

**Errata and Addenda Sheet as of January 6, 2010
[material for insertion in 2d Edition]**

Antenna Zoning for the Radio Amateur
Fred Hopengarten, K1VR

Frontispiece (inside cover): Change within the box labeled “About the Cover”:

Front cover photo by the late Dan Robbins, KL7Y.

Page 1.2 - Just before “Build Your Winning Team,” add:

As you gear up for this challenge, recall the words of Winston Churchill, who first used the words with reference to World War I:

In war: resolution. In defeat: defiance. In victory: magnanimity. In peace: goodwill.

Winston Churchill (1874–1965), The Second World War, epigraph (1948-1954).

Page 1.5 - Substitute the following for the last paragraph:

Recall the words of Matthew 10:16: “behold, I send you forth as sheep in the midst of wolves. Therefore be wise as serpents and harmless as doves.”

Finally, don’t forget that most officials . . .

Page 2.2 - Footnote to bullet in upper left-hand corner, after “Find another agent.”

This thought is reminiscent of the following story:

While looking at a house, my brother asked the real estate agent which direction was north because, he explained, he didn't want the sun waking him up every morning.

She asked, "Does the sun rise in the North?"

When my brother explained that the sun rises in the east (and has for some time), she shook her head and said, "Oh, I don't keep up with that stuff."

Page 2.3 – Add to first paragraph, about YT:

data for the *YT* program. For further discussion, see QST, July 2001, page 99.

Add to the end of the first full paragraph (the one that begins “Free topo maps may be found at . . .”):

Uncle Sam provides excellent topographic maps on <http://nationalmap.gov> . Or try <http://www.acme.com/mapper/>. Better yet, buy the ARRL Antenna Book and learn to use MicroDEM and HFTA, programs that are provided on the included CD-ROM. A clever site to create path profiles for VHF/UHF/SHF paths, where it can be argued that "line-of-site" communications is required, can be found at <http://www.heywhatsthat.com/faq.html>, click on "Path Profiler."

Page 2.3 – Add to the second paragraph:

For additional maps on the web, some with aerial views, see <http://www.mapquest.com/>, <http://www.zillow.com/>, <http://www.wikimapia.org/>, www.acme.com/mapper, <http://maps.live.com/>, <http://mapserver.maptech.com/homepage/index.cfm>, www.maps.google.com, and www.earth.google.com (known as Google Earth). These mapping and aerial photography web sites can be very helpful to a board. For the aerial photography especially, try them all – as the dates of the photographs may vary. Take full advantage.

I am particularly fond of the "bird's-eye" view function in <http://maps.live.com/> and others.

Most of the Internet sites where you can view maps, aerial and satellite photography are really just like clearing houses for data obtained from other third parties.

Thanks to Bob McCormick, WIQA, who notes that in Google, Live (Microsoft) and others you'll often see the copyright or source of the data, which is typically stitched together with whatever is the most recently acquired data. To wit: using Google Earth you can see great aerial imagery in Massachusetts from the MassGIS database, but across the border in Connecticut, the aerial photos are sometimes not as good. So, if you are really interested in this kind of thing, try to find / go to the source! In Massachusetts, you'll may find the Mass orthoimagery available well in advance of what Google and others will have.

The USGS is also doing (today, right now) true-color imagery for Eastern Massachusetts that will provide images with a pixel size of 0.3m/pixel. These should be available after late 2008. If you're interested to see the extent of this photography, visit: <http://www.mass.gov/mgis/USGSprojArea.pdf>. In Massachusetts, there are presently on-line color orthoimagery with a nice resolution of about 0.5m/pixel. These images were taken in both 2001 and 2005. (The islands off Cape Code were photographed in 2003.) You can view these with the state's web based ortho viewer or as layers in the MassGIS OLIVER program (requires Java). Here's a full list of the MassGIS on-line content: <http://www.mass.gov/mgis/mapping.htm> (scroll down a little for access to the color and Black & White orthos).

Other New England states:

CT - including historical (old) aerial photography:

<http://magic.lib.uconn.edu/>

ME - GIS

<http://apollo.ogis.state.me.us/>

NH - Statewide GIS clearinghouse

<http://www.granit.unh.edu/>

RI - GIS

<http://www.edc.uri.edu/rigis/>

VT - Centre for Geographic Information

<http://www.vcgi.org/>

New on the scene, for very detailed, street-level views (i.e., not from above), try <http://www.mapjack.com/>. It is new and may not have your municipality.

Page 2.5 – right hand column, new sub-head, insert before “GETTING TO KNOW THE PLAYERS”:

Buy Land – Avoid a Fight A Covenant Not to Compete or Complain

If you are thinking about buying a piece of land to be carved out of a larger parcel, you may wish to consider adding a covenant not to compete or complain. After all, you don't want to be in a position where what you really purchased was a big fight with the seller (in the deed to the parcel you are buying, the seller will be called the Grantor). Here's language I used in a Maine transaction where the buyer was purchasing 25 out of 42 acres.

Grantor understands and agrees that Grantee intends to use the premises herein conveyed for communications, which may involve the construction and use of one or more towers, communications equipment buildings, satellite dishes and related structures, as well as equipment for both receiving and transmitting. Grantor, his heirs and assigns, hereby consent to and waive any objections to the lawful construction and use of such facilities, as well as radio and television reception and transmission. Grantor, his heirs and assigns further agree to not permit the construction of a communications tower or any other communications-related commercial use, including, but not limited to, a commercial radio or television use, which may have the potential of creating radio frequency interference to a use by Grantee, on the remainder of the

Grantor's land or any other land in [name of town] now owned by or controlled by Grantor, or any affiliated entity or individual(s).

Note that this is a very aggressive request, in that it includes “any other land in [name of town] now owned by or controlled by Grantor, or any affiliated entity or individual(s).” One of the purposes of this additional coverage for this covenant is to provide you with something to give away – a bargaining chip. For example, in a negotiation, you could let the Grantor (or any affiliated entity or individual) have a commercial radio or television use so long as it is at least 1000 yards, or, if you are Canadian, 1 Kilometer away.

Page 2.6 – left hand column, before “Your Building Permit Application”

New sub-head: Yes, You Really Want a Building Permit

There are any number of hams around the USA who have erected antenna support structures without building permits. Many were even told by the building department that no permit was necessary, because an amateur radio antenna support system is not a habitable structure. You know what I call people who build without a permit? Clients. Obtaining post-construction building permits is always interesting work.

There are several problems associated with building without a permit.

Proving the Date of Construction

If your municipality ever changes its zoning bylaws, you could have a problem. A building permit is the surest way to prove that your structure was erected before the zonings laws were changed. (Keep that building permit forever! I once had a client who couldn't prove he had properly obtained a building permit because the building department had a fire. That took some sleuthing.)

OK, let's take a moment to consider, in the absence of a building permit, how you'd prove that your structure is a *prior-existing use*, because it was erected before a change in the zoning bylaws. For some reason, many hams immediately suggest what I like to call “the hostage photograph.” They suggest that you merely stand in front of a structure, holding up a copy of the daily newspaper, to prove the date. Newsflash: Most newspapers in the country will sell you an old paper from their archives. On this theory, it would be possible to get a copy of the Boston Herald from 1888, and claim that your tower was erected back then.

How about writing the date in the concrete? Surely that would prove when the base was poured. *Nope*. It is a nice tradition, but it only proves what you wrote in the concrete with a stick or a finger. You could just as easily write in the concrete that the base was poured on July 4, 1776.



Figure _____. Written with a stick, the inscription in this base reads: “K1VR 82”. But does it really prove that the concrete was poured in 1982?

The best way to prove a date of construction by means of a photograph, in my humble opinion, would be to gather up a bunch of young children from the neighborhood and place them in a circle around the tower (to diminish the likelihood that someone will claim that you “*Photoshopped*” them into the picture). [Ah, the modern world. Is “Photoshop” a proper noun, as well as a verb?] Years later, if you are ever questioned about the original date of construction, you could produce the photograph of children three feet tall, and the same individuals now five to six feet tall. That ought to end all questions.

Nonetheless, nothing is better than a building permit.

Preserving the Right to Claim on Insurance

Another good reason to obtain a building permit is to make a claim on your homeowner’s insurance, should that ever be necessary. Imagine that your antenna system comes down in a storm. (It shouldn’t! But imagine that a tree falls and takes it down.) You peek at your homeowner’s insurance and say: “A ha! I can make a claim and the insurance should cover reconstruction.” Bzzzzt. It is likely that any claim will be denied if no building permit was obtained prior to installation. A building permit, better yet a “Certificate of Completion,” or “Certificate of Use,” provides the ham with documentation that the tower was installed in accordance with the local building code.

Without that document, the insurance company may decline to honor a claim, arguing that they have no way to determine if the tower was appropriately installed.

Page 2.6 – left hand column.

YOUR BUILDING PERMIT APPLICATION [no hyphen]

Page 2.6 – Correct a typo:

The Life and Political Memoirs of Speaker Tip O’Neill . . . [no comma]

Page 2.7 - You can also create a list of hams in your city or town by going to <http://www.qrz.com>. Enter the ZIP code you wish to search into “Enter name or keyword(s) to search”. The same feature (ZIP code search) is available at <http://www.arrl.org> (partials OK, 3 or more digits), and at <http://www.wm7d.net/> in “Advanced Search.” Similarly, you may find a useful database look up at <http://callsign.ualr.edu/index.shtml>. With call signs found, if you use <http://www.qrz.com> or <http://www.eham.net>, you may find some biographical information on other hams in town.

Page 2.7 – Change

by driving around town looking for **antenna structures** [remove “towers”]

Page 2.9 -- last paragraph under HOW LONG WILL THIS TAKE?:

While you are agonizing over the potential time involved, remember this:

Q: What's the difference between a GOOD lawyer and a BAD lawyer?

A: A BAD lawyer can let a case drag out for several years. A GOOD lawyer can make it last even longer.

Page 3.2 – right hand column, just before “What to Expect of Your Attorney”

“Must You Use a Local Attorney?”

It is not unusual for communications attorneys to handle cases all over the country. Here’s an often-asked question: “When you appear before an out of state zoning board do you seek advance authorization as a lawyer, or just as an expert?”

The answer? Usually, neither. In general, only a court can grant permission to appear *pro hac vice* (meaning: for this occasion). And anyone (an architect, a surveyor, a contractor) can usually represent a homeowner before a zoning board. Sometimes a lawyer must file an appearance or seek permission to appear at a hearing, sometimes there is no form or even a method to file anything. But in most cases, ABA Model Code §5.5(c)(2) applies:

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

...
(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

Source: http://www.abanet.org/cpr/mrpc/rule_5_5.html

Discovering a state's local rule with respect to ABA Model Rule 5.5(c)(2), to see if it has been adopted in your jurisdiction or not (California is the biggest holdout), is actually pretty easy. The American Bar Association keeps track. See <http://www.abanet.org/cpr/mjp/home.html>, click on "Quick Guide Chart on State Adoption of Rule 5.5," and download "quick-guide_5.5-1.pdf."

As any ham radio matter may eventually appear in the local US District Court, because of federal preemption (whether a matter of zoning, or RF interference), there is a reasonable expectation (except in California, or any other state that has not adopted Rule 5.5(c)(2)), that a lawyer may be authorized to appear in that potential proceeding. End of worry.

Even where it is not required, it may be advisable to bring in a local attorney at some point, but that is another discussion.

Page 3.4 – Just before “What to Expect from Your Attorney: The Retainer Letter”

Civility in Professional Conduct

One more thing. Do not expect your attorney to get mad at your opponents, or the City Attorney, or to “talk trash” (say nasty things) about an opposing attorney. There are good reasons that your attorney will not get as hot under the collar as you may.

The first reason is founded in a long tradition, best expressed by this quote from William Shakespeare:

And do as adversaries do in law,-
Strive mightily, but eat and drink as friends.
-- The Taming of the Shrew. Act i. Sc. 2.

There are days when lawyers must work together, and days when lawyers must oppose one another as they represent their clients zealously. But there are never days when it is appropriate for one lawyer to be uncivil to another lawyer, to an opposing party, or to a civil servant. Remember that a lawyer is, in addition to being your zealous advocate, an independent member of a learned profession, not your vassal (subordinate or dependent).

Principles of General Applicability: Lawyers' Duties to Other Counsel, Parties and the Judiciary

General Principles

1. In carrying out our professional responsibilities, we will treat all participants in the legal process, including counsel and their staff, parties, witnesses, judges, and court personnel, in a civil, professional, and courteous manner, at all times and in all communications, whether oral or written. We will refrain from acting upon or manifesting racial, gender, or other bias or prejudice toward any participant in the legal process. We will treat all participants in the legal process with respect.
2. Except within the bounds of fair argument in pleadings or in formal proceedings, we will not reflect in our conduct, attitude, or demeanor our clients' ill feelings, if any, toward other participants in the legal process.
3. We will not, even if called upon by a client to do so, engage in offensive conduct directed toward other participants in the legal process nor will we abuse other such participants in the legal process. Except within the bounds of fair argument in pleadings or in formal proceedings, we will abstain from disparaging personal remarks or acrimony toward such participants and treat adverse witnesses and parties with fair consideration. We will encourage our clients to act civilly and respectfully to all participants in the legal process.
4. We will not encourage or authorize any person under our control to engage in conduct that would be inappropriate under these standards if we were to engage in such conduct.
5. We will not bring the profession into disrepute by making unfounded accusations of impropriety or making ad hominem attacks on counsel, and, absent good cause, we will not attribute bad motives or improper conduct to other counsel.
6. While we owe our highest loyalty to our clients, we will discharge that obligation in the framework of the judicial system in which we apply our learning, skill, and industry in accordance with professional norms. In this context, we will strive for orderly, efficient, ethical, fair, and just disposition of litigation as well as disputed matters that are not, or not yet, the subject of litigation, and for the efficient, ethical and fair negotiation and consummation of business transactions.
7. The foregoing General Principles apply to all aspects of legal proceedings, both in the presence and outside the presence of a court or tribunal.

Scheduling Matters

8. We will endeavor to schedule dates for trials, hearings, depositions, meetings, negotiations, conferences, vacations, seminars, and other functions to avoid creating calendar conflicts for other participants in the legal process, provided our clients' interests will not be adversely affected.
9. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings, or conferences need to be canceled or postponed. Early notice avoids unnecessary travel and expense and may enable the court and the other participants in the legal process to use the previously reserved time for other matters.
10. We will agree to reasonable requests for extensions of time and for waiver of procedural formalities provided our clients' interests will not be adversely affected.
11. We will not request an extension of time for the purpose of unjustified delay.

Source: D.C. Bar Voluntary Standards of Civility in Professional Conduct,
http://www.dcbbar.org/for_lawyers/ethics/legal_ethics/voluntary_standards_for_civility/

“The will to win is nothing without the will to prepare.”

-- Eduardo Alejandro Polon, Boys' Varsity Soccer Coach,
Sandy Spring Friends' School, Sandy Spring, Maryland

Page 4.4 - Fig. 4-1

At A, photo of Sander Idelson, KB1FPU, in normal perspective (**landscape view**).

Page 4.4 – left hand column.

Bring these two pictures along to the hearing and hold them in reserve. **They may be found on, and printed out from, the CD-ROM: Photo-Perspective-Sander.PDF.**

Pages 5.3 – include in the section entitled “Talk to Your Neighbors,” after the existing text, and before “Talk to the Building Inspector.”

You may wish to speak with some neighbors; you may wish to write to others. Here’s an example of the written approach created by W3EF.

Wolfsden
1111 Bonifant Road
Silver Spring, MD 20905-5954 U.S.A.
Telephone +1 301 879-2770

20 September 2003

Dear Neighbors,

Greetings from Wolfsden, where we have been doing a lot of work this year on the exterior of the house and around the yard. I am happy to report that Hurricane Isabel did us only minimal damage, and hope that the same was true for you. You will by now have seen the new perimeter fence (if it borders your property) and we trust that you are satisfied both with its appearance and with the care and attention shown by Abbey-Fritz Fence Company in removing the old fence and putting the new one up. (One neighbor asked for a referral to this company, which we were pleased to provide.) The same firm also replaced the fence around our pool with a very nice black aluminum one with which we are very satisfied.

You may also have noticed the new paint job—the entire clapboard exterior of our house was stripped and re-painted this year. This was a massive job and was capably carried out by Jaime Faria and his crew, whom we also highly recommend. Finally, we had the entire house insulated by having liquid foam blown into the walls (130 years ago they didn’t insulate; there was nothing in there but air). We have high hopes for lower heating bills this winter.

You may also have seen the building permit notice that has been in front of the property since June, and the bulldozer and dump truck that have been parked here this week. Let me explain this current building project, starting with a bit of background:

What we are *not* planning to do

You may recall that some years ago our predecessors, the Sullivans, obtained permission to divide their land into four lots, and to construct three new houses, two of which would be accessed from Bonifant Road and one (plus the original house, making two) from Cutstone Way. This would involve an extension of Cutstone onto the property, major utility works along the eastern edge, and a number of other complicated undertakings.

We are not planning to pursue any such development. We bought this property in part because we wanted to see it preserved as one unit. We also think this area has seen enough development and that the County has no business approving further residential construction until the infrastructure (Metro parking, sewers, etc.) catches up with the population we already have. So please rest assured that a sub-division of our property is not on the cards, and not the reason for the building notice.

