Exhibit P
Letter from Atty Hopengarten to DDA Grant, 8/25/2008

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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 Bernalill*o, 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. *Chedester 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,

Fred Hopengarten
D.C. Bar # 114124

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

Enclosures: As listed above

END OF EXHIBIT P

Exhibit Q
Letter to Atty McMahon from DDA Grant, 8/27/2008

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), forbad 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

Exhibit R
Letter from Atty. Hopengarten to DDA Grant, 8/29/2008

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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

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 9th 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 9th Circuit Court case may be found at 937 F. 2d 1376 (9th 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 preemptinve 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.
>
> [I]n 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 therein clearly prescribed. [Internal citations omitted.]

If the Office of the District Attorney holds the opinion that the law of the 9th 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. McMahon 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 8th 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 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." 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]* [13] 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

---

[13] 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.

END OF EXHIBIT R

Exhibit S
Letter from Atty. Hopengarten to DDA Grant, 9/22/2008

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 22, 2008

Office of the District Attorney
Attn: Laura Grant, Deputy District Attorney
P.O. Box 496
Virginia City, NV 89440 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. With a plain language reading or the ordinance, 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.

In sum, there is no antenna on or proposed for structures #1-7 that is greater than 48' wide and no antenna greater than 60' long. Permits for those structures, with antennas less than 48'x60', should be a matter of right.

With respect to Structure #8, the permit for the antenna support structure should be granted, with the antenna that is also less than 48'x60', for the same reason. We can leave for later discussion the last antenna, the one that is 65.6'x75.5'. Would you please allow the issuance of permits at this time for all but that one antenna?

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

A Special Obligation

In closing, I ask that you recall the unique nature of this situation. Normally, the County may apply the full measure of the applicable law—but not in this case. Federal law, at 47 CFR §97.15(b) requires, in relevant part:

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

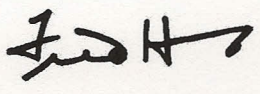
This is echoed in Nevada statutory law:

> **NRS 278.02085 Amateur radio**: Limitations on restrictions on amateur service communications; limitations on regulation of station antenna structures; exception.
>
> 1. A governing body shall not adopt an ordinance, regulation or plan or take any other action that precludes amateur service communications or that in any other manner does not conform to 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.
>
> 2. If a governing body adopts an ordinance, regulation or plan or takes any other action that regulates the placement, screening or height of a station antenna structure based on health, safety or aesthetic considerations, the ordinance, regulation, plan or action must:
> (a) Reasonably accommodate amateur service communications; and
> (b) Constitute the minimum level of regulation practicable to carry out the legitimate purpose of the governing body.

In this one special instance of law, the County has an obligation under both federal and state law to invoke (as per the Federal regulation) "the minimum practicable regulation," or (as per Nevada statute) "the minimum level of regulation practicable," and not, as presently seems to be the position of the County, the maximum possible regulation.

I ask that building permits be granted immediately for all eight antenna support structures, and all antennas to be placed on those structures that are less than 48 feet wide by 60 feet long.

