

# PRB-1 and CC&Rs — What Should I Do Now?

*Although states and towns have to “reasonably accommodate” Amateur Radio communications, how does PRB-1 actually apply to real-world situations?*

Dan Henderson, N1ND

**P**icture the following scenarios:  
*Scenario 1:* You have picked out the site on your property for the perfect tower and antenna. The tower sections are on order, the rotator is in the garage and the guy points have been identified. You're in the back yard, digging the hole for the concrete pad, dreaming of busting the pileup in the next big DXpedition or getting that message through in an emergency.

There is a knock at the door. A town zoning official says a neighbor has called and reported that you are building a tower. He tells you there are town ordinances or bylaws that control the height and location of towers and the towers require a building permit. You aren't sure what to do next.

Welcome to one of the most challenging areas of Amateur Radio — antenna and tower zoning and regulations.

*Scenario 2:* You and your spouse have settled into your lovely “dream home,” picked because of the extra large lot with space to put up a tower so you can “work 'em all” in your golden years. You have paid for the backhoe, poured the concrete pad for the base and have four of the eight sections of tower in the air. The next morning you find a certified letter in your mail from the development's Home Owners' Association (HOA). It tells you your tower work is prohibited by a restriction in your property deed and demands that you cease and desist immediately and remove what you have already done.

Welcome to the world of CC&Rs — Covenants, Conditions and Restrictions.

## Towers and Antennas in the 21st Century

The ability to actively participate in our hobby in the 21st Century is a far different landscape than it was in the beginning. Even with the Amateur Radio Service's well-deserved reputation as a valuable community resource, we are constantly confronted by neighbors and their approach of “NIMBY” (not in my back yard) when we wish to put up antennas to help us

communicate more effectively.

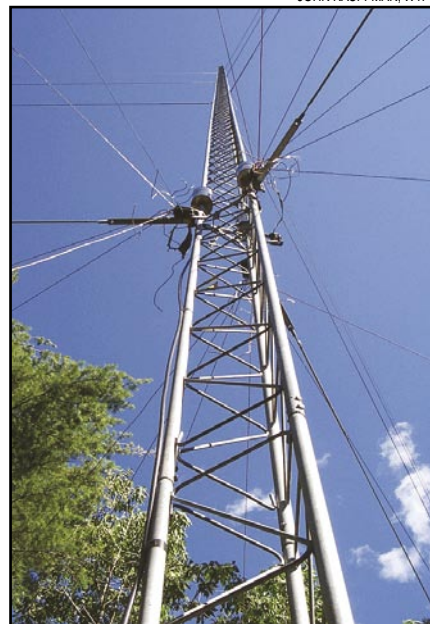
Each antenna restriction situation is different and there is no single correct way to approach the problems that may come up. There is no way to convey in a brief article everything you need to know in order to “fight your fight.” But here are a few steps to help get you started in the right direction.

First, determine if you are facing a PRB-1 issue or a CC&R issue. PRB-1 issues are those arising out of governmental action (statutes and ordinances established by state or local governments). CC&R issues arise out of what historically are private contracts between individuals or groups relating to the use of a parcel of land or an entire subdivision. To quote Rudyard Kipling, “East is East and West is West and never the twain shall meet...”

## PRB-1

After much hard work, we have the FCC limited preemption (known as PRB-1) to help us handle land use restrictions. PRB-1 is the FCC declaratory ruling requiring that local zoning laws must *reasonably accommodate* amateur antennas and support structures *with minimal regulation* and without unreasonable restrictions. Any regulations must constitute the minimum practical regulation to accomplish the state or local authority's legitimate purpose of protecting public safety.

PRB-1 isn't a “magic bullet” allowing amateurs to do whatever they want. States may still regulate for legitimate public interests, such as safety. What PRB-1 (and its “sister” laws in 23 US states) says is that *state and local governments must work with the amateur by providing the minimum amount of local restriction but still allowing the amateur to erect antenna support structures that are reasonable to carry out the desired communications.* It isn't “anything goes” for the amateur, as some suggest. But neither does it allow the municipal government to “balance” its goals against the amateur's interests. The FCC did the balancing. It is now up to the municipality to reasonably accommodate the amateur's communications needs.