What we *are* doing

The construction taking place this week was to put in place footings and guy anchors for two amateur radio towers. These are private, non-commercial supports for my “ham” radio antennas and have nothing to do with any cellular, television, government or other kind of communication. I have been an active ham for most of the past 28 years and have long wanted to build a state-of-the art station.

Ham radio

Amateur (“ham”) radio is a popular hobby which has been around in this country for nearly 100 years and has a strong public service bent. Radio hams are often the only means of communication when conventional systems are knocked out by man-made or natural disasters (see attached article about hams and Hurricane Isabel), and my station (which includes a generator) will be available for such communication. Hams are also experimenters, many of whose inventions have been used in the development of services such as wireless remote control, hands-free and cellular telephones, and the Internet. I myself have been active in Civil Defense, emergency message traffic networks, and the development of packet-switched communications protocols. I am also planning a training session about radio communications for the local Cub Scout troop in November.

Hams love to introduce non-hams to the fascination of the radio art. For more information about amateur radio, please visit the ARRL, the National Association for Amateur Radio at www.ARRL.org/hamradio.html, or get in touch with me directly. I would be pleased to show you around my station and give you a demo.

Three guiding principles

In building this station, I have undertaken to follow three principles:

1. Safety and compliance. The station should be constructed in accordance with the specifications of the tower and antenna manufacturers and OSHA guidelines, using best-practice construction methods. It should also be in full compliance with all applicable laws, zoning regulations, and building permissions.

2. Functionality. I've been active in amateur radio since I moved in, and found that, with the antennas I had on the roof and in the trees, I simply could not achieve effective communications at times. So I'm going forward to install antennas that can meet the need for more effective communications. There should be little or no interference to other services (TV, telephone, etc.).

3. Aesthetics. The design of the station should minimize its impact on the surrounding landscape (subject to 1 and 2 above).

Specific steps taken to ensure adherence to these principles include:

1.a. All designs are being built to the specifications of Rohn Tower, the premier manufacturer of amateur antenna support systems. Shaws Construction of Cloverly have carried out the footing construction and I am currently in discussion with US Towers of Frederick about erecting the antennas. Both companies are very experienced in their respective areas of work, and safety procedures are being rigorously followed.

1.b. A building permit has been obtained from the Montgomery County Department of Permitting Services (including approval from the zoning, septic, and building code sections), and the rules for posting of notices and inspection of the stages of construction are being adhered to. The building permit was obtained on June 11, 2003 and posted at the front of the property immediately thereafter. The thirty day appeal period passed before construction commenced. No other covenants (such as homeowner association restrictions) apply to the property.

2. Directional, high-gain antennas at significant heights (maximum of 100 and 120 feet, respectively), will provide state-of-the-art performance, and are distant enough from surrounding homes and equipment that there is little risk of interference. In addition, my use of only low power and the fact that most of the neighborhood is on cable mean that there is a negligible chance of interference occurring.

3. The installation will be situated within the grove of trees at the center-west side of our property. The trees will do a reasonable job of hiding the lower portions of the towers from open view, though they will still be visible in part, as will the portions above the tree line. The tower sections are open lattice type, easy to see through, and will be painted a silver-gray to minimize their standing out against the sky. In siting the towers I

have taken particular care not to have them in open areas, so as to minimize any disturbance to the aspect of adjacent properties.

Next Steps/Feedback

I hope this letter has provided sufficient detail about the work done so far, and continuing to be done, at Wolfsden this year. I plan to have the main portions of the antenna project complete by early November, though I will likely continue to make adjustments as time goes by. As the project moves forward, I would like to know what you think. Please take a moment to fill out the attached page and send it back to me in the enclosed envelope, or drop me an e-mail (W3EF@ARRL.net).

In the meanwhile, please accept our best wishes, from our house to yours, for the fall and the rest of the hurricane season – may it spare us further power cuts; we've certainly seen enough by now!

Sincerely,

Maury Peiperl

To: Maury Peiperl

From: _____

Street Address: _____

Telephone : _____

E-mail: _____

Date: _____, 2003

Dear Maury:

Thank you for your letter about Wolfsden and your antenna project. Our feeling about the project is (please circle one, or provide your own):

1. It sounds good; best of luck with it.
2. We're not thrilled about it, but it's your property and as long as you follow safety and building permission procedures we won't object if you go ahead.
3. We object to the project.
4. (Other): _____

Comments:

Thank you for your input!

==>AMATEUR RADIO RESPONDS EFFECTIVELY TO HURRICANE ISABEL

(From the *ARRL Letter*, 19 September 2003. Copyright © 2003 ARRL.)

Downgraded to a tropical storm by week's end, Isabel vented much of her fury on North Carolina and Virginia after coming ashore on North Carolina's Outer Banks the afternoon of September 18. The flooding it spawned in the Washington, DC, area also meant a two-day holiday for federal workers.

Amateur Radio volunteers had been keeping an eye on the storm for several days prior to its arrival, however, and they were ready to assist in providing communication support and weather spotting. The Hurricane Watch Net <http://www.hwn.org/> secured its operation September 18 after two full days and nights of dealing with Isabel.

"Many thanks to the dozens of dedicated reporting stations in the path of the storm for their support," said HWN Manager Mike Pilgrim, K5MP, "and most of all to all Amateur Radio operators who patiently stood on the sidelines while helping to maintain a clear frequency on 14.325 MHz during this high-priority operation." The HWN worked with WX4NHC <http://www.wx4nhc.org/> at the National Hurricane Center to provide ground-level weather information for hurricane forecasters.

In North Carolina, Amateur Radio Emergency Service (ARES) member Mike Langley, KD4MTT, spent three days at ARES station NC4EB at the North Carolina Emergency Management's Eastern Branch headquarters in Kinston--the primary emergency operation center (EOC) for Isabel.

"Ham radio has been very busy throughout the storm," Langley said. He noted that the Eastern Branch EOC operated with a staff of six, with two on duty for two days or more and the others taking turns. "It's been a pretty busy process."

NC4EB participated in the statewide Tarheel Net on 75 meters, which backed up logistical communication between the state and county and local EOCs, and sometimes provided a primary link when government communication systems went down. Langley said telephone and power were "spotty at best" in many areas of Eastern North Carolina.

"Right now in the after-action, we're still maintaining vigilance here passing information back and forth from the different EOCs to Emergency Management and the Red Cross," Langley said. Other communication has involved helping state agencies to deploy needed resources, such as chainsaw crews to remove downed trees. The Eastern Branch also monitored the Hurricane Watch Net as well as several VHF and one HF frequency plus e-mail and telephones, he said.

In Virginia, Section Emergency Coordinator Tom Gregory, N4NW, said he had plenty of volunteers in the early going but could have used more as the emergency wore on. "A few did a lot," he summed up.

The Virginia Beach Hamfest <http://www.vahamfest.com/> set for September 20-21 was among the storm's first victims. Sponsors called off the annual event September 18.

Power outages were widespread in Virginia, and Gregory himself was running an emergency generator. Ground already wet from previous rainfall caused trees to topple, too, and that included several that uprooted and landed across Gregory's driveway. He urged all involved in Amateur Radio emergency communication to install emergency power systems in their homes and on their repeaters.

The Old Dominion Emergency Net/Virginia Emergency Net Alpha activated on HF to help support communication between the state EOC and local EOCs. Gregory said the net had checkins from about half

of the Commonwealth's localities. "Our role was to provide a backup for their landline or whatever communications, but very few of those lost that capability," he said of the local EOCs. Areas most drastically affected, including Hampton Roads and Northern Virginia, did need Amateur Radio support and had plenty of volunteers, he said.

Amateurs also supported American Red Cross and Salvation Army relief operations in Virginia.

Virginia Section Manager Carl Clements, W4CAC, in the Tidewater Area lost commercial power shortly after the storm struck and was powering his equipment with an emergency generator. While he also has no telephone service, his cell phone continues to operate. Clements also lost his HF antennas. Many trees were down in his area, he said, in some cases blocking access.

Tidewater Area amateurs deployed at Red Cross shelters set up in schools. "Amateur Radio is the only way for the shelters to get in touch with one another," Clements said. Hams were handling some health-and-welfare traffic for shelter clients.

"It's a true disaster," Clements said.

In West Virginia, ARRL Section Manager Hal Turley, KC8FS, said ARES/RACES support of the West Virginia EOC ended September 19. "All in all, Isabel was kind to us," he said. "As anticipated, the Eastern Panhandle sustained the brunt of the storm." Heavy rain caused some flooding, and the state also suffered power outages.

The Salvation Army Team Emergency Radio Network (SATERN), handled health-and-welfare inquiries via its SATERN Net on 14.265 MHz and via its Web site <http://www.saturn.org>.

ARES teams in Maryland, Delaware, Pennsylvania and New Jersey also activated for Isabel. The storm made itself known as far north as Southern New England and as far west as Eastern Ohio.

Page 5.4 — left hand column, before “Save the difficult questions for the second meeting.”

Please do not ever ask about other structures around town that you think are offending. There are three principal reasons:

1. All land is considered to be unique. For purposes of the law, no two lots are the same. Therefore, there is almost no such thing as precedent with relationship to land. There may be precedent with relationship to law, but not land.
2. Any thoughts you may have about subsequently claiming “selective enforcement” are likely to go nowhere. Furthermore, unless you qualify as someone in a protected category for the claim of discrimination based on race, color, creed, national origin, sexual orientation and the like, you’ve also got no chance of succeeding on a claim of “discrimination.”
3. If the building department decides to follow up and treat your inquiry as a complaint, you may have begun the process of making an enemy. Having a few enemies is better than making more enemies. You may have a full quota already.

Page 6.2 — right hand column, before AIRSPACE SAFETY

MUNICIPAL IMMUNITY

You may run into someone who worries: Can the municipality might be held liable in tort if an amateur radio antenna system falls down and creates injury to property or persons?

Fortunately, the answer is black letter law. NO.

The common law principle has always been one of “sovereign immunity,” based on the principle that “the King can do no wrong.” From that basis, American courts created the doctrine of “governmental immunity,” sometimes also called “municipal immunity.”

State law may vary with respect to physical actions by a municipal employee or volunteer. But where a board or inspector is acting in good faith, and performing a responsibility that is strictly governmental, such as issuing or denying permits, the municipality is immune from suit. (There is an exception when civil rights are involved, protected as they are by the Bill of Rights. No cases have been found involving a civil rights claim arising out of the grant of an amateur radio antenna permit.)

Some Leading Cases and Laws

New York

The decision whether to issue a permit is a discretionary determination and the actions of the government in such instances are immune from lawsuits based on such decisions (see, *Rottkamp v Young*, 15 NY2d 831, affg 21 AD2d 373, 377; see also, *Matter of Parkview Assocs. v City of New York*, 71 NY2d 274). *City of New York v 17 Vista Associates*, 84 N.Y.2d 299, 642 N.E.2d 606, 618 N.Y.S.2d 249.

Texas

City of Round Rock v. Smith, 687 S.W.2d 300 (Tex. 1985), holding that, as the approval of a subdivision plat is a governmental function, a city cannot be liable for negligent approval of a plat after the developer had filled in natural watercourses that provided drainage.

Vermont

Municipal immunity is a common-law doctrine dating back to the mid-1800s in Vermont. Vermont follows the common law and provides municipal immunity for functions which are "governmental" as

distinguished from "proprietary" in nature. *Hillerby v. Town of Colchester*, 167 Vt 270, 272 (1997).

Massachusetts

See Mass. Gen. Laws Ann. ch. 258, § 10 (West Supp. 1997). The law specifically provides immunity against claims based on issuance of or refusal to issue a license or permit, failure to inspect or negligent inspection, acts or omissions connected with fighting a fire, failure to provide adequate police protection or to arrest or detain suspects or enforce any law, and the release of persons in public custody.

All New England states extend municipal immunity to discretionary acts.

See Conn. Gen. Stat. § 52-557n(a)(2)(B) (Supp. 1997); *Gordon v. Bridgeport Housing Auth.*, 544 A.2d 1185, 1189 (Conn. 1988); Me. Rev. Stat. Ann. tit. 14 § 8104-B(3) (West Supp. 1996); *Adriance v. Town of Standish*, 687 A.2d 238, 240 (Me. 1996); Mass. Gen. Laws Ann. ch. 258, § 10(b) (West 1988); *Horta v. Sullivan*, 638 N.E.2d 33, 36-37 (Mass. 1994); *Merrill v. City of Manchester*, 332 A.2d 378, 383 (N.H. 1974); *Haley v. Town of Lincoln*, 611 A.2d 845, 849 (R.I. 1992)

Looking Beyond Municipal Immunity

If we're in the middle of a hurricane, and trees could fall, children should not be outdoors, and there are bigger problems than a ham radio antenna falling down. Parents who allowed children outdoors in such circumstances could be responsible for contributory negligence, should a child be injured – because injury would be seen as a natural consequence of flying debris.

The town also carries general liability insurance. The premium for protection against a successful claim in the face of governmental immunity is no doubt tiny, reflecting – one suspects – only the cost of the defense, because the likelihood of success by a plaintiff on the merits is so low.

Construction in accordance with the building code is all that is required – of all parties.

Concern for the hypothetical plaintiff, playing outdoors during a hurricane, is laudible. Yet the applicant, denied a permit for an antenna system on grounds primarily or partially out of concern for liability, represents a much more likely plaintiff.

Pages 6.2— right hand column, just before “Painting and Lighting”

Change http://www.fcc.gov/wtb/antenna/infoCenter/gettingStarted_1.html to <http://wireless2.fcc.gov/UlsApp/AsrSearch/towairSearch.jsp>

Page 6.2 – after the paragraph mentioned immediately above on this Errata and Addenda page, and just before “Painting and Lighting”

These days the FAA wants an e-filing. Start at <https://oeaaa.faa.gov>. When you get to the part about ERP in KW (Item 21), start with the output of your power amplifier, then subtract feedline loss at the frequency of interest. Multiply that by .5 for CW and .4 for SSB. Take that number and add in any antenna gain at that frequency. Now you have your ERP.

Here’s a chart used recently in an FAA Determination of No Hazard to Air Navigation for one radio amateur:

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
1.8	2	MHz	1	kW
3.5	4	MHz	1	kW
7	7.3	MHz	1	kW
10.1	10.15	MHz	0.2	kW
14	14.35	MHz	1	kW
18.068	18.168	MHz	0.2	kW
21	21.45	MHz	1	kW
24.89	24.99	MHz	0.2	kW
28	29.7	MHz	1	kW

Obviously, this particular radio ham had no VHF or UHF intentions. The chart above was sent in response to a letter to the applicant:

The ERP, 4.5 to 6.68 kW, for the proposed frequency bands are very high. The proposed ERP does not comply with CFR 47 Part 97, which states that no station may transmit with a transmitter power exceeding 1.5 kilowatts. For these proposed frequency bands, the transmitter power should be 200 watts. If you hold the certification of external RF power amplifiers, you are required to provide the current certificate for verification.

This may indicate that the FAA does not understand the complex calculation that results, after calculations starting at a power output that begins at the maximum allowable, subtracts out the duty cycle and feedline loss, but adds back, for example, 8 dB gain for a Yagi. Put plainly, the FAA may confuse output power at the amplifier with Effective Radiated Power, and believe that ERP cannot exceed 1.5 kW, or 200 Watts, depending on the band.

Page 6.3 – left hand column, top of page, in the last paragraph before “FAA Permission”

Change http://www.fcc.gov/wtb/antenna/infoCenter/gettingStarted_1.html to <http://wireless2.fcc.gov/UlsApp/AsrSearch/towairSearch.jsp>

Page 6.3 – left hand column, first paragraph under “FAA Permission”

Most Boards will accept your assurance that you’ve checked and FAA “permission” is not required. A quick way to buttress your claim is to go to the FCC’s TOWAIR Determination web site, <http://wireless2.fcc.gov/UlsApp/AsrSearch/towairSearch.jsp>, enter your information, and print out the result. The print out normally includes the distance to the nearest airport. To doubters, give them the URL and tell them that they can independently confirm your results at no cost. Some Boards will want to see the rule .

..

Page 6.8 – right hand column.

However, this is not a courtroom and the Board will be very reluctant to prevent people from speaking out at a public hearing.

EARLY TV RECEIVERS GOT BLASTED BY THE 15-METER HAM BAND

One of the reasons that the objection may be couched in terms of interference to televisions is that early TV receivers got blasted by 15-meter ham band transmissions. As explained by Phil Kane, K2ASP: “TV IF’s used to be 21.4 MHz. When the 1947 Atlantic City WARC allocated 21.0 - 21.45 MHz as the 15-meter amateur band, effective in 1951, the complaints of direct-pickup TVI became horrendous. As a result, in the mid ’50s the industry shifted the IF to 45 MHz, thus alleviating problems from the ham band, but inviting new problems in areas where there were land-mobile (e.g. police) systems operating near that frequency.” Land-mobile systems have moved again, hams have improved output filtering, and instances of TVI or RFI are rarer today.

People who stand and object . . .

Page 6.9 – left hand column.

Remove “No. 97-9141 (2d Cir. February 23, 2000)” and replace with: **204 F. 3d 311 (2d Cir. 2000)**. Remove 2000 U.S. App. LEXIS 2672 as unnecessary.

Page 6.9 – insert before “The Applicant’s Assurance”

Are You Threatening Us?

“You were emphatic when you said that we can’t consider potential radio frequency interference, nor condition any permit by requiring that there be no interference. Are you threatening us?”

