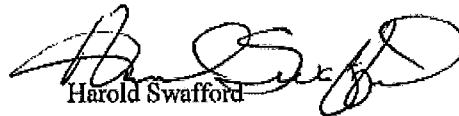
Your reliance on NRS 41.0344 is misplaced for the reason that there is no "conflict of interest" under the foregoing rules just discussed. Consequently, there is no reason for the Storey County District Attorney to employ "Special Counsel" in the current matter involving Mr. Taormina.

Your observation that Mr. Taormina's radio antennae may be visible from approximately a half mile from the District Attorney's residence is beside the point. It is submitted that the antennae are so high they are probably visible from practically anywhere in Storey County. However, that fact adds nothing to your contention that the District Attorney and/or his Deputy has a "conflict of interest."

Finally, you make the croneous argument that Mr. Taormina and I are members of the same homeowners' association and that, because of this relationship, I have a prohibited "conflict of interest." Be advised that I have never had any dealings with Mr. Taormina as a homeowner, that I am not in the same real property subdivision as Mr. Taormina and we are not members of the same Property Owners' Association. My one acre parcel of property is approximately a half mile from Mr. Taormina's property, there are other owners of real property between his parcel and mine (some as large as 10 acres). My residence is in the Virginia City Highlands, Unit No. 1. Mr. Taormina's property is in the subdivision known as the Highlands Ranches subdivision and he is a member of the Highlands Ranches Property Owners Association which has a Board of Directors entirely separate from the Virginia City Highlands Unit No. 1 Property Owners Association, of which I am a member.

In view of the foregoing reasons I will not recuse the District Attorney's office from representation of Storey County in this matter and will not seek "independent counsel" to represent Storey County.

Sincerely,



Harold Swafford

**Exhibit X**

**Exhibit X**

Exhibit X

Correspondence from Buddy Morton to Dean Haymore 11/17/08

**Dean Haymore**

---

**From:** B Morton [tacaimnv@gmail.com]  
**Sent:** Monday, November 17, 2008 1:02 PM  
**To:** Dean Haymore; lgrant@storeycounty.org; Pat Whitten; adkinsgrade@yahoo.com  
**Subject:** phone conversation regarding stop work order

Dear Dean,

In our phone conversation the other day you indicated you would check on what Ms Grant had written in her stop work order and letter to Taormina.

Her letter is very specific about him not doing any maintenance or repairs or other work.

We have three witnesses and photos of someone working on his antenna and he moved the large towers.

I worked construction and have been on jobs where a stop work order was posted. On the jobs I worked on it meant exactly that, stop work.

Taormina is basically flipping all of us the bird and doing what he pleases. I believe you and the ADA can put a stop to his action and I would encourage you to do so.

Storey County code Chap.17.88 , section 17.88.020,states that violation of the order is a misdemeanor and he can be imprisoned and or fined \$1,000 a day. That would be a great start!

Storey County code Chap. 15.08 section15.08.030 goes on in great detail about what you can do, but it mentions specifically, that you have law enforcement authority to stop the work and can apply for an injunction to the DA's office.

It seems to me that you have the authority to deal with this.

Those of us want the towers taken down are not going away or giving up and I believe we have been very patient waiting for something to be done, but we'd like to see some action taken.

He seems to think he's above the law, and getting away with these actions seems to indicate that maybe he's justified in having that opinion.

Buddy Morton

Exhibit Y

Exhibit Y

Exhibit Y  
Nuisance Complaint from Buddy Morton, 1/1/2008

*January 1, 2009*

*To the Storey County Commissioners and the Storey County Assistant District Attorney,*

*Several months ago there were some nuisance complaints filed about the towers on the Taomina property.*

*We have a petition with about 100 signatures stating we want the towers taken down because they destroy the natural beauty of the area and are in violation of several county statutes.*

*As of this date, we have not heard of any action being taken on these nuisance complaints.*

*Also, in spite of the ADA's letter to Taormina telling him to NOT do any maintenance on the towers, building inspector Haymore ignored our reports of a man working on the towers.*

*I am formally requesting permission to address the commissioners on this matter at their next meeting.*

*Storey County Code Ch. 17.88 Enforcement Section 17.88.010 is very clear in stating that public nuisances can be dealt with by the District Attorneys office to remove said nuisance. It also mentions preventing anyone from maintaining said structure.*

*Storey County Code 17.88 Enforcement Section 17.88.020 Penalty Says anyone guilty of violating this provision is guilty of a misdemeanor and can be jailed and fined.*

*Storey County Code Chapter 15.08 Building Official Duties generally states that if the stop work order is not honored, and it hasn't been, that the building official has all law enforcement authority to enforce said order.*

*NRS 244.360 Abatement of nuisances: Complaint: notice; hearing; order; enforcement of order; costs; alternative procedures states that this has to be dealt with in 30 to 40 days.*

*I will provide copies of all of these statutes and codes for all the commissioners and the ADA as they go on and get very specific about dealing with a nuisance complaint.*

*I don't mean to be a pain in the butt, but this has gone on way too long and we want the towers taken down legally.*

*Thank you,*

*Buddy R Morton*

Exhibit Z

Exhibit Z



Exhibit Z  
Nuisance Hearing Notification, Whitten to Taormina, 1/25/09

**Nuisance Hearing Notification**

Pat Whitten [pwhitten@storeycounty.org]

You forwarded this message on 1/25/2009 10:39 AM.

To: Tom Taormina

Cc: lgrant@storeycounty.org; Dean Haymore; Vanessa Dixon; Marilou Walling

Tom,

Please consider this a courtesy notification that, pursuant to NRS 244.360 (1), our County Clerk has notified the Board of County Commissioners of a written nuisance complaint filed by Buddy R Morton on January 9, 2009. A date for our County Commissioners to hear the proof of the complainant and of the owner or occupant of the real property whereon the alleged nuisance is claimed to exist has been set for 2:00 pm on February 17, 2009 at the Storey County District Courtroom in Virginia City. Staff intends to publish notification of this hearing in the Comstock Chronicle editions of February 6 and February 13<sup>th</sup>. I believe I have previously provided you a copy of the complaint as filed.

Pat W



---

**Pat Whitten**  
County Manager  
Storey County

(775) 847-0968 (Office)  
(775) 721-7001 (Cell)  
[PWhitten@StoreyCounty.org](mailto:PWhitten@StoreyCounty.org)