Exhibit K - Taormina Submission to County Commission, May 3, 2011

Before the Storey County Commissioners
May 3, 2011
Submitted by Midge and Tom Taormina

Recent History of this Application

This is a Special Use Permit application for four existing lattice ham radio towers greater than 45' in height, and for two new monopole structures for which building permits were granted in 2008. This SUP application results from a Stop Work Order, issued in 2008 at the behest of former Deputy District Attorney Laura Grant. That Stop Work Order effectively revoked ***existing building permits*** for the ***new Monopoles after the foundations had been poured and passed inspections.***

The building permits authorized the construction of those foundations. The Applicants relied on those permits to their detriment to install those expensive foundations, as well as to purchase, refurbish and ship to the site two monopoles, and certain antennas. Though no one wants to return to federal court, if there is an "as applied" phase of this matter, a claim of "vested rights" will be appropriate. As the Staff Report notes, the Court decided only the question of the applicability of the special use process in this case.

In addition, the Stop Work Order also looked backward at existing structures constructed since 1997.

On March 3rd, 2011, the Planning Commission voted to approve the SUP application, with a recommendation to permit only the four existing lattice towers higher than 45'. The Staff Report and recommendations were adopted on April 21st and forwarded to the County Commission for consent agenda approval. The Applicants have asked that the SUP recommendation be removed from the consent agenda for the following reasons:

The County Commissioners Must Negotiate in Good Faith with these Applicants

The Ninth Circuit Court of Appeals, the FCC, and the Storey County Staff Report all point out that the County must "attempt[]to negotiate **a satisfactory compromise with the applicant**." FCC PRB-1 ¶25. As the Applicants pointed out in their letter of February 28, 2011, to the District Attorney and the Planning Office, which may be found **as Exhibit H to the Staff Report**,

> [T]he Court requires a negotiation aimed at a satisfactory compromise WITH THE APPLICANT, not the application, not the public. Thus far, with respect to this application for an SUP, there has been no negotiation with the applicant.

The letter continued,

> Please note that, as the Staff Report correctly notes, the obligation is to negotiate with the Applicant. There is no corollary obligation to negotiate with the public. And, ... "a balancing of interests approach is not appropriate." [Citation omitted.]

Exhibit H to the Staff Report deserves your careful attention.

Photo-simulation Now Available

At the Planning Commission hearing, residents presented false representations of the existing structures, and exaggerated depictions of the proposed monopoles. At the request of Dean Haymore, we now have photographs that fairly represent the present situation, and an accurate photo-simulation of the proposal. The photograph attached was created from a current photo taken from700 Saddleback Road. The majority of residences that have an actual view of the structures are on Saddleback and the north side of Panamint Road. Unlike Figure 2 of the Staff Report, **Exhibit 1** was carefully crafted, and is mathematically correct. It is fair and representative. Views and aesthetics were not included in the issues set forth by the Court for consideration by the Commissioners in this SUP process, but the Applicants respect the concerns of the neighbors and are prepared to discuss the impact of the project – comparing the recommendation of the Planning Commission with the initial request.

The Applicable County Ordinance Should Be Clearly Understood

The U.S. District Court ruled that the applicable law "specifies that an individual seeking to build a radio antenna over forty-five feet may obtain a special use permit [and] may apply for such a permit under section 17.62.010." For the purposes of this application, the Court's ruling settles the matter as to what standard the County must apply to this application.

The test for a Special Use Permit ***in this case***, stated by the Court **five times**, is SCC§ 17.62.010:
"Certain uses may be permitted by the board of county commissioners in zones in which they are not permitted by this title where such uses are deemed essential or desirable for the public convenience or welfare." The only question is whether the proposed amateur radio use is "deemed essential or desirable for the public convenience or welfare."

Despite the Court's detailed examination of the County Code, it did NOT cite § 17.12.014 as relevant. This section requires a finding that the proposed use is "consistent with and compatible to those other uses permitted within the zone." ***That test does not apply.***

Furthermore, and again despite the Court's detailed examination of the County Code, it did NOT cite § 17.12.018. This section requires that the proposed use must be "demonstrated by the applicant to be in the best interest of the general public and would not be incompatible with or detrimental to the surrounding area." ***That test does not apply.***

The Applicants think of the proposed structures as majestic. But majestic or not, compatible or not, in the best interest of the general public or not – none of that is before this Board. It is the USE, not the architecture style, not the material, not the aesthetics, not the color, that is before the County Commissioners.

