

## **Appendix B: Antenna Restrictions – A Continuum of Devious Purpose**

### **I. Background**

1. Antenna restrictions, it seems, were conceived in the 1970s as a means to encourage cable TV (CATV) companies to install their infrastructure in new subdivisions. If rooftop, over the air antennas were to be allowed, then just what would have been the motivation to pay for the same channel coverage that could be obtained without cost from an over the air rooftop antenna? At the time, CATV premium programming did not exist as it does today. Perhaps, for some, the only motivation, sans restrictions, would have been to eliminate what might have become ill-conceived lightning rods atop their homes.

2. Then, in the 1990s, along came the satellite television industry with Congress accommodating their small dish antennas in the Communications Act of 1996 (Act). Competition was to be preserved by legislating preemption of private land contract restrictions, known as covenants, conditions and restrictions, (CC&Rs) so as to allow homeowners a choice between over the air television, CATV or satellite television via small dish antennas. Following passage of the Act, the Commission promulgated what is known today as the Over The Air Reception Device or OTARD rule.<sup>1</sup> It became effective in October 1996.

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<sup>1</sup> 47CFR§1.4000

3. Developer language prohibiting antennas, however, stayed right where it was. To this day, in many cases, the same language, word for word, is being used more than 16 years after OTARD. In the case of the Bradenton, Florida home owned by the author from 2000 until 2006, the developer, Neal Communities, is a case in point. Examples include his homes in the Azalea Park subdivision<sup>2</sup> and his latest Woodbrook development in Manatee County, Florida.<sup>3</sup> The following clause was last recorded in January 2012 for the Woodbrook subdivision and has been used over and over for years: *“Antennae and Masts. No television, radio, or other electronic or communications antenna, mast, dish, disk or other similar device for sending or receiving television, radio, or other communication signals shall be permitted upon an Lot or improvement thereto, except in conformance with uniform rules and standards established by the ARC.<sup>4</sup> No such device is permitted under any circumstances if it sends, contributes to or creates interference with any radio, television or other communication reception or interferes with the operation of other visual or sound equipment located within any part of the Subdivision.”*

## **II. Anti-Competitive Arrangements Continue Unabated**

4. Neal Communities arranged with a CATV company for flat-rate cable service for several of its developments, leaving its restrictive covenants in place banning any and all sorts of outdoor antennas. A means to give the local CATV company, Time Warner’s Brighthouse Networks, a competitive advantage over satellite dish service in Neal’s developments. With 10 year contract commitments written and effected by Neal on

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<sup>2</sup> Recorded at Book 1154, Page 1293, of Manatee County Official Records, August 1986.

<sup>3</sup> Recorded at Book 2406, Page 3333, of Manatee County Official Records, January 2012.

<sup>4</sup> Architectural Review Committee.

behalf of the homeowner associations (HOAs), each homeowner was then required to pay for CATV service via semi-annual assessments whether they used the CATV service or not. The practice continues to this day, to my knowledge. The Laurel Oak Park master CATV contract was signed by Neal in 1998,<sup>5</sup> and a similar contract between Bright House Networks and the Wisteria Park HOA became effective in 2005.<sup>6</sup>

### **III. Even The OTARD Rule Doesn't Go Far Enough**

5. OTARD promulgation left the burden of action seeking relief on the affected individual who wishes to install a satellite dish or outdoor television broadcast antenna, not upon the HOA. The existing remedies, seeking either a Commission Declaratory Ruling or filing a petition in Federal District Court are both costly and unknown to most affected individuals. The cost of retaining counsel to investigate and pursue one of these options is not inexpensive. As such, the HOA prevails with its intimidation by default, with hapless, frustrated homeowners settling for the “Neal Solution:” A subdivision master subscription to CATV.

6. Proactive regulations are needed, with a sunset date for removal of generic, devious language. Penalties should be substantial for developers and HOAs who refuse to amend documents and remove suppressive restrictions by a specified cutoff date and any who refuse to terminate anti-competitive contract arrangements with CATV interests.

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<sup>5</sup> See Book 1601, Page 2680, Official Records of Manatee County, Florida Pages 61-64 and 68. Attached as Exhibit 1 in four documents.