Sincerely,



Fred Hopengarten
D.C. Bar # 114124

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

Exhibit I
Antenna Nomenclature

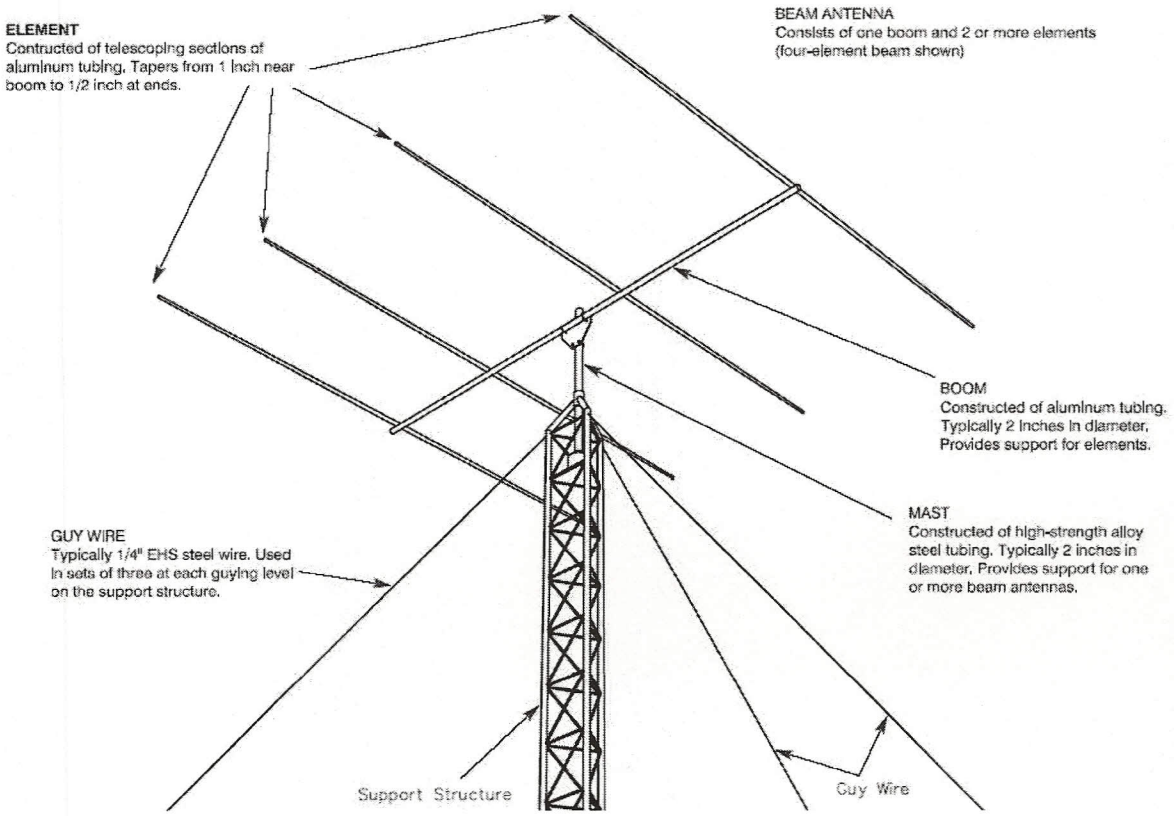
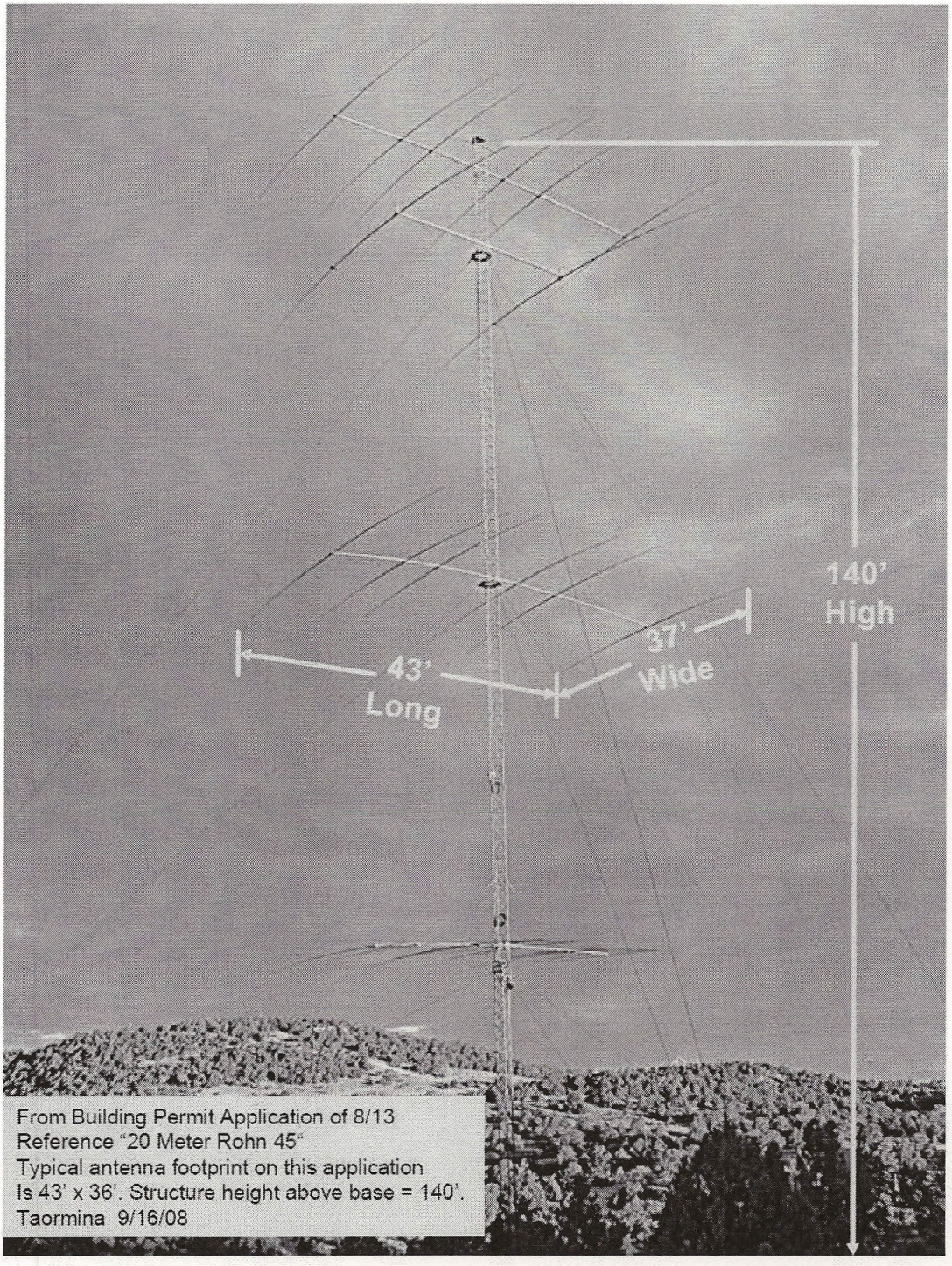