The Building Department in its Staff Report, and the Planning Commission by its favorable vote, have concluded that granting the SUP ***will be*** "essential or desirable for the public convenience or welfare." The Building Department and Planning Commission have considered every issue raised by the public: aesthetics, property values, hazard to air navigation, impediment to firefighting, RF interference, and so forth. They have recommended the grant of an SUP with four lattice tower structures over 45'.

A variety of issues raised by the public before the Planning Commission are considered and put to rest in the attached exhibits.

The Applicants urge thoughtful approval of an SUP that will end an expensive and time-consuming controversy.

Respectfully Submitted,

Midge and Tom Taormina
370 Panamint Rd.
VC Highlands NV 89521

List of Exhibits

Exhibit 1 ***Photo of Existing Structures and Photo-simulation Showing Monopoles***
Exhibit 2 ***Taormina Does Not Maintain a Nuisance***
Exhibit 3 ***Representation by Atty. Hopengarten is Proper***
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Exhibit 6 ***The Installation Will Not Interfere with a Pacemaker or Other Electronic Equipment***
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Exhibit 1

Photo of Existing Structures and Photo-simulation Showing Monopoles

Current Configuration

Photo Taken 3/10/11 from 700 Saddleback Rd – Sony DSC-H1 Camera, 5.1MP, No Zoom

Photo-simulation showing monopoles, taken from 700 Saddleback Road (a common view spot). Presented to show that Figure 2 of the Staff Report is not a fair or accurate representation.

Taormina 4/27/11

Exhibit 2

Taormina Does Not Maintain a Nuisance

Some claim Mr. Taormina is engaged in maintaining a nuisance. It is not true. The definition of a nuisance in Nevada is found at NRS 40.140:

1. Except as otherwise provided in this section:
a. Anything which is injurious to health, or indecent and offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property;
b. A building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, using or giving away a controlled substance, immediate precursor or controlled substance analog; or
c. A building or place which was used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog . . .

Mr. Taormina is not involved with any controlled substances, and no one makes that claim. Parts (b) and (c) are irrelevant.

This leaves us to examine, one at a time, . . .

- **Injury to health.** Claims of interference to pacemakers has been debunked and withdrawn, and the County Attorney has ruled that matters of interference are exclusively federal.

- **Indecent and offensive to the senses.** Here, no one alleges indecent exposure, pornography, nude dancing, or any violation of indeceny. No one claims his amateur radio antennas cause fumes, dust, noise or vibrations that interfere with their ability to use or access their property. *Cf. Palm Springs Transfer and Storage v. City of Reno*(2009) (Reno constructed a shoofly next to the property). The problem for opponents is that even if a bright pink house might offend someone's sense of beauty, it fails the indecent and offensive tests. The statute requires BOTH indecent AND offensive to the senses.

- **Obstruction to the free use of property.** There is no claim that the amateur radio antennas interfere with the use of property, or access to property.

We think the antennas are majestic. Those who think otherwise have a problem with the nuisance statute, because even ugly is not a nuisance under Nevada law.

A claim of nuisance was a subject in *Evans v. Burruss* (MD case), 401 Md.586, 933 A. 2d 872,http://www.courts.state.md.us/opinions/coa/2007/1a07.pdf (MD Court of Appeals, 2007). This case involved four amateur radio towers, each 190 feet in height. The Court wrote:

> Fn 23. At one time in England as a part of nuisance law, the Doctrine of Prior Appropriation and the Doctrine of Ancient Lights applied. The former held that the first user to appropriate a resource had the right to the continued use of the

resource. The latter held that if a "landowner had received sunlight across adjoining property for a specified period of time, the landowner w as entitled to continue to receive unobstructed access to sunlight across the adjoining property." *Prah*, 108 Wis.2d at 233, 321 N.W.2d at 188 (footnote omitted). Even if these doctrines survived in this country, it is doubtful that they would apply to the construction of amateur radio towers, such as these in the case *sub judice.*

In addition, every other litigated claim of nuisance for an amateur radio tower has failed.

