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June 2, 2009

Via Hand Delivery

Members, City Planning Commission
City of Bradford, Pennsylvania
City Hall
Kennedy Street
Bradford, PA 16701

**Re: Proposed Draft Comprehensive Land Use Plan
Amendments/ Final Draft Dated April 15, 2009;
Amateur Radio Residential Antenna Installations**

Greetings:

The undersigned serves as General Counsel for ARRL, the National Association for Amateur Radio, also known as the American Radio Relay League, Incorporated. ARRL is a Connecticut not-for-profit corporation, and is the advocate for amateur radio operators in the United States. ARRL has been made aware of the pendency of the above-referenced proposed comprehensive land use plan amendments, now under consideration for enactment in the City of Bradford and elsewhere. We have been provided by local Amateur Radio operators a small portion of this draft, specifically pages 122 and 123 of the proposed draft, pertaining to "Radio and Television Antennas." We are at a distinct disadvantage in commenting on this proposal, because (1) we do not have a complete copy of the Final Draft document; (2) we do not have a copy of the "definitions" section thereof, and therefore are unable to understand the meaning of several terms in the antenna portion of the ordinance which are not standard terms of art; and (3) we do not know what other portions of the proposal might affect Amateur Radio antennas in the City, such as blanket height limits for various zones. This is unfortunate, and it would seem unusual that a hearing might be held on a proposed comprehensive plan or zoning ordinance, the terms of which are not public.

The foregoing notwithstanding, this ordinance is quite apparently significantly restrictive in several specific respects with respect to Amateur Radio communications and in our view runs significantly counter to the Federal Communications Commission's limited preemption policy (and the Federal regulations implementing that policy) governing Amateur Radio antennas. Though this letter is limited to a discussion of the Federal

regulatory limits on the proposed plan relative to antennas, it is apparent that the plan runs counter to recently enacted Pennsylvania law governing Amateur Radio antennas and municipal jurisdiction to regulate them.

We would like to offer some observations concerning the provisions currently included in this draft, and as well our assistance in connection with a redraft of it prior to its adoption. As it stands, there is a virtual certainty that the plan's provisions currently included in the April 15, 2009 draft are subject to successful challenge. The terms of the draft, both individually and in the aggregate, constitute neither a reasonable accommodation for Amateur Radio communications nor the least practicable regulation to accomplish the legitimate purposes of the City of Bradford, and therefore are not compliant with the preemption policies of the Federal Communications Commission. The plan provisions for antennas as drafted in our view are, in several specific respects, preempted on their face by Federal law and regulation.

We presume to offer some constructive suggestions and a bit of background on the value of Amateur Radio to communities such as Bradford, and to the United States. Antenna provisions in the comprehensive plan such as that now under consideration is detrimental not only to all Amateur Radio operators in the City, but to the residents of the City as well, who are the beneficiaries of Amateur Radio public service and emergency communications, furnished by volunteers. In 2002, the Second Appellate District, Court of Appeals of California summed up the value of Amateur Radio succinctly in *City of Rancho Palos Verdes v. Mark J. Abrams*, B151086 (August 26, 2002): "As a group, amateur radio operators provide a valuable service to the public. They transmit information about emergency preparedness, national security, and disaster relief. Amateur Radio has been credited, through the use of intercontinental communications, with enhancing international goodwill. And much of the highly developed radio communication technology existing today is the result of advances and discoveries made by amateur radio enthusiasts."

Municipal land use regulation of Amateur Radio antennas is subject to Federal policies [47 C.F.R. §97.15(b)], a subject with which we have some expertise. ARRL, in furtherance of the interest of its members (and of the Federal government) in efficient, reliable worldwide communication via Amateur Radio, has a significant interest in the occasional instances of overly burdensome restrictions on the operation of amateur radio stations which preclude effective amateur radio communications. Amateur radio stations are individually licensed by the FCC, and together constitute a network of stations which link all parts of the United States, and the world, at all times of the day and night. Amateurs participate in communications activities and in the emergency preparedness capabilities of the Amateur Service. The communications effectiveness of each amateur station is important as a link in the network of amateur stations which provide important communications worldwide, nationally, regionally, and locally.

