

From: [Pat Whitten](#)
To: [Bob Kershaw](#); [Greg Hess](#); [Bill Sjovangen](#)
Cc: [Bill Maddox](#); [Dean Haymore](#); [Austin Osborne](#); hopengarten@post.harvard.edu; [Tom \(tt@taorminagroup.com\)](mailto:tt@taorminagroup.com)
Subject: SUP 2011-010 (Antenna Towers)
Date: Tuesday, June 07, 2011 10:04:04 AM
Attachments: [Tower Timeline Differential Recap 0611.xlsx](#)

June 6, 2011

Commissioners,

Upon my return this morning, I had the opportunity to review documentation submitted to you for consideration at your June 7th meeting with respect to Special Use Permit Application 2011-010 (Taormina). After several conversations and emails throughout the day and evening with our Senior Planner, District Attorney, the applicant and his counsel, I believe it important to provide you the following update based on the most recent information available: (Please note I consider the following as a matter of "public record" based on the nature of the communications addressed to you)

- Shortly after noon today, you received an email from Mr. Taormina's counsel suggesting the most recent staff report for your June 7th meeting did not mention a suggested alternative that has been discussed by the applicant and staff during the interim period between scheduled meetings. Specifically, in effort to provide some basis for a possible "negotiated compromise" as required in the FCC PRB-1 Ruling, the applicant thru his counsel, has proposed a sixth alternative motion (F) as they outlined at the May 3rd meeting. Although staff (including your counsel) has not had the opportunity to discuss in detail the proposed language, as submitted it reads:

ALTERNATIVE: MOTION F: In accordance with the recommendation of the Community Development Department that this use is in accordance with section 17.62.010 (see letter of April 28, 2011), to grant a Special Use Permit for Planning Case No. 2011-010, allowing the Applicant to maintain **three existing amateur radio antenna lattice towers (not to exceed 140, 140 and 110 feet in height) and to install two monopole towers for which building permit # 8354 has previously been granted (not to exceed 175 and 140 feet in height)**. "Existing" contained herein means that each permitted tower will remain at or lower than its current height and at or less than its structure face. This motion allows the permit holder to move the permitted towers around the property, so long as there are no more than five antenna support structures greater than 45 feet in height, and each tower remains in compliance with the limitations of this Special Use Permit, and the applicable Storey County Building Code, including setbacks and noise requirements for the use of an emergency power generator. This Special Use Permit shall be valid only so long as Mr. or Mrs. Taormina, or a close family member (son, daughter, niece, nephew) is a resident at the location.

Please note this contains revised language from the earlier referenced email as it provides for a possible reclamation process after the Taormina's no longer have resident property interests. Should you wish to consider this alternative, staff believes your motion could be based on the "findings of facts" outlined in Enclosure 1, excluding Finding 3 as approval may appear to impose greater impacts on the surrounding environment than what was deemed acceptable and appropriate by the planning commission based on findings..

- In further discussion with the applicant's counsel late this afternoon, a limited number of questions were also posed regarding the staff report for the June 7th meeting. Specifically, these are:

- o The paragraph prefacing the staff recommendation “presented motions” states “*The subsequent three motions, C,D and E, offer alternatives in accordance with federal rulings that authorize the Governing Board to “attempt to negotiate a compromise with the applicant” in order to “reasonably accommodate” amateur radio antenna towers.*”

The applicant, thru his counsel wishes to point out a more correct phrasing might be “***The subsequent three motions, C,D and E, offer alternatives in accordance with federal rulings that require the Governing Board to “attempt to negotiate a compromise with the applicant” in order to “reasonably accommodate” amateur radio antenna towers.***”

Staff takes no exception to this word alteration as it appears consistent with our understanding of PRB-1.
- o The applicant, thru his counsel also questioned differences in timelines previously provided by the applicant (as requested), versus that provided by staff. Specifically, there are several events that appear on the applicant's timeline but not on staff's. In reviewing these, many appear to be events that cannot be reasonably validated by the County records or routine processes such as his “tour with neighbors” in September 1996 or a conversation with Ed Dietrich of the HROPA in November 1997.

However, several appear to at least involve County action or interface that most likely occurred and might possibly be verified thru an extensive search of other records not specifically and directly related to the tower permitting process. These would include matters such as multiple building inspections for electrical service, driveway renovation and retaining wall construction, as well as other on-site visits, contacts or meetings with our Building Department, Sheriff's Office or other agencies such as the HRPOA. The applicant's counsel has provided a timeline recap which I have attached. The areas highlighted are primarily the ones requested to be considered as having occurred despite current lack of documentation to verify. While not all of the items shown in Mr. Hopengarten's submitted timeline were included in the draft developed by county staff, included as “Enclosure 3” of the Staff Summary report, Mr. Hopengarten's timeline was made part of the final document and included therein as “Enclosure 5”. Also, county staff proposed no challenge to the statements exhibited in the applicant's summary timeline.

Staff believes in the strong probability that these events did occur on or about the dates provided by the applicant and recommends you consider them as factual in order to assess the overall timeline of events.
- o Also reflected in the attached timeline recap on lines 60 thru 64, applicant's counsel has questioned the staff report accuracy where we state “application(s) not acted upon due to pending litigation”. This would pertain to applications for construction permits for towers 1, 2, 4 and 6 and the staff report wording would possibly lead one to believe there was actual litigation pending at the time of application in August 2008 which there was not. As indicated in both the applicant and staff provided timelines, legal action did not occur until October 2010. While staff confirms we took no action due to concerns of possible legal action, there clearly was no legal action pending until over 2 years after application submittal.

This concludes my update. I apologize for the last minute nature but feel it important that you have as much information as possible in advance of your meeting in order to make the most appropriate decision.

Respectfully submitted:

Pat Whitten
County Manager