Furthermore, see *Oliver v. AT&T Wireless*, 76 Cal. App. 4th 521(1999) [130 foot cell tower]:

> [W]hile we have sympathy for plaintiffs' plight, not all plights give rise to legal rights. We conclude that the mere displeasing appearance in size and shape of a neighboring structure that is otherwise permitted by law, the only admitted effect of which is an alleged diminution in value of the adjacent property, cannot constitute a nuisance or give rise to an inverse condemnation claim. n1 [omitted] Since a landowner has no natural right to an unobstructed view (*Posey v. Leavitt*(1991) 229 Cal. App. 3d 1236, 1250 [280 Cal. Rptr. 568]), the size and shape of an otherwise lawful structure on one side of a boundary cannot be deemed either to damage (for purposes of inverse condemnation) or to interfere with the enjoyment (for purposes of nuisance) of that which is on the other side of the boundary. Otherwise, one person's tastes could form the basis for depriving another person of the right to use his or her property, and nuisance law would be transformed into a license to the courts to set neighborhood aesthetic standards.

Exhibit 3

Representation by Atty. Hopengarten is Proper

Some citizens have questioned whether it is proper for Atty. Fred Hopengarten to appear before a Storey County tribunal in this case.

An order of Larry R. Hicks, United States District Judge, approved my appearance in this case, dated January 27, 2009.

The Nevada Rules of Professional Conduct include Rule 5.5 which reads, in relevant part:

(b) Exceptions. A lawyer who is not admitted in this jurisdiction, but who is admitted and in good standing in another jurisdiction of the United States, does not engage in the unauthorized practice of law in this jurisdiction when:

(1) The lawyer is authorized to appear before a tribunal in this jurisdiction by law or order of the tribunal or is preparing for a proceeding in which the lawyer reasonably expects to be so authorized;

. . .

(6) The lawyer is representing a client, on an occasional basis and not as part of a regular or repetitive course of practice in this jurisdiction, in areas governed primarily by federal law, . . .

Source: http://www.leg.state.nv.us/courtrules/rpc.html

Exhibit 4

The Proposed Antennas are Not Commonly and Universally Found in Factory or Industrial Areas

Much has been made of FCC Order on Reconsideration DA 00-2468, "In the Matter of Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antennas and Support Structures, and Amendment of Section 97.15 of the Commission's Rules Governing the Amateur Radio Service, RM-8763" ("DA 00-2468") (Released November 15, 2000). In particular, one paragraphdeserves close examination:

> 8. We take this opportunity to amplify upon the meaning of 'reasonable accommodation' of amateur communications in the context of local land use and zoning regulations. The Commission adopted a limited preemption policy for amateur communications because there is a strong federal interest in promoting amateur communications. We do not believe that a zoning regulation that provides extreme or excessive prohibition of amateur communications could be deemed to be a reasonable accommodation. For example, we believe that a regulation that would restrict amateur communications using small dish antennas, antennas that do not present any safety or health hazard, or antennas that are similar to those normally permitted for viewing television, either locally or by satellite, is not a reasonable accommodation or the minimum practicable regulation. On the other hand, we recognize that a local community that wants to preserve residential areas as livable neighborhoods may adopt zoning regulations that forbid the construction and installation in a residential neighborhood of the type of antenna that is commonly and universally associated with those that one finds in a factory area or an industrialized complex. Although such a regulation could constrain amateur communications, we do not view it as failing to provide reasonable accommodation to amateur communications.

http://www.fcc.gov/Bureaus/Wireless/Orders/2000/da002468.doc(last visited April 2, 2011) (*Emphasis supplied.*)

The County May Not Deny Completely

Opponents to the proposed project have pounced on some loose language in old court rulings such as "as long as a city has considered the application, made factual findings, and attempted tonegotiate a compromise with the applicant, a city may deny the antenna permit." *Howard v. Burlingame*, 937 F.2d 1376, 1380 (9th Cir. 1991). Those opponents failed to recognize the impact of DA 00-2468, where, in the language quoted above, the FCC Order holds that: "[T]here is a strong federal interest in promoting amateur communications. We do not believe that a zoning regulation that provides . . . prohibition of amateur communications could be deemed a reasonable accommodation." The FCC has thus made plain that denial of outdoor antennas cannot meet the requirements of 47 CFR §97.15(b).