Suggested answer: “If the Board feels threatened by the law, it should seek guidance on this question from its own attorney to see if I have misrepresented the state of the law in any way.”

When the next board member, or a member of the public, restates the claim that I'm threatening the Board with a lawsuit, I reply: “Of course I am! Duels are illegal, not to say dangerous. If the only way to make the Board obey the law is to ask a Judge to make them obey the law, then what other course must be taken in a civilized society?”

[Note: I am not this arrogant with respect to limited preemption, just RFI cases -- because the law is so clear and so consistent. I warn non-lawyers that high dudgeon argument should not be attempted by amateurs (pun intended). The opportunity to cross the line is too great.]

Page 6.10 – left hand column, first bullet, after “for even bigger structures than you propose”:

Also included is a Federal government funded study by REPP, the Renewable Energy Policy Project, entitled: “The Effect of Wind Development on Local Property Values.” It can be found at http://www.repp.org/articles/static/1/binaries/wind_online_final.pdf. This highly-detailed, 81-page study includes references at its end to other wind power and electric transmission line studies on the question of property values.

Page 6.10 -- left hand column, create a new first bullet:

- Offer to overpay!

In 2005, an antenna system erected by Howard White, KY6LA, in La Jolla, CA, was the subject of an article in “The San Diego Reader.” A neighbor claimed that the erection of a 40 meter beam, at a height of 85 feet, had reduced the value of that neighbor's home by \$500,000.

Quoting from the article:

Etes says a conservative estimate of her property's loss is \$500,000. New, who is a real estate broker, says her own house has lost one of its prime assets: its ocean view. "I've gotten professional opinions on the matter, and I think my house has been devalued by over a million dollars," she claims. "Maybe as much as a million and a half."

White believes those figures are ridiculous. "If her house has dropped in value by a million and a half dollars, I'll buy it from her at that price. You know where the most expensive houses in La Jolla are? At the top of Mount Soledad, right next to 94 antenna towers, all of which are bigger than mine. It's not hurting their property values."

I have no special comment with respect to the circumstances in this case (a building permit was granted and all inspections passed).

But think about the numbers when a neighbor claims loss of value.

The neighbor claimed that his or her house had lost \$500,000 of value, and the ham offered to buy the house at that discounted price – a clever idea. But perhaps it would have been better if the ham had offered to pay substantially more than the claimed estimate of value with the antenna present, i.e.: "If he thinks his house is was once worth \$1.5 million, and it is now worth only \$1,000,000 -- and I disagree -- I'd gladly pay him a substantial premium over \$1,000,000, because I believe I'll make a huge profit on his house – even after overpaying for his house."

In these circumstances, where money will never change hands, you can afford to be generous! I'd advise a client that he should offer to pay a substantial premium over the offended owner's low-ball estimate. ;-)

By the way, buying a \$1.5M house (which the owner now says is worth only \$1M) for \$1.25M, and reselling it within one year at \$1.5M, offers a deal with a better rate of return than most other investments. You would do well to buy the neighbor's house. You'd get rid of a pesky neighbor, you could ask the new buyer to sign a "covenant not to complain," and you'd make a profit. Is this a great country or what?

Page 6.11 – left hand column.

Change the listed ualr.edu URL to a later version:

<http://callsign.ualr.edu/index.shtml>

Page 6.13 – right hand column

. . . the Board could legally decide to give your own testimony or studies no credibility whatsoever. **But the Courts do not smile on that. "While the [local zoning authority] may not ignore evidence presented by the applicant, it is not require to credit that evidence; but, where the applicant's evidence is uncontroverted, there must be a gfood reason for rejecting it." *SNET Cellular, Inc. v. Angell, et al.*, 99 F.Supp.2d 190, 194, 195 (D.R.I.2000).**

Nonetheless, I encourage you . . .

Page 6.15 – upper left hand corner, change

Health Agent, Town of Orleans

to

Health Agent, Town of Yourtown

Page 6.19 – Figure 6-7

[In the First Edition, First Printing, the drawing showed one cone of protection for the entire house. In reality, the cone begins at the top of each lightning rod. With four lightning rods, the four cones overlap.]

Page 6.21 – before “Remote Control”

Recent Federal Activity

The FCC’s handling of bird matters is a complicated subject, involving a bunch of Federal statutes and regulations. The present state of affairs is well described in a U.S. Circuit Court of Appeals decision dated February 19, 2008. See *American Bird Conservancy, Inc. and Forest Conservation Council, Petitioners v. Federal Communications Commission, Respondent, CTIA - The Wireless Association, et al., Intervenors*, <http://pacer.cadc.uscourts.gov/docs/common/opinions/200802/06-1165a.pdf>.

Executive Summary: If you are not required to register a tower with the FCC, you can probably ignore the problem. If your tower requires registration (perhaps it is over 200 feet tall), or your tower is in the middle of a migratory bird pathway, read up on original sources and learn how to claim that you have a "programmatic" exemption. In the meantime, this is still a matter of your government and knot-tying, and not yet closely related to the application process.

Page 7.24 – 4th paragraph, "icestormn" should be ice storm.

Page 7.4 in the italicized comments.

Izzo v. River Edge should not be in bold letters, it should just be italicized.
Pentel v. Mendota Heights (MN) should not be underlined or in bold letters, just italicized.

Page 7.4 as part of the text of the generic application.

The Applicant [and his wife] owns [own] the property, which was acquired on ___(date)__. The deed is filed in vol. ___, pp. ___ of the (Name of Town/County) Land Records/Registry of Deeds, and appears as in this document as **Exhibit** ___.

[Comment: The Application/Supplement should include a scan of the deed (or each deed, if there is more than one) included as an exhibit. It serves several purposes:
- it says that you've prepared a detailed application (i.e., you are a serious person)
- it says you own the land and do not need permission from a landlord
- it tells the board the size of the lot
- it confirms that you've owned the land for a long time.]

Page 7.7 – The last sentence of the last paragraph before “GOOD ENGINEERING PRACTICE” should now read:

Another source of topographic maps is <http://www.topozone.com/> (private), or <http://nationalmap.gov> (U.S. government, your tax dollars at work). See QST, July 2001, p. 99. Or try <http://www.acme.com/mapper/>. Better yet, buy the ARRL Antenna Book and learn to use MicroDEM and HFTA, programs that are provided on the included CD-ROM. A clever site to create path profiles for VHF/UHF/SHF paths, where it can be argued that "line-of-site" communications is required, can be found at <http://www.heywhatsthat.com/faq.html>, click on "Path Profiler."

Page 7.22 – Letter from Another Ham in Town. New URL for the University of Arkansas at Little Rock callsign database: <http://callsign.ualr.edu/callsign.shtml> . You may also try: <http://www.qrz.com/i/names.html>

Page 7.34 – Figure 7. Typo: from San Francisco to Europe on 7 MHz

[**Note:** In the book, the document by Straw and Hall is printed in black and white. At <http://www.arrl.org/FandES/field/regulations/local/antplnr.pdf>, it is printed with color, and is easier to read. The typographical error mentioned above is also corrected on the ARRL web site.]

Page 7.44 – The new URL for the FCC Interference Handbook (it is no longer called the "tvibook"):
http://www.fcc.gov/ftp/Bureaus/Mass_Media/Databases/documents_collection/1993InterferenceHandbook.pdf

Page 7.47 – insert the following:

Needs Analysis

It is the obligation of the municipality to accommodate the need of the individual radio amateur for effective communications. Thanks to N6BV, K1NU and WX3B, there is now an excellent way to demonstrate the need for height at HF. Examples of the results of what is called a "Needs Analysis" are available on request, and on the new CD accompanying this book.

To demonstrate the need for height at VHF or UHF, try using SPLAT!, available at <http://splat.ecok.edu/>. SPLAT! calculates path loss for frequencies from 20 MHz to 20 GHz. You input your location, antenna height, and frequency and it calculates a regional coverage pattern for you using the Longley-Rice Irregular terrain model and assuming vertical polarization. It's a local coverage program and should be a good tool. Each plot takes a few minutes to generate and you must enter your station's lat/long with some precision. SPLAT! is a product of [John Magliacane KD2BD](#), made available on the East Central University (Oklahoma) web site by Bill Walker W5GFE.

Page 7.48 (a new page) – insert the following:

Submitting Your Application

The men and women who work out front as Town Clerks, and secretaries in building departments, or departments of planning and zoning, are almost always nice people, deserving of respect. This does not mean, however, that they are completely worthy of your trust. Strange things can happen, mostly through innocent neglect or mistake, but strange things can still happen. It is important that you be able to show that an application was submitted, and the date on which it was submitted.

Printing Instructions – Bound Supplement

One last time, read through the document to be sure that the Table of Contents matches the actual pagination. Then please read through the document searching for typographical errors. You should also have someone else proof-read the document, because by now you should be almost blind from having reviewed the document so many times. If you find errors, you have choices:

- (1) errors can be corrected before printing,
- (2) errors can be corrected after printing and before binding, by substituting only the affected page, or
- (3) you can file an errata sheet if necessary.

In any event, if you don't find the typos, you can't correct them. Here's a "been there, done that" tip: Pay special attention to headers and footers. Make sure that dates in headers or footers match the cover.

1. **Convert to PDF.** When you are completely satisfied with the document, **convert it to a PDF.** The best way to take a document to the printer is **not** to print out one nice copy and then go to the printer. Any modern print shop will give you better quality if you show up with the document in PDF format. Instead of printing from your original, the shop is now printing an original every time.

If you own only the PDF reader, Adobe will permit you to create a PDF document on their web site. Go to <http://www.adobe.com/>, and look down the left hand side of the opening page for:



or you can buy emulators, such as PDF995. Creating a PDF version is good, as it fixes pagination. Should you subsequently add pages, you won't have to reprint the entire document – just print and insert in pages 34a and 34b.

Do not give it to the printer in "*.doc" or "*.wpd" format, because the margins set in the printer's computer may be different. Problems will creep in.

2. **Printing – One or two sides?** You'll probably choose one-sided printing. (Two sided requires the thicker paper on *every* page and is probably more expensive. Why thicker paper on every page? Because you need thicker paper for color printing, and you will have some pages of color printing.)

Also, think about whether you are going to ship the document. If so, two-sided printing can save you shipping costs. Mostly you will deliver by hand. See below for the discussion of proof of delivery, a very important aspect of the process.

3. **Color pages?** Go through the document and decide which pages should be printed in color. Then prepare a sheet for your printer that looks something like this:

Please print the following pages in **color**:

7

8

11

14

15

16

31-34

37-38

41

43

Total: 14

The newspaper articles, or other documents that make you look good, should appear just behind the last page of the document, because they are Exhibit __ and *are* part of the supplement.

4. **Punching for Binding.** Punch all pages for Comb binding. OK, I concede that some people prefer a three-ring binder. If that's what you want, I recommend the type with a clear cover page. So print **three** copies of the cover page – one to go under the clear plastic on the cover, and one to go inside, plus one to get stamped in with a date/time stamp. Some people prefer GBC binding. This is a binding with a stiff plastic strip on the front and back. It also requires a special punch.

5. **Covers.** I recommend a clear plastic front cover, and a dark blue thick paper or plastic back cover, with a black comb. [See above notes on three-ring binders.]

6. **Collating.** If the pages have to be hand-collated, you can probably save some money by doing it yourself, as you may need only 8-10 copies. But then you have to bring it back to the printer to use their machine to install the comb bindings.

7. **Delivery.** Hand-deliver the required number of copies to the Planning & Zoning office (and before they leave the office for the day!). Keep two – one for you and one for your attorney.

Printing - Quantity

It is not uncommon for a thorough application to require 100 pages of printing, when you include copies of law cases to which the Department of Planning and Zoning may not have access, as well as a number of exhibits (including photographs). You could be facing a printing bill of several hundred dollars, or \$8.00-\$30.00 per copy of the application submitted. This makes it worthwhile to work hard to understand how many copies you need to submit.

Here are some possibilities:

- One for the Town Clerk,
- Five (or eight, or nine) for the members of the Board before which you will appear (some boards require copies for alternates, some do not),
- One for the secretary to the Board,
- One for yourself,
- One for your lawyer.

That's a possibility of 13 copies. If it is a joint meeting of the Planning Board AND the Zoning Board, add another five (or more) copies.

Print an extra cover page for each copy (to insert in the front cover of the three-ring binder). The printer will tell you whether to use cover stock (80 lb.) or a more standard 24 lb. Cover stock is only necessary with comb or GBC binding.

And print two extra copies of the cover page that you will have "date stamped in."

Printing – Quality

You might think that the least expensive way to print is to print on 20 lb. standard white, using your home printer. But this is a lot of printing, as you could be making 100 pages times 13 copies, or 1300 impressions. A copy shop may give you a better price for the black and white portion of the printing than is possible at home, when you add in the cost of inkjet cartridges. Color pages I leave to your own investigations.

In any event, as you are no doubt aware, a laser printer will produce sharper images than the ink jet printer. Moreover, **24 lb.** (maybe 28 lb. if you insist on spending more money) **bright white (brightness of 96 or more)** will better support the impression that you are quite professional in everything you do and ready to go to Court if necessary.

Printing – Binding

I like one-inch, three-ring binders, with a slip in front cover duplicating the cover page of the document. This permits last minute substitutions when you find an error, or need to slip in one more letter from a neighbor, another photo page, or a new law case. Other alternatives are comb-binding (which allows the document to lie flat) and GBC binding (which allows it to stand tall).

Make sure that at least one copy has original signatures (from you, your contractor, your P.E., whomever).

Delivery

OK – you’ve got *n*- copies ready for delivery, in a box, in your vehicle, and you drive to town hall.

You walk in and present yourself to the desk. Smile. Talk:

“I’m here to file an application. I think I have enough copies, but could you confirm that ____ is enough? And, while we’re at it, could you stamp in the one with original signatures, and two copies for my records?”

Every building department in the nation can put a date stamp that says “Received” on the front cover. If you find one that can’t, ask the secretary to write: “Received. [Date] [Signature].”

Example:

RECEIVED
February 16, 2005
Janice Jackson

A Photo?

No witness, or still feeling insecure? Take a photo of Janice holding the application, with the box of copies on the counter. Ask her to smile and hold up the three ring binder. Tell her: “This is a really big day for me. I’ve been waiting to file this form all of my life.” (Or, “I need to prove to my boss that I was here, and not in some local watering hole.”)

What if she doesn’t want to cooperate, smile and hold up a copy? Take a picture anyway. You have a perfect right to do so. It’s a public office. You can later testify: “I took this picture on February 16, 2005 and it shows the applications on the counter as I filed them.”

The surest possible proof? Have your witness take a photo of you delivering the application to the Secretary. Now you have a witness, a photo, and a stamped copy.

Before Leaving

You want two copies with stamps for yourself. One for you and one for your lawyer. Don’t leave without checking to see that the date is correct. (Was the last time that the stamp was used during the previous century?)

The Reluctant Recipient

It has been my experience just once that there was some confusion as to WHO receives the application. It was a small town. The statute clearly said that the application must be made to the Town Clerk, but the Building Department insisted that the application was to be filed with the secretary to the Building Inspector (which was just plain wrong). Here’s how we did it.

Applicant to Town Clerk: “I know that this goes to the Secretary in the Building Department, and I’ll gladly walk it down the hall to her, but could you please stamp these three pages?” (He was referring to the cover page on the original signature document, and the two copies for our files.)

Town Clerk: “No one ever files with me. You are supposed to file with the Secretary in the Building Department.”

Applicant: “I know, but my lawyer absolutely insists that I get a date stamp from you. Just this once, could you help me out? It costs way too much to have a full-blown argument with the damn lawyer.”

Town Clerk: “OK. [Stamps the three pages.] Now walk it down the hall and do the right thing.”

Applicant: “Thanks. You are saving me a lot of grief.”

This is what is commonly known as “blaming it on a third party.” And lawyers are used to being the person blamed. It comes with the territory. It’s right up there with “My doctor insists . . . , my CPA insists . . . , my teacher insists . . . , and my wife insists . . .” The devil made me do it.

Why am I getting excited about this? I have *experienced* each of the following:

- A lost application (completely missing from the town’s paper files),
- A town which took the position that an application is not filed until it has been stamped in AFTER fire, water, police, health and other departments had reviewed the application. So the stamp date on the document was almost three weeks later than the originally filed date. That will never happen to me again.
- The need to prove a filing on Wednesday, when the Planning Board met to announce the draft of a bylaw change on Thursday – which would have effectively cut off any claim to vested rights (the ability to apply under the old bylaw, not the new).

Now your application is filed, you can prove it was filed on the date necessary to get on the agenda for the next meeting of the Board (so you don’t have to wait a month), and, hoping this never happens to you, you can show that you filed before a change in the bylaw was proposed to foreclose your project – giving you vested rights to apply under the prior bylaw.

One more thing about the need for a date/time stamp. You may be lucky enough to live in a state like Pennsylvania which has a “deemed approved” statute, 35 P.S. §7210.502. It establishes a 15 business day rule, after which an application for a building permit is deemed approved if no action has been taken. If the drawings are prepared by a PA-licensed engineer, architect, etc., and the engineer or architect certifies that the plans meet or exceed the Uniform Construction Code, then the period is only five days! There is a 30-day period for “other construction,” which some municipalities will argue applies to antenna support structures, but even if you concede that, there is still a time period after which an application upon which no action has been taken is deemed approved.

Here’s the full text. Pray that you have such a statute.