The U.S. Congress has repeatedly spoken of the benefits of a healthy, efficient Amateur Radio Service, such as in the Conference Report to the Communications Amendments Act of 1982, Pub. Law #97-259 (1982). In the "Federal

Communications Authorization Act of 1988, Public Law 100-594, Congress established its policy regarding protection of amateur radio communications:

SENSE OF CONGRESS

Sec. 10. (a) The Congress finds that -

(1) More than four hundred and thirty-five thousand four hundred radio amateurs in the United States are licensed by the Federal Communications Commission upon examination in radio regulations, technical principles, and the international Morse Code;

(2) by international treaty and the Federal Communications Commission regulation, the amateur is authorized to operate his or her station in a radio service of intercommunications and technical investigations solely with a personal aim and without pecuniary interest;

(3) among the basic purposes for the Amateur Radio Service is the provision of voluntary, noncommercial radio service, particularly emergency communications; and

(4) volunteer emergency communications services have consistently and reliably been provided before, during and after floods, tornadoes, forest fires, earthquakes, blizzards, train wrecks, chemical spills, and other disasters.

(b) It is the sense of the Congress that -

(1) it strongly encourages and supports the Amateur Radio Service and its emergency communications efforts; and

(2) Government agencies shall take into account the valuable contributions made by amateur radio operators when considering actions affecting the Amateur Radio Service.

Recently, Congress passed Public Law 103-408, a Joint Resolution to recognize the achievements of radio amateurs, and to establish support for such amateurs as national policy:

Congress finds and declares that -

(1) radio amateurs are hereby commended for their contributions to technical progress in electronics, and for their emergency radio communications in times of disaster;

(2) the Federal Communications Commission is urged to continue and enhance the development of the Amateur Radio Service as a public benefit by adopting rules and regulations which encourage the use of new technologies within the amateur

radio service; and

- (3) **reasonable accommodation should be made for the effective operation of amateur radio from residences, private vehicles and public areas, and that regulation at all levels of government should facilitate and encourage amateur radio operation as a public benefit.**

(emphasis added).

The Federal Communications Commission, twenty-three years ago, declared a limited preemption policy over the regulation of amateur radio antennas. This addresses prohibitions, procedural or structural limitations imposed unreasonably by non-federal entities. Amateur Radio Preemption, 101 FCC 2d 952 (1985); codified at 47 C.F.R. Section 97.15(b). The declaratory ruling is often referred to as "PRB-1", the FCC file number for the notice and comment proceeding that led to the issuance of the ruling. The history of the FCC's preemption order is relevant to the instant proceeding.

Following a notice and comment proceeding, in September of 1985, the FCC issued Amateur Radio Preemption. In that declaratory ruling, the FCC stated, in relevant part:

* * * * *

...we recognize here that there are certain general state and local interests which may, in their even-handed applications, legitimately affect amateur radio facilities. Nonetheless, there is also a strong federal interest in promoting amateur communications. Evidence of the interest may be found in the comprehensive set of rules that the Commission has adopted to regulate the amateur service. Those rules set forth procedures for the licensing of stations and operators, frequency allocations, technical standards which amateur radio equipment must meet and operating practices which amateur operators must follow. We recognize the Amateur radio service as a voluntary, noncommercial communication service, particularly with respect to providing emergency communications. Moreover, the amateur radio service provides a reservoir of trained operators, technicians and electronic experts who can be called on in times of national or local emergencies. By its nature, the Amateur Radio Service also provides the opportunity for individual operators to further international goodwill. Upon weighing these interests, we believe a limited preemption policy is warranted. State and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted.

25. Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur

operators with the communications he/she desires to engage in. For example, an antenna array for international amateur communications will differ from an antenna used to contact other amateur operators at shorter distances...[L]ocal regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose.

(*Id.*, at 959-60)(citations omitted; emphasis added)

Following the issuance of this preemption policy, a series of cases applied it. These are relevant in evaluating the proposed ordinance draft. *See, Thernes v. City of Lakeside Park, Kentucky, et al.*, 779 F. 2d 1187, 59 Pike and Fischer Radio Regulation 2nd Series 1306 (6th Circuit, 1986); *on remand*, 62 Pike and Fischer Radio Regulation 2nd Series 284 (E.D. Kentucky, 1986). In that case, an amateur was denied a building permit for an antenna support structure and associated antenna, although the city agreed to suffer the continuation of a twenty-foot-high wire antenna, erected as a temporary measure by the amateur, and which was clearly inadequate. The amateur had proposed a 73-foot support structure, atop which were to be located eight feet of rotatable, directional antennas. Pending appeal in the Sixth Circuit, the FCC issued its preemption order. Upon consideration by the Sixth Circuit Court of Appeals of the FCC's legitimate "exercise of its... preemptive powers," the action by the city was declared unlawful, and the case was remanded to the District Court for action consistent with the FCC's order. On remand, the District Court ruled that:

...the defendants shall allow the plaintiff to erect, maintain and use an amateur radio antenna system (at 73 feet as proposed)...unaffected by any present or future ordinances of the city to the contrary, and shall issue to plaintiff all permits therefor.

