



## STAFF REPORT

August 11, 2008

**To:** Northwest Consolidated Zoning Board  
**Fr:** Diane Wicklund, AICP, Principal Planner  
**RE:** Application No. NW-CU-2869

### APPLICATION INFORMATION:

**Applicants:** Johnson County Emergency Communications and Johnson County Public Works Departments

**Property Owner:** Johnson County Board of County Commissioners

**Requested Action:** Conditional Use Permit to allow the continued use of a (1) 120-foot tall, lattice communication tower with associated antennae, and accessory equipment; (2) an allowance for a 30-foot future extension, associated antennae, and accessory equipment; (3) new antennas with antenna base installed at 120 ft. and a new microwave dish installed at 85 ft.; and (4) a public works shop and yard (not yet constructed).

**Legal Description:** Part of the Northeast Quarter of Section 3, Township 13, Range 22.

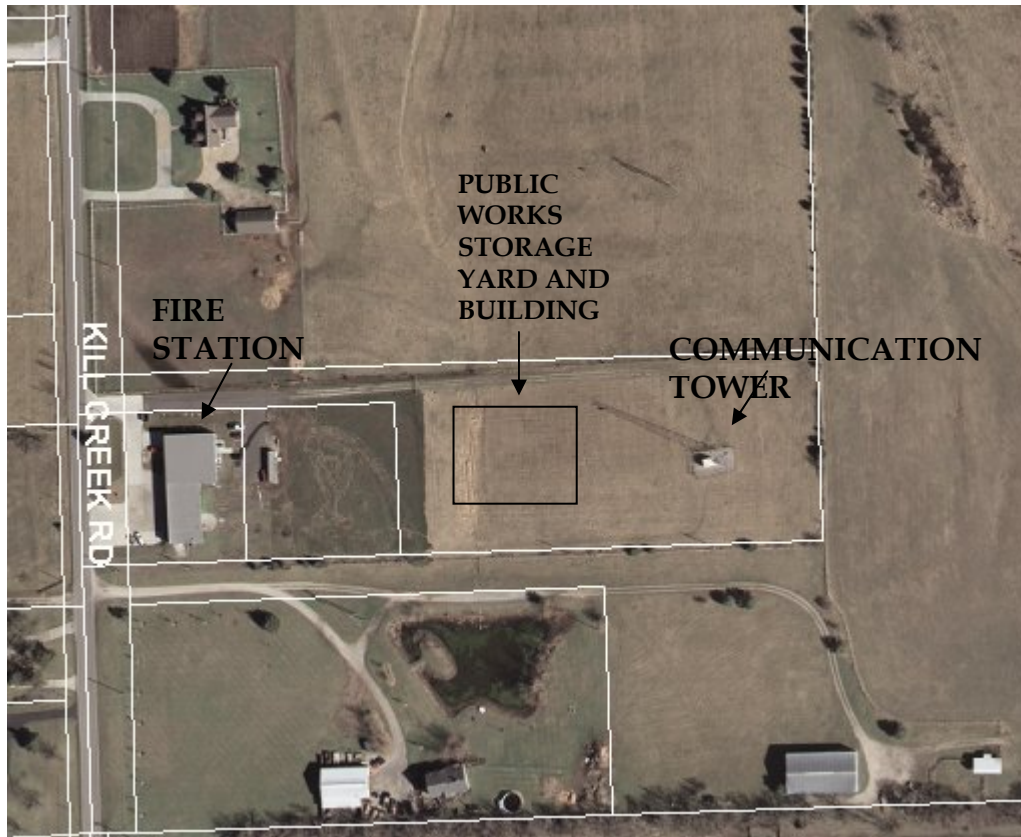
**Site Address/Location:** 9745 Kill Creek Road

**Existing Land Use and Zoning:** The tower is located within the RUR, Rural District. A fire station is located on the parcel in front of the subject property.