CHAPTER 40A. CONSTRUCTION CODE ACT
CHAPTER 5. ADOPTION AND ENFORCEMENT BY MUNICIPALITIES

35 P.S. § 7210.502 (2007)

§ 7210.502. Consideration of applications and inspections

(a) APPLICATIONS FOR PERMITS AND INSPECTIONS.--

(1) Every application for a construction permit for one-family and two-family dwelling units and utility and miscellaneous use structures shall be granted or denied, in whole or in part, within 15 business days of the filing date or, if the drawings have been prepared by design professionals who are licensed or registered under the laws and regulations of this Commonwealth and the application contains a certification by the licensed or registered design professional that the plans meet the applicable standards of the Uniform Construction Code and ordinance as appropriate, within five business days of the filing date. Every application for a certificate of occupancy for one-family and two-family dwelling units and miscellaneous use structures shall be granted or denied, in whole or in part, within five business days, or within ten business days in cities of the first class, after receipt of a final inspection report indicates compliance with the Uniform Construction Code and ordinance as appropriate. All other construction permits shall be granted or denied, in whole or in part, within 30 business days of the filing date. Municipalities may establish different time limits to consider applications for construction permits in historic districts. A code administrator shall review a construction plan of a building permit application upon submission and shall issue a notice of construction plan approval on a building permit application within the periods set forth in this section if the construction plans comply with the Construction Code Act and any other applicable municipal construction code ordinance. The municipality shall also provide a list of all other required permits necessary prior to issuance of the building permit. The municipality will not be liable for the completeness of any list. When a construction plan has been approved, a code administrator shall issue a building permit immediately upon receipt of all other required permits or approvals related to the construction. All revisions or changes to construction plans so approved under this subsection shall necessitate an additional plan review prior to the issuing of the building permit.

(2) If an application is denied in whole or in part, the code administrator shall set forth the reasons in writing, identifying the elements of the application which are not in compliance with the relevant provisions of the Uniform Construction Code and ordinance as appropriate and providing a citation to the relevant provisions of the Uniform Construction Code and ordinance as appropriate.

(3) If the code administrator fails to act on an application for a construction permit for one-family and two-family dwelling units and

utility and miscellaneous use structures within the time prescribed, the application shall be deemed approved. The time limits established in this section for permit applications other than one-family and two-family dwellings may be extended upon agreement in writing between the applicant and the municipality for a specific number of additional days.

On the other hand, you could live in Georgia, where it seems that the building department can take forever, and your only alternative is to go to court seeking a "writ of mandamus." That's no fun.

A real life example of last minute jitters:

To: Fred Hopengarten
From: "William Q. Meeker" [K0KT] <wqmeeker@iastate.edu>
Subject: Re: Meeker: almost ready---one more question
Date: Thu, 17 Feb 2005 09:10:15 -0600 (CST)

Thanks. I will do as you suggest. And blame all of the red tape (date stamping, etc. on you). My wife and I will be wearing our best smiles!

Bill

> On Thu, 17 Feb 2005 07:09:05 -0600 William Q Meeker
> <wqmeeker@iastate.edu> writes:

Ms. Herrington asked, "You do not require a conditional use permit for that do you?" I said "No." I do not know if her question was a result of Mr. Holm's instructions to P&Z that I should be allowed to construct (as reported to me by George [an Iowa lawyer] in December) or just ignorance. Ms. Herrington said that I should submit the application to her. I asked what to do if she is not in the office (the web pages says she is often on the road doing inspections). She said that I could then submit to Janese.

> K1VR: As a matter of respect, you should call before jumping in the car and ask if she'll be there when you arrive, because you'd like to answer any questions she may have.

Now, to the question. There are all kinds of things that I imagine will happen when I get there. I have been trying to anticipate them (and the instructions that you sent yesterday cover most of these). One not covered is that Ms. Herrington (or someone else) will want to ask technical and other questions about the project. I have an inclination to try to answer these as best I can, pointing them to the appropriate places in the document. Is it OK to get into a conversation like this?

> K1VR: It is OK to have this conversation when submitting, as (speaking generally) it is too late for them to start a change in the bylaw after you've submitted. Answer questions with bullets, and point to the section in the document covering the matter more completely. Be friendly and helpful. NOW is the time to be helpful. The Building Inspector, or Zoning Administrator, or Code Enforcement Officer will

write the covering memo that goes to any Board or Commission and you want it to be favorable.

I am pretty sure that I should not venture into a discussion of legal things like details of the zoning ordinance. Right?

> K1VR: Its NOW fine to get into a discussion of anything she wants to talk about. You are MUCH more familiar with the issues today [than you were months ago when this process began]. Same strategy as above. Answer briefly, point to the section (or exhibit), smile and be friendly. Give the impression that you've thought of EVERYTHING, which is why -- given the size of the document and the effort you put into it, you'd like to take a photo of the submission!

Let me know if we need to talk.

> K1VR: You are a bright guy who graduated from Union (did I tell you how pleased we are that our son is going there?) and talks in front of people for a living. You'll be fine. Nonetheless, prepare for the visit as if it were a conference with your boss, scheduled to last 10 minutes but capable of resulting in a huge downside if you are not prepared for anything that might arise. Review the answer cards from the CD-ROM.

One last thing: If a question is asked to which you do NOT have the answer in the application of supplementary materials -- DO NOT offer to come back and refile another day. FILE TODAY and offer to supplement later. A rebuff for a minor matter is a trap. And any question you have not already addressed is minor, believe me, because your application [any application I've given you permission to file] is thorough.

> Fred Hopengarten K1VR

Post Script: A photo of his submission was taken. [See below.] Though the bylaw clearly says that antennas are limited to 35', KOKT was granted a building permit for an 80 meter four square (all Rohn 25 tower, each 60'), and an HF tower. We never did get an opinion -- from anyone (not town counsel, not the zoning administrator, not the Code Enforcement Officer -- no one) that antennas over 35' were legal because of the preemptive effects of PRB-1. But the permit was granted and the antennas are up.



KOKT submitting his building permit application to the Code Enforcement Officer in Story County, IA

**STORY COUNTY
PLANNING AND ZONING**

STORY COUNTY ADMINISTRATION
900 6TH STREET
NEVADA, IOWA 50201-2087



"Commitment, Vision, Balance"

515-382-7245
515-382-7294 (FAX)

March 7, 2005

William Q. Meeker, Jr.
5779 Arrasmith Trail
Ames, IA 50010

SUBJECT: ZONING PERMIT

Your application for a zoning permit for a communication tower has been approved. Enclosed are two copies of the Zoning Permit; one that must be posted on the construction site and a paper copy of your Zoning Permit for your records.

If you have any questions concerning this information, please do not hesitate to contact my office.

Sincerely,



Natalie Herrington
Code Enforcement Officer

NH:jmm

Enc.: Zoning Permits

Getting nervous, about a week or ten days after filing his application, a different client wrote to me:

- > I am going to call the ZA on Wednesday morning to see what progress
- > has been made over the two weeks since filing. Any words of advice before I
- > make that call?

I replied:

Actually, yes.

The correct questions are:

- Have you had a chance to go through my building permit application?
- Is there any more information that your department will need in order to make a decision?

These are low pressure questions, and friendly. **WHEN** are you going to grant my permit? is high pressure and assumes a conclusion. That is unfriendly.

Ask the friendly questions. You will get the answers you need.

Likely answers include:

- We sent it out to Town Counsel for an opinion.
- The City Manager/County Executive is reviewing it [a bit discouraging, by the way, since he should have nothing to do with it].
- Actually, I haven't had a chance to wade through it yet. It's quite a bit denser than most submissions I see.
- Actually, I've been through it and sent a copy to zoning administrator/building inspector/Code Enforcement Officer [name of a cohort]. As soon as he finishes with it, you'll have an answer.

Your best comeback to a vague or unhelpful response is:

When should I check in again?

[End of Chapter 7]

Page 8.5 – RH column. Change two citations.

Southwestern Bell. . .Commissioners, 199 F. 3d 1185 (10th Cir. 1999).
Freeman v. Burlington Broadcasters, Inc., 204 F. 3d 311 (2d Cir. 2000).

Page 8.9 -- LH column, substitute the following.

Thus the following good ideas:

- **Dress.** If hams come, ask that they leave [. . .] call letter hats at home. It is disrespectful to wear a hat indoors anyway. Other indicia attire may only look, to the untrained eye, like the attendees are members of a motorcycle gang. Having said that, a sea of yellow ARRL jackets, or local emergency communications team jackets, might be useful. A tie isn't totally necessary, but it shows civility and respect. Wear shirts with collars, with the shirt tucked in.
- **Presence is good, but . . .** Most hams will not help your legal arguments. Ask them to do their best to remain silent, or at least limit their remarks to 30 seconds.
- **Arrive early.** Ask your friends to get there early and take seats. This forces the NIMBY's to stand. (A NIMBY is a person who is there to say: "Not In My Back Yard.") Maybe they will tire and leave early. If this is a place where comments from the public are heard in the order appearing on a sign-up sheet, *immediately* head for the front of the room to see if you can sign up to speak.
- **Locals.** Hams who live in town are usually useful, as they may actually know the bylaw, the Board members and some history.
- **Non-locals.** Out of town hams, you may be surprised to learn, may have a right to speak at a public hearing. For example, in California, a planning commission or zoning board is governed by "The Brown Act," Gov't. Code §54950, and any person may attend a meeting. While public comment may be limited in time (perhaps 1-3 minutes), the Board can't deny a right to speak just because the speaker lives outside the board's physical jurisdiction – *as long as the comment is on a subject within the board's subject matter jurisdiction*. In any event, showing up in large numbers is, all by itself, usually a good thing, even if people don't get to speak.
- **The sign up sheet.** Sometimes there is a list. Sign up and you speak in the order you sign up. Many boards refuse to recognize "informal" sign up lists, where a complete presentation is planned in three minute segments in a particular order, and one person tries to make it happen.
- **Who goes first is important.** It is possible that 20 people sign up to speak, and each is entitled to three minutes (total: 60 minutes), but the Board cuts off debate at a certain time, with the result that only ten people get to speak. So this is critical: Get your most persuasive arguments in first, before any cut-off of further witnesses.
- **Your three minutes?** If a board member asks questions, the time to ask the Q and the time to provide the A may be subtracted from the three minutes you are allotted. That's the way it is in appellate court, and you don't know how they'll do it at the hearing unless you (1) Send a scout to a prior meeting, or (2) Assign someone to view old hearings of a controversial issue, if videos of prior hearings are on the web. A better idea for supportive hams who feel compelled to exercise their First Amendment rights is to limit remarks to a single topic and to speak for no more than 30 seconds.
- **Content.** Don't take the Libertarian line. ("My home is my castle.") There is a time for this argument but this is not it.
- **A Spokesman.** For the typical tower application, a lawyer is the spokesman. If no lawyer has been retained by the ham, appoint a spokesman. When the spokesman rises, s/he may ask those represented by the spokesman to rise. Though it was not for an antenna application, but rather a proposed bylaw session, one Texas group planned it this way: "We have 3 people scheduled to speak: RACES CO, a County SKYWARN NCS who runs nets from his QTH in Garland, and the ARRL Section Manager will be available to field questions. The others have been asked to show up, fill out "support" cards, and smile presently in their seats. The current Mayor does not permit "demonstrations" in the

chambers including applause and showing support by standing so our people will be briefed accordingly."

Page 8.12 - before "The Photos".

If You Won

Congratulations! You may soon receive a phone call from the local newspaper's reporter. Start preparing your answer now, recalling this maxim: "You'd be amazed how little a reporter on deadline will settle for."

Some possible answers:

- "Well, the vote went my way, but I can't really say I won. Now I'll have to work especially hard to convince my neighbors that amateur radio has value. In addition, I heard their concerns about interference loud and clear. I'll do whatever I can do to avoid it."
- "I'm no winner here. The neighbors are upset. I have a lot of work to do."

If You Were Denied

I feel your pain. You may soon receive a phone call from the local newspaper's reporter. Start preparing your answer now, recalling this maxim: "You'd be amazed how little a reporter on deadline will settle for."

Some possible answers:

- "Well, the vote went against me, and I'm not sure of what to do next. If you'd like, please feel free to call me back in a few months."
- "Gosh, I thought I'd done a decent job of pointing out that Federal law requires that local authorities must accommodate amateur radio. Right now, however, I can't really say what I might do next."

Page 8.12 – right hand column, low, after three bullets:

Remove existing paragraph. Insert:

Why? For the reason in an expression oft-attributed to Mark Twain: "Never argue with someone who buys ink by the barrel and paper by the ton."

Page 8.13

For other thoughts on dealing with the press, read "Hard Pressed," reprinted below in Chapter 9.

Page 9.1 – just before “If You Won”

If you get a call from a reporter shortly after the hearing, return it quickly or you'll forfeit your chance to comment. Remember this rule, however: "You'd be amazed how little a reporter on deadline will settle for."

Page 9.2 – just before “Or you may appeal, . . .”

Speaking of submitting a different plan, states vary on the question of whether you can re-apply right away to a Planning Board or Zoning Board of Appeals. In Pennsylvania, the matter is left to the regulations of local authorities. Your community may not have a rule that prevents re-applying right away. In other words, you could get lucky and re-apply, attempting to meet each and every stated objection to the application. In Massachusetts, a favorable vote on a re-application would require a super-majority vote, with a finding of “specific and material changes in the conditions upon which the previous unfavorable action was based.” Without such a finding, an applicant must wait two years before a permit may be granted after a denial. The meaning of all this is that you'd be better off to delay your first hearing and submit a really good plan, with a really good supplement explaining your plan and the controlling law, than to assume you can do better the second time. Do you really want to wait two years?

Page 9.2 – after the last sentence (“Remember that.”). New sub-section:

Dealing with the Press

What follows may be the best article ever written on how to deal with the press, whether before or after your hearing. It appears with the permission of the magazine which originally published it, and the permission of the author, who, incidentally, is WA2HNI (and whose father was W2HUG!). It offers some real insider views.

3865 words, Fall 2001 Issue, pages 25 *et seq.*

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Hard Pressed

To talk or not to talk? How to protect your case, help your client, and defend your reputation when the media comes calling.

By David Reich

FROM THE SCOPES “MONKEY” TRIAL to the trials of the Rosenbergs and Dr. Sam Shepard, from the congressional Watergate and Iran-Contra hearings to events like the Elian González custody battle and the Bush/Gore presidential election, some of the most riveting news stories since the end of World War I have had lawyers at their forefront. Lawyers in court, lawyers at press conferences on courthouse steps, and in the last decade, via regular television exposure, law professors have become household names, as impartial “legal analysts.”

Even the events of September 11, while not at first glance a legal story, will sooner or later become one, and as criminal defendants are brought to trial and corporations sued in connection with the World Trade Center and Pentagon attacks, legal point and counterpoint will flicker once again on the nation’s television screens. “More and more of what we do as a society seems to be about law,” says Steven Weisman ’73, who hosts an on-air legal clinic on Boston’s WBIX radio. “Many times it involves trials, and other times legislation and regulation or resolution of disputes. Law is involved in so many stories.”

Since the O. J. Simpson trial, media have discovered that legal stories can attract and hold an audience. Laurie Levenson, a Los Angeles law professor who has served as legal analyst for three major television networks, says legal stories’ appeal can range from the civic: “In the Rodney King case the issues of race and police conduct really mattered; they really affected people’s lives,” to the sensational, “O. J. was a soap opera with real people as stars.” Professor Dale Herbeck is chair of the Boston College department of communication and teaches courses on law and media. “Crime is a natural

for media interest,” he observes. “So much of what crime is about is narrative.” Indeed, trials and the events leading to them offer three classic story elements: conflict (between litigants and between opposing lawyers); mystery (what really happened?); and suspense (who will prevail?).

Combined with unprecedented growth in the number of media outlets—especially websites and all-news cable channels—the growing interest in legal stories has meant more depth of coverage, says BC Law Professor Robert Bloom ’71, who has explained law and legal procedure to NPR, the Fox News network, the *New York Times*, and *Newsweek*. Now, he says, “they don’t just report the crime, but the legal issues behind it.” He explains that the increase in media outlets has created competition for audiences, thus, “each outlet is looking for another angle, so that their coverage is different from that of other outlets.”

GETTING IT WRONG

UNFORTUNATELY, THE LIKELIHOOD OF MISREPORTING rises in proportion to a legal story’s depth. Some blame rests with lawyers, says Levenson. “Lawyers don’t know how to talk to journalists,” she says. “They use lawyer words instead of real people words. They don’t distinguish between what the law says and how they predict [a case] will come out. And a lot of lawyers will talk about things they don’t know about. One of the hardest things for a lawyer to say is ‘I don’t know.’”

However, much of the blame rests with the media. Because most reporters do not have law degrees, they lack detailed understanding of the law or the way the legal system operates. “Legal issues these days are too complex for a reporter even to understand his sources without legal training,” says Steven Weisman. “That’s why, in the Simpson case, only a handful of reporters picked up on the larger legal issues, such as how evidence is portrayed.” In that instance, he says, some reporters fell for the argument that you can change DNA evidence to make it appear to be someone else’s. Weisman suggests that reporters covering legal stories should have a law degree as well as a few years’ experience in law practice, “to understand the practical elements of the stories they are covering—what goes into a plea bargain, for example.”