Looking up a 160 meter single vertical, now integrated into 3-element inline array, one of the many towers at the home of Matt Strelow, KC1XX, of Mason, New Hampshire.

S. KHRYSTYNE KEANE, K1SFA



Two of the six towers at the Peru, Massachusetts home of Dave Robbins, K1TTT. The 60 foot tower (foreground) has both 6 and 10 meter beams, while the 150 foot tower boasts 4-element 20 meter beams.

## Wanted: A Few Good VCs and VCEs

### Dan Henderson, N1ND

Invariably, when an amateur wants to erect a tower and more efficient antennas, there will be questions about zoning and building ordinances. Some questions are simple, while others may lead to a long battle with town officials. Rule number one in any of these cases: Make sure you know the legal landscape you are facing before you start any project.

#### A Tool in the Amateur Radio Toolbox

There are many tools to assist amateurs in navigating the perils of zoning and restrictions. Among the most important resources are fellow amateurs who have stepped forward to serve as either an ARRL Volunteer Counsel (VC) or an ARRL Volunteer Consulting Engineer (VCE).

ARRL VCs are fellow amateurs who are attorneys. They have agreed to provide you with a free initial consultation when you are facing town zoning issues related to your erection of Amateur Radio towers and antennas. ARRL VCEs are registered Professional Engineers (PEs) who likewise agree to give you an initial consultation when facing antenna support installation issues required by the town.

Note that VCs and VCEs provide their initial consult for free; however, if you need to retain them further to help you navigate through the "red tape," you need to be prepared to pay them for their professional services (many VCs and VCEs do provide discounted rates if they assist long term).

#### The Role of the VC and VCE

Primarily the role of the VCs and VCEs is to assist amateurs in antenna and zoning issues, though some do provide advice on other topics. These might include a VC helping a club through the process of incorporating, or a VCE serving as an "expert witness" before a town zoning meeting. When facing an antenna fight, remember VCs, VCEs and other resources are there to assist you, but their role is secondary to yours. The amateur seeking to erect the tower has to take the lead, making sure that all required information from the town is provided promptly and as required. This includes bearing any costs associated with the permitting process or legal fees. If you follow the steps required by the city or town, and you don't take any shortcuts and are reasonable in your approach, you should end up prevailing in the end.

#### Take the First Step

The ARRL is looking for qualified and interested attorneys and registered Professional Engineers to step forward to serve as VCs and VCEs. There is no better time to consider serving in these important but unsung volunteer positions than now. Right now, the ARRL has VCs in only 44 states and VCEs are registered in just 33.

If you would be willing to step forward and volunteer your services as a VCE, you may submit an application online at [www.arrl.org/FandES/field/regulations/local/vceapp.html](http://www.arrl.org/FandES/field/regulations/local/vceapp.html). To apply as a VC, submit your application [www.arrl.org/FandES/field/regulations/local/vcapp.html](http://www.arrl.org/FandES/field/regulations/local/vcapp.html). For more information on how you can assist as a VC or VCE, send an e-mail to [n1nd@arrl.org](mailto:n1nd@arrl.org) or call 860-594-0236.

If you need the services of a VC or VCE to help with your zoning problem, contact the ARRL Regulatory Information desk at [reginfo@arrl.org](mailto:reginfo@arrl.org) or call 860-594-0236. We are happy to help you sort through the first steps or try to hook you up with a nearby VC or VCE. The ARRL VC/VCE programs are here to serve you, but we need your help.

If you are facing a PRB-1 issue, make sure you don't take shortcuts. Work with those government officials to if possible agree upon and implement reasonable standards. If you omit a step, you weaken your case should it have to go to litigation. The ARRL offers what is right now the comprehensive resource to assist amateurs facing zoning issues. *Antenna Zoning for the Radio Amateur* by Fred Hopengarten, K1VR,<sup>1</sup> should be con-

sidered a "must have" by any amateur facing PRB-1 issues.