See also, Bodony v. Incorporated Village of Sands Point, et al., 681 F. Supp. 1009, 64 Pike and Fischer Radio Regulation 2nd Series 307 (E.D. NY, 1987), (based on *Amateur Radio Preemption, supra*, the court permitted an antenna 85 feet in height); *Bulchis v. City of Edmonds*, 671 F. Supp. 1270 (W.D. Wash, 1987) (denial of a conditional use permit frustrated Federal goals in regulating amateur radio communications as it did not provide for the reasonable accommodation of amateur radio communication as required by *Amateur Radio Preemption, supra.*); *Izzo v. Borough of River Edge, et al.*, 843 F.2d 765 (3d Cir., 1988) (the FCC's preemption order "infuses into the proceeding a federal concern, a factor which distinguishes the case from a routine land use dispute having no such dimension." Because the effectiveness of radio communication depends on the height of antennas, local regulation of those structures could pose a direct conflict with federal objectives."); *Evans v. Board of Commissioners*, 752 F. Supp. 973, (D. Colo. 1990); *MacMillan v. City of Rocky River*, 748 F. Supp. 1241 (N.D. Ohio, 1990).

In *Pentel v. City of Mendota Heights*, 13 F. 3d 1261 (8th Cir., 1994) a radio amateur who had two small, ineffective amateur antennas was denied authority to install a proposed 68-foot antenna in her yard. The Court, in reversing a District Court summary judgment to the City, held, in part, as follows:

Courts applying PRB-1 have discerned two means by which PRB-1 may preempt a local ordinance. First, the local regulation may be preempted on its face. The city's zoning ordinance does not conflict on its face with PRB-1 because it neither bans nor imposes an unvarying height restriction on amateur radio antennas. (citations omitted).

Second, PRB-1 also preempts a zoning ordinance that a city has not applied in a manner that reasonably accommodates amateur communications (citations omitted). The FCC refused to specify a height below which local governments could not regulate, and instead declared that "local regulations which involve placement, screening or height of antennas based on health, safety or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose." PRB-1, para. 25.

Some cases held that, where a zoning conditional use permit process exists, local authorities could balance the communications needs of the radio amateur against whatever legitimate land use needs exist in considering a particular conditional use permit application. See, e.g. *Howard v. City of Burlingame*, 726 F. Supp. 770 (N.D. Cal. 1989), *affirmed*, 937 F. 2d 1376 (9th Cir., 1991); *Williams v. City of Columbia*, 707 F. Supp. 207 (D. SC 1989), *affirmed*, 906 F. 2d 994 (4th Cir., 1990). The more thorough analysis of the matter, however, provided by the Eighth Circuit in *Pentel v. City of Mendota Heights, Minnesota*, *supra*, held that the Commission did the balancing itself, and the courts merely must determine whether or not a municipality has made a reasonable accommodation for the amateur communications, which is the absolute obligation of the municipality. Recently, the FCC has held that municipalities may not "balance" their perceived goals against the FCC's preemption policy goals. The preemption policy is exactly that: the FCC itself did the balancing, and it is up to the municipalities to regulate consistent with the FCC's policy. See, *Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antennas and Support Structures*, 14 F.C.C.R. 19,413 para. 7 (1999), FCC 99-2569; *Reconsideration denied by Order on Reconsideration*, 15 F.C.C.R. 22151 (November 15, 2000); *Review denied on other grounds*, 17 F.C.C.R. 333 (2001) (*emphasis added*):

[T]he PRB-1 decision precisely stated the principle of 'reasonable accommodation.' In PRB-1, the Commission stated: 'Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's

legitimate purpose.' **Given this express Commission language, it is clear that a 'balancing of interests' approach is not appropriate in this context.**

It is apparent that the essence of the FCC's preemptive intent as expressed in Amateur Radio Preemption was to insure at least a basic guarantee that each amateur radio operator could install functional antennas for all amateur frequency bands, at the licensee's residence. This was made clear in September of 1989, when FCC revised its amateur radio rules to codify the essential holding of Amateur Radio Preemption, as follows:

(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.]