Worse than the lack of a law degree, many reporters who cover trials have little experience on the legal beat, observes Dan Kennedy, media critic of the *Boston Phoenix*, who covered the Woburn, Massachusetts, toxic waste trial depicted in the book, *A Civil Action*. The media, says Kennedy, often “send in general assignment reporters, and they end up groping around in the dark.”

Even when reporters do have law degrees, few of their readers do. Thus, legal issues must be simplified for popular consumption, says Michael Cassidy, associate dean for administration at BC Law and former chief of the criminal bureau at the Massachusetts attorney general’s office. In addition, legal cases can be long and complex, and the size of television and newspaper stories is limited by airtime and column-inches. “Frequently it is impossible to summarize a legal issue, claim, or defense in a hundred words or less,” says Cassidy, “so reporters get it wrong in trying to do so.”

Former Boston television reporter David Ropeik makes a similar point. “A news story isn’t a record of a trial,” he says. “It’s a challenge to the reporter to include the context, subtleties, and extra detail that can help make a story complete and accurate.”

Another more pernicious cause of misreporting is the media’s tendency to emphasize, in Ropeik’s words, “the more dramatic, controversial, and negative aspects of anything they report.” Criminal defense lawyer J. W. Carney Jr. ’78, who made headlines defending abortion clinic gunman John Salvi, explains that “some media are as much in the entertainment business as they are in the news reporting business.... This leads reporters to emphasize the sensationalistic aspects of a legal story rather than the core substance of a case.” The *Boston Globe* story on opening statements in the Salvi trial led with the prosecution’s opening and didn’t mention Carney’s defense opening until the eighteenth paragraph, he recalls, and adds, “I was disappointed, but then I read the *Boston Herald*, and it took twenty-seven paragraphs to mention that the defense had also made an opening statement.” (By contrast, he credits the *New York Times* with mentioning the defense case in the second paragraph of the article on the opening statements in *Salvi*.)

Ropeik cites a high-profile case he covered for Boston’s Channel 5—socialite Claus von Bülow’s retrial for the attempted murder of his wife—as another example of the media’s being blinded to a crucial issue by its zeal to “play up the aspects of a trial that are most attention-getting but may not be the most important for the trial’s outcome.”

A turning point in the von Bülow retrial came at the end of a three-day-long hearing on the expertise of a doctor who was prepared to testify to the presence of scratches, signs of a possible struggle, on the body of the comatose Mrs. von Bülow when she was first brought into the hospital. The judge ruled that the doctor couldn't testify because he "wasn't an expert in the field of scratches," Ropeik says. "She based her ruling on a three-to-two ruling in a roughly similar case in Michigan. Her decision got reported [by most media outlets] but not the flimsy reason for rejecting this pivotal piece of evidence."

WHY TALK?

KNOWING OF THE MANY OBSTACLES to good reporting of legal stories, why would a lawyer ever talk to a reporter? Among the nobler motives is the wish to improve public understanding of the law. "It's important that the public trust the legal system," says the Law School's Bloom, "and the more you know about the system, the more you can look at it in a positive way, and in a critical way.... [This] can lead to changes in the system through the legislative process." In their daily work as litigators, lawyers can use the media "to influence the public," Bloom continues, "and if it's going to be a jury trial, to influence the jury pool."

Weisman says that a jury can come in with subconscious biases that are molded by the media, so to ignore the media is to do so at the peril of yourself and your client. Cassidy adds that "criminal defense lawyers and civil lawyers on the plaintiff's side have the most to gain from using the media.... David has more chance of beating Goliath if public sentiment is on his or her side."

Defense lawyer Carney counters that media coverage of criminal trials is almost always slanted toward the prosecution. He says, "The prosecution's case is already a headline: 'The defendant killed his estranged wife and kids, and their bodies were found buried in a trunk in the backyard.' Whereas some defense lawyers, talking to the press, often feel they must resort to some lame platitude such as 'the defendant is cloaked in the mantle of innocence.'" Levenson, who, like Cassidy, once worked as a prosecutor, is nonetheless inclined to agree with Carney. She points out that in many criminal cases, prosecutors can produce dramatic images such as tables of weapons and drugs for the cameras of newspaper photographers and television stations. "And then," she adds, "the

prosecutor stands next to the flag—that makes a good image. The defense lawyer stands next to a guy in prison garb—that doesn't make a good image.”

So, why does Carney talk to reporters? “Was it Mark Twain who said, ‘Never pick a fight with someone who buys ink by the barrel’? As a criminal defense lawyer,” Carney says, “I have to be aware of the damage the media can do to my clients if they really want to get them.... Nothing I put in the media ever helped a client,” he admits, “You can only hope to do damage control if you're a defense lawyer.”

As for prosecutors, aside from trying to get the public behind a prosecution they can use the media in a number of ways in keeping with their governmental role. During her days as a prosecutor, Levenson says, she talked to the media about a pending case “to let the public know the job was being done, to let other perpetrators know we were on their trail, and to let other victims of the defendant know about the charges so as to encourage them to come forward.”

Kevin Burke '71, the district attorney of Essex County, Massachusetts, says his office talks to media mainly during criminal investigations, “to release information related to the public's need to know in a public safety sense, or if suspects have fled, to encourage the public to help us find them.” Favorable coverage of a high-profile case “doesn't hurt [a district attorney] if you're running for reelection,” he adds, “but it doesn't help your case, except maybe when it comes time for sentencing. Judges are human, and public opinion can creep in sometimes.”

Media can also create the climate for thoughtful reconsideration of questionable verdicts, says Boston's Channel 4 reporter Dan Rea (who has a law degree). His reporting helped get a commutation for Joseph Salvati, who served thirty years in prison for a murder many people feel he didn't commit. “The court of public opinion can sometimes provide you justice that courts of jurisdiction cannot provide,” Rea says.

While media generally show less interest in civil cases than criminal ones, spectacular tort actions can draw its attention, and then it can be useful for both defendants and plaintiffs to think about a media strategy. According to Dale Herbeck, many corporations, when they're sued, will hire a media relations firm before they search for legal help. After all, their public image is at stake, and so is money in whatever amount the plaintiff is demanding. Plaintiffs' lawyers, meanwhile, can use negative

publicity about a defendant to force a favorable settlement. Regarding the recent cases against Firestone, Herbeck says, “Media coverage has so sensitized the public to problems with Firestone tires that the company knows if it goes to court, it is going to get pummeled.”

MEDIA RELATIONS 101

IF YOU DECIDE IT IS IN YOUR INTEREST to talk to a reporter, common sense and common courtesy will go far in helping you avoid pitfalls and getting the most from the encounter. Here are some suggestions from experts and practitioners.

Be honest. Don’t ever mislead reporters, let alone misrepresent a fact, warns BC’s Herbeck. “The media is very good at exposing inconsistencies,” he says.

Maintain your civility. Snide and supercilious comments don’t play well with reporters—or their audience. Neither does gloating when you’ve won a case or blaming someone else when you have lost.

Return phone calls promptly. “One of the things lawyers frequently do not understand is that reporters are working under a deadline,” says Cassidy. “Waiting until the end of the day to return a phone call is not going to cut it if the radio interviewer is looking for a sound bite for drive time. Lawyers who want to be responsive need to understand the different media and their deadlines.”

Never say “no comment,” on camera or in print. Carney jokes that when a defense lawyer refuses to comment, “People psychologically see a neon sign on your forehead blinking, ‘Guilty, guilty.’” Herbeck adds that a “no-comment” strategy “licenses the media to cover the story however they want. If you say ‘no comment,’ you are, in effect, commenting. In most situations, it communicates the inference you’re trying to avoid. ‘How do you explain your client’s fingerprints on the gun?’ Saying ‘no comment’ implies you don’t have an explanation.”

Cultivate relationships with reporters. As a reporter, Ropeik had relationships with both criminal defense lawyers and prosecutors, whom he would call for answers to legal questions brought up by trials he was covering. “Then, when I would cover one of their trials, they would know that (a) I’m friendly and (b) I know the law.” Kevin Burke’s

office assigns the media outreach to an on-staff specialist who can answer legal questions over the phone and who holds seminars on criminal procedure basics for reporters new to the legal beat.

Know in advance what you intend to say, practice saying it beforehand, and during the interview, stay on point and speak concisely. Most reporters are looking for brief, punchy quotes, so rambling speeches and elaborate phrasings aren't likely to get picked up. By contrast, says David L. Yas, publisher of *Massachusetts Lawyers Weekly*, "if you say something that's sexy or snappy and encapsulates the case, we're probably going to use it."

Be careful how you frame a legalistic argument. "There are certain legal strategies that work well in court but not with the media," Herbeck says. "For example, a motion to get evidence suppressed if it has been obtained illegally. It's important...to explain to reporters that it's not about this particular evidence; it's about a larger constitutional principle."

Ask questions before you answer questions. Make sure you understand what you're being asked, and assess the reporters' knowledge of the legal issues underlying their questions so that you can fill in any needed background.

Do your homework. Don't discuss a case until you're certain you know the facts and the law. When in doubt, look it up, Levenson advises. "Don't guess, don't speculate, don't fudge. There are so many times when people shoot from the hip about what a pleading says, what the code says, what the transcript says." Even better, when it's possible and answers the question, fax a copy of the document instead of trying to paraphrase it.

Don't talk off the record, except with reporters you know well and trust implicitly. Ropeik says that attorneys who gave him information off the record that helped him put the facts in context made him trust and rely on them more. On the other hand, both Ropeik and Levenson know of situations where off-the-record comments were printed with full attribution. (For definitions of *on-the-record* and *off-the-record* and a discussion of the gray area in between, see sidebar.) During the Rodney King beating trial, "there was one reporter who took something I thought was off the record and distorted it and used it," says Levenson. "I think I made a personal comment about one of

the litigants. It was very painful to me. That's when I grew up." Now she goes by the rule "unless it's a journalist you know *so* well, *nothing* is off the record."

If you suspect your case or client is going to end up in the media, be proactive and try to shape the coverage. "If I were representing a developer," says Herbeck, "who wanted to put up more houses and take down those woods, I would get ahead of the curve and shape public opinion. The story can be framed as 'here's this arrogant businessman who wants to impose a development on us,' but it can also be framed as 'here's this responsible businessman who wants to work with us.' "

Be as forthcoming as you can afford to be. Ropeik recalls that the *Civil Action* trial, held in federal court where television cameras are banned. The attorneys for the plaintiffs shared the physical evidence they would be presenting the next day so Ropeik could get it on videotape. Meanwhile, the defense was wholly uncooperative, he says, "so that some of their information and visual material, which would have helped me balance the story, was only present in court and wasn't included in my journalism."

WHO NEEDS MEDIA SKILLS?

CARNEY'S SPECIALIZED TECHNIQUES aren't taught in most law schools, but neither are more basic media guidelines. No one interviewed for this article knew a law school that has a course on media relations. One near-exception is a course at Loyola School of Law, where Levenson teaches, that introduces law students to the profession of legal journalism (several of her former students now write for legal newspapers) and includes sessions on how a lawyer can best deal with media.

One reason for the lack of media education in law schools is a widespread feeling that only a small percentage of lawyers ever face a reporter's microphone. Carney says "one hundredth of one percent of lawyers" have any use for media relations skills.

Herbeck agrees that the overwhelming number of legal cases don't interest media, but he still thinks most lawyers can benefit from knowing how to handle an interview. "A DWI is not a big issue unless it's some prominent local individual," he explains. "A divorce is not a big issue unless it involves a pillar of the religious community. Sooner or later," he concludes, "most attorneys will run into a case" that will require them to talk to a reporter.

Levenson concurs. As a network legal analyst, she often speaks to bar groups on media and law, and she starts the sessions by asking how many in the audience have ever been interviewed for either radio, television, or a print medium. Typically more than 90 percent of the audience members raise their hands. “These bar groups include all kinds of lawyers,” she says. “People who do wills and trusts, bankruptcy, and all kinds of boring stuff. But sooner or later everyone gets their fifteen minutes of fame. The question is, how wisely do you use it?”

David Reich is a regular contributor to BC Law Magazine.

[Sidebar 1]

What’s Off the Record?

THE TERMS *on* and *off the record*, *on background*, and *on deep background* can mean different things to different reporters, so while the definitions given here are generally accepted, it makes sense to spell out exactly what you and the reporter are agreeing to before you start an interview.

Unless a reporter says otherwise, all conversations between you and the reporter are considered on the record. This means anything you say can be quoted verbatim, paraphrased, or summarized. It can also be attributed to you by name, with your job title or other identification.

If a reporter agrees to speak with you off the record, nothing you say can be used in any form.

If a reporter agrees to speak with you on background, anything you say can be quoted verbatim, paraphrased, or summarized, but the reporter may not identify you as the source except in a generic way—e.g., as “a Manhattan civil rights lawyer.”

If a reporter agrees to speak with you on deep background, your words can be paraphrased or summarized but not quoted. Also, conversations on deep background must be reported without attribution of any kinds.

—DR

[Sidebar 2]

Advanced Media Manipulation

TRYING TO HAVE A WARMING EFFECT on one's fellow humans usually makes a lot of sense, especially for a lawyer trying a case. But what if you're defending an unpopular client who appears to have committed a horrible crime, and it looks as if the media can do your case more harm than good? You may want to adopt some of J. W. Carney's media damage-control techniques.

1) In advance of a *telephone interview with a print reporter*, Carney suggests that you type three sentences on different aspects of the case, as you want them printed. Tell the reporter you want to give some quotes on the record, then go off the record to talk more freely, then go back on the record to answer questions. Read the quotes slowly to make sure the reporter writes them down as you want them. Next, go off the record and provide the background that will not be attributed to you—disparage government witnesses, mock the police investigation, brim with overconfidence about your planned defense. Finally, arrange to be interrupted by a phone call and tell the reporter you'll be in touch before deadline. Regrettably, you can't, and the only thing that is printed in the paper is your three perfectly formed sentences.

2) For a *courthouse steps interview with television reporters*, Carney says to prepare the one sentence you want to see on television that night, and no matter what you're asked, repeat that sentence word for word with great sincerity. For example, your sentence might be "I intend to investigate this case fully and determine whether there is an appropriate defense," you will use this sentence to answer any and every question.

“To really insure that your sentence will be on television that night,” Carney says, “each time you repeat the answer, start with the name of the reporter whose question you are answering—for example, ‘Valerie, I intend to investigate this case fully and determine whether there is an appropriate defense.’ If the answer doesn’t go with the reporter’s question, she will retape the question so that it fits your answer.”

3) Even if *you don’t want to talk*, Carney advises, “never run from a camera. It makes you look like an unindicted co-conspirator.” Instead, if you have nothing to say, give a multipart answer to every question. “There are four important points to make. The first point is....” Television news can only use twenty seconds of you, and you’ve spoken for much longer. If they only show you saying, “The fourth point is,” the viewers will want to know why they didn’t see the other three. Thus, you haven’t said, “No comment,” but you guarantee there will be no useable footage.

—DR

Page 10.2 – after the bullets, insert:

As you begin the process of erecting the antenna support structure and the antennas to be mounted on it, consider the timeless wisdom reflected in this letter to the Editor that appeared in QST, October 2007, at page 24:

Almost 50 years ago when we built our home that we still live in, I visited our Town Engineer to see if I needed a permit to build a 50 foot tower (now grown to 90 feet over the years). He said I didn't need any permit (today, I'd be thrown out by the ears), but not being a ham, he asked if lots of friends would be helping put the tower up. I said yes, and that I'd probably recruit some neighbors, too. He suggested that I give my wife a camera loaded with a full roll of film (we used film back in the Stone Age) and have her walk around the tower during the day and take pictures of all our interested and helpful neighbors as they were holding tools, pulling ropes, carrying tower sections, looking up and pointing and such. Then, in later years when the neighbors complain about the eyesore in my yard, I could pull out the pictures and show them that they helped put it up. What a wise man he was!

Bob Beaudet, W1YRC
ARRL Rhode Island Section Manager
Cumberland, Rhode Island

Page 10.3 – right hand column, after “enjoy your hamming.” And before “After a few days . . .”. Insert new sub-header:

Neighbors

Page 10.3 – right hand column, after last paragraph, ending in “tranquility.”

Finally, be the first to bring bread and salt, or a bottle of wine, to any new neighbor. Welcome new neighbors to you neighborhood. They'll be less inclined to gang up on you later.

Page 11.2 – LH column, just before “Work Neatly”

Please remember that this suggestion, that you build over the weekend, is put forward with the idea in mind that all proper permits are in hand, but you fear dilatory tactics will be employed by meddlesome neighbors who seek – however improperly – to interfere with your project. Whatever you do, do not brag to anyone (especially neighbors, or an internet reflector), that you've deliberately moved on the project when zoning officials were snug in their beds. Remember, you are the good guy. There is every likelihood that such bragging will later become part of an attempt to put a black hat on your head.

Page 11.4 – RH column, under TVI/RFI Complaint by a Homeowners Association:

Change W4UK to W4U**C**K.

Page 11.8 – LH column, the letter to a neighbor who is a policeman:

Change date from December 7, 1988 to December 7, **20__**.

Change date inside letter from November 30, 1988 to November 30, **20__**.

Insert after sub-head “Escalation is Undesirable”

If this matter escalates, it will involve all sorts of claims by Mr. Ham, based on actions you have taken. **The resultant lawsuit will be expensive for the town. First, no criminal charges could possibly stick, and the Courts do not look kindly on charges which have no basis in law.**

I urge you to consult 47 USC §302a. Devices which interfere with radio reception:

SUBCHAPTER III - SPECIAL PROVISIONS RELATING TO RADIO

...

