



Report to Planning & Zoning Commission

Clay County, Missouri

General Information

Site Location: Approximately 12822 NE 144th Street
 Section 31 | Township 53 | Range 31

Site Size: 67.6 ± acres

Existing Landuse & Zoning: Currently Residential Rural District (R-1), proposed to be rezoned to Agricultural (AG) [Dec. 11-122RZ]

Zoning/Platting History:
 Rezoning from A to R-1, 01/17/1974, County Courts Page 502 (Claybrooks)

Surrounding Landuse & Zoning:

- North* – Agriculturally zoned land (AG), Wilmar Estates (R-1)
- East* – Agriculturally zoned land (AG), Rolling Hills (AG), Arrowhead Creek (R-1A & AG), City of Kearney [approx. 1 mile]
- South* – Agriculturally zoned land (AG), Shearer Estates (R-1A)
- West* – Agriculturally zoned land (AG), Easter Estates (R-1A), Parnell Estates (R-1A),

Current Conditions:

Existing Property Lines = **YELLOW**



Courtesy Clay County Assessor GIS/Mapping



Report to Planning & Zoning Commission

Clay County, Missouri

Assessment

Property owners Jeremy and Angela Walters with support from Tony Holland, Isotech, Inc. request approval of a **Conditional Use Permit (CUP)** to erect a commercial communications tower specifically for high speed wireless internet service at approximately 12822 NE 144th Street. The property is 67.6± acres (unplatted) in size and currently zoned Residential Rural (R-1), but is proposed to be rezoned to Agricultural (AG) by the associated case Dec. 11-122 RZ.

The property owner initiated this request with Isotech, Inc. in order to provide high speed wireless internet service to their property and surrounding residents within a 2-mile radius. This proposal is to locate a 70-foot tall lattice tower/antenna assembly bracketed to the existing accessory building.

2008 Comprehensive Plan Considerations

The Comprehensive Plan ("Plan") indicates that the subject property is located in the **URBAN SERVICES TIER**, as well as the 1-Mile Urban Coordination Sub-Tier where advise-and-consent should be solicited from the designated city. In an e-mail dated November 22, 2011, the City of Kearney had no comment regarding the rezoning request.

The following tables illustrate two (2) of the most pertinent policies shaped by the Plan. The first (1st) table shows the landuse tiers and corresponding guidelines, and the second (2nd) explains the exceptions to the 20-acre minimum lot size policy directed by the Plan.

	Natural Resources Tier[†] (Yellow)	Rural Low-Density Tier[†] (Green)	Urban Services Tier[†] (Salmon)
Intent	Support continued agricultural uses in areas beyond near- and long-term urban service extensions.	To accommodate low density rural uses in areas located beyond anticipated city annexation areas.	To promote urban development compatible with the long range growth plans of adjoining cities.
Primary Uses	Agricultural-related uses, natural resources	Agricultural crop lands, livestock grazing, woodlands, grasslands, rural residences	Urban density residential and non-residential
Residential Uses	Rural Density: 1 dwelling unit per 20+ acres.	Rural Density; Rural Residential Density: low-density rural residential development: 1-dwelling unit per 20+ acres, or 1-farmstead dwelling on 5+ acres; Suburban Density: moderate-density development on municipal-level services: up to 4- units per acre.	Suburban Density: moderate-density development on municipal-level services: up to 4- units per acre. Urban Density: development on municipal-level services: greater than 4-units per acre. 20-acre minimum for agricultural and rural residential uses until such time as urban development occurs.
Non-Residential Uses	Farm service related, recreation	Farm service related, recreation	Recreation, limited commercial and industrial consistent with the long range growth plans of adjoining cities.
Minimum Sanitary Sewer Provisions	On-site septic, Community Wastewater Facility if indicated by LESA guidance.	On-site septic, Community Wastewater Facility if indicated by LESA guidance.	Municipal Wastewater Treatment Plant connection for Suburban Density or greater. ⁽¹⁾
Zoning Districts	Ag-related zoning districts; Open Space & Parks; non-agricultural zoning if on strict standards (not including Res. Low Density, such as on 3-acre lots).	Ag-related zoning districts; Open Space & Parks; non-agricultural zoning if on strict standards (not including Res. Low Density such as on 3-acre lots).	Open Space & Parks; and residential districts through general industrial (not including Res. Low Density such as on 3-acre lots). AG, Agricultural zoning is appropriate until full range of urban services available.

⁽¹⁾ On-site septic allowed for agricultural uses only.