That there is inherent tension between the land use jurisdiction of municipal governments and the Federal and State goals for Amateur Radio communications is clear from the decision of the United States District Court for the Northern District of New York in *Randall Palmer v. City of Saratoga Springs, et al.*, 180 F. Supp. 2d 379 (N.D.N.Y. 2001), where the court found that "undeniable tension exists between amateur radio operators' interests in erecting a radio antenna high enough to ensure successful communications, and local municipalities' interests in regulating the size and placement of amateur radio antennas. Choosing between the two, the federal government aligned its interests with those of the amateurs... Accordingly, 'federal interests are furthered when local regulations do not unduly restrict the erection of amateur radio antennas.'"

The Federal Communications Commission has purposely placed few specific restrictions on the height of amateur radio antennas. See 47 C.F.R. §97.15. Only if the radio amateur is near an airport or requires an antenna higher than 200 feet in order to communicate effectively must he or she get special FCC approval. Because of the relationship between antenna height, terrain obstacles, and the susceptibility of home electronic equipment to interference from antennas in the same horizontal plane, the FCC has allowed amateur radio operators virtually unfettered discretion for ascertaining proper antenna height up to 200 feet.¹ The topography of the site, the presence of geographic

¹ FCC has, however, offered some guidelines for appropriate antenna height. It has, for example, determined that CB antennas, used for communications up to only 150 miles, may be erected at heights up to 60 feet:

"to enable licensees to erect antennas above nearby obstacles which may absorb radiated energy and thus decrease ability to communicate. The Commission believes that the 60-foot maximum proposal of this Notice represents a reasonable antenna height which will accomplish this purpose. Moreover, this increase in permissible height may tend to decrease television interference problems since it will allow increased height differential between (CB) antennas and television antennas."

obstacles such as hills or mountains, the frequency bands used, the eleven-year sunspot cycle, and many other technical factors must all be considered when a radio amateur decides how high and in what location to place his or her antenna, and what configuration that antenna should take. Arbitrary procedural restrictions, unreasonable cost burdens, and arbitrary aesthetic conditions which preclude or limit antenna size or configuration, all of which are contained in the draft antenna element in the proposed comprehensive plan, preclude effective, reliable antenna systems and amateur communications, and take away this important discretion intentionally given by the FCC to the Amateur Radio Service. As Thernes and Bodony each recognized, without specific and substantiated concerns for public health, safety or other compelling purposes (and except to the extent that amateur radio communications are "reasonably accommodated"), preclusive limitations violate the Federal Communications Commission's preemption regulation.

The Proposed Ordinance Provisions

The first specific concern in the draft plan is the limitation of antennas to roof or rear yard location only, and imposition of an apparently arbitrary 20-foot setback. The setback limitation is not keyed to any safety consideration, as it is a fixed setback. To the extent that the combination of a rear-yard antenna structure requirement and the 20-foot setback requirement precludes installation of an antenna on a particular lot, the requirement is an absolute prohibition on Amateur Radio communications for that resident. Nor can the combination of restrictions constitute neither a "reasonable accommodation" for Amateur Radio communications nor the least practicable regulation to accomplish a permissible municipal purpose.

The second, and perhaps the most restrictive provision in the draft is the absolute height limit. Antennas of all types are limited to a height of 20 feet above the maximum height limit for the zone in which the antenna is located. This creates the irrefutable presumption that any antenna higher than that is prohibited. There is not even a conditional use permit or special exception procedure for obtaining a permit for a higher antenna where need is shown. Given this, the draft proposes a fixed, non-variable antenna height. Such is preempted on its face by the FCC's preemption policy. This is neither a reasonable accommodation nor the least practicable regulation of Amateur Radio antennas. Therefore, the ordinance is insufficient to survive a challenge premised on 47 C.F.R. § 97.15(b). As a practical matter, the class of licensed radio amateurs that could install and maintain an effective antenna that meets all of the criteria for a building permit is extremely small. Clearly, a more reasonable approach would be to permit in residential areas (where virtually all Amateur Radio antennas must be located given the non-commercial, avocational nature of the Service) those antennas that are normally encountered and utilized by Amateur Radio operators. Within these parameters, it is perfectly reasonable

511, at 513.