The County May Adopt Zoning Regulations, But Hasn't Or The Applicant Has Not Proposed Anything Forbidden

DA 00-2468 does hold that "a community may adopt zoning regulations that forbid the construction and installation in a residential neighborhood of the type of antenna that is commonly and universally associated with those that one finds in a factory area or an industrialized complex." But no such regulation has been adopted here.

The County may not decide, in the absence of a properly adopted zoning regulation, that something is forbidden.

The Proposal is for Antennas Commonly Found in Residential Areas

While a community may forbid antennas "commonly and universally associated with those that one finds in a factory area or an industrialized complex," every antenna proposed in this case is commonly – typically – almost universally – found in residential areas.

What types of antennas does one find "commonly and universally" "in a factory or an industrialized area"? Here are some antenna installations in factory or industrialized areas, from which conclusions will be drawn.

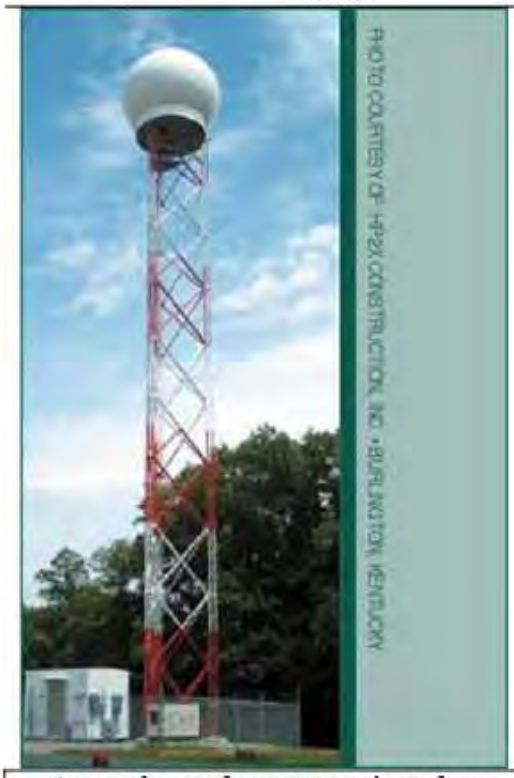
Large parabolic dish uplink

Cable TV headend with several dishes and tower

Satellite TV dish farm

Large microwave dishes for broadband relay. Note that whip antennas are found in both residential and industrialized areas.

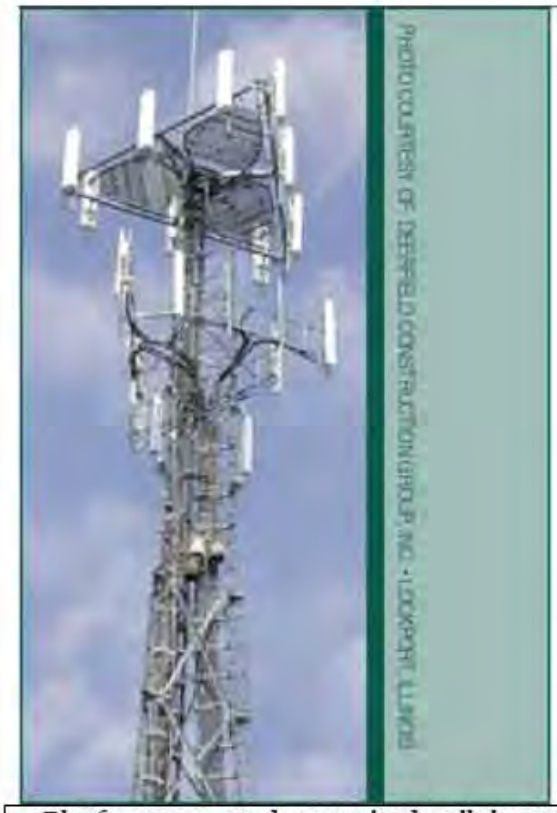
FM radio and TV antennas, with microwave dishes



A weather radar antenna in radome on a wide-stance self-supporting tower.

Microwave horn and covered dish

Weather radar in radome on A-frame lattice tower.



Platform mounted, sectorized, cellular telephone antennas. The wide-stance lattice tower is necessary to hold the platform and many feedlines (one per sector).

Platform mounted, sectorized, cellular telephone antennas. The fat monopole depicted is necessary to hold the platform.

