

**I'm from the Government...
(*Planning Department*)
...and I'm Here to (whatever)!**

Presenter:

Dr. Jonathan L. Kramer, W6JLK

RF Engineer and Attorney at Law
Telecom Law Firm, P.C.
Los Angeles, California

This time: November 17, 2023 (Last time was in 2018!)

Lawyers **LOVE** Disclaimers!

This lecture is for informational purposes only. Hopefully, you will find it entertaining, as well. If not, well, tough.

This lecture is not intended to provide legal advice, and may not reflect recent law changes, court cases, ARRL petitions, or your deepest, darkest hopes and dreams.

Also, this lecture does not (necessarily) reflect the official positions, views, hopes, or even the deep, dark secret desires of the San Fernando Valley Amateur Radio Club, the ARRL, the ARRL SW Division, any of my local government clients or any person, animal, plant, mineral, or space alien.

presently on this or any other planet.



Get Ready, take aim (at me)...



Dr. Jonathan Kramer, W6JLK (Extra Class)

Licensed has a Ham since 1971
Life Member of the ARRL since 1972ish
ARRL Volunteer Counsel & Volunteer Examiner
ARES LAX NW Westside Something

FCC General Radio Telephone w/ Ship Radar

Originally 1st Phone/radar,
GMRSS Maintainer & Operator, 6 more more...



RF Engineer for local, state, fed governments since 1984

Wireless siting reviews, including amateur tower apps, for nearly 40 years
Wireless Ordinances, Amateur Provisions
RF safety issues (Co-author of FCC's guide to local governments)



Yeah, I'm a lawyer

Admitted in California and New Mexico
Public Law Sec. Ex. Comm. Board member



Eye-R-realee Sumrt

JD
LL.M (IT/Telecom Law)
Doctor of Law & Policy
Regulatory Law and Policy Instructor at Northeastern University

**But really,
I'm just...**



Government Scum

PRB 1...

“Waiter! Reality check, please!”

- National policy established by the FCC defining the relationship between antenna structures and local zoning considerations.
- *Limited* preemption of local zoning processes and policy considerations
- **Codified at 47 C.F.R. § 97.15(b), which says...**

PRB 1...

“Waiter! Reality check, please!”

Sec. 97.15 Station antenna structures.

(a) *[deals with antennas in excess of 200' AGL or near public airports]*

(b) *Except as otherwise provided herein, a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. (State and local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority's legitimate purpose. See PRB-1, 101 FCC 2d 952 (1985) for details.)*

[64 FR 53242, Oct. 1, 1999]

PRB 1...

“Waiter! Reality check, please!”

- History
 - 1984: ARRL Petitions FCC to preempt local government restrictions on amateur radio antenna structures
 - 1985: FCC adopts PRB 1.
 - 1999: ARRL petitions FCC to extend PRB 1 to preempt CC&Rs (more on this, later).
 - 2000; ARRL petitions FCC to reconsider 1999 denial.

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California's PRB 1 Law

Gov. Code § 65850.3 (2003)



California's AB 1228 (Gov. Code § 65850.3) (2003)

65850.3. **Any** ordinance adopted by the legislative body of a city or county that regulates amateur radio station antenna structures shall allow those structures to be erected at heights and dimensions sufficient to accommodate amateur radio service communications, shall not preclude amateur radio service communications, shall reasonably accommodate amateur radio service communications, and shall constitute the minimum practicable regulation to accomplish the city's or county's legitimate purpose. It is the intent of the Legislature in adding this section to the Government Code, to codify in state law the provisions of Section 97.15 of Title 47 of the Code of Federal Regulations, which expresses the Federal Communications Commission's limited preemption of local regulations governing amateur radio station facilities.

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W6SD

HAM SHACK



CC&Rs: Read the fine print!

- CC&Rs = Covenants, Codes, and Restrictions
- Covenants = ***Enforceable promises.***
- Codes = ***Rules you're bound to follow.***
- Restrictions = **(Huh? What restrictions?)**
- ***A private contract*** between ***consenting adults*** (***ahem***)
- CC&R's can be 'enforced' by others bound by the same promise (an 'equitable servitude')
- How far is the boundary of enforcement? Sight? Feet?
- Is a non-interference covenant legal? (**yes**)
- Is a no external antenna covenant legal? (**yes**)



CC&Rs: Read the fine print!

- PRB 1 and CC&Rs (2001):

- **ARRL to FCC:**

- Ah, would you please extend PRB 1 to preempt those pesky CC&Rs and similar private contracts based on OTARD?

- **FCC to ARRL:**

- Thanks for asking, but the answer is **no**.

But while we're on the subject, we will talk about **OTARD**, and you *won't like* what we have to say.

H.R. 555

Amateur Radio Parity Act of 2017

AN ACT

- To direct the Federal Communications Commission to amend its rules so as to prohibit the application to amateur stations of certain private land use restrictions, and for other purposes.
- *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. Short title.*
- This Act may be cited as the “Amateur Radio Parity Act of 2017.”

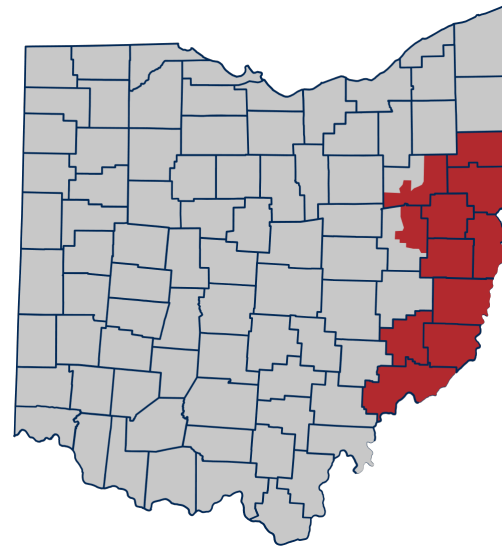
(Passed the House; Something is Better Than Nothing!)

H.R. 4006

Amateur Radio Emergency Preparedness Act



Rep. Bill Johnson (R, Ohio)



Communications Act of 1934 (47 U.S.C. 301 et seq.) is amended by adding ... the following:

“SEC. 346. APPLICATION OF PRIVATE LAND USE RESTRICTIONS TO AMATEUR STATION ANTENNAS.