(f)(2) A station that is licensed by the Commission pursuant to section 301 of this title in any radio service for the operation at issue shall not be subject to action by a State or local government under this subsection. A State or local government statute or ordinance enacted for purposes of this subsection shall identify the exemption available under this paragraph.

Second, Mr. Ham will claim that you have attempted to restrain his First Amendment right of free speech, and attempted to deprive him of equal protection under the law. In that case, . . .

Page 11.8 – RH column, within the letter to a neighbor who is a policeman:

Change date from December 5, 1988 to December 5, **20__**.

Page 11.9 – LH column, last paragraph of letter to a neighbor who is a policeman.

I hope that you and Mr. Ham can work this thing out. If I can be of assistance in any way, **please feel free to contact me.**

Sincerely,

Page 11.10 – LH column. Change SW Bell citation to:

199 F.3d 1185 (10th Cir. 1999)

Change *Freeman* citation to:

204 F.3d 311 (2d Cir. 2000)

Page 11.14 – LH column, refers to Section 302 of the Communications Act of 1934, in a title and a header. The correct citation is to Section 302a. Protection for radio amateurs from any attempt by a municipality to regulate interference caused by a CB operator is therefore found in §302a(f)(2).

Page 11.14 – RH column, should now read:

For a radio amateur, the heart of the statute is found at 47 USC §302a(f)(2): . . .

Page 112.14 – RH column, under “The Renewal,” should now read:

The renewal may be required by the general bylaws of the town

Page 11.15 – LH column, third bullet:

- Some years, then to coincide with license renewal.

[No need to capitalize license renewal.]

Page 14.2 – RH column. Change address of K1NU to:

88 Hildreth St.
Westford, MA 01886
k1nu@k1nu.com

Change K1NU web site to: www.k1nu.com

Page A.3 – RH column, low. In bold letters, add a single word to the beginning of the paragraph.

Nuisance. In any event, here’s an especially dangerous . . .

Page A.4 – RH column, in paragraph A

Typo: “the subject property will **be imposed by Seller or his transferees** . . .

Page A.5 – RH column, after “2. Figure out . . .

add ARC

“architectural control committee” (generally known as an “ACC”), or architectural control committee (generally known as an “ARC”), but there is no ACC/ARC anymore . . .”

Page A.5 – LH column, bottom

Typo: Notice of Violation Received

Page A.7 – LH column, before “Local Zoning Bylaws and Ordinances”

CC&R Strategies

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Fred Hopengarten, Esq., K1VR

www.antennazoning.com

OK, you’ve been warned. DO NOT BUY A HOME IN A CC&R CONTROLLED COMMUNITY. But what if you already live there, or the situation is unavoidable? Here are some strategies for dealing with your predicament.

The Early Buyer Strategy

If the developer has just started, and sales look to be slow, there’s no harm in asking, especially while the developer is still the entire Home Owner’s Association (i.e., the power of the HOA has not yet transferred to an independent association). This strategy is so well illustrated by N3RR, that I’ll just let him tell his own story. After the N3RR story, read the document negotiated by K6JRY to see how it is done legally.

From: "Bill Hider (N3RR)" <n3rr@erols.com>
To: "Tower Talk (mail list)" <towertalk@contesting.com>
Subject: [TowerTalk] Negotiating CC&Rs
Date: Tue, 1 Jan 2002 13:54:04 -0500

In 1985, I negotiated exemption from the CC&Rs on a new, yet to be built, house in a local subdivision. I had a fully executed purchase agreement that included an exemption from the CC&Rs. Those CC&Rs prohibited ANY external antennas and/or towers. My exemption allowed an amateur radio tower not to exceed 100 feet tall. The purchase agreement also included a one-week window within which I could get out of the contract for any reason. (This allowed me to look at the zoning regulations for the property and see if amateur radio towers were prohibited or not.) I ultimately terminated the

agreement for other reasons, not for CC&Rs or zoning, both of which I successfully passed.

Here's what I did for the CC&Rs:

The house was one of the first few (but not THE first) houses being built a new subdivision. In fact, the house was not under construction yet. The builder would begin construction when a contract was consummated. The CC&Rs were written such that the builder (and several of his management staff) constituted the homeowners' association. Per the CC&Rs, when the last house was sold, the then-homeowners then constituted the homeowners' association. The builder would be then no longer involved.

Well, I negotiated with the builder's representatives and the builder's on-site real estate agent for an exemption from certain paragraphs in the CC&Rs that prohibited towers. The CC&Rs gave specific authority to the homeowners' association to make modifications to the CC&Rs and, as I mentioned, the builder and his managers constituted the association at that time.

****This is the important part of this story: If you can negotiate with a smaller number of people who are not owners, and who care only that their property gets sold, you may have a chance to negotiate out of the CC&Rs.****

So, my house purchase agreement contained a specific rider that specified the changes to the CC&Rs that my attorney and I wrote, was signed by all members of the then-homeowners' association, and was attached to the purchase contract as a rider. It was **beautiful**!

Alas, I decided to exercise my termination rights because I decided to buy another property (my current QTH: www.erols.com/n3rr). I changed my mind because this new property was larger, on higher ground, had NO CC&Rs and NO zoning prohibitions. But, I had an interesting experience with CC&Rs along the way.

Bill, N3RR

If you are successful in your negotiations with the developer, here's what well done paperwork looks like:

BK1416 PG182
DECLARATION OF SPECIAL COVENANTS AND RESTRICTIONS ON

HARBOUR RIDGE

RESIDENTIAL CLUSTER DEVELOPMENT BK1416 PG182

WHEREAS, HARBOUR RIDGE ASSOCIATES, LLC, a duly organized Rhode Island Limited Liability Company, the owner and developer of a certain tract of land situated in the Town of North Kingstown, County of Washington, State of Rhode Island, filed certain "Declaration of Restrictions and Protective Covenants" upon the above entitled plat which were recorded on March 2, 2000 at 10:18 a.m. in the Land Evidence Records of the Town of North Kingstown in Book 1237 at Page 309; and

WHEREAS, it is the desire and intention of Harbour Ridge Associates, LLC to grant a variance to paragraph four, letter b, of said Covenants and Restrictions as it applies to Lot No. 18 (Eighteen) on said recorded Plat entitled "CLUSTER SUBDIVISION PLAN HARBOUR RIDGE, NORTH KINGSTOWN, R.I. FOR HARBOUR RIDGE ASSOC., LLC, LOTS 1, 112, and 122 ON A.P.116 AND LOT 7 ON A.P 115 DAVID D. GARDNER & ASSOCIATES, INC., 200 METRO CENTER BOULEVARD, WARWICK, RI 00228 (401) 738-3200 ENGINEERS.SURVEYORS, PLANNERS DATED ISSUED: 3/25/98, D.E.M. REVISIONS 8/1/98 SCALE 1"=80' ", and recorded in the Records of Land Evidence of the Town of North Kingstown, Rhode Island and designated as Plat No. 1638.

WHEREAS, pursuant to Paragraph 12 of said "Special Covenants and Restrictions", Harbour Ridge Associates, LLC acting as the "Developer" and title Owner of two-thirds (14) of the total lots (said recorded lots in above referred Plat No. 1638, lots 1, 2, 3, 5, 6, 7, 9, 12, 13, 15, 16, 18, 20, 21) votes to authorize the following Amendment to said "Declaration of Special Covenants and Restrictions":

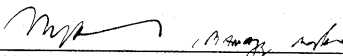
Paragraph 4.6 shall be amended to allow the next record title holders of Lot 18 on said recorded plat, Gerald T. and Carol R. Plemmons ("Plemmons"), to install and operate a radio tower - US Tower-MA series (or similar type of retractable tubular tower) and a Cuschcraft x 7 (or similar Yagi type) antenna. The "Plemmons" agree to keep said tower and antenna retracted when not in use, and to locate said tower and antenna so as to minimize its visibility from the street and abutting lots when it is retracted. The Amendment herein granted to allow an antenna in excess of 30" shall be effective for only as long as Gerald T. and Carol R. Plemmons, either jointly or individually, are record title holders of said Lot No. 18, and said amendment/variance shall not run with the land. The "Plemmons" further agree to cooperate with abutting lot owners and the Harbour Ridge Homeowners Association, Inc. regarding any reasonable request of rules they may make that do not unreasonably interfere with the use of said Ham Radio Tower and Antenna.

BK 1416 PG 183

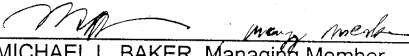
It is the intent of said Developer that this Amendment shall apply to Lot 18 only, subject to restrictions set forth above and that all other restrictions and protective covenants set forth in Book 1237 at Page 309 et seq. and Book 1243, Page 283 of the Land Evidence Records of the Town of North Kingstown are kept in full force and effect.

IN WITNESS WHEREOF, HARBOUR RIDGE ASSOCIATES, LLC has caused these presents to be signed this 28th day of December, 2001.

HARBOUR RIDGE ASSOCIATES, LLC
Acting as Developer

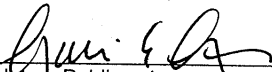
By: 
MICHAEL L. BAKER, Managing Member

HARBOUR RIDGE ASSOCIATES, LLC
Acting as Record Title Holder of Fourteen (14) Lots,
Numbered 1,2,3,5,6,7,9,13,15,16,18,20,21, that being
Two-thirds of said lots in the recorded Plat referenced above.

By: 
MICHAEL L. BAKER, Managing Member

STATE OF RHODE ISLAND
COUNTY OF KENT

In Warwick, on the 28th day of December, 2001, before me personally appeared MICHAEL L. BAKER, Managing Member of HARBOUR RIDGE ASSOCIATES, LLC, to me known and known by me to be the party executing the foregoing instrument, and he acknowledged said instrument, by him executed, to be his free act and deed in his said capacity and the free act and deed of said Limited Liability Company.


Notary Public Laurie E. Lewis
Commission Expires: 10/21/04

TOWN OF NORTH KINGSTOWN
JAMES D. HARRIS, TOWN CLERK
2001 DEC 28 PM 12: 51

And what does the implementation of such a variance look like? Here are the photos.



Home of K6JRY, antenna down.



Home of K6JRY, antenna up. Photo shows a US Tower, Model MA-770MDP (the motor drive version), which nests to ~23'. Fully extended, it can reach (without additional mast) 71'. The foundation is 5' x 5' x 5' of reinforced concrete.

<http://www.ustower.com/>

The “Last Lot” Strategy

Suppose the developer has nine lots, has sold eight, and you come along. He is no doubt emotionally tired of dealing with this development. His loans have been outstanding for a long time and he would like to close them out. You would like to buy the place, but it has the standard CC&R's used by developers in your area. What do you do?

If you come across a “motivated developer/seller” (whether it is the last lot or not), and he has not yet turned control of the property over to the Home Owner's Association, approach him with the idea that (1) he should change the bylaws and abandon the CC&R's (if that is still possible), or (2) he should, in his role as the sole member of the Architectural Review Committee (or equivalent) issue you a waiver/permit/permission (the exact wording depends on the HOA rules). See the example of the K6JRY paperwork above.

You may understand this concept, but the game isn't over yet. The developer may want to issue a waiver for only the exact antenna system you propose, showing both the

antenna support structure and the antennas on it. You probably want a complete waiver of any antenna system you contemplate, now or in the future, which the developer may think is too “open-ended.” An example of a compromise you might propose, given that you are the beggar? Perhaps any antennas that can be safely supported, no more than two antenna support structures, and no antenna support structure may exceed 89 feet in height.

The Second Lot Strategy

The “Early Buyer” and the “Last Lot” strategies are designed to appeal to the developer’s needs. There is no shame in that. But those strategies depend on “timing” – being first or last. What if you are somewhere in the middle?

A back lot? While untested to my knowledge, there may be no harm in asking if you could buy a second lot, but this time a “back lot.” A developer may have purchased a very large parcel of land. In planning the development, roads may have been platted with one or two acre homes along each street, with additional land behind each home preserved as a green space or buffer. Think about whether the developer might be willing to sell you a “back lot” in exchange for a promise that it will not be developed with another home – but rather that it will just have antennas on it. Keep your eyes open for an advertisement or comment that “additional land is available.” You never know. Perhaps the “front” lot will carry the Common Covenants, but the “back lot” can be obtained as a separate lot, without the Common Covenants, in exchange for a restriction against building a house back there.

An adjacent lot? Or perhaps you can purchase a second lot along the same street, buying two lots at the same time and thereby becoming an important customer, saving the developer the cost of installing water/sewer/cable TV/telephone lines, in exchange for removal of the restriction against outdoor antennas.

The Developer’s Lot Strategy

Somewhat along the lines of the “Last Lot” strategy is the “Developer’s Lot” strategy, best explained by K4XS.

Date: Mon, 7 Apr 2003 20:34:16 EDT
To: TOWERTALK@contesting.com

Do not rule out towers just because you see a phrase that refers to no towers or something like that. READ THE RESTRICTIONS CLOSELY FOR LOOPHOLES! It worked for me.

I live in a deed-restricted community that has restrictions against towers, but I have three 200-footers, plus several smaller ones. How did I do it?

In my development of around 40 units, all an acre or more, the last one on the street was reserved for the owner and developer, who had a tract which was eight acres MOL [More or Less]. His tract was excluded from the deed restrictions of the development. When I went to buy the undeveloped lot, I checked and found the loophole.

Many of the neighbors complained about the towers but I had no problems. They should be happy, in addition to towers, I could be raising horses, chickens, and pigs. Ain't no restrictions for me about them either. All this is in the middle of a 2500 to 4000 square foot home neighborhood. Again check the fine print!

Bill K4XS

You Might Get Lucky, Part I -- No Restrictions on File

Each state varies, so be sure to enlist the help of a local lawyer who really understands real estate. There is a chance that your developer never correctly filed the CC&R's and that, though someone may waive them in your face, the restrictions are not valid. If this is the case, be prepared to do battle, but there's chance you could prevail. Nonetheless, do not confuse a lack of CC&R's in your closing packet, or in your files elsewhere, with a failure to correctly file the covenants at the Registry of Deeds. You may need a trip to a courthouse to discover the real answer to the question as to whether or not the covenants are really on file. Only if you are really lucky, and your county is really modern, is there a chance that the covenants are available on line.

You Might Get Lucky, Part II – Someone Made a Mistake

Bales v. Duncan, 231 Ga. 813 (1974), stands for the proposition that the covenants did not specifically or impliedly apply to "Tract A," when all other references were to lots with numbers. In Georgia, when construing the applicability of a restrictive covenant to a questioned parcel of land, a presumption will operate in favor of the free use of the land by its owner and any doubt will be resolved in favor of the owner. The subdivider's intent did not clearly appear in the original documents.

The *Bales* case was cited and affirmed in *C.H.E., LTD. et al. v. KENT et al.* (262 Ga. 418) (419 SE2d 915) (1992), holding that "(s)ince the covenants apply to lots and the northern portion of the tract is not a lot, it follows logically that the covenants do not apply to the northern portion of the tract."

You Might Get Lucky, Part III – The Plaintiff Fails to Act in a Timely Way [Doctrine of Laches]

In the *Bales v. Duncan* case above, the Plaintiff attended a hearing on a project in August of 1972. The landowner had spent approximately \$15,000 (1972 dollars) on the

project when the Plaintiff filed a complaint seeking an injunction in October 1972. The Court held (at 814):

It has long been held that "the extraordinary equitable relief of injunction will be denied a party where, with full knowledge of his rights, he has been guilty of delay in asserting them, and has allowed large expenditures to be made by another party on whom great injury would be inflicted by the grant of the injunction." *Davies v. Curry*, [230 Ga. 190](#), 192 (196 SE2d 382) and cits.

Failure to Give Notice

Again, you will need a lawyer with particular knowledge of your jurisdiction. If you were not properly notified of the restrictions (was a copy given to you at the time of the closing?), or the restrictions were not on file at the county registrar's office, they may not be valid. Watch out though, in some states the burden may be on the purchaser to investigate all restrictions on land. This is a good reason to buy title insurance, because your only recourse may be to take advantage of whatever options you have under your title insurance and try to unwind the deal.

Restrictions with an Expiration Date

Some CC&R's contain an expiration date, after which time the CC&R's are no longer valid, unless renewed. You won't know until you read them. Don't wait until the closing to read them. This is a variation on the classic invocation in the computer world: RTFM!

As you read the CC&R's, keep your thinking cap on. One ham reported reading a set of CC&R's that described limitations on water sports, but the home in question was located in a Nevada desert! He had been sent the wrong set of CC&R's, and, be assured, they are not all the same.

However, after you've read the CC&R's, more homework may be necessary. Were they renewed? Watch out, some CC&R's, or HOA rules, automatically renew.

CC&R's are, after all, a restriction on land which may be frowned upon in certain jurisdictions (North Carolina is one). So check to see if your state has a statute which limits the life of CC&R's and causes them to expire unless affirmatively renewed.

You never know. Whether by their own provisions, by inaction, or by statute, the CC&R's may have expired.

Some smarty pants may point out that a new set of restrictive rules could be voted in. If there is presently no set of rules to prevent your antenna system, but you fear just that possibility, be sure to read the section on adoption of rules or regulations. If a new rule or regulation requires unanimous consent of all homeowners, you hold a veto. But if the rule just requires a majority, there could be trouble on your horizon.