Exhibit II
Height, Width and Length of Structure #6: 20 Meter Rohn 45G



END OF EXHIBIT S

Exhibit T
Letter from DDA Grant to Atty McMahon, 9/30/2008

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*

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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 U
Nuisance Complaint of 1/1/2009

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 downs 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 V
"Courtesy" Nuisance Hearing Notification

Nuisance Hearing Notification

Pat Whitten [pwhitten@storeycounty.org]

You forwarded this message on 1/23/2009 10:37 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 13th. 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

Exhibit W

Supplemental Information for an Amateur Radio Facility, 8/12/2008

Attached 80 page .pdf file

MCMAHON LAW OFFICES, LTD.

ATTORNEYS AT LAW

Brian M. McMahon
Anne M. Langer

Brian@McMahonLaw.org
ALanger@McMahonLaw.org

3715 Lakeside Dr., Ste A
Reno, NV 89509-5239

(775) 348-2701
FAX (775) 348-2702

September 15, 2009

Via Hand Delivery:
Brent T. Kolvet, Esq.
Thorndal Armstrong Delk Balkenbush & Eisinger
6590 S. McCarran Boulevard # B
Reno, Nevada 89059

Brent:

I am following up on our Statement of Material Facts, now in final form, to be included in a Motion for Summary Judgment. I enclose it for your review, thoughts, comments and reflection. I am fortunate to work with Fred Hopengarten on the substantive issues of law involving PRB1 and 47 CFR §97.15(b), and the application of that law to these parties and facts. Obviously, his assistance and guidance in these areas has been a useful yardstick for me to measure the merits of the upcoming DRA practice, pursuant to FRCP 56.

Under Local Rule 74, Limitation on Length of Briefs and Points and Authorities, there is a 30 page limit on motions, but exhibits are excluded. We do not anticipate that our motion or cross motion will exceed the 30 and 20 page limits respectively.

Local Rule 561 requires a "concise statement setting forth each fact material to the disposition of the motion which the party claims is or is not genuinely an issue citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, admission or other evidence upon which the party relies." A review of our Statement of Material Facts demonstrates our preparation for the Rule 56 motion. Would Storey County like to add to these facts so that they may be called a Stipulated Statement of Material Facts? In the alternative, you may, of course, choose to prepare your own Statement of Material Facts as a part of a cross motion/opposition to motion for summary judgment.

The exhibits supporting the Statement of Material Facts, which are extensive, are excluded from the page count for the motion, as mentioned above. See Local Rule 74.

All of this is premised on the concept that this case may be resolved by a DRA decision. As it stands now, Mr. Taormina has received building permits for two antenna support structures less than 45 feet in height, with permits granted and construction approved. He has also filed applications for four existing antenna support structures more than 45 feet in height, and those applications are pending. Finally, he has filed applications for two new antenna support structures, for which permits were granted. To keep things straight, I attach a table detailing the towers, sizes, configurations and status.

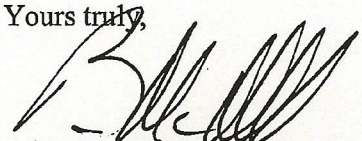
At the outset, Mr. Taormina took the position that there should be no limitations on his legal entitlement to erect antennas. Litigation realities have impressed upon him the potential exposures in the case. Obviously, both sides are passionate in their beliefs. At least at this time, Mr. Taormina is proceeding with his (stipulated or otherwise) Motion for Summary Judgment, with its Statement of Material Facts, and filing the DRA.

