

## Memorandum

February 28, 2008

To: Frelinghuysen Twp. Mayor & Committee  
From: Edward Wacks, Township Attorney  
CC: Robert Stiles, Esq., George Boesze, Construction Official, Michael Lavery, Esq.,  
Planning Board Attorney, Edward Palmer, Esq. Zoning Board Attorney, Richard  
O'Connor, Construction Official

Re: Noah Gottfried- Amateur Radio Antenna

Noah Gottfried constructed a radio tower on his property without obtaining any permits or approvals. He has maintained this tower for sometime and recently, he submitted an application for a building permit for the erection and maintenance of a private, non-commercial amateur radio antenna support structure for his personal use. The question arose as to whether the Township has any right to control the erection and maintenance of any tower he constructs on his property. Mr. Gottfried is represented by Mr. Stiles, who submitted a written argument that Federal Law preempts local jurisdiction of such towers. We have been asked to provide a written opinion on the questions raised. Accordingly, and in summary, it is our opinion that Federal law does in fact preempt local zoning ordinances and the township has no zoning authority to regulate the amateur radio antennas which are the subject of said application. However, the Township still has jurisdiction over the manner in which the tower is constructed under applicable building codes.

The application points out that "simply granting the necessary permit is an extremely common approach through out the United States." The granting of a permit without a variance is supported by the cases cited under New Jersey Law.

Zoning setback requirements are also not applicable in this instance because they apply to dwellings and buildings, not antenna structures. The application points out that even if the setback requirements were applicable, all of the antenna structures are within the proper setbacks.

However, the antenna must comply with the State Building Code requirements found in the International Building Code, New Jersey Edition, Section 3108, Radio and Television Towers.

The pertinent sections of this Code are:

3108.1 General. Subject to the provisions of Chapter 16 and the requirements of Chapter 15 governing the fire-resistance-ratings of building for the support of roof structures, radio and television towers shall be designed and constructed as herein provided. (Chapter 15 is not applicable in this instance.)

3108.2 Location and access. Towers shall be located and equipped with step bolts and ladders so as to provide ready access for inspection purposes. Guy wires or

other accessories shall not cross or encroach upon any street or other public space, or over above-ground electric utility lines, or encroach upon any privately owned property without written consent of the owner of the encroached-upon property, space or above-ground electric utility lines.

3108.3 Construction. Towers shall be constructed of approved corrosion-resistant noncombustible material. The minimum type of construction of isolated radio towers not more than 100 feet (30 480 mm) in height shall be type IIB.

3108.4 Loads. Towers shall be designed to resist wind loads in accordance with TIA/EIA-222. Consideration shall be given to conditions involving wind load on ice-covered sections in localities subject to sustained freezing temperatures.

3108.4.1 Dead load. Towers shall be designed for the dead load plus the ice load in regions where ice formation occurs.

3108.4.2 Wind load. Adequate foundations and anchorage shall be provided to resist two times the calculated wind load.

3108.5 Grounding. Towers shall be permanently and effectively grounded.

Chapter 16 of the Code referenced in Section 3108.1 is entitled "Structural Design". Chapter 16 is 50 pages and could not be duplicated herein. The general scope of the Chapter and possible applicable code sections are listed below.

Section 1601.1 Scope. The provisions of this chapter shall govern the structural design of buildings, structures and portions thereof regulated by this code.

Section 1603	Construction Documents
Section 1604	General Design Requirements
Section 1605	Load Combinations
Section 1606	Dead Loads
Section 1607	Live Loads
Section 1608	Snow Loads
Section 1609	Wind Loads
Section 1612	Flood Loads
Section 1613	Earthquake Loads

In addition, within the application, the Applicant has agreed to certain conditions or made statements regarding his intentions with respect to the antennas. They are as follows:

Page 8: The Applicant will accept a permit condition to the following effect: "These structures shall not be used to support common carrier cellular telephone or any other commercial purpose antennas."

Page 12: "The Applicant will gladly accept a condition to the building permit that no signs shall be erected on an antenna support structure, unless required by law. (The Applicant knows of no law requiring any signs at this location.)"

Page 21: "Mr. Gottfried has no intention of going over 200 feet in height, as that might then require lighting and painting under FAA regulations."

Page 23: "Radio Frequency Interference. The question of the potential for radio-frequency interference (RFI) has been completely preempted by Federal law on the matter."

Page 24: "Nonetheless, amateurs generally, and this Applicant in particular, are prepared to offer aid beyond the requirements of law. Should it be necessary, the Applicant pledges to cooperate with any individual, whether or not an abutter, who owns equipment that might be affected."

Page 25: "Finally, the Applicant assures the city that should he no longer reside at the property, assuming no other person residing there wishes to continue using the structure, he will remove the antenna-support structure and the antennas. He has every intention of taking the structure and antennas to his next home."

A copy of this opinion is being furnished to all interested persons so that we will all be on the same page regarding this particular matter. Nothing contained in this memo shall be deemed to apply to the construction of a future tower on any other property in the Township whether owned by Mr. Gottfried or anyone else.

Respectfully submitted. Edward Wacks, Esq. Township Attorney.