“(a) **IN GENERAL** .—A private land use restriction that prohibits, restricts, or impairs, or has the effect of prohibiting, restricting, or impairing, an amateur operator from operating, installing, or maintaining any amateur station antenna on property subject to the control of the amateur operator may not be adopted or enforced, except as permitted by subsection (b).

“(b) **PERMISSIBLE RESTRICTIONS** .—

“(1) **IN GENERAL** .—Subject to paragraph (2), the following private land use restrictions applicable to amateur station antennas may be adopted or enforced:

“(A) A restriction that requires an amateur station antenna to be installed in compliance with the specifications of the manufacturer of the antenna, applicable zoning ordinances, amateur radio tower ordinances (if any), and governmentally adopted building codes.

“(B) A restriction that requires an amateur station antenna to be maintained in a structurally safe condition.

“(C) A restriction that requires any deteriorated or structurally unsafe component of an amateur station antenna to be repaired, replaced, or removed.

“(D) A restriction that requires an amateur station antenna to be removed if the property on which the antenna is located ceases to be subject to the control of an amateur operator.

“(E) A restriction that requires an amateur station antenna ground-mounted electrical enclosure, ground-mounted control enclosure, or guy wire anchor to be visually screened if such enclosure or anchor—

“(i) is visible from the street faced by the dwelling; or

“(ii) is located in an unfenced side or rear yard and is visible from an adjoining property.

“(2) REASONABLE APPLICATION AND ENFORCEMENT .—A private land use restriction permitted by paragraph (1) shall be reasonably applied and enforced.

“(c) LIMITATIONS ON PRIOR APPROVAL .

“(1) REQUIREMENT NOT PRESENT IN LAND RECORDS AT TIME OF PURCHASE OR LEASE .—A requirement in a private land use restriction for an amateur operator to obtain prior approval for the installation of an amateur station antenna may not be adopted or enforced if such requirement for prior approval was not present in the publicly recorded land records prior to the purchase or lease of the property by the amateur operator.

“(2) INFORMATION REQUIRED FOR PRIOR APPROVAL .—A private land use restriction that requires an amateur operator to submit an application for approval of an amateur station antenna prior to installation may not be adopted or enforced if the information required to be submitted as part of the application is greater or more detailed than the information required to be submitted as part of an application for any other improvement.

“(3) DEEMED APPROVAL .—If a community association or other person authorized to enforce a private land use restriction applicable to an amateur station antenna does not approve or deny an application of an amateur operator for approval of the installation of an amateur station antenna by the day that is 45 days after the date on which the application is submitted, the application shall be deemed to be approved on the 45th day.

“(4) EXISTING APPROVAL .—If a private land use restriction requires an amateur operator to submit an application for approval of an amateur station antenna prior to installation, after a community association or other person authorized to enforce the restriction approves the application, no further approval of the antenna may be required, unless there is a material change in the dimensions or structural integrity of the antenna.

“(d) ANTENNAS THAT DO NOT REQUIRE PRIOR APPROVAL .—A requirement in a private land use restriction for an amateur operator to obtain prior approval for the installation of an amateur station antenna may not be adopted or enforced with respect to any of the following types of amateur station antennas:

“(1) 1 METER OR LESS IN DIAMETER OR DIAGONAL MEASUREMENT .—An antenna for use by an amateur operator that is less than 1 meter in diameter or diagonal measurement, or having other measurements prescribed by the Commission.

“(2) FLAGPOLE ANTENNAS .—A flagpole, capable of dual use as a flagpole and an amateur station antenna, not greater than 43 feet in height above ground.

“(3) WIRE ANTENNAS .—Minimally obtrusive wire antennas, of a length necessary for the frequency of use intended.

“(4) VERTICAL ANTENNAS .—Vertical antennas, not to exceed 43 feet in height above ground, including collapsible whip and tilt-over antennas.

“(e) RULES OF CONSTRUCTION .—

“(1) CONTROL OF PROPERTY .—For purposes of this section, property is subject to the control of an amateur operator if the amateur operator is an owner, lessee, or legal resident of the property.

“(2) IMPAIRMENT OF INSTALLATION , MAINTENANCE , OR OPERATION .—For purposes of this section, a private land use restriction prohibits, restricts, or impairs the installation, maintenance, or operation of an amateur station antenna if the restriction—

“(A) unreasonably delays or prevents installation, maintenance, or operation of the antenna;

“(B) unreasonably increases the costs or difficulty of installation, maintenance, or operation of the antenna; or “(C) prevents or degrades reception or transmission of a signal acceptable to the amateur operator.

“(3) LIMITED COMMON AREA .—

“(A) I N GENERAL .—For purposes of this section, if there exists, within the property for which a community association is responsible, a limited common area to which an amateur operator has the right to exclude use by others, the limited common area shall be treated as property under the control of the amateur operator.

“(B) PERMISSION ACCESS .—For purposes of subparagraph (A), access by a community association for roof repairs, landscaping, or other maintenance activities shall be treated as a permission, or authorized access, which does not limit or destroy the control of the amateur operator.

“(f) ENFORCEMENT .—

“(1) STAY OF ENFORCEMENT .—If an action is initiated to seek a declaratory ruling from the Commission or a court of competent jurisdiction regarding whether a private land use restriction complies with this section, any community association or other person seeking to enforce the restriction shall suspend all enforcement efforts with respect to the restriction until a ruling in the action has become final.

[Definitions omitted]

(b) REGULATIONS .—Not later than 180 days after the date of the enactment of this Act, the Federal Communications Commission shall promulgate regulations to implement the amendment made by subsection (a).

“(2) PROHIBITION ON ACCRUAL OF PENALTIES OR OTHER COSTS.—No penalty or other cost related to an amateur station antenna may accrue against an amateur operator under a private land use restriction while an action described in paragraph (1) is pending to determine whether the restriction complies with this section.