Because the Citizen's Radio Service operates on a frequency adjacent to the highest HF amateur frequency band, antennas for the Amateur Radio Service must, assuming many other favorable factors and ideal ionospheric conditions, be at least that high in order to be even minimally effective, even on that one band. Antennas for other bands must be higher. As stated in Bodony, supra, "Testimony of experts indicates that a height of 60 to 70 feet is necessary for good reception under ideal atmospheric conditions."

to impose certain even-handed restrictions to accomplish the goals of minimal aesthetic impact, etc. without unreasonably restricting the types, heights or cost of installation of antennas to the extent that an effective antenna is not permitted as a matter of right anywhere in the City. In this case, the ordinance arbitrarily limits antenna height to a fixed limit without any regard to the possibility that the communications needs of the licensed radio amateur might in some cases exceed that height limit. Amateur Radio communications require antennas located at a height that will permit VHF and UHF line-of-sight communications and to clear the treetops which would severely attenuate such radio signals, both transmitted and received.

The *Bodony*, *Bulchis*, *Evans* and *Pentel* cases cited above each stand for the proposition that fixed antenna height limits without a process incorporated in the ordinance to make reasonable accommodation in certain cases makes the ordinance void as preempted on its face. In *Bodony*, the Court held that a fixed height limit was invalid because it interfered with Bodony's "right to the full use of his Amateur Extra Class license and the license to use his property as an Amateur Radio station issued by the FCC." In *Bulchis*, the court held that an ordinance with a height limit was not preempted on its face because it incorporated a conditional use permit process which permitted an analysis to be conducted based on each licensee's needs. In *Evans*, an absolute height limit was held to invalidate the ordinance as preempted. And in *Pentel*, an absolute height limit of 25 feet in the ordinance invalidated the ordinance. The case was remanded with instructions by summary judgment.

Perhaps closest to the instant case is a Florida court decision, *Brower v. Indian River County Code Enforcement Board*, (No. 91-0456 CA-25 (June 23, 1993), 1993 WL 228785 (Fla. Cir. Ct.) in which a radio amateur sought to erect an antenna and support structure totaling 95.6 feet above ground level. The ordinance permitted antennas to a height of 70 feet, but above that, such antennas were absolutely prohibited. The court held that the ordinance was facially void due to the unvarying height limit. The Court held: "We agree with the *Evans* court's adoption of prior rulings in that case which concluded that prohibitions of this nature are not permitted (citing *Evans*, 752 F. Supp. 973 at 976).

The types of antennas commonly found in communities throughout the United States include free-standing, lattice-type support structures with rotatable antennas mounted atop them, at heights in the normal range of 65 to 85 feet. Prohibition of all antenna support structures higher than 20 feet above maximum building height (whatever that might be) is arbitrary and capricious. A stand alone, guyed or fixed lattice amateur radio antenna support structure with horizontal, rotatable antennas mounted on the top is a normal, customary accessory use in a residential area. Amateur radio antennas supported by fixed height lattice support structures are without any doubt at all normal, reasonable accessory uses to residential real property. In *Dettmar v. County Board of Zoning Appeals*, 28 Ohio Misc. 35, 273 N.E. 2d 921 (1971), it was held that a sixty-four-foot high amateur radio antenna atop a lattice tower in a residential, single-family zone was permissible as an accessory use customarily incident to single-family dwellings. In *Town of Paradise Valley v. Lindberg*, 27 Ariz. App. 70, 551 P. 2d 60, 81 A.L.R. 3d 1080 (1976), a ninety-foot high amateur radio antenna atop a lattice tower was held

to be a permitted use accessory to a single-family residence. Village of St. Louis Park v. Casey, 218 Minn. 394, 16 N.W. 2d 459, 155 A.L.R. 1128 (1944) held that a sixty-foot high pole and two thirty-foot high poles supporting a wire amateur antenna were permitted as an incidental use of residential real property. In Skinner v. Zoning Bd. of Adjustment, 80 N.J. Super. 380, 193 A.2d 861 (1963), a one-hundred-foot high amateur antenna on a lattice tower was held to be a permitted accessory use of residential property. As early as 1951, it was held in Wright v. Vogt, 7 N.J. 1, 80 A.2d 108 (1951) that a sixty-foot high amateur (lattice) tower was a permissible use in residential zones.

The requirement that all roof-mounted antennas over 8 feet above roof level be guyed (the term, incidentally, is “guy wires”, not “guide wires” as the document states) is not inherently unreasonable, but as discussed below, it is a restriction that does not comply with the FCC’s very specific regulations affecting over-the-air video reception devices (the so-called “OTARD” regulations; see 47 C.F.R. § 1.4000 (1996)).

The requirement that all antennas comply with “Airport Zoning” regulations and FCC regulations is unclear, unless “Airport Zoning” regulations is defined elsewhere in the document, and unless that translates to Federal Aviation Administration (FAA) regulations which comprehensively regulate antennas near airports pursuant to Federal statutory authorization, which also would preempt municipal land use regulation of antennas relative to air safety.