**Existing Improvements:** A 120-foot tall lattice communication tower, associated antennae, and accessory equipment.

**Site Size:** 3.6 acres

**Proposal:** The applicants request renewal of a Conditional Use Permit for continued use of (1) an existing 120-foot, lattice communication tower with associated antennae, and accessory equipment; (2) an allowance for a 30-foot future extension, associated antennae, and accessory equipment; (3) new antennas with antenna base installed at 120 ft. and a new microwave dish installed at 85 ft.; and (4) a public works shop and yard (not yet constructed). The radio tower has existed for 20 years. The Public Works shop and yard would include an approximate 880 square foot equipment storage building and an adjacent gravel outdoor storage yard. Public Works has no immediate need to construct this facility, but seeks a renewal of the CUP for possible future need. *See attached narratives and site plans.*



*Aerial View of Entire Parcel (not to scale)*

## ZONING HISTORY

The original CUP for this tower site and the public works yard and shop was approved for a ten-year term by the Board of County Commissioners (BOCC) on September 29, 1988 via Resolution No. 130-88. A ten-year renewal of the CUP was then approved by the BOCC on September 10, 1998 via Resolution No. 095-98.

### Existing Infrastructure and Minimum Infrastructure Requirements:

- Water:** Water is not a requirement for the existing radio tower. The property is served by Johnson County Rural Water District # 6. Public Works is not sure at this time, if water would be needed for the storage building. Appropriate permits would be obtained in the future if needed.
- Sewers:** Wastewater facilities are not a requirement for the existing radio tower. Public Works is not sure at this time, if wastewater facilities would be needed for the storage building. Appropriate permits would be obtained in the future if needed.
- Public Safety:** Police protection is provided by the Johnson County Sheriff's office.  
Fire protection is provided by Johnson County Rural Fire District #3.

- Roads:** Kill Creek Road provides access to the subject property and is a paved road.
- Summary:** Planning staff is of the opinion that infrastructure is adequate for this application.

## STAFF ANALYSIS

### Article 23, Section 6 (B)(4), Performance Standards for Communication Towers

Communication towers and antennas obtaining a CUP are required to conform to the special development and performance standards of Article 23, Section 6 (B)(4) of the *Johnson County Zoning and Subdivision Regulations* (the *Regulations*).

Preface: The goals of these performance standards regarding communication towers and other structures greater than 60 feet in height are to: (i) encourage their location in non-residential areas and minimize the total number throughout the community, (ii) encourage locations that do not negatively impact the general health, safety and welfare of the community, (iii) encourage the joint use of new and existing structures, (iv) encourage users to locate such structures, to the extent possible, in areas where the adverse impact on the community is minimal, (v) encourage users to design and configure them in a way that minimizes the adverse visual impact, and (vi) enhance the ability of service providers to offer such services to the community quickly, effectively, and efficiently.

The Regulations have been amended recently to allow for longer or shorter terms for CUP's, based upon findings of certain aspects or circumstances related to a specific application. In this case, Staff suggests a stipulation for a 20-year term limit in the Recommendations section, below.

The performance standards also include requirements for certain setbacks from property lines, residences and public streets; co-location capabilities and tower separation requirements. The tower is separated by at least 5,000 feet from the nearest existing tower, the setbacks of the existing tower on the property are adequate, and the design accommodates up to 2 carriers.

The tower's location and design are in compliance with the requirements and meets the goals of the performance standards set forth in the *Regulations*.

### Golden Analysis

The Regulations, the *Rural Comprehensive Plan*, and Kansas case law indicate that consideration should be given to whether issuing the CUP is in the interest of the public health, safety, morals, and general welfare of the community. The purpose of this analysis with a CUP renewal is to provide an opportunity to examine these issues in light of conditions that may have changed in the surrounding area in order to evaluate whether the CUP use has been and continues to be appropriate. The CUP application has been considered with regard to the following:

1. Whether the use is consistent with the zoning and uses of nearby properties.

Immediately adjacent property to the north, south, and east is within the city of DeSoto. A few properties to the west (across Kill Creek Road) are also within the city of DeSoto. These properties are zoned R-O, Residential Suburban. Nearby property in the County (north, south, east, and west) is zoned RUR, Rural district. Surrounding land uses are residential, vacant or agricultural. A Rural Fire District No. 3 fire station immediately adjoins the property on the west.