The Non-Existent or Dead HOA

In some developments, the developer turns over control of the development to the HOA when a certain percentage of homes, or all of the lots, or all of the homes (or something!) occurs. In some developments, by oversight, this never happened, and the developer still controls the HOA or ARC, though his interests have long since moved on. If, by some chance, you find this to be the case, consider offering the developer \$1,000-5,000 to issue you the permission necessary for what you want to do. After all, if he's no longer really around the development, it might be "found money" for him and no skin off his nose. You never know.

If he doesn't want to actually sign the papers, ask if he'll appoint you as the Chairman of the ARC, and see if you can issue your own permission!

The Moneyless HOA

You may find a situation where the HOA now has control, and you've received a no (a denial of permission), or, if you've erected an antenna system, you may even receive a "nasty gram" (better known as a lawyer's letter) from the attorney representing the HOA. Fear not, until you know more. The game may not be over. Here are some lines of investigation worth pursuing.

Is this an HOA where the annual dues are \$25? Or \$250? Are there nine homes, or 2,000? The answers to such questions will tell you whether the HOA has the economic power to pursue a lawsuit against you, or, at least, whether they might be willing to negotiate a satisfactory accommodation before they run out of money to pay a lawyer.

On the other hand, do not be overconfident, because the HOA bylaws may provide that if you lose, you must pay the fee for the HOA attorney. So you may be putting yourself at risk.

In any event, read carefully to see if neighbors can enforce the bylaws without using the HOA to do the dirty work for them, and whether they can recover their fees.

Not all CC&R's are the same. You must know what you're dealing with.

Transferability

If you get into negotiations, ask that any favorable outcome be transferable to subsequent owners. It's the kind of thing that would be nice, and you could choose to give up this request later if you need something to trade.

Propose a Change in City Zoning Bylaws

The following strategy may not help you if you've already bought and moved in. But if you haven't yet bought, and the development into which you might move has not

yet really begun, you might consider proposing a change at the community level. Here's what happened in Acworth, GA.

GEORGIA COMMUNITY TO ALLOW HAM ANTENNAS IN CC&R-GOVERNED SUBDIVISIONS

Tim Richardson, W4IOU, an alderman in Acworth, Georgia, reports that his city has added language to its Residential Development Standards that allows antenna installations for amateurs living in subdivisions governed by deed covenants, conditions and restrictions (CC&Rs) and homeowners' associations.

"While a special stipulation previously was added to each new residential zoning request before the city, this incorporates the language directly in the zoning and development standards," Richardson explains. According to the language incorporated into the ordinance November 5, "Antennas for amateur radio stations licensed by the Federal Communications Commission will not be prohibited by Declaration of Covenants, Conditions and Restrictions or homeowners' association, and the installation of such antennas must be reasonably accommodated."

Richardson emphasizes that the CC&R restriction only applies to residential development occurring on or after the ordinance's date of adoption. "Any neighborhoods with existing CC&Rs will not be affected, since those constitute a legal agreement accepted by the property owner at the time of purchase," he said. Nonetheless, he called the city's action "a step forward" and said he hopes other hams will work to get similar provisions enacted in their communities. He had help in Acworth. Bob Weatherford, KI4COP, also sits on the Board of Aldermen.

A city of some 20,000, Acworth is about 35 miles northwest of Atlanta, and, Richardson says, one of the state's fastest-growing cities.

ARRL CEO David Sumner, K1ZZ, said the Acworth ordinance was the first to come to his attention. "Congratulations to you and the City of Acworth for your vision," he told Richardson.

The ARRL has supported the repeated introduction of a bill in Congress--"the Amateur Radio Emergency Communications Consistency Act," designated HR 1478 in the current session--to require private land-use regulators such as homeowners' associations to "reasonably accommodate" Amateur Radio antennas consistent with the PRB-1 limited federal preemption. Introduced by Rep Steve Israel (D-NY) the CC&R bill attracted 36 cosponsors during the current Congress, which is about to adjourn.

ARRL discusses a variety of amateur antenna restrictions on its Web site <<http://www.arrl.org/FandES/field/regulations/antenna-restrictions.html>>.

Comments:

Let's assume you can't get the kind of concession from the Board of Alderman that was obtained in Acworth, GA. You could try for an end run that would still be useful. Try to get the state or municipality to adopt a law or bylaw which says:

In no event shall structures for amateur radio use represent a noxious, illegal or offensive use of the property, nor an annoyance or nuisance to the neighborhood.

Join 'Em and Propose a Change in Homeowner Association Bylaws

If you are already a resident with CC&R's, think about running for office. It's not a totally outlandish idea. As KF8ZN wrote on an eham.net thread, on September 18, 2007: "My Solution was to Become President of my Homeowners Association =0)." [Apparently his community then took the position that wire antennas are not antennas!]

If you win an election for an office or board membership, you may be forbidden, by existing bylaws relating to conflicts of interest, from voting on your own application for approval for an antenna system from the HoA or ARC (Architectural Review Committee). But that's OK. You just have to be a bit more patient and subtle.

Here's a suggestion. Propose a change in the bylaws or ARC rules to accommodate OTARD antennas (OTARD stands for Over the Air Reception Devices). Here's some proposed wording, but your Homeowner Association's bylaw may well be written differently. Let's assume that the present regulation looks like this:

No antenna shall be placed or erected upon any property within [the Community] except with prior written approval of Architectural Committee.

You could propose a replacement regulation that looks like this:

Except for antenna systems which, by federal law, may be erected without prior approval of the Architectural Committee, in accordance with 47 CFR §1.4000 (commonly known as the OTARD, or Over the Air Reception Devices rule), see <http://www.fcc.gov/mb/facts/otard.html>, **or antenna systems for any purpose of a height no greater than would be permissible under 47 CFR §1.4000**, no antenna shall be placed or erected upon any property within [the Community] except with prior written approval of Architectural Committee.

[Emphasis added to show you what's going on. Don't use bold lettering when you submit the resolution!]

What does this mean? The OTARD rule almost automatically permits antennas up to 12 feet above the roofline. If you have a roofline at 36 feet, and go 12 feet above that, you could put a tribander at 48 feet. Not good, but not bad either – for a restricted neighborhood.

When asked, your reason for adding the additional language (the language that might allow a Yagi at 48 feet) will be: "Why should we limit it to TV and Wi-Fi antennas? Why not scanner antennas for volunteer firemen and auxiliary police?" As any good politician knows, you'd be amazed what can get passed in the name of public safety.

On the subject of getting the bylaws changed, Allan Yackey, WB9PKM notes:

In our area, many homeowners associations have provisions for proxy votes. While the opposition is likely to show up at a meeting, supporters and those who really don't care are not likely to appear. If you spend time in advance of any meeting getting signed proxies, you can control almost any vote one time. After that, of course, everyone knows about the proxies and it becomes a proxy fight on future issues.

Vote to Rescind the CC&R's

If you read the HOA bylaws carefully, you will read that they contain a provision to permit CC&R's to be rescinded. The vote required may seem overwhelming, but it can be done!

CC&R's typically are involved with smaller properties. And the smaller the properties, the more intense and detailed CC&R's can sometimes get, although that's not always the case. [But what if your development has large lots?] I have 10 acres of land that had (key word -> had), CC&R's.

It [was] my . . . experience that . . . one (or a few) over-zealous CC&R promoter's can easily change the mind of those are are "on the fence" about CC&R's. This occurred in my case. A VERY over-zealous CC&R [enforcer] caused many in my neighbors to take legal action to over-throw our CC&R's. It took 2 years to get written concurrence and have all the legal paperwork done, but I'm happy to report I no longer have to deal with CC&R's on my property.

Depending on how the CC&R's are written, if the necessary percentage of property owners (typically 75-80%) are in concurrence, they can legally overturn and dissolve CC&R's.

KF4HR

The house I live in now had CC&Rs. Some of them were silly, but relevant to the conversation at hand, they prohibited "satellite dishes and other

free-standing antennas". The phrasing leads me to believe the prohibition is against the older 3'-4' diameter dishes, especially since the CC&Rs did permit antennas attached to the "primary structure," provided they didn't reach higher than ten feet above the roof peak. Nonetheless, the HOA chose to interpret as prohibiting the DirectTV & DishNetwork style dishes.

I put up a 6BTV, which extends less than ten feet above the roof peak. And it is attached to the primary structure - it's mounted on the one of the posts of the back patio. About a month after I did so, the HOA association, on behalf of the homeowners, distributed ballots to determine whether the CC&Rs would be revoked. By an overwhelming majority, the residents voted to eliminate the CC&Rs. The full process has taken a bit of time; last I heard the lawyer's still dotting the Ts and crossing the Is, but it's just about finished; meanwhile, while we're waiting for paperwork to finish, the HOA has pledged not to enforce the CC&Rs.

(I'm getting ready to move. Anybody want to buy a house that's driving distance to HamVention? <grin>)

Chris NORZT/8

Make Nice with Neighbors

Sometimes, there is just no way to get what you really need for an antenna system, and you may be forced to live with what you can get. Here's the approach taken by W6QJI, as reported in his letter to the editor, QST, July 2007, page 24.

Here's the solution I worked out with my Home Owners Association.

Most HOAs have a committee whose responsibility it is to make sure there are no serious violations of the CC&R or Bylaw. The first thing I did, immediately after I moved in, was to make social contact with the committee. I gradually brought them up to speed on emergency communications. Our HOA also has a monthly newsletter, and I wrote a series of articles on EmComm and Amateur Radio. After about six months, I gave a brief speech on "When All Else Fails." I then applied for a waiver to put up a GAP multi-band vertical. It passed without comment, except that my neighbors said they felt better when they realized that I was a last ditch communications portal out of the area.

TOM SANDERS, W6QJI

Make Nice with Neighbors, Part II

If things are going well in your dialogue with neighbors, and you have a long time horizon, but the restriction is still there, propose a more aggressive compromise. Look into an unguyed crank-up pole or crank-up tower. You might then propose that it will be down, behind the house and not visible, “when not in use.” As reported by Jerry Plemmons, K6JRY (who, as mentioned earlier in this article, negotiated a variance from the CC&R’s while the developer still held all the votes on the HOA: “Mine started off that way and then stayed up more and more, until everyone got used to it. Now I only bring it down in high winds or when lightning is expected.”

Conclusion

In addition to the tactics described in this note (chapter), the ARRL Book, *Antenna Zoning for the Radio Amateur*, has further discussions on pages A.1-A.8. Furthermore, a contingency clause for a purchase and sale agreement, drafted by Jim O’Connell, W9WU, is on the CD which comes with the book.

It is not the fault of the ARRL that you’ve bought into a community with difficult or impossible CC&R’s. You’ve been warned about just how uphill the road will be. If you come up with yet another strategy, let us know! This is one of the most difficult areas of antenna permission law for a radio amateur.

-End of Article-

Page A.7 – left hand column, top of page, add to citation

Katzman v. Anderson, 359 Pa. 438, **59 A.2d 85 (Pa. 1948)**.

Page A.7 – right hand column, add sub-head.

Vested Rights

If, during the course of your research . . .

Page A.10 - left hand column. Change *Freeman* cite to 204 F. 3d 311 (2d Cir. 2000), cert. denied, 531 U.S. 917 (2000), <http://www.tourolaw.edu/2ndCircuit/February00/97-9141.html>.

Page A.10 - right hand column. “Public Law 103-408” appears above and below “PUBLIC LAW 103-408 – OCT. 22, 1994.” Three mentions is two too many. Remove the mentions above and below.

Page A.11 - left hand column. After “Approved October 22, 1994” add:

Source: <http://thomas.loc.gov/cgi-bin/query/D?c103:1:./temp/~c103axha51:> , or http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=103_cong_bills&docid=f:sj90enr.txt.pdf (last visited June 11, 2005)

Page A.15 – right hand column. Insert before “Memorandum on Using 47 CFR §1.4000”

The OTARD rule has proven to be a pretty “active” rule. See <http://www.hallikainen.org/FCC/FccRules/CiteFind/0014000.htm> for the history, from the FCC's website.

Page A.16 – left hand column. The titantv.com web site is now devoted to program listings for your area. The Titan site showing what antenna you will require is <http://www.antennaweb.org>.

Page A.21 – RH column.

Typo: 3) An antenna which is not near an airport and is less than 200 feet tall.

Page B.3 – left hand column. Under “Does it Meet State law Requirements?”

The text presently reads: “In at least 10 states, a state law impacts the control a town may exert over Amateur Radio antennas.” There are now 27 states!

The text should be changed to:

In at least 27 states, a state law impacts the control a town may exert over Amateur Radio antennas. Five of those states--Alaska, Wyoming, Virginia, North Carolina and Oregon--specify heights below which local governments in those states may not regulate. This actually goes further than PRB-1. To see if you are in one of those states, check out : http://www.arrl.org/FandES/field/regulations/PRB-1_Pkg/index.html.

...

Page B.4 – left hand column

Under 5. Waiver for large Lots.

Add an s

“from certain land-use regulations for farms, where . . .”

Re-arrange a sentence

“the standard fee low, define it away, make **large lots exempt**, or change the effective date.”

Add to a sub-head

Setback **or Fall Zone**

Page B.4 right hand column

Insert the following as “2.”, and renumber the present “2.” and “3.” as “3.” and “4.” .

2. If a concern to avoid tall structures, note that if the applicant’s land slopes, such a setback bylaw forces hams to build TALLER antenna structures. A location on the UP side of the lot could be shorter!

Page B.5 – left hand column

Insert before the Section labeled “Setback for Guy Wires.”

A Fall Zone Easement

If you fail to convince the authorities that a “fall zone” is of limited or no value, consider another approach. If you own the adjacent lot, or have friendly neighbors who live on the adjacent affected lot (your son or daughter?), might be a “fall zone easement.”

Ultimately facing a requirement for a fall zone, Dale Avery, WU7X, a clever man who is not a lawyer, created a set of easement documents for himself that were accepted by Spokane County, WA. He had to create a JPG of the map he created for the easement document, but the county did not require that it be to scale – though it did have to display a required North arrow, and name the streets.

The documents may be found on the accompanying CD-ROM in MS-Word, and as a PDF.

<Start Box>

Return Address:

Dale W. Avery
1109 E. Glencrest Dr.
Spokane, WA 99208

Private Tower Impact Area Easement

THIS AGREEMENT made and entered into this ____ day of _____, 2006, by the undersigned property owners, who are granting the easement across their property, being tax parcel number 37321.1026.

WHEREAS this easement was created to cover a private tower impact area on the following described property:

One parcel---- SW ¼ of NW ¼ of NE ¼ of NE ¼

Located within Section 32 Township 27 Range 43 EWM, Spokane County, Washington.

Tower impact access to the above described tract of land is provided by an easement being 40 feet wide and described as follows:

An elliptical area, with a maximum depth of 40 feet located along the southern edge of parcel 37321.1026 where it shares a common property border with parcel 37321.1025 to the south,

Located within Section 32 Township 27 Range 43 EWM, Spokane County, Washington, as shown on attached MAP.

MAINTENANCE of the property covered by this easement shall be by the property owners, as described above. Spokane County has no responsibility to maintain or otherwise service the private easement herein described. Only the Division of Building and Planning or its successor agency can remove this easement.

I am co-owner of record of the property involved with granting this easement.

Co-owner of Record:

Signed:_____ Date: _____

I am co-owner of record of the property involved with granting this easement.

Co-owner of Record:

Signed:_____ Date: _____

STATE OF WASHINGTON) SS
County of Spokane)

I certify that I know or have satisfactory evidence that _____

and _____ are the persons who appeared before me, and said persons acknowledge that they signed this instrument and acknowledge it to be their free and voluntary act for the use and purposes mentioned in the instrument.

Dated: _____

Notary Signature

My Appointment

Expires: _____

Title

<End Box>



5399826
Page: 2 of 3
06/29/2006 11:06A
Spokane Co, WA

MAP Of Private Tower Impact Area Easement

THIS MAP is to accompany the attached easement agreement made and entered into this 28th day of JUNE, 2006, by the undersigned property owners of record.