What should you do if you come across what you consider to be an unreasonable requirement that cannot be negotiated? First, make sure you understand what land use authority's requirements really are. Once you are certain of that, you are encouraged to contact an ARRL Volunteer Counsel (VC) or ARRL Volunteer Consulting Engineer (VCE). These ARRL volunteers have agreed to do an initial assessment of cases when approached and offer advice to the amateur as to where they stand in a given situation. VCs and VCEs provide this initial consult for free as a service to the amateur community (see sidebar). Bear

<sup>1</sup>Fred Hopengarten, K1VR, *Antenna Zoning for the Radio Amateur*. Available from your ARRL dealer or the ARRL Bookstore, ARRL order no. 8217. Telephone 860-594-0355, or toll-free in the US 888-277-5289; [www.arrl.org/shop/](http://www.arrl.org/shop/); [pubsales@arrl.org](mailto:pubsales@arrl.org).



in mind that it may be in your best interest to retain the services of an attorney if you are facing an extended battle over a PRB-1 issue.

Unfortunately, the ARRL is not able to provide individual legal assistance to amateurs facing zoning fights; however, our Regulatory Information Specialist can help you review the situation you are facing and direct you to available resources. Remember: It is not legal advice, but an attempt to help you understand current regulations. An extensive online PRB-1 package is also available from the ARRL. It provides a significant amount of information that you may find useful in presenting your case (see [www.arrl.org/FandES/field/regulations/PRB-1\\_Pkg/index.html](http://www.arrl.org/FandES/field/regulations/PRB-1_Pkg/index.html)). You should also review the "How To" chart, as it is a good guide to help keep you pointed in the right direction (see [www.arrl.org/FandES/field/regulations/ant-how-to-charts.html#local](http://www.arrl.org/FandES/field/regulations/ant-how-to-charts.html#local)).

The bottom line in PRB-1 cases is that there is almost always a way for an amateur to succeed when they make a reasonable antenna and support structure request. But it takes hard work by an amateur well versed in current information to be successful and help educate the municipality gently.

### CC&Rs

A different problem that requires a different approach, CC&Rs are usually added to the deed by the original non-government restrictions of the property when it was initially sold. CC&Rs remain on the deed even when it is transferred to another party through resale.

Before you purchase your property, you'll

## Advice from the Front Lines

### S. Khrystyne Keane, K1SFA, QST Assistant Editor

Are you looking for a VC or VCE to help you with your situation? You never know just when you will need good advice. Read what these current VCs and VCEs have to say about challenges many ham operators face when trying to install towers.

#### VCs

Fred Hopengarten, K1VR, of Lincoln, Massachusetts, is a VC and author of *Antenna Zoning for the Radio Amateur*. He says he became a VC to help people help themselves. "I am lucky to be a ham and an attorney, so I can help others in a field I actually know something about." He said a primary challenge in advocating on behalf of hams wishing to put up a tower is encouraging the applicant to do enough homework in advance of putting in the application and the hearings that will follow. He encourages those hams wishing to construct towers on their property to research the process before they purchase the property. "Pick out your property with the view of the Amateur Radio potential in mind. Don't expect to be able to put up three towers on a half-acre lot."

Phil Kane, K2ASP, of Beaverton, Oregon, is both a VC and a VCE. Now retired from a 30 year career with the FCC's Field Enforcement Branch, Phil knows both sides of the issue when it comes to putting up towers. "I was very involved on the regulatory end of Amateur Radio — now I'm on the other side helping my fellow hams." He says that municipalities do not fully understand reasonable accommodation. "My job, in advocating on behalf of hams, is to make sure planning and zoning commissions clearly understand just what reasonable accommodation is." He offers this advice: "Have a VC read over any home buying contract *before* you purchase your property. This will save you a bunch of headaches in the long run."