“(3) BURDEN OF PROOF .—

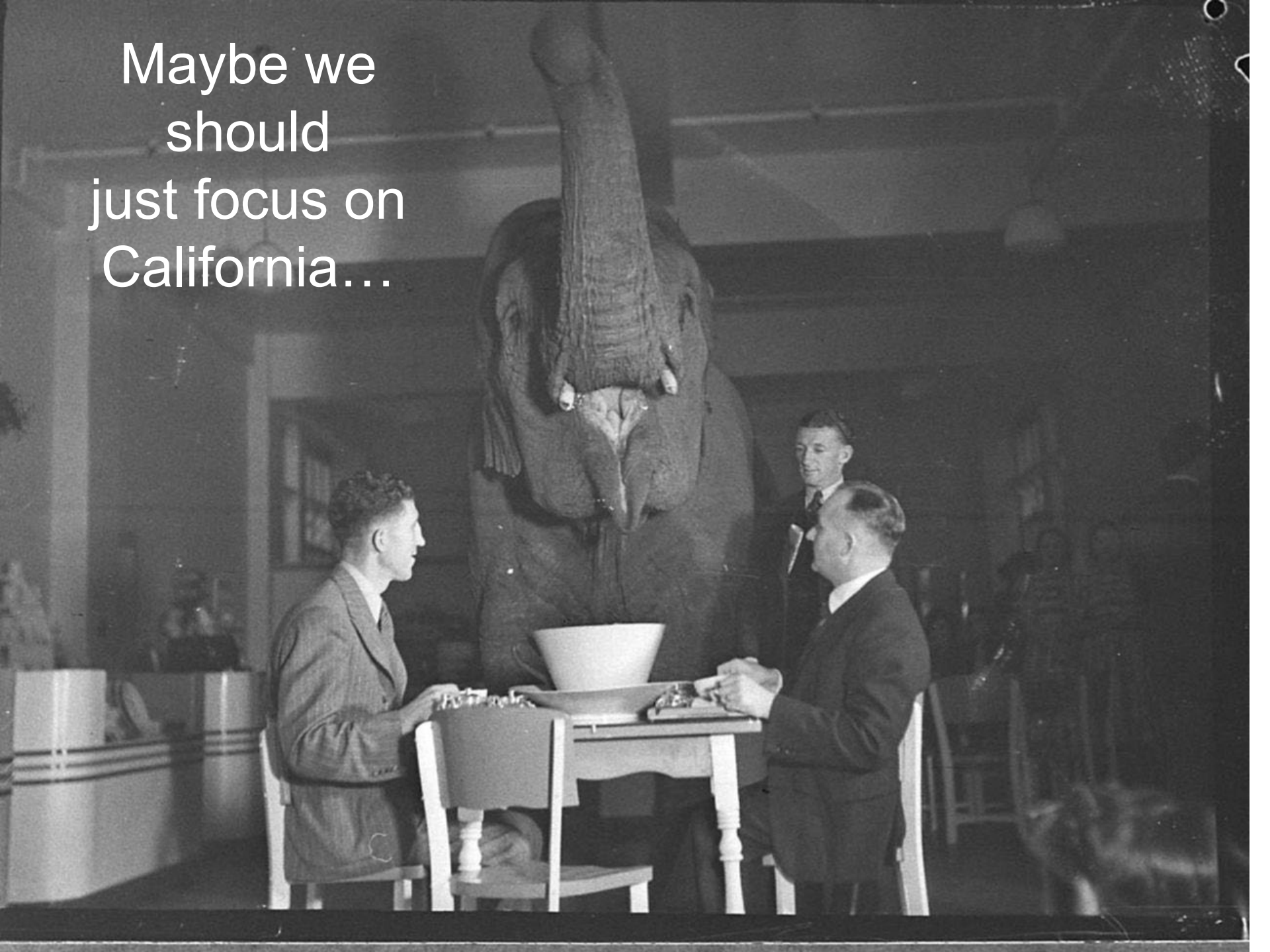
“(A) REGARDING COMPLIANCE WITH THIS SECTION .—In any action before the Commission or a court of competent jurisdiction involving the interpretation of any provision of this section, the burden of demonstrating that a particular private land use restriction complies with this section shall be on the party that seeks to impose, maintain, or enforce the restriction.

“(B) REGARDING VIOLATION OF PRIVATE LAND USE RESTRICTION .—In any action before the Commission or a court of competent jurisdiction to determine whether an amateur station antenna violates a private land use restriction, the party alleging the violation bears the burden of proof.

“(g) PRIVATE RIGHT OF ACTION .—A person harmed by a violation of this section may bring an action against the person alleged to have committed the violation in an appropriate district court of the United States without first exhausting remedies under State law.

“(h) AFFIRMATION OF LIMITED PREEMPTION OF STATE AND LOCAL LAND USE REGULATION .—Nothing in this section shall be construed to modify or otherwise limit the applicability of section 97.15(b) of title 47, Code of Federal Regulations, or any successor regulation.

Maybe we
should
just focus on
California...



*“That's the
signpost up ahead...*

your next stop

*...the
Planning
Counter
Zone!”*



Putting your best foot (and planning case) forward

- Some basics (Information collection):
 - **What, exactly, are the local zoning rules in your community governing amateur radio antenna structures? Get a copy (likely online) and study them. Add a musical score.**
 - **What previous cases have been decided under the current rules? Ask to review the files and find out why the cases were approved or disapproved. Explain why you're asking (“...so I can do the best job putting together a complete application...”)**
 - **Ask the counterperson for all of the forms you'll need, and find out all of the fees you may be asked to pay.**
 - **What about a fee waiver? PRB1? Cal PRB1?**

Putting your best foot (and planning case) forward

- Some more basics (Information display):
 - **Know, exactly, what you're going to ask permission to do.**
 - **Loser: "I want to put some antennas up about 65 feet in the air. I know what's best here, not you!"**
 - **Better: "I want to erect an XYZ tower with a LMN rotator and an ABC Yagi. Here's a drawing..."**

YOUR PLANNER'S RESPONSE?

STOP! TAKE A BREATH...

- Things to remember...the odds are very high that:
 - Your planner has **little or no experience** with ham radio antenna and tower projects;
 - Your planner thinks **your project is just like a cell tower**;
 - Your planner has **no technical expertise**...
 - And...Your planner wants to take an **immediate leave!**

STOP! TAKE A BREATH...

- And your planner thinks that Radio Frequency Emissions are...



Time for some PLANNER CPR:



- **HELP** restart your planner's heart by:
 - Keeping. Your. Voice. Calm. And. Friendly. At. All. Times. Friendly....friendly is good.
 - Speak. At. A. Normal. Talking. Speed.
 - Take the time to explain, in detail, your project and why you need what you're asking for...
 - and that this is not a cell site;
 - How?

Making Your Case

Planner: “Why does it have to be that tall? It not permitted by our Government Code.”