<sup>6</sup> See Book 2026, Page 7953, Official Records of Manatee County, Florida. Attached as Exhibit 2.

7. Even if the Commission were to extend the protections of OTARD to amateur radio antennas of reasonable size and dimension as it does for satellite dishes, unless offending language is removed from CC&Rs, they will continue to achieve their purpose of suppressing interest in the Amateur Radio Service.

#### **IV. A Continuous Chilling Effect**

8. The proliferation of Antenna Restrictions creates a chilling effect. For example, a person who might wish to explore obtaining an amateur radio license would be discouraged if shown the outright prohibition of transmitter use in their home in a Neal development and what appears to be a total ban on outside antennas unless approved by an ARC. Vague and overly restrictive language suppresses interest in amateur radio from the comfort and convenience of one's own home. Four of the five purposes that the Amateur Radio Service exists today cannot be met without a means to operate from one's own residence.<sup>7</sup> An amateur cannot communicate without an effective antenna. While some might argue that disguised or attic antennas will function, their effectiveness is considerably limited.

#### **V. Aesthetics Concerns Often A Charade**

9. Community aesthetics is not always the issue, contrary to what is claimed. Lightning rod 'picket fences' on ridgelines of roofs, around perimeters and atop chimneys are seemingly no problem for developers or HOAs. Nor are the large, unpainted copper bonding conductors running down outside walls to ground rods along

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<sup>7</sup> Purpose of the Amateur Radio Service 47CFR§97.1 (b)-(e).

structure perimeters. There are no restrictions whatsoever on lightning protection systems in any documents ever recorded in any Neal Communities developments from 1986 through 2012.<sup>8</sup> But, vertical antennas or masts that would look very similar to lightning rods certainly are prohibited, unless couched by clandestine Architectural Review Committee (ARC) guidelines. It is amazing that restrictive covenants are silent on lightning protection, within a region often referred to as “the lightning capital of the world.”<sup>9</sup> Perhaps developers wish to dodge avoid liability for loss in the event of a direct lightning strike by not restricting the application of lightning protection systems.

## **VI. ARC Guidelines, Rules and Standards**

10. ARCs are often used as “fences to hide behind.” Language that prohibits antennas of any kind unless in accordance with guidelines issued by the ARC is a frequent approach. The default position is, of course, prohibition. In many cases, developers remain in control of HOAs for years until all homes in a development are sold. And, during that interval, they are reluctant to set up or operate an ARC. For instance, based on documents recorded recently, Neal Communities, and its successor-subsiary, have been in control of its Wisteria Park subdivision HOA for more than six years. It was in control of Laurel Oak Park for three years, from 1999 until 2002. As such, the developer is the HOA and either the ARC does not exist or consists of developer employees as it did at Neal’s Laurel Oak Park for the first two years we resided

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<sup>8</sup> Azalea Park, University Park, Mango Park, Laurel Oak Park, Wisteria Park, Forest Creek, River’s Reach, River Sound, Central Park, or Woodbrook. All are developments in Manatee County, Florida. Neal claims to have constructed more than 8,000 homes.

<sup>9</sup> West Central Florida is generally accepted to have the world’s highest isokeraunic level (number of annual thunderstorms producing cloud to ground lightning strikes).

there. Simply, the developer says no ARC guidelines have been written and none will be produced until after turnover to residents, if at all. So all antennas of any form, including satellite dishes and broadcast television arrays, are prohibited by absence of ARC guidelines. Guidelines are essentially amendments to the covenants by reference and are not recorded. Yet the words, ideas and committee concepts have the full force of CC&R restrictive covenants by reference. Even if made available to prospective homeowners to examine before close of escrow, ARC guidelines, rules and standards could change at any time and are usually not subject to majority approval by HOA members. Guidelines can indeed be flippant as they are subject only to the whims of several homeowners or the developer. For example, in our case, the developer would not allow us to install a maintenance-free polymeric perimeter fence prior to turnover, so a wooden fence that had to be repainted every two years was constructed. After turnover to an owner-controlled HOA, an ARC was formed and changed the guideline, requiring all fences to be maintenance-free polymeric material.

A handwritten signature in blue ink, appearing to read "W. Lee McVey".

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