[†] The **Planning Tier Map** notes a special designation of areas within one mile of each city: "1-Mile Urban Coordination Sub-Tier" where advise-and-consent should be solicited from the designated city. The applicant will be required to submit a letter from the city of jurisdiction concerning the proposal. The Clay County Planning and Zoning Commission may consider the letter as a non binding city recommendation for Clay County to consider in their deliberations.



Report to Planning & Zoning Commission

Clay County, Missouri

Table 4.3 – Option B for Land Use Tier Implementation: Transition Policy Procedures

	Natural Resources Tier* (Yellow)	Rural Low-Density Tier (Green)	Urban Services Tier (Salmon)
Intent	Exceptions from 20-acre minimum lot size in Ag-districts / phasing in of new regulations		
Density Exceptions for Legal Lots of Record as of the date of Revision of the Land Development Code	Subdivision of land to 5+acre lots, provided that 50% of the subdivided parcel is preserved, such as in an agriculture deed restriction.	Or, subdivision of land to 10+acre lots, provided that a "shadow plat" at urban density is approved.	Subdivision of land to 10+acre lots, provided that a "shadow plat" at urban density is approved, and—for plats within one mile of a city—the city's issues have been addressed.
Other Exceptions	Farmstead** dwellings allowed on 5+acre parcels.		City within one mile may review and recommend other exceptions granted in other tiers, provided a "shadow plat" at urban density is approved.

* The Natural Resources Tier includes an "Urban Services Transition Sub-Tier" area along M-92 and C-Highways that extends where urban development is influenced by the urban highway; yet remains within the Natural Resources Tier designation for purposes of enhanced environmental review and scrutiny.

** A "Farmstead Dwelling" is the original residence built and initially occupied by a farm family, regardless of whether the current household occupant is associated with farming.

Character of the General Neighborhood

The City of Kearney is approximately one (1) mile to the east of the subject property. Wil-mar Estates (R-1) is to the north. Easter Estates (R-1A) is adjacent on the west. Shearer Estates (R-1A) is to the south. Agricultural (AG) zoned land is in each direction of the property.

Federal Aviation Administration (FAA) Considerations

The FAA has no comments in regards to this tower location as it is over 20,000 linear feet (approximately 3.79 miles) from a public use or military airport and not over 200 feet in height. The only known public use or military airports is the Roosterville Airport approximately 4 ½ miles to the southwest, and the Midwest National Air Center ("MNAC") roughly 6 miles to the east of the proposed site.

Code Considerations

The Conditional Use Permit (CUP) application was properly noticed in the Kearney Courier on November 17, 2011. Adjacent property owners within the statutory law mandated 1,000 foot distance were notified by means of a certified letter sent November 18, 2011.

The subject request for a commercial communication tower, more specifically being a high speed wireless service antenna, is addressed under multiple portions of the 2003 Clay County Land Development Code ("LDC"). The use table inside Section 151-6.1 includes a "Communication Towers, Commercial" designation requiring approval of a Conditional Use Permit ("CUP") in an Agricultural ("AG") zoning district. As such, the subject request must meet all of the approval criteria for a CUP in Section 151-3.9 (A) (13) detailed below:

- A) The proposed use complies with the intent of the Comprehensive Plan and general provisions of the Land Development Code.
- B) The use in its proposed location will not have a substantial adverse impact on the public health, safety and general welfare.
- C) The proposed use will not cause substantial injury to the value of other property in the vicinity.
- D) Adequate access routes will be provided and designed to prevent traffic hazards and to minimize traffic congestion in public areas.



Report to Planning & Zoning Commission

Clay County, Missouri

- E) Adequate public safety, transportation and utilities will be available to service the property while maintaining adequate levels of service for existing development, and
- F) The proposed use is compatible with adjacent uses in terms of scale, site design, and operating characteristics.

Under Section 151-6.2 (G), the LDC provides specific use standards for commercial antennas/towers which partially apply to this “semi-commercial” proposal and are summarized below:

- 1) Federal Requirements – The proposed tower meets all FAA and FCC regulations as to radio frequency emissions and findings of no hazard to air navigation.
- 2) Abandoned Towers – The LDC requires abandoned towers be removed at the owner’s expense, and a bond or letter of credit be maintained for this purpose in the County Clerk’s Office. The amount shall be equal to a demolition bid of the tower structure, updated every 5 years.

STAFF RESPONSE: Since this application only involves a 70-foot “semi-commercial” tower/antenna, staff believes the bonding requirement should not apply.

- 3) Inspection – The tower shall be inspected every 24 months by a registered structural engineer. A copy of the inspection report shall be provided to the County.
- 4) Accessory Equipment Storage – mobile equipment or equipment not used in direct support of a tower facility shall not be stored or parked on the site.