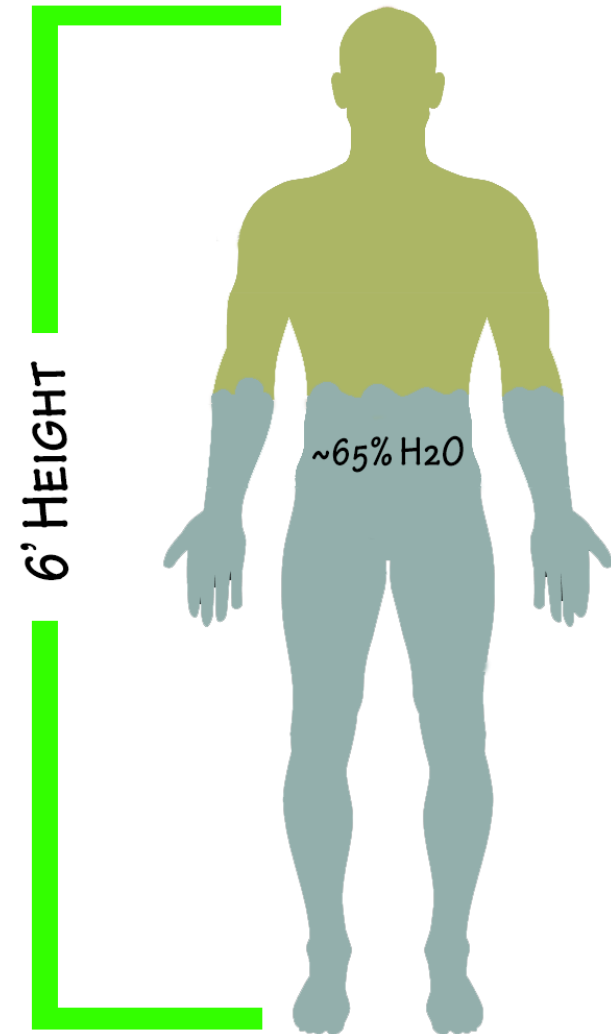
Ham: “I know that the Code has some specifics, but this is an issue controlled and in some ways preempted by both the FCC’s PRB1 rules and California Government Code PRB1 law. Let me show you the engineering for the XYZ Yagi antenna. That engineering justifies the height I need and demonstrate that I comply with the federal and state laws that govern antenna height.”

- Roll your own antenna? EZNEC is your friend...use ‘um if you’ve got ‘um.
- Commercial antenna? Your antenna manufacturer is your friend...use ‘um to get NEC/EZNEC outputs.
- Show the relationship between height above terrain versus the take off angle of the main lobe. Show the launch angle for multiple heights around your requested height. Explain why a low launch angle is critical for HF long-haul communications.
This is likely the most important evidence you can submit to justify your height request!
- **BEWARE: never, Never, NEVER use the “R WORD”**
- ...and be prepared to show full compliance with FCC OET Bulletin 65 for amateur radio operations. Start by visiting: <http://www.arrl.org/rf-exposure> and jump to the RF Exposure Calculator link.

How did we get here?

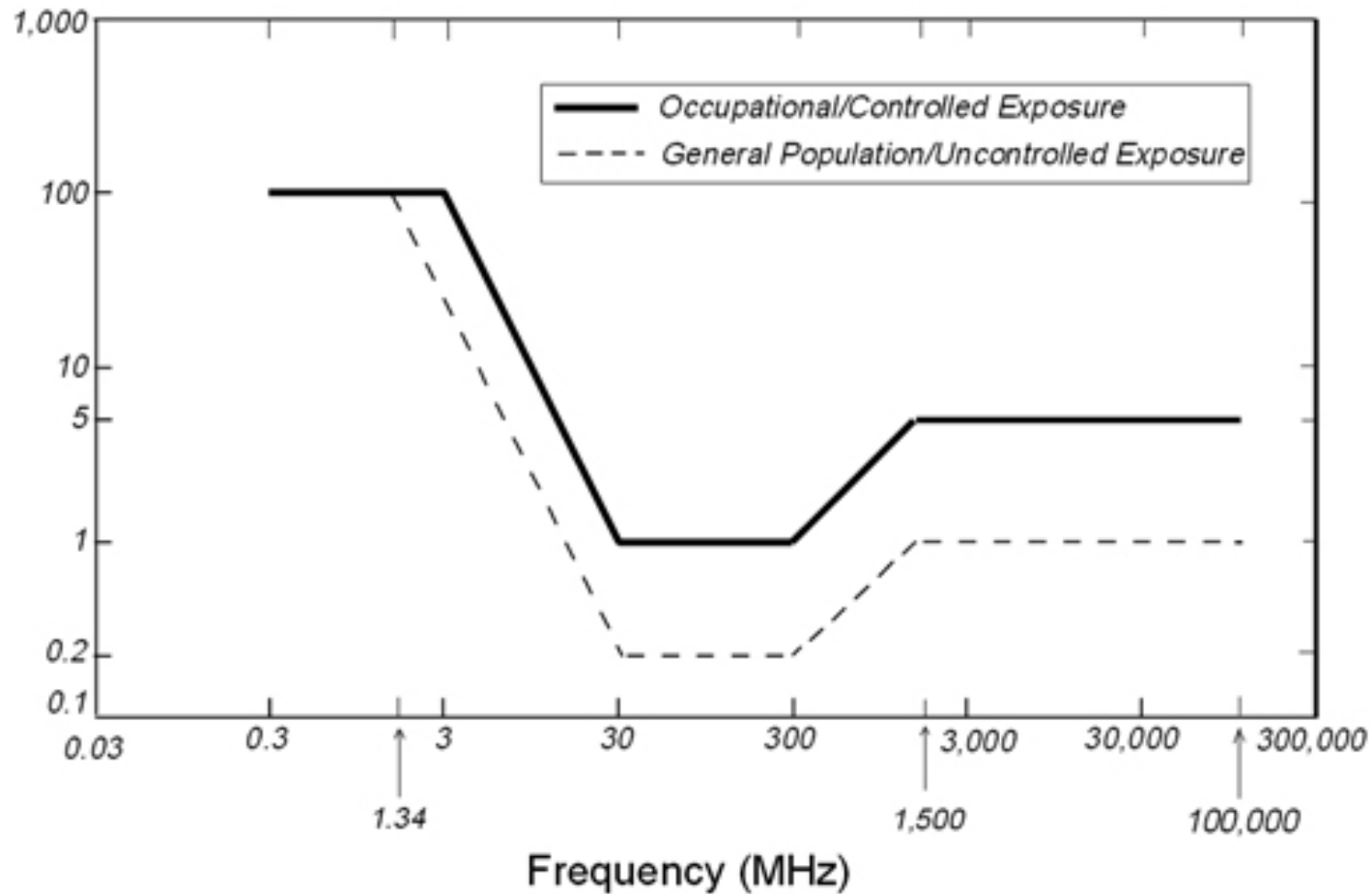
Know that the FCC set
RF safety emissions
guidelines based on:

- (1) power (ERP, EIRP) *versus*
- (2) frequency (MHz, GHz) *versus*
- (3) occupational status (general population or occupational) *versus*
- (4) time (minutes) *versus*
- (5) Height (



How did we get here?