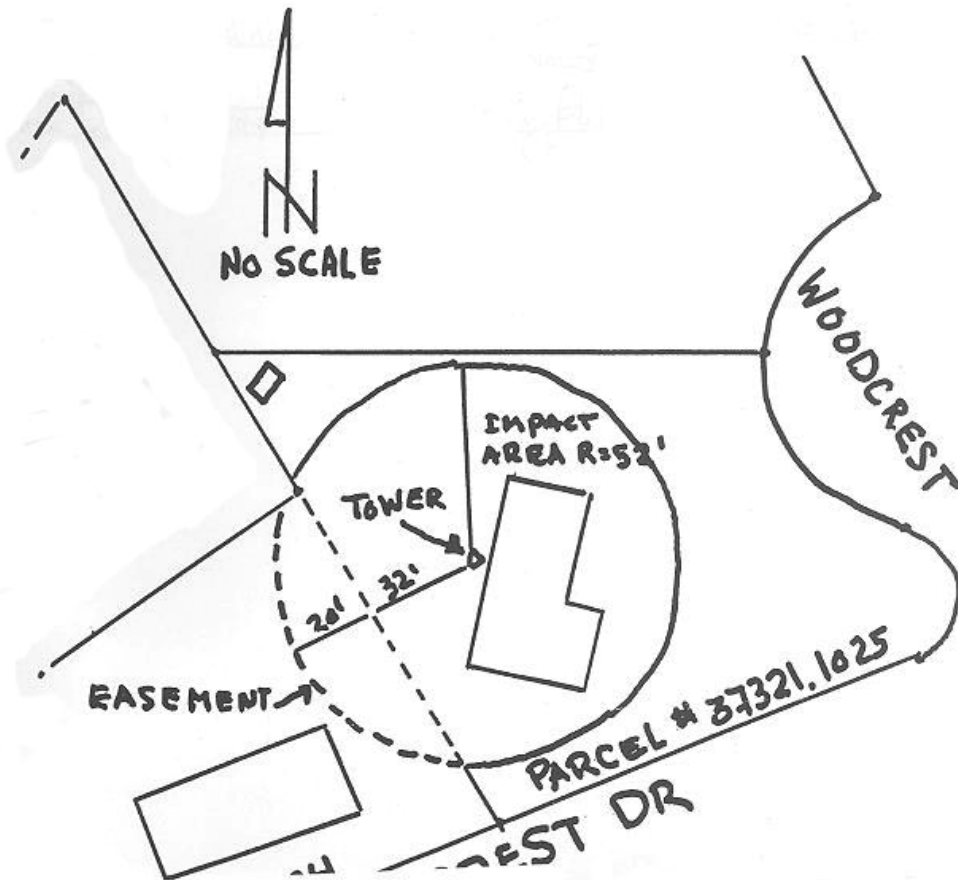
Co-owner of Record: _____

Signed: _____ Date: JUNE 28, 2006

Co-owner of Record: _____

Signed: _____ Date: JUNE 28, 2006

WHEREAS this easement was created as a medium for a private tower impact area for the benefit of a neighboring property, parcel 37321.1025, located within Section 32 Township 27 Range 43 EWM, Spokane county, Washington, as shown below:



STATE OF WASHINGTON) SS
County of Spokane)

I certify that I know or have satisfactory evidence that _____

and _____ are the persons who appeared before me, and said persons acknowledge that they signed this instrument and acknowledge it to be their free and voluntary act for the use and purposes mentioned in the instrument.

Dated: _____

Notary Signature

My Appointment

Expires: _____

Title

**MAP
Of
Private Tower Impact Area Easement**

THIS MAP is to accompany the attached easement agreement made and entered into this _____ day of _____, 2006, by the undersigned property owners of record.

Co-owner of Record:

Signed: _____ Date: _____

Co-owner of Record:

Signed: _____ Date: _____

WHEREAS this easement was created as a medium for a private tower impact area for the benefit of a neighboring property, parcel 37321.1025, located within Section 32 Township 27 Range 43 EWM, Spokane County, Washington, as shown below:

Return Address:

Dale W. Avery
1109 E. Glencrest Dr.
Spokane, WA 99208

Private Tower Impact Area Easement

THIS AGREEMENT made and entered into this ____ day of _____, 2006, by the undersigned property owners, who are granting the easement across their property, being tax parcel number 37321.1024.

WHEREAS this easement was created to cover a private tower impact area on the following described property:

One parcel---- SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of NE $\frac{1}{4}$

Located within Section 32 Township 27 Range 43 EWM, Spokane County, Washington.

Tower impact access to the above described tract of land is provided by an easement being 20 feet wide and described as follows:

An elliptical area, with a maximum depth of 20 feet, beginning 4 feet west of the corner property line of parcel 37321.1023 where it shares a common property border with parcel 37321.1023 to the north and parcel 37321.1025 to the east, and ending 20 feet north of the southeast corner of parcel 37321.1024.

located within Section 32 Township 27 Range 43 EWM, Spokane County, Washington, as shown on attached MAP.

MAINTENANCE of the property covered by this easement shall be by the property owners, as described above. Spokane County has no responsibility to maintain or otherwise service the private easement herein described. Only the Division of Building and Planning or its successor agency can remove this easement.

I am co-owner of record of the property involved with granting this easement.

Co-owner of Record:

Signed: _____ Date: _____

I am co-owner of record of the property involved with granting this easement.

Co-owner of Record:

Signed: _____ Date: _____

STATE OF WASHINGTON) SS
County of Spokane)

I certify that I know or have satisfactory evidence that _____

and _____ are the persons who appeared before me, and said persons acknowledge that they signed this instrument and acknowledge it to be their free and voluntary act for the use and purposes mentioned in the instrument.

Dated: _____

Notary Signature

My Appointment

Expires: _____

Title

**MAP
Of
Private Tower Impact Area Easement**

THIS MAP is to accompany the attached easement agreement made and entered into this _____ day of _____, 2006, by the undersigned property owners of record.

Co-owner of Record:

Signed: _____ Date: _____

Co-owner of Record:

Signed: _____ Date: _____

WHEREAS this easement was created as a medium for a private tower impact area for the benefit of a neighboring property, parcel 37321.1025, located within Section 32 Township 27 Range 43 EWM, Spokane County, Washington, as shown below:

Page B. 11, after “Line Up Lobbying Help”, add a new topic:

Testimony at the Public Hearing

The hams of Connecticut are attempting to get a state version of 47 CFR §97.15(b) passed. When they reached the stage of a hearing before the appropriate legislative committee, they received a sheet of rules established by the legislature for public testimony. Here are some of the rules, with comments.

Please submit 50 copies of written testimony to Committee staff one hour prior to the start of the hearing in Room 3900 of the LOB [Legislative Office Building].

K1VR: I have testified before the Connecticut legislature. They are serious about the 50 copies rule. But paper is cheap. In any event, you’d want to produce enough copies for the committee, committee staff, allies, and the press. Also, written testimony requires that people really think through their complaint, and their proposed solution. It is a good public policy.

Sign-up for the hearing will begin at 12:00 PM. in Room 2B of the LOB. The first two hours of the hearing is reserved for the public comment and will recess at 3:00 PM. Public speakers will be limited to 3 minutes of testimony. Agency and Department officials and legislator testimony will begin at 3:00 PM. Public comment will resume at 4:00 PM. Unofficial sign-up sheets have no standing with the Committee.

K1VR: They are serious about the 3-minute rule. Forget the thanks, a serious thank you eats up 15 percent of your available time. Do not concentrate on language, unless you have something really specific. I recommend testimony that will grab the attention of a newspaper reporter (there are always two or three reporters at every hearing, they have "the state house beat"). I recommend horror stories and public safety stories (medical help to missionaries overseas, ships at sea, disasters, etc.). Drafting technicalities are best handled in private conversations with staff.

What they mean by "unofficial sign-up sheets" is that if the hams come along with their own list of people in proper order, each for three minutes, hoping that ONE person can sign up for all the hams, they won't accept that. Each person wishing to speak must sign up individually, and you should be there at 12 to sign up, as the late signers don't get to speak at all. 120 minutes divided by three minutes theoretically permits 40 speakers, but things tend to get sloppy. I doubt that 25 people will have time to speak. So get there early to sign up.

In summary, submit serious testimony in writing, speak about human-interest stuff in public oral testimony. If a reporter approaches, take all the time s/he wants (they usually break off after 2-5 minutes to talk with someone else). Bring business cards so that the reporter can follow up.

C.3 LH column, replace existing paragraph that begins with "The flip side . . ." with:

The flip side of all of this is also true. If you proceed to apply for a permit for an antenna system and somehow wind up in a lawsuit, remember this line uttered by Richard Gere, as Atty. Martin Vail in the movie "Primal Fear" (1996):

The first thing I ask a new client is:
"You been saving up for a rainy day?"
"Guess what? *It's raining.*"

C.3 LH column, before STRESS, insert

Can the Town Be Sued?

Can a municipality, or other governmental entity (zoning appeals board, county commission, statewide siting board, etc.) be held liable in tort if an amateur radio antenna system falls down and creates injury to property or persons?

Fortunately, the answer is black letter law. NO.

The common law principle has always been one of "sovereign immunity," based on the principle that "the King can do no wrong." From that basis, American courts created the doctrine of "governmental immunity," sometimes also called "municipal immunity."

State law may vary with respect to physical actions by a municipal employee or volunteer. But where a board or inspector is acting in good faith, and performing a responsibility that is strictly governmental, such as issuing or denying permits, the municipality is immune from suit. (There is an exception when civil rights are involved, protected as they are by the Bill of Rights. No cases have been found involving a civil rights claim arising out of the grant of an amateur radio antenna permit.)

Some Leading Cases and Laws

New York

The decision whether to issue a permit is a discretionary determination and the actions of the government in such instances are immune from lawsuits based on such decisions (see, *Rottkamp v Young*, 15 NY2d 831, affg 21 AD2d 373, 377; see also, *Matter of Parkview Assocs. v City of New York*, 71 NY2d 274). *City of New York v 17 Vista Associates*, 84 N.Y.2d 299, 642 N.E.2d 606, 618 N.Y.S.2d 249.

Texas

City of Round Rock v. Smith, 687 S.W.2d 300 (Tex. 1985), holding that, as the approval of a subdivision plat is a governmental function, a city cannot be liable for negligent approval of a plat after the developer had filled in natural watercourses that provided drainage.

Vermont

Municipal immunity is a common-law doctrine dating back to the mid-1800s in Vermont. Vermont follows the common law and provides municipal immunity for functions which are "governmental" as distinguished from "proprietary" in nature. *Hillerby v. Town of Colchester*, 167 Vt 270, 272 (1997).

Massachusetts

See Mass. Gen. Laws Ann. ch. 258, § 10 (West Supp. 1997). The law specifically provides immunity against claims based on issuance of or refusal to issue a license or permit, failure to inspect or negligent inspection, acts or omissions connected with fighting a fire, failure to provide adequate police protection or to arrest or detain suspects or enforce any law, and the release of persons in public custody.

All New England states extend municipal immunity to discretionary acts.

See Conn. Gen. Stat. § 52-557n(a)(2)(B) (Supp. 1997); Gordon v. Bridgeport Housing Auth., 544 A.2d 1185, 1189 (Conn. 1988); Me. Rev. Stat. Ann. tit. 14 § 8104-B(3) (West Supp. 1996); Adriance v. Town of Standish, 687 A.2d 238, 240 (Me. 1996); Mass. Gen. Laws Ann. ch. 258, § 10(b) (West 1988); Horta v. Sullivan, 638 N.E.2d 33, 36-37 (Mass. 1994); Merrill v. City of Manchester, 332 A.2d 378, 383 (N.H. 1974); Haley v. Town of Lincoln, 611 A.2d 845, 849 (R.I. 1992)

Looking Beyond Municipal Immunity

If we're in the middle of a hurricane, and trees could fall, children should not be outdoors, and there are bigger problems than a ham radio antenna falling down. Parents who allowed children outdoors in such circumstances could be responsible for contributory negligence, should a child be injured – because injury would be seen as a natural consequence of flying debris.

The town also carries general liability insurance. The premium for protection against a successful claim in the face of governmental immunity is no doubt tiny, reflecting – one suspects – only the cost of the defense, because the likelihood of success by a plaintiff on the merits is so low.

Construction in accordance with the building code is all that is required – of all parties.

Concern for the hypothetical plaintiff, playing outdoors during a hurricane, is laudible. Yet the applicant, denied a permit for an antenna system on grounds primarily or partially out of concern for liability, represents a much more likely plaintiff.

C.3 RH column, before The Kaplan, N2FOB, Case, insert:

If you were hoping that the ARRL will pay your legal fees, you'll want to know about the League's criteria. For its January 2005 Meeting, the Board minute reads:

37. On motion of Mr. Bellows, seconded by Mr. Roderick, it was VOTED that the ARRL funding criteria for Landmark Antenna -- Zoning appeals be amended to read as follows:

The ARRL Board adopted procedures for limited antenna case funding. These must include the following factors:

(1) Antenna case funding should be limited to appellate decisions only, since those provide precedent that is citable authority for other amateurs to use. A trial court decision is not precedent for any other case.

(2) Case funding should be limited to not more than \$10,000 per appeal, so as to maximize the number of cases that can be funded with the limited funds available. Funding is limited to the

amount of the Legal Research and Resource Fund, and any donations subsequently received for such Fund.

(3) The appeal must have substantial merit on the facts of the case.

(4) It must present a significant issue of law.

(5) There must be a reasonable likelihood of success on appeal.

(6) There must be some financial participation at the appellate level of the amateur and the local amateur community.

(7) The funding of appeals will be limited to:

a. Appeals in Federal Courts of Appeal. Federal courts have a far wider scope and the precedential value of Federal appellate decisions is more substantial.

b. In those instances where a Federal District Court decision is reported and the decision has precedential value the committee may recommend partial reimbursement of costs incurred.

c. State appellate decisions are limited in precedential value. Except in extraordinary circumstances where a decision has a clearly demonstrable benefit to a significant number of Amateurs, funding will not be available for state court appeals.

Finally, all decisions on funding made by the Antenna Assistance Committee, formed in July 2000, must be unanimous. The Committee consists of two ARRL directors, one Vice Director, an experienced attorney not a member of the ARRL Board, and the League Counsel.

C.6 LH column, just before “AT&T Wireless.” The opening bracket should NOT be italicized. [Citations omitted.]

C.6 RH column. *Pentel v. Mendota Heights* should be italicized, not underlined.

Interference: new URL for FCC Interference Handbook:

http://www.fcc.gov/ftp/Bureaus/Mass_Media/Databases/documents_collection/1993InterferenceHandbook.pdf

Additions to the Index, page 227 ff.

47 USC §302a	11.8
[note to editor of 2d Edition: Search for “USC” and “CFR” and add to index]	
Abandonment	A.7
Acquiescence	A.7
Altman, Jim, W4UCK . . .	
Attorney, hiring an	3.2
Bar admission (see <i>pro hac vice</i>)	
Brock, Ralph:	11.10

Bylaw drafting:	B.1-B.11
CC&R's:	A.1ff
Caselaw.DOC:	8.7, A.13
Changed conditions	A.7
Clean Hands	A.7
Common Covenants:	A.1
Costs:	B.3
Covenants:	A.1
Covenant not to complain	
Criminal prosecution:	
Estoppel	A.7
Evidence	6.13
Fall Zone:	B.4ff
Fees:	B.3
Hiring a lawyer	3.2
Interference, RFI or TVI:	6.8ff, 7.44
K1JX:	14.1
K1NU:	14.2
K2UNK	8.8
K5MA:	7.35ff
K5XI:	A.6
Laches	A.7
Lawyer, hiring a	3.2
Leach, Sid, K5XI:	A.6
Neighbors:	
Letter to Neighbors (sample)	
Nuisance	A.3,
Number of hams (in ZIP code)	6.11
O'Neill, Thomas P. (Tip)	2.6
Poem:	6.1
Policeman, letter to	11.8
<i>pro hac vice</i>	3.2
Proposed bylaw:	B.1-B.11
Real Estate:	
Agent:	2.1 ff, 3.8
Terrain:	
Vested rights	A.7 ff
VE6SH:	13.1 ff, 14.2
VE7BJ:	6.1
WA9AQN:	2.4
What I Bring:	8.4 ff

The accompanying CD:

There is a page missing from one of the W3AFM articles.

Dinman No Noise Letter.PDF: second page is landscape; should be portrait.

Add the following document, described as Fall Zone Easement.doc and Fall Zone Easement.PDF:

Private Tower Impact Area Easement

THIS AGREEMENT made and entered into this ____ day of _____, 2006, by the undersigned property owners, who are granting the easement across their property, being tax parcel number 37321.1026.

WHEREAS this easement was created to cover a private tower impact area on the following described property:

One parcel---- SW ¼ of NW ¼ of NE ¼ of NE ¼

Located within Section 32 Township 27 Range 43 EWM, Spokane County, Washington.

Tower impact access to the above described tract of land is provided by an easement being 40 feet wide and described as follows:

An elliptical area, with a maximum depth of 40 feet located along the southern edge of parcel 37321.1026 where it shares a common property border with parcel 37321.1025 to the south,

Located within Section 32 Township 27 Range 43 EWM, Spokane County, Washington, as shown on attached MAP.

MAINTENANCE of the property covered by this easement shall be by the property owners, as described above. Spokane County has no responsibility to maintain or otherwise service the private easement herein described. Only the Division of Building and Planning or its successor agency can remove this easement.

I am co-owner of record of the property involved with granting this easement.

Co-owner of Record:

Signed: _____ Date: _____

I am co-owner of record of the property involved with granting this easement.

Co-owner of Record:

Signed: _____ Date: _____

STATE OF WASHINGTON) SS
County of Spokane)

I certify that I know or have satisfactory evidence that _____

and _____ are the persons who appeared before me, and said persons acknowledge that they signed this instrument and acknowledge it to be their free and voluntary act for the use and purposes mentioned in the instrument.

Dated: _____

Notary Signature

My Appointment

Expires: _____

Title

=====Next Page=====

**MAP
Of
Private Tower Impact Area Easement**

THIS MAP is to accompany the attached easement agreement made and entered into this _____ day of _____, 2006, by the undersigned property owners of record.

Co-owner of Record:

Signed: _____ Date: _____

Co-owner of Record:

Signed: _____ Date: _____

WHEREAS this easement was created as a medium for a private tower impact area for the benefit of a neighboring property, parcel 37321.1025, located within Section 32 Township 27 Range 43 EWM, Spokane County, Washington, as shown below:

[Insert Map Here]

--End of Document--

This document, as it is updated, may be found at

http://www.arrl.org/notes/8217/Errata_Addenda_2nd_Edition.pdf.

Revision History

Page 6.13 SNET quote.

Index entry: Evidence

Page 3.2 Must you use a local attorney?

Index entries: *pro hac vice*

Bar admission

Attorney, hiring an

Lawyer, hiring a