The alternative is to settle the case, now. To settle this matter, Mr. Taormina would agree to a "stand still," with respect to all antenna support structures in controversy. If the County will grant permits for those existing structures now subject to the Stop Work Order, and lift the Stop Work Order with respect to the two structures that have been permitted but not yet erected, he will not apply for any more tall antenna support structures. He would also waive any claim for legal fees. I attach a proposed settlement for the consideration of your client.

In the alternative, please advise if you would like to add to the Statement of Material Facts, or create your own. I would like to have your initial response as soon as possible and certainly no more than 10 working days. Thereafter, I will respect your decision and move forward with the pleading process.

I appreciate the chance to work with good attorneys and always wish you the best.

Yours truly,



Brian M. McMahon, Esq.

BMM:jh

Building Permit History

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

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D.C. Bar No.: 114124
Maine Bar No.: 1660

Attorneys for the Plaintiff,
THOMAS S. TAORMINA

Brent T. Kolver, Esq.
Thorndal, Armstrong, Delk, Balkenbush & Eisinger
6590 S. McCarran, Suite B
Reno, Nevada
State Bar No. 1597

Attorneys for Defendant,
STOREY COUNTY

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THOMAS S. TAORMINA, Plaintiff, vs. STOREY COUNTY, Defendant	Case No. 3: 09-CV-00021-LRH-VPC

Settlement Between the Parties

WHEREAS, Mr. Taormina has filed suit against Storey County in U.S. District Court seeking a declaratory judgment and order, and

WHEREAS, the parties seek to avoid the expense and uncertain outcome of a such a lawsuit, and

WHEREAS, the parties have reached an agreement to end this litigation,

WHEREFORE, the parties agree to the following terms:

1. 1.Within 10 days, the County will withdraw the STOP WORK order presently in place against construction at the Taormina site, including reinstatement of Building Permit 8354 for the 120' and 195' structures.
2. Within 15 days, the County will grant all permits necessary for the antenna support structures which are the subject of the application filed on August 14, 2008 for the four existing structures greater than 45'.
3. Mr. Taormina agrees that he will not construct, nor apply to construct at this parcel, any further antenna support structures, or structures which could be characterized as a "tower," which exceed the height of 45 feet. The effect of this commitment shall be to limit Mr. Taormina to the six antenna support structures higher than 45' above grade referenced in ¶1 and ¶2 above. Mr. Taormina acknowledges that he is waiving his rights to construct additional antenna support structures greater than 45' in height that would otherwise be protected by applicable Nevada and federal law.
4. So long as the number of antenna support structures is not increased, and the height of any antenna support structure greater than 45 feet in height is not increased, the County agrees that the erection and maintenance of antennas on permitted structures may involve the use of riggers, cranes and other construction machinery, and that construction and maintenance may continue so long as those structures remain.
5. The County agrees that wire and metal antennas may be changed on the permitted antenna support structures at any time without further permits.
6. With respect to repair or replacement an antenna support structure or antenna, the County agrees that, from now on it will apply the building code and zoning laws in effect at the time of this agreement.
7. The County agrees that wire or ropes, including catenaries, supported by one or more antenna support structures shall not be subject to any building permit proceedings. Experiments and changes may be conducted, and construction of wire or rope appurtenances may go forward without consulting with the County.
8. The County agrees that all structures and guy anchors currently in place are compliant with all County Codes, as certified in the existing Compliance Reports issued during 2008 for this site.
9. Both parties agree that this agreement shall be incorporated, if the Court shall so agree, into an Order of the Court. If the Court does not so agree, the agreement is still valid and may be enforced by claim in any court of competent jurisdiction, but it is agreed that the U.S. District Court shall be the first resort, as the Court has familiarity with the issues and federal questions raised.
10. Both parties agree that the terms of this settlement may be made public.

11. Each party acknowledges that he or it was represented by counsel and its signatory is duly authorized to make this agreement.
12. Each party shall in all respects act in good faith to carry out the purposes of this settlement.
13. Mr. Taormina agrees to withdraw this lawsuit with prejudice, and that he will not pursue any claim for legal fees in conjunction with this controversy.
14. With respect to any of the antenna support structures or antenna systems on the property, the County agrees that it will waive any prosecution of Mr. Taormina or his spouse for construction of such structures or systems without a building permit.
15. The County agrees to cancel and abandon any nuisance hearings regarding the antennas and support structures at the Taormina site and inform complainants that these structures and ham radio related activities do not meet the NRS definitions of "nuisance."

AGREED:

Thomas S. Taormina
By

_____ Date: _____
His Attorney

Storey County
By

_____ Date: _____
Its