*Figure 1. FCC Limits for Maximum Permissible Exposure (MPE)
Plane-wave Equivalent Power Density*



Document that your antenna system, as proposed, will comply with the FCC rules (47 CFR § 1.1307 et seq) *and* FCC Office of Engineering and Technology Bulletin 65 for the 'Uncontrolled/General Population.'

see:

https://transition.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet65/oet65b.pdf

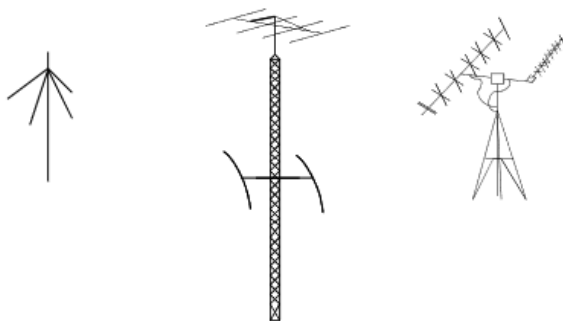


*Federal Communications Commission
Office of Engineering & Technology*

Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields



Additional Information for Amateur Radio Stations



Supplement B

(Edition 97-01)

to

OET Bulletin 65 *(Edition 97-01)*

Making Your Case

- **Before and at the hearing:**

- Find out what the hearing notice range is (typically 300 feet). Figure out who might have a problem with your project and reach out. Inviting your neighbors over before the hearing to discuss your project, and ham radio in general, is a good move. Talk about emergency communications. Be sure to highlight that you held the pre-meeting when you get to your hearing, *EVEN IF NO ONE SHOWED UP*.
- Get a copy of the Planner's Staff Report as soon as it's available; usually 3 days before the hearing. Carefully review it. Be prepared to respond to every negative point and error (if any).
- Prepare ***and repeatedly practice*** an opening and closing speech. Practice responses to potential objections. Watch the clock! If you've never been to a planning hearing before, consider going to observe the process *before* it's your turn!
- **Dress in formal attire.**
- **Ask for the approval.**



Making Your Case

- **At the hearing:**
 - **Calmly explain why under both PRB 1 and California Government Code § 65850.3 your project is justified *in light of the engineering documentation you provided, and the special consideration ham projects are accorded by those federal regulations and state laws.***
 - **IT'S CRITICAL TO GET OUT 'THE TROOPS' (Hams, friendly neighbors, ARES members, CERT members, others) TO THE HEARING, AND TO GET THEM TO SPEAK IN SUPPORT OF YOUR PROJECT!!!! (Each fills out their own speaker's card).**
 - **Stress EmComm!**



EmComm...Emmmm Good!





EmComm.... Emmmm tasty!





EmComm, EmComm,
and Dogs!

Your Antenna Project is...

DENIED

What the **f**requency, now?

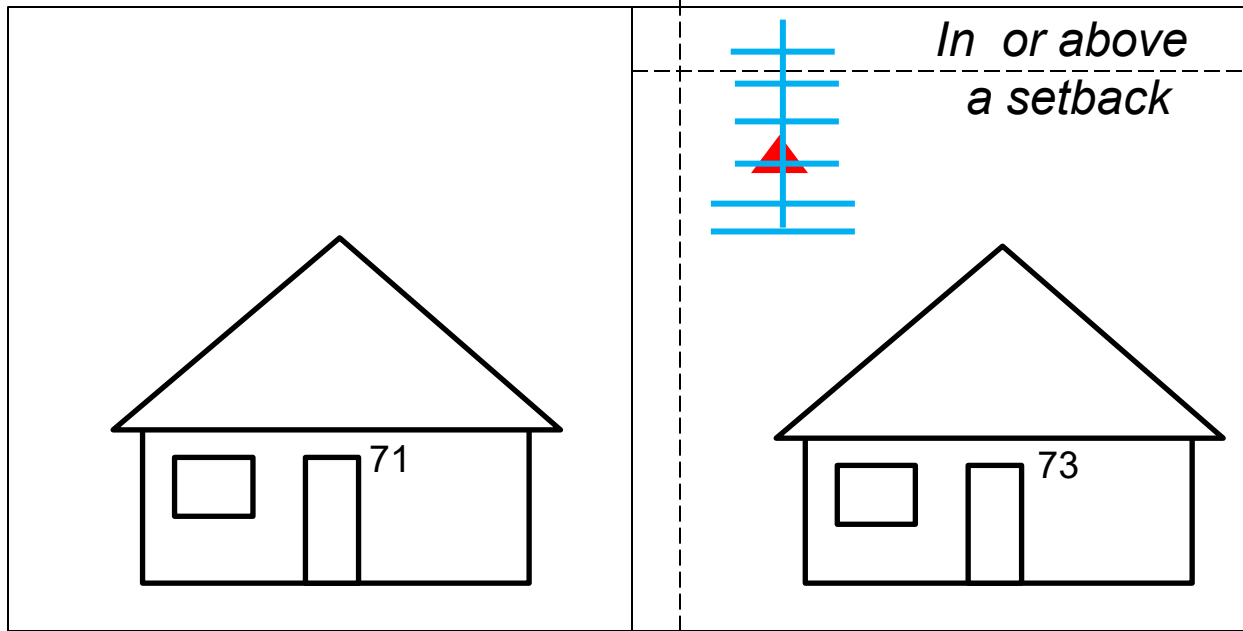
Making Your Case

- **If you have to deal with an appeal:**
 - Get a copy of the formal reasons for a City denial. If an appeal of an approval is filed by someone else, get a copy of the appeal application.
 - If you must file an appeal on a denial, it **MUST** be timely, and you must address and appeal every basis of denial in your appeal (risk of waiver).
 - **Explain, softly and clearly, why the initial decision maker/board erred. DO NOT ATTACK, but be clear, and explain (again) why, under both PRB 1 and Cal. Gov. Code § 65850.3, the project is justified on evidence you provided.**
 - **IT'S EVEN MORE CRITICAL TO GET "THE TROOPS" (Hams, friendly neighbors, ARES, CERT, parents, children, strangers, others, etc.) TO THE HEARING, AND TO GET THEM TO SPEAK IN SUPPORT OF YOUR APPEAL!!!! (Each fills out a speaker's card). Ask for the approval!**