#### VCEs

Dick Weber, K5IU, of Prosper, Texas, said that he thought he could help other hams as a VCE. "As a Mechanical and Structural Engineer, I see that a lot of hams put up structures that are dangerous and unsafe." He says that hams have to realize they are not engineers. "They might have a solid background in radio theory, but many have no idea how to design a structure with the correct integrity. They just have a lack of understanding on how structural stuff works." He said that by following manufacturers' directions "to the letter" and making no deviations, you should be in good shape. "If you do deviate from these instructions, please get a Structural Engineer to help you."

John Corini, KE1IH, of Barkhamsted, Connecticut, is also a Structural Engineer, as well as an Aerospace Engineer. He cites Fred Hopengarten as his impetus for joining the VCE ranks. "I saw hams with dangerous tower and antenna installations, and I want to make changes for safer structures." He says that "hams are 'cheap.' They will spend thousands of dollars on a radio, but won't spend \$500 for a Structural Engineer to make sure they have a safe structure." (John, as a VCE, offers a free 2 hour initial consultation to hams.) "Hams have no idea just what can go wrong if they don't get the proper assistance with the tower." He says that planning the proper location and getting the right equipment is vital. "Visit as many hams' properties as you can. See what they have done; see what works and what doesn't," he advises.




**Brian Curtiss, AB1AI, of Wallingford, Connecticut, has a 65 foot Rohn 25 tower at his house. It supports a 4-element KLM KT 34A triband antenna for 10, 15 and 20 meters.**

complex owner for an acceptable antenna, but the answer is that you are bound by the terms of your lease and can only do what your landlord will permit. PRB-1 doesn't apply to this situation. Remember: If your lease says no antennas or radio transmitting from your rental property, you run the risk of having your lease terminated and being evicted for breaking the lease. Proceed at your own peril.

### How Is the ARRL Addressing These Issues?

The ARRL takes any antenna restrictions seriously. After all, the effectiveness of our communications (both in routine operations and in emergencies) depends on efficient and adequate antennas. That is why the ARRL Board of Directors has adopted a legislative goal of expanding PRB-1 protection to all forms of land use regulation as its Number One objective with the 110th Congress (see "ARRL Legislative Positions for the 110th Congress" found online at [www.arrl.org/govrelations/](http://www.arrl.org/govrelations/)). If you have questions on any of these areas, contact the ARRL Regulatory Information Branch ([reginfo@arrl.org](mailto:reginfo@arrl.org) or by phone at 860-594-0236). We will be happy to help get you pointed in the right direction with information and contacts as appropriate for the situation you face.

So as you dream of your ultimate station, keep in mind that there are some outside forces you will have to be mindful of in your planning. By doing your homework you should be able to develop plans for a station that will let you continue to enjoy this wonderful hobby

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want to have your attorney research any potential deed restrictions or conditions. If it is restricted, you may need to keep looking, because it can be difficult (and expensive) to have restrictions declared invalid. *The FCC has been very clear that PRB-1 does not cover CC&Rs, as they are a private contract, not public policy issues.* As of now, PRB-1 won't be of help to address CC&R issues.

Your best (and right now, the only realistic) approach if facing a CC&R issue is to approach the HOA board or its equivalent with a modest, reasonable plan. Read the excellent article by ARRL General Counsel Chris Imlay, W3KD, "But I Never Agreed to That" from the November 1995 issue *QST*. This can be found online at

[www.arrl.org/FandES/field/regulations/local/ccr.html](http://www.arrl.org/FandES/field/regulations/local/ccr.html). This article will help you more fully understand CC&Rs and the various approaches you might consider.

The practical bottom line when dealing with CC&R cases is that the amateur is often in a weak negotiating position. Short of getting the HOA to change or waive the restriction, you probably are going to have to rely on alternatives to pursue Amateur Radio from your home in a CC&R situation.

### Renters

There is actually a third scenario (and the one that I personally fall into). What are your options if you are a renter in an apartment complex? You can try and negotiate with the