Self-supporting lattice tower with 800 MHz trunked system for most of the public safety agencies in a county and surrounding areas, including microwave links

A-frame lattice tower with one microwave link and one carrier

The towers

WAMG-AM, Natick, MA Five, **540'** *lattice towers, marked (painted red and white) and lighted. Note that in the case of an AM radio station, the towers are the antennas.*

Conclusions re Antennas Commonly and Universally Found in Factory or Industrial Areas

Remember, DA 00-2468 has no definition of "the type of antenna that is commonly and universally associated with those that one finds in a factory area or an industrialized complex." But we can still extract several concepts, from the wording and from common usage as depicted in the pictures:

- The FCC, of all agencies in the U.S. government, knows the difference between an antenna and a tower. This order speaks only to *antennas, not towers.*
- The order speaks in the conjunctive; *i.e.*, the antennas concerned must be *both* commonly *and* universally found in factory and industrialized areas. As all antennas *universal* to factory and industrial areas would be "common" to factory or industrial areas, the word universal controls.
- The types of antennas one most often finds in factory or industrial areas are: - Parabolic dishes for uplink and downlinks,
- Parabolic dishes for microwave links,
- Panel antennas for "sectorized" cellular telephone service,
- AM, FM and TV transmit antennas for the broadcast service.

- ***Yagi antennas, mounted on thin lattice towers, or thin monopoles, are commonly found on residential property, because that is where radio amateurs live. It cannot be said that they are "universally" found in factory or industrial areas.*** **The following photographs are evidence that amateur radio antennas comparable, even identical, to the Taormina project, are not universally found in factory or industrial areas.**