A photograph showing a large number of dead fish, likely salmon, lying on a dry, cracked riverbed. The fish are scattered across the cracked earth, which is a sign of severe drought. The text is overlaid on the center of the image.

**BUT DON'T APPLY FOR
OR APPEAL
SOME REAL LOSERS!**

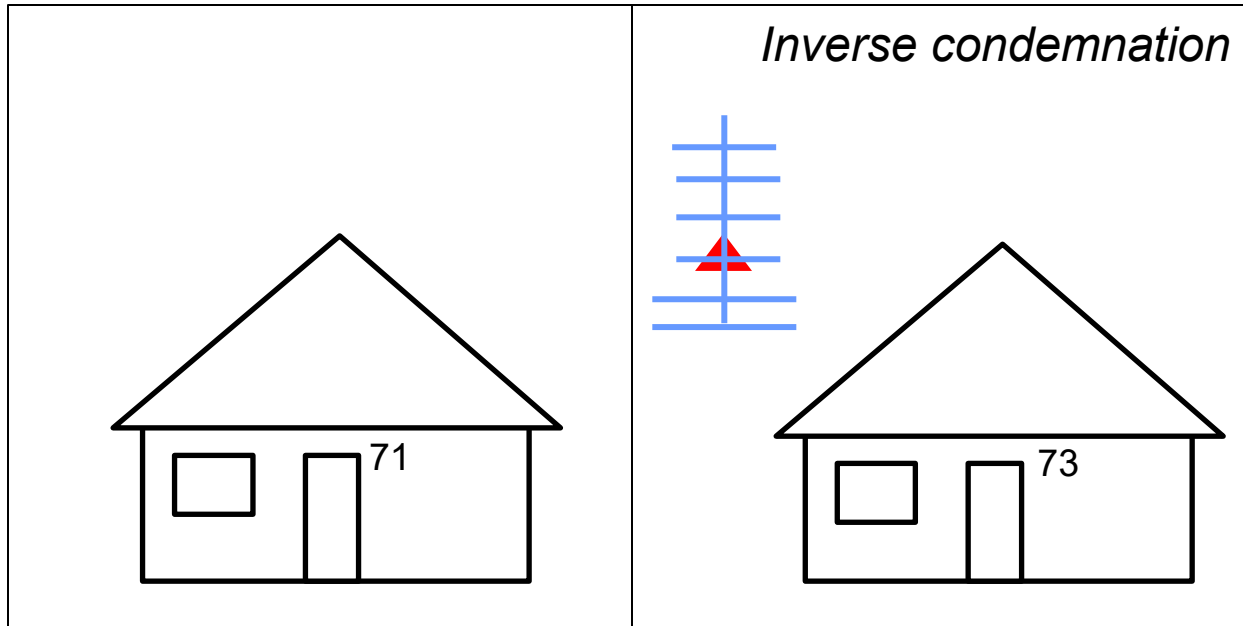
There are two planning cases you will lose