STAFF RESPONSE: No accessory buildings are requested in relation to this application.

- 5) Fences – Towers shall be enclosed by security fencing not less than 6 feet in height with anti-climbing device, and have a locked gate. Security signs shall be posted on the fence.

STAFF RESPONSE: Since this application only involves a 70-foot “semi-commercial” tower/antenna, staff believes only the anti-climbing device requirement should apply, and is shown as 6’ on the “Tower Plan” elevation drawing.

- 6) Design and Construction – The LDC requires a building permit be issued for construction of a tower, and plans and specifications be submitted from a registered professional engineer.
- 7) Lighting – If lighting is required, the County Commission may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

STAFF RESPONSE: No additional lighting is required in relationship to this request.



Report to Planning & Zoning Commission

Clay County, Missouri

- 8) Landscaping – The tower compound shall be landscaped with a buffer of plant materials that effectively screens the compound from adjacent property.

STAFF RESPONSE: *Since this application only involves a 70-foot “semi-commercial” tower/antenna, staff believes the landscaping requirement should not apply.*

- 9) Co-locations – The LDC requires tower installations at or below 80 feet in height provide a minimum capacity for one (1) user.

STAFF RESPONSE: *The proposed tower/antenna has the ability to provide space for additional users of the same licensed bands, if desired.*

- 10) Separation from Existing Towers – A lattice tower such as this structure must be at least 1,500 feet from any existing tower.

STAFF RESPONSE: *There is an existing PWSD #6 Standpipe approximately 7,800 feet (~ 1.34 miles) due straight northwest from subject request.*

- 11) Height and setback – No tower shall exceed 300 total feet above ground level, and must be setback a minimum distance equal to 66% of the height of the tower from all adjoining property lines.

STAFF RESPONSE: *This tower is 70 feet in height and is proposed to be 85.4 feet from the nearest adjacent property line to the south, thereby meeting the requirement.*

Section 151-5.4 of the LDC sets additional height hazard limitations for tall structures within the Airport Overlay Zoning District (“A-O”). However, these restrictions do not apply to the subject request as its location falls outside the geographic boundaries of the A-O.

Outside Agency Review

The Clay County Highway Department noted “No new access (driveway) will be required to service the equipment with use of existing driveway”.

The Clay County Health Department has given final approval. Public Water Supply District #6 supplies water to the property. The Kearney Fire District serves this property.

Findings

No opposition has been received as of the date of this staff report.

Recommendations

Staff recommends the request for the **Conditional Use Permit** to erect a 70’ commercial communication tower specifically for high speed wireless service be **approved**, with the following conditions as shown on Exhibit A:



Report to Planning & Zoning Commission

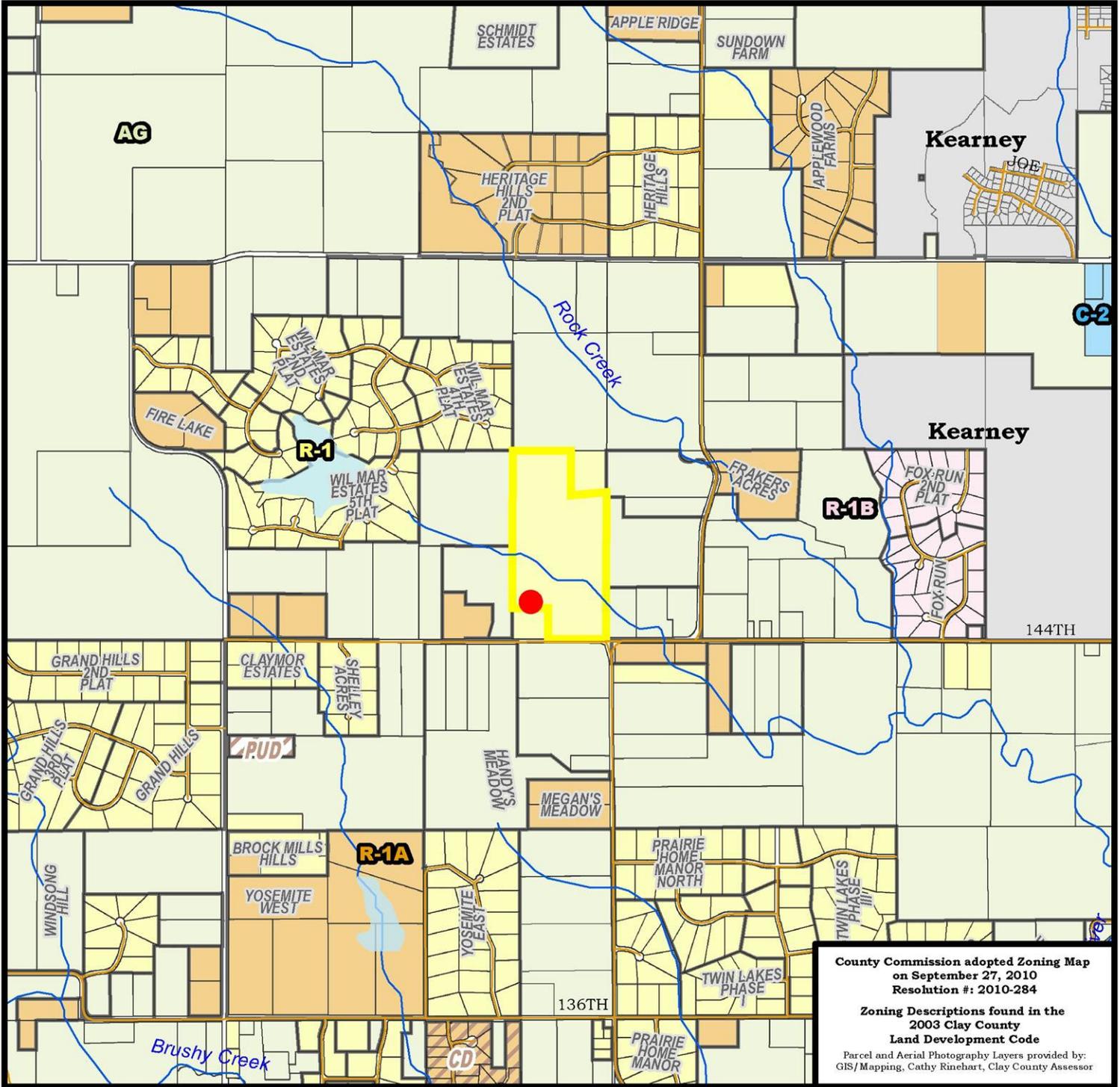
Clay County, Missouri

Exhibit A

1. The CUP shall be based on a time frame of fifteen (15) years;
2. Tower design shall be reviewed at the time a building permit is issued, and at minimum shall include the following elements:
 - a. Maximum height for this communications tower shall be 70 feet.
 - b. The lattice tower shall be set back a minimum distance of 46.67 feet from all adjoining property lines.
 - c. Construction plans and specification drawings be submitted from a registered professional engineer in the State of Missouri.
3. One (1) co-location shall be granted at no charge to the Clay County Sheriff Department and/or any other authorized public safety responder servicing the tower's coverage area.
4. Every twenty-four (24) months the tower must be inspected by a structural engineer registered in the State of Missouri who is regularly involved in maintenance, inspection and erection of communications towers.
5. If the tower is damaged or destroyed, the property owners will have 120 days to repair or dismantle the facility.
6. No hazardous materials may be stored on the property.
7. Installation of an anti-climbing device to go at least 6 feet up the tower/antenna assembly from ground elevation.
8. Once approved, this CUP is non-transferable; therefore, if ownership changes a new CUP must be filed with the Clay County Planning and Zoning office.
9. In case of amateur radio use (often referred to as "HAM radio"), applicant/owners must submit evidence of Federal Communications Commission (FCC) licenses and permits.

Dec. 11-123CUP - Walters Wi-fi Tower - 144th St

Attachment B - Existing Conditions Map



County Commission adopted Zoning Map on September 27, 2010
Resolution #: 2010-284
Zoning Descriptions found in the 2003 Clay County Land Development Code
 Parcel and Aerial Photography Layers provided by: GIS/Mapping, Cathy Rinehart, Clay County Assessor

Planning & Zoning Department

LEGEND

<ul style="list-style-type: none"> Subject Property ● Wi-Fi Tower Location parcel ~ Streams (EPA) — Railroads 	<p>Roads CLASS</p> <ul style="list-style-type: none"> — Interstates — State Highways — Local Roads — Highway Ramps 	<p>Overlay Districts</p> <ul style="list-style-type: none"> CD (Conservation District) PUD (Planned Unit Development) 	<ul style="list-style-type: none"> Subdivisions County Boundaries 2011 City Limits Parks
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Zoning Districts

	AG
	R-1
	R-1A
	R-1B
	R-3
	C-1
	C-2
	C-3
	I-1
	I-2
	OP

Map Document: (G:\GIS\Project_Files\Vacinity Map - 8 x 11 P.mxd) 11/21/2011 -- 10:22:28 PM