It is ARRL’s view that Bradford cannot, without violating two separate obligations imposed by the FCC’s preemption policy, impose restrictions on antennas and antenna support structures that are as broad as proposed. The standards for antennas and their support structures, in fact, are imposed without any explanation of how they relate to clearly defined objectives; they are simply restrictions, and therefore cannot qualify as a basis for restricting an Amateur Radio antenna system. As such, they fail the FCC’s (and Pennsylvania’s) preemption policy. For these reasons, the restriction is not the least practicable restriction to accomplish the (presumably aesthetic) municipal purpose.

Finally, the plan requires that antennas be screened from adjacent properties by evergreen trees or “other suitable material” (sic) as approved by the City Zoning Officer. The provision would be acceptable if it merely required that an antenna be placed within the “least visible location on the site” (except where the “least visible location on the site” would not permit effective Amateur Radio communications. However, the requirement of “vegetative screening” from adjacent properties, however, is insidious: The City is not permitted to limit Amateur Radio communications to certain technical parameters but not others. Dictating antenna height, or the ability to install an effective antenna at all, is not subject to municipal limitation. A screening requirement has the obvious potential of imposing costs that are excessive (and completely outside the control of the applicant) relative to the cost of the antenna to be installed. The FCC’s metric for determining whether cost

burdens constitute preclusion of antenna approvals is tied to the cost of the antenna installation: If imposition of costs on the applicant approaches or exceeds the cost of the installation (as would clearly be the case with unlimited vegetative screening obligations at the Applicant's cost), then the restriction as applied to the applicant will be preempted as a prohibition, and clearly neither a reasonable accommodation nor the minimum practicable regulation to accomplish the municipality's legitimate purpose. Imposing or passing on to the applicant unspecified and unlimited costs is a thinly-veiled method of discouraging or precluding antenna permit applications and thus Amateur communications. The conditions that would be attached to the approval process (which are not ascertainable by the applicant for a building permit in advance of applying for one) are completely unreasonable. The municipality cannot prohibit indirectly what it cannot prohibit directly, and the many thousands of dollars of expenses in order to be able to install a non-commercial antenna installation for public service communications constitutes a direct prohibition of Amateur Radio operation anywhere in the City.

It is Bradford's burden to establish that its land use processes, individually and in the aggregate, comply with the "no prohibition, reasonable accommodation, least practicable restriction" obligations of the Federal regulations. So, it is not reasonable to require a radio amateur to meet burdens that far outstrip the value of the facility installed.

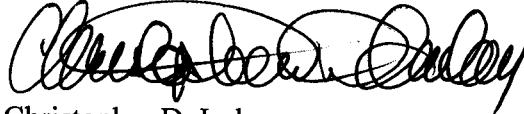
Purely aesthetic concerns, and especially the obligation to avoid some unspecified aesthetic impact on people using rights of way or adjacent properties, do not justify denying a radio amateur an effective antenna. While it would be perfectly reasonable to obligate the applicant to site the antenna at a spot in the yard of the residence that minimizes the aesthetic impact of the antenna, the presence or absence of vegetation shielding a neighbor's property cannot be the "go-no-go" determinant for approval or denial of the authority to install a fundamentally effective Amateur Radio antenna.

Also incidentally, though not a direct concern of ARRL,, this proposed antenna regulation, if applied to television broadcast, small satellite dish antennas, or wireless cable antennas (or wireless broadband antennas) is also completely void and unenforceable; the OTARD rule (47 C.F.R. 1.4000), which the FCC enacted pursuant to the Telecommunications Act of 1996, makes it clear that there is NO height limit applicable to television receive antennas. Building permits can be required for TV antennas above 12 feet above roof level, but no height limit can be imposed on those antennas, pursuant to the Telecommunications Act of 1996 and the FCC rules enacted pursuant to that legislation.

We hope that you will take these suggestions into consideration in connection with this proposed ordinance. We would offer the assistance of this

office in arriving at a mutually acceptable redraft that complies with both 47 C.F.R. § 97.15(b) and all applicable Pennsylvania statutes. I look forward to hearing from you.

Yours very truly,

A handwritten signature in black ink, appearing to read "Christopher D. Imlay". The signature is written in a cursive style with some overlapping loops.

Christopher D. Imlay
General Counsel, ARRL

Cc (by facsimile and/or e-mail only)

Mr. Bill Edgar
ARRL Division Director