prohibitions of this nature are not permitted, *Evans,* at 976." [Refers to Evans I, the Federal District Court case in *Evans v. Boulder, CO*, 994 F2d 755 (10th Cir. 1993)].

In *Pentel v. Mendota Heights, MN*, 13 F3d 1261 (8th Cir., 1994) http://www.qsl.net/k3qk/pentel.html, an absolute 25' height limit was preempted. In *Palmer v. Saratoga Springs, NY,* 180 F. Supp. 2d 379 (N.D.N.Y. 2001), http://www.nysd.uscourts.gov/courtweb/pdf/D02NYNC/01-12259.pdf, an absolute height limit of 20' was preempted. "[A]n unvarying height restriction on amateur radio antennas would be facially invalid in light of PRB-1." (Citing *Pentel* and *Evans*.)

In other words, if a variance is required to go over a certain height, the ordinance is pre-empted.

Effective Communications and Reasonable Accommodation is Found in the Specifics of the Application, and from the Ham's Perspective.

In *Marchand v. Town of Hudson, NH,* 788 A.2d 250 (N.H. 2001), http://webster.state.nh.us/courts/supreme/opinions/0112/march221.htm, a case involving three antenna systems, each totaling 100' tall, in addition to ruling that balancing of interests is not appropriate, the Court held that: "[T]o "reasonably accommodate" amateur radio communications . . . the ZBA may consider whether **the particular height and number of towers are necessary to accommodate the particular ham operator's communication objectives.** (Emphasis added.)

Similarly, in *Snook v. Missouri City, TX,* http://users3.ev1.net/~osnook/34.pdf (reproducing the slip opinion) (USDC, SDTX, 2003), the Court held:

"To conduct effective emergency communications, Snook must be able to achieve at least a 75 to 90 percent successful signal under the changing variables that impact emergency or other amateur radio communications." At ¶9.

"PRB-1 requires a site-specific, antenna-specific, array-specific, operations-specific, ordinance-specific, and city action-specific analysis. PRB-1 at p. 7." At ¶16.

An Attempt to Negotiate a Satisfactory Compromise.

Finally, localities should realize that saying no is never enough. *Howard v. Burlingame, CA* (*id.*), requires that the city "consider the application, make factual findings, and attempt to negotiate a satisfactory compromise with the applicant." At 1380.

Similarly, *Pentel (id.)* quotes with favor the Howard case, saying that reasonable accommodation requires an attempt to negotiate a satisfactory compromise.

No Consideration of Radio Frequency Interference.