K3LR – West Middlesex, PA

K8LX - West Bloomfield, MI

K8LX Different View – West Bloomfield, MI

W3LPL – Glenwood, MD

Three of four 195' towers at N3HBX- Clarksburg, MD

N5AU – Rockwall, TX

NR5M - Hempstead, TX

K4JA – Callao, VA

K4JA – Callao, VA

WB9Z - Crescent City, IL

W7RM – La Center, WA

K3CR – near State College, PA

NØNI – Rippey, IA

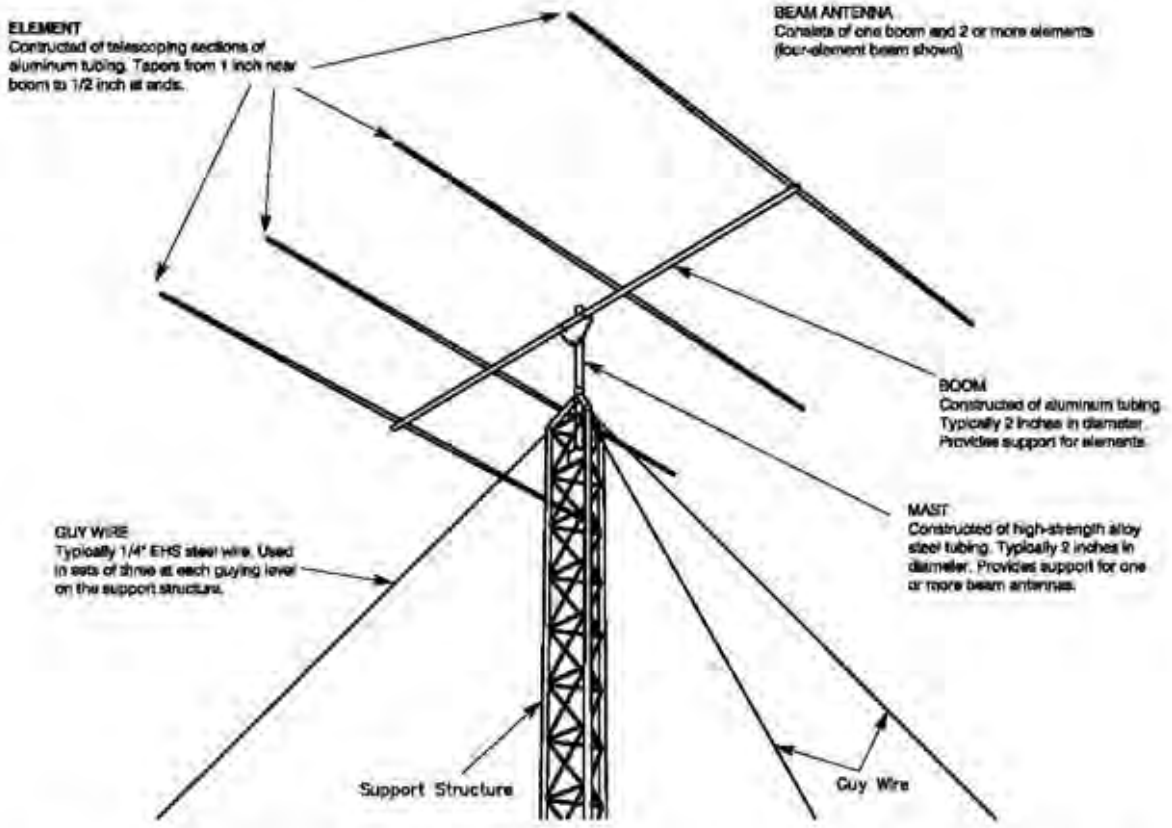
NQ4I – Griffin, GA

KC1XX- Mason, NH

Exhibit 5

Amateur Radio Antenna Systems that are Ordinary Accessory Uses of a Residence

In contrast to the commercial antenna systems, above, amateur radio antennas, other than whips, are frequently Yagi-style beam antennas.[1] The pictorial below shows a Yagi antenna installation. Here's some nomenclature:



In this case, the antennas proposed are verticals, a whip, and Yagis for amateur radio.

Yagi antennas, atop an antenna support structure, for amateur radio use are, without any doubt at all, normal, reasonable accessory uses to residential real property. See *e.g.*, *Wright v. Vogt*, 7 N.J. 1, 80 A.2d 108 (1951) (holding that a sixty-foot high amateur tower was a permissible use in residential zones); *Dettmar v. County Board of Zoning Appeals*, 28 Ohio Misc. 35, 273 N.E. 2d 921, 922 (Ohio Ct. Com. Pl. 1971) (holding that a sixty-four-foot high amateur radio antenna in a residential, single-family zone was permissible as an accessory use customarily incident to single-family dwellings); *Town of Paradise Valley v. Lindberg*, 27 Ariz.

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[1] In the 1926, *Dr. Shintoro Uda* and *Dr. Hidetsugu Yagi* of the Tohoku Imperial University invented a directional antenna system consisting of an array of coupled parallel dipoles. This form of antenna is correctly called a Yagi-Uda array, frequently shortened to "a Yagi." Since the 1950's, the Yagi antenna has been the style of amateur radio antenna most widely installed atop antenna support structures. Most typical residential outdoor TV antennas are Yagi antennas.

App. 70, 551 P. 2d 60, 61-62 (Ariz. Ct. App. 1976) (holding a ninety-foot high amateur radio antenna was a permitted use accessory to a single-family residence); *Skinner v. Zoning Bd. of Adjustment*, 80 N.J. Super. 380, 193 A.2d 861, 863-864 (N.J. Super. Ct. App. Div. 1963), (holding that a one-hundred-foot high amateur antenna is a permitted accessory use of residential property).

Exhibit 6

The Installation Will Not Interfere with a Pacemaker or Other Electronic Equipment

Citizens have asked questions about interference with a heart pacemaker, and other electronic equipment.

You may refer to the "Standard Letter" from Medtronic CDRM Technical Services U.S., Mounds View, MN, entitled: "Radio Frequency Transmission, Rev B, 16-FEB-2009." It is available on request.

The maximum power output for a radio amateur in the U.S. is 1500 watts, or about the same wattage as a kitchen toaster oven, or small room heater. At page 2 of the Medtronic Standard Letter, for power in watts between 1000 to 2000, for ham radio, Medtronic recommends a "Minimum Distance of device from Antenna" of 30 feet. "If the antenna transmits in a very directional pattern, it may be necessary for the patient to be further away from the antenna at the strongest part of the pattern."

Radio signals decrease in power as the square of the distance (the "r-squared law"), therefore, increasing the distance from a radio antenna from 30 feet to 60 feet would mean that the radio emission is only 1/4 of transmitted power that existed at 30 feet.

Bottom line: If you wear a pacemaker, don't climb up to the antennas on Tom's tower -- while he is transmitting. Other than that, you're OK.