----- HAM AVENUE N.W. -----

Yeah, the perspectives are all screwed up. **Tough.**

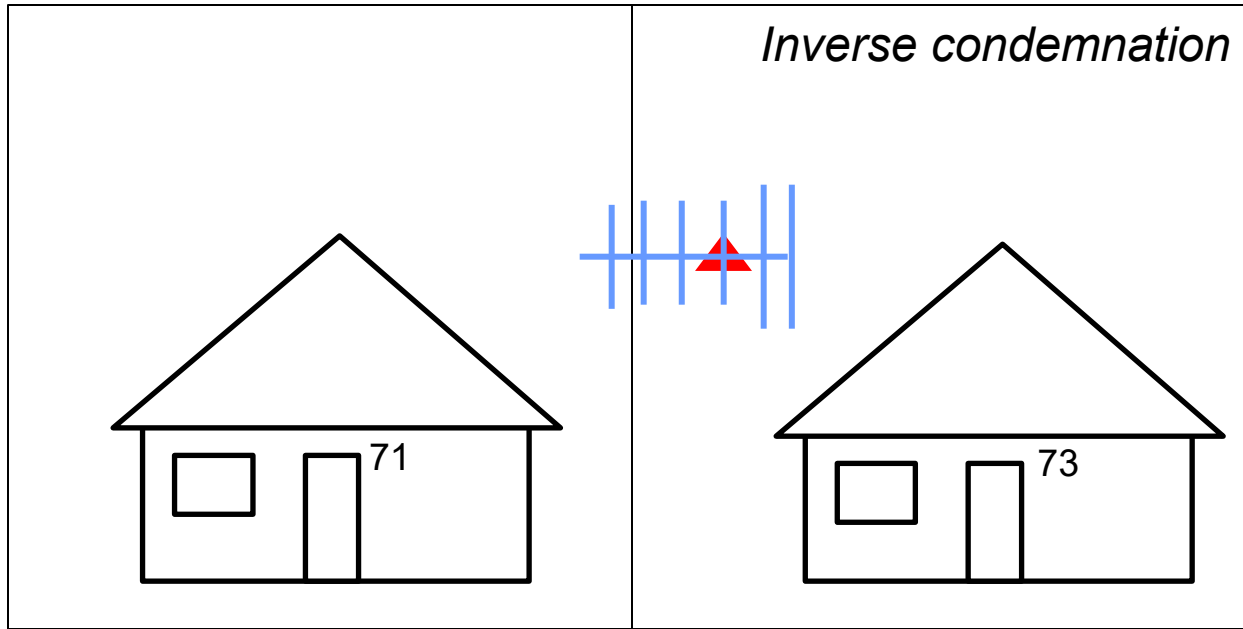
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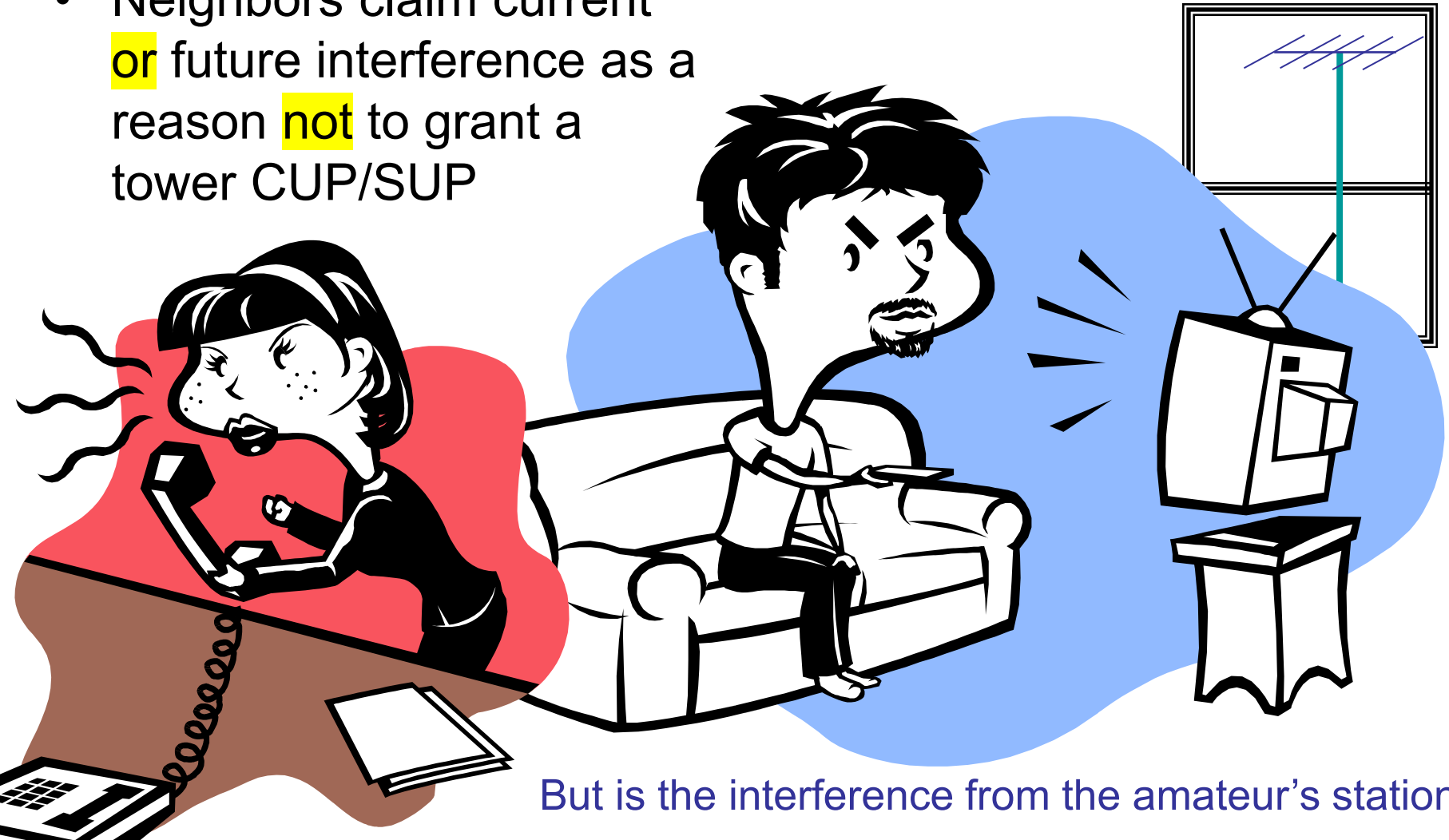


----- HAM AVENUE N.W. -----

Yeah, the perspectives are still all screwed up. **Tough.**

Yo___'re Inte_fe_ring w____th me

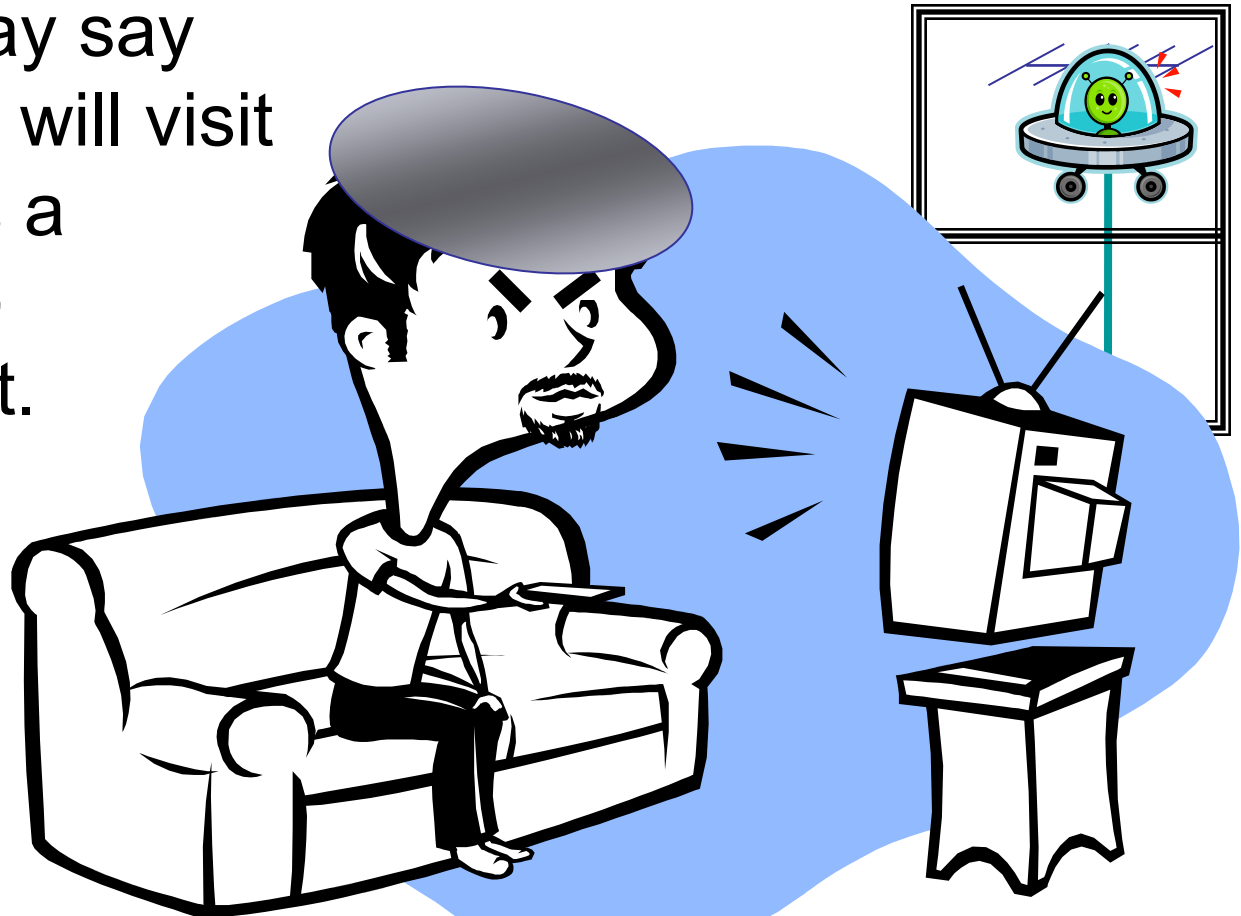
- Neighbors claim current or future interference as a reason not to grant a tower CUP/SUP