As to TV interference, or interference with any other home electronic devices, I attach a copy of a letter written by the Chief of the Private Radio Bureau at the FCC, to the Board of Zoning Appeals in Hempstead, Long Island, NY. He wrote:

> I would also like to point out that there is no reasonable connection between requiring [the radio amateur] to reduce the height of his antenna and reducing the amount of interference to his neighbors' home electronic equipment. On the contrary, antenna height is inversely related to the strength, in the horizontal plane, of the radio signal that serves as a catalyst for interference in susceptible home electronic equipment. It is a matter of technical fact that the higher an amateur antenna, the less likely it is that radio frequency interference will appear in home electronic equipment.

Bottom line: If you fear interference, you should encourage Mr. Taormina to put his antennas up as high as possible.

Exhibit 9

Monopoles Preferred

The Existing Situation

At present, there are four towers more than 45 feet in height. In his SUP Application, the applicant has proposed to erect two monopole towers, for a net of six towers exceeding 45' above grade. Of the existing four towers over 45', all are lattice-type.

The Applicant was granted a building permit for the two additional monopoles, for which bases were constructed, then inspected and approved by the building department. These were the subject of the Stop Work Order of July 17, 2008.

The staff report recommended a total of four towers over 45', either two monopoles and two lattice towers, or the existing four lattice towers.

At the hearing, counsel for the Applicant argued that monopole-style towers are preferred by planners nationwide. The matter of choosing monopole vs. lattice towers was not a subject of discussion by the public at the hearing. After the public portion of the hearing was closed, one Commissioner moved to recommend two monopole towers and two existing lattice towers, on the ground that he believed that monopoles were the preferred style. That Commissioner's motion failed.

The Planning Commission voted to recommend that a special use permit for the four existing lattice-type towers be approved by the County Commissioners.

The matter is now before the County Commission for an independent examination of the situation.

The Applicable County Ordinance

The U.S. District Court has declared that the applicable law "specifies that an individual seeking to build a radio antenna over forty-five feet may obtain a special use permit [and] may apply for such a permit under section 17.62.010." *Slip Opinion at 8*. For the purposes of this application, the Court's ruling settles the matter as to what standard the County must apply to this application.

The test for a special use permit in this case was stated by the Court, which five times cited as the applicable ordinance section 17.62.010:

> Certain uses may be permitted by the board of county commissioners in zones in which they are not permitted by this title **where such uses are deemed essential or desirable for the public convenience or welfare.**

(*Emphasis supplied.*)

The only legal question is whether the proposed Amateur Radio use is "deemed essential or desirable for the public convenience or welfare."

Despite the Court's detailed examination of the County Code, it did NOT cite Section 17.12.014 as relevant. This is the section that suggests that the proposed use must be "consistent with and compatible to those other uses permitted within the zone." That test does not apply.

Furthermore, and again despite the Court's detailed examination of the County Code, it did NOT cite Section 17.12.018. This is the section that requires that the proposed use must be "demonstrated by the applicant to be in the best interest of the general public and would not be incompatible with or detrimental to the surrounding area."

Neither of those two tests, which involve (1) compatibility with other uses within the zone, or (2) compatibility with the surrounding area, applies.

If beauty is in the eye of the beholder, be assured that the Applicant thinks of the proposed structures as majestic. But majestic or not, compatible or not, in the BEST interest of the general public or not – none of that is before this Board.

It is the USE, not the architecture style, not the material, not the aesthetics, not the color, that is before the County Commissioners.

Yet without public comment or debate on the style of structure, without the expression of an interest one way or another by the Senior Planner, and for no apparent reason, the Board did not recommend the monopole design towers.

The Applicant was astonished by this decision, especially after thousands and thousands of dollars had been spent on purchasing and preparing, including fresh weatherproof paint, then shipping the two monopoles for erection. The applicant had been encouraged to erect the monopoles, and the bases had passed inspection, when the stop work order was initiated by a former Assistant District Attorney.

The reasons that the Applicant was astonished by the decision of the Planning Commissioners to choose lattice design towers are:

- Above 45', the monopoles taper from 10" to as little as 7", whereas the average face of the Rohn 45 triangular lattice-style towers is 18",
- The monopoles will have only one visible set of guy wires (3) while the existing lattice towers have as many as four visible sets of guy wires (12),
- The Planning commission really did not discuss lattice vs. monopole design[2],
- The Building Department's recommendation to the Planning Commission does not discuss why one design is preferable over the other,
- The Building Department's recommendation provides no rationale as to why tower design was a matter for the Planning Commission at all (and it is not, as mentioned above – see the applicable ordinance). Finally, and perhaps most important of all,
- Nationwide, planners prefer monopoles.

The usual arguments that favor the traditional monopole design are that:

- It is simple,
- It is functional,
- It is minimalistic, and

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[2] The County Commissioners are welcome to listen to the recording of the Planning Commission hearing to confirm for themselves that there was really no meaningful discussion of lattice vs. monopole design.

Cables inside the pole are not visible.

Case law contains confirmation that planning departments prefer monopoles. The "department would prefer to see the existing lattice tower replaced with a monopole tower." *Preferred Sites, LLC v. Troup County*, 296 F.3d 1210, 1214-15 (11th Cir. 2002).

Preferences for Monopoles Over Lattice Towers Are Found Nationwide

In cellular, monopoles are used much more commonly than lattice towers. Source: Master's Thesis by Mark Brose, University of Minnesota, http://freenet.msp.mn.us/people/brose/papers/pcs.html

But monopoles are not just more common these days, they are preferred. For example:

Chapter 17.82 Wireless Facilities

. . .

17.82.080 General Development Standards

A. . . . The placement or siting of wireless facilities, wireless transmission devices, support structures and accessory equipment shall be subject to the following . . . preferences [in this order]:

. . .

v. Proposals contemplating the construction of a new **monopole** structure, . . .

i. Proposals involving the construction of new lattice towers or guyed structures.

Source: El Monte, CA (County of Los Angeles) http://74.125.155.132/scholar?q=cache:zPeggJ2ysEJ:scholar.google.com/+monopole+preferred+cellular+ordinance&hl=en&assdt=1,22

The United States Fish and Wildlife Service's *Interim Guidance on the Siting, Construction, Operation and Decommissioning of Communications Towers* (September 14, 2000) seeks to reduce the use of guy wires in the interest of protecting birds.

A quick review of zoning ordinances reveals that monopoles are widely preferred. See for example, the zoning ordinances of:

Hackettstown, NJ	Minneapolis, MN	Kenosha, WI
Oswego County, NY	Edina, MN	Boston, MI
Lincoln County, SD	Holmen, WI	Belle Plaine, MN
West St. Paul, MN	Franklin, MO	Lakewood, CO
Caldwell County, NC	Mountain Lake, MN	Mineral Springs, NC
Fitchburg, WI	Medina, OH	Sherburne, MN

Coon Rapids, MN	O'Fallon, IL	Gautier, MS
Napoleon, MI	Champlin, MN	Pepper Pike, OH
Lauderdale, MN	Urbandale, IA	Annandale, MN
Gaston, NC	Sunnyvale, CA	Old Bridge Twp, NJ
Robbinsdale, MN	Granite Falls, NC	Jackson, NC
Henry Co, GA	Menasha, WI	Savage, MN
Montville Twp, WA	Eureka Twp, MN	Appleton, WI
Overland Park, KS	Fostoria, OH	Shoreview, MN
Deep Haven, MN	Springfield Twp, OH	Appleton, WI
Senatobia, MS		

This list is far from exhaustive. For additional jurisdictions that prefer monopoles, do a search on bing.com or google.comfor the phrase "towers shall be of a monopole design."

Also, the monopole design has been accepted in the Virginia City Historic District, and the proposed wind farm at the Eastern end of the County will all be constructed using monopoles.

Conclusion

Nationwide, Planners prefer monopole designs when possible. The Storey County Building Department has shown no preference. Above 45', the Applicants' monopoles are smaller than the Rohn 45 towers recommended without discussion by the Planning Commission. The Applicant has already invested thousands of dollars in monopoles, their preparation and shipping, as well as their very special base designs and hardware which have already been installed and passed inspection. The Applicants want monopoles so that they may rotate the entire monopole, instead of erecting big steel rings at each level where a rotating antenna will be mounted – which puts less steel in the sky.

The ordinance speaks only to the use, not the design. The County Commission has no business dictating the design or color, as such controls are not authorized by the ordinance.

The applicant respectfully requests that the County Commissioners reject the Planning Commission recommendation for lattice-type towers and approve instead the monopoles as proposed, present on site, and for which construction of the bases has already been completed and inspected.