But is the interference from the amateur's station?

YoIU'sre Intuxzerfeering wizth my Telaevizsion

- Neighbors may say **space aliens** will visit your tower as a reason ***not*** to grant a permit.
- Offer them an aluminum foil cap!



(NO! NO! NO! Just kidding!)

You're Interfering With Me

- The FCC has spilled some ink on this subject.

Federal Communications Commission DA 03-2196

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Petition of Cingular Wireless L.L.C. for a)
Declaratory Ruling that Provisions of the Anne) WT – Docket No. 02-100
Arundel County Zoning Ordinance are Presumpted)
as Impermissible Regulation of Radio Frequency)
Interference Reserved Exclusively to the Federal)
Communications Commission)

MEMORANDUM OPINION AND ORDER

Adopted: July 3, 2003 Released: July 7, 2003

By the Chief, Wireless Telecommunications Bureau:

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APPENDIX: List of Commenters

I INTRODUCTION

1. In this order, we find that federal law preempts provisions of the Anne Arundel County, Maryland ("County") zoning ordinance involving radio frequency interference ("RFI"). The provisions require that, prior to receiving a County zoning certificate, owners and users of telecommunications facilities must show that their facilities will not degrade or interfere with the County's public safety communications systems.¹ The Ordinance provisions also permit the County to revoke a zoning

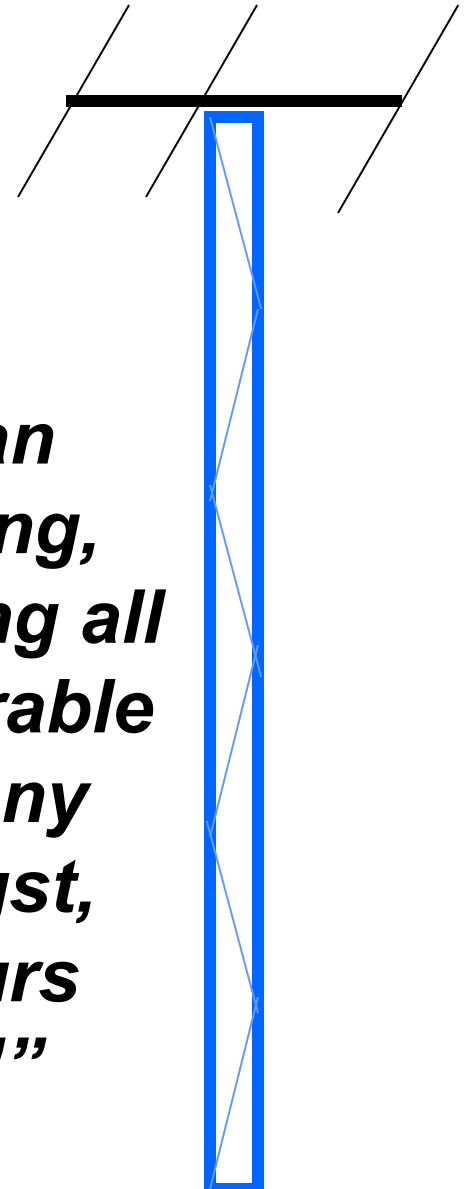
¹ See Article 28, §§ 1-101(14B), 1-128(a)(c), 10-125(j)(1)-(2), &(k)(1)-(2) of the Anne Arundel County, Code ("Ordinance").

17. Taken together, these Commission and court decisions clearly establish that the Commission has sole jurisdiction to regulate RFI, to the exclusion of provisions in local zoning or other regulations.

Yoiu'sre Intuxzerfeering wizth da Birdz

What neighbors may claim that...

“Amateur antennas are absolutely an anti-American abomination, attracting, affecting, and afterwards annihilating all airborne aviary (and additional adorable and agile animals) approaching at any angle, all absolutely absent any angst, anger, and agitation against amateurs anywhere and anytime and anyway!”

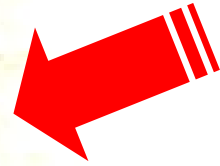


**We're just 3 slides
away from the end
of the lecture!**

(Get your pen and paper ready)

Smartphone

Likely **NOT** a space alien, but the jury's still out...



My thanks to **Dick Norton**,
N6AA our ARRL SW Division
Director, for his **misguided**
decision appointing me as a
SW Division Volunteer
Counsel some 15-ish years
ago!



Absolutely a space alien!





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W6JLK.com/w6sd23

Nope, sorry, I *mostly* don't do VC work in planning cases unless it's on the government side (hey, they need help, too!), but if you find yourself dealing with interference or FCC issues, give me a call.

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PS: If you're reading through these slides without having first suffered through the live lecture, all I can say is, "too bad; so sad! for you!" Certain portions of some of the slides won't make any sense to you if you weren't there for the real thing. Some of the slides may not make sense to people where *were* actually attending the meeting. It's kind of like real life, right? Ta Da, again.