The tower has existed for 20 years with a CUP. It is within 500 ft. of two existing homes, but predates the County's regulations requiring separation of towers from residential areas. The existing communication tower will continue to be consistent with the nearby vacant and agricultural uses, due to the distance from (700 ft.) from Kill Creek Road.

The proposed Public Works shop and yard, when constructed and screened from residential uses, will also be consistent with the nearby vacant, residential, and agricultural uses.

2. Whether the use is compatible with the character of the neighborhood.

There are about 10-15 homes within 1,000 ft. of the tower. This is considered very low density. The surrounding area is moderately wooded and varies in topography. These factors provide separation as well as visual relief from the tower.

The tower is located about 700 ft. east of Kill Creek Road, behind the fire station. The nearest homes are about 500 ft. away from the tower.

The tower, which has existed for 20 years, is 120 ft. tall. The last CUP renewal included approval of a 30-foot extension to the tower, which has not been constructed yet.

The tower is about  $\frac{3}{4}$  of a mile from K-10 Highway, and is visible from the highway, however, its appearance from that distance is not obtrusive.

There are no known complaints over the last 10 years. The tower has generally been compatible with the character of the neighborhood.

If screened from residential use, the future Public Works shop (about 880 sq. ft. in size) and yard (for outdoor storage of equipment), would be compatible with the character of the neighborhood. This future use will generate minimal traffic to the site.



*Aerial of Surrounding Neighborhood*

3. Suitability of the property for uses to which it has been restricted.

The 3.6 acre parcel is zoned RUR, Rural District. This size is not suitable for most agricultural uses. The site would be suitable for residential use. The site has the existing tower and associated equipment and antennae. A fire station is located in front of the tower, and adjacent to Kill Creek Road.

The site and area conditions suggest that the continued use of the property for a tower site and future use as a Public Works shop and yard are reasonable uses of the property.

4. Extent of detrimental effects to nearby parcels should the CUP be approved.

Given that there have been no known complaints over the last 10 years, there is no detrimental effect to nearby parcels. If the future Public Works shop and yard is screened, then it would not have any detrimental effects to nearby parcels. In addition, there would be minimal traffic generated to the shop and yard area and staff would only visit the site on an intermittent basis.

5. Length of time the property has remained vacant as zoned.

The existing tower was built in 1988.

6. Relative gain to the public health, safety and welfare as opposed to the hardship imposed upon the landowner by denying the request.

Denying this request would be detrimental to the public's health and safety because of the tower's role in the county-wide emergency communication network. In addition, as stated above, because of the low intensity nature and activity of the future Public Works shop and yard, there would be no gain to the public interest for denying this request.

7. Whether the use is in keeping with the Comprehensive Plan.

*The Rural Comprehensive Plan: A Plan for the Unincorporated Area of Johnson County (Plan)* designates this property as Urban Fringe Policy Area. The Urban Fringe Policy Area does not directly address communications towers and facilities. However, the policy allows for this type of non-agricultural use based upon the merits of the property. This property appears to have been suitable for the existing communication tower and the term limit of the CUP allows for future review. Further, the Urban Fringe Policy Area calls for close coordination between the city and the county on such matters and the City of Desoto has generally indicated that the City has no objection to approving the renewal CUP for this facility (please see the attached memorandum). Therefore, this request appears to be in keeping with the Comprehensive Plan.

8. Other Considerations

A. Article 23 Section 6 (C), Standards for Issuance of a CUP:

The Zoning Board shall not recommend that a Conditional Use Permit be granted unless it shall first make a finding, based upon the evidence presented to it, that adequate consideration has been given to the following:

1.) *Is in harmony with the general purpose and intent of the regulations.*

The *Regulations* encourage co-location and this tower is designed to support co-location of up to two carriers. In addition, the tower supports the county-wide emergency communication network. If screened, the Public Works shop and yard will be in harmony with the nearby property and in keeping with the purpose and intent of the Regulations.

2.) *Will not impair the adequate supply of light and air to adjacent property.*

Both uses will not impair the adequate supply of light and air to adjacent properties.

3.) *Will not increase hazards from fire or other dangers.*

At a minimum, the tower must be operated according to FAA and FCC regulations. Falling ice and the slight risk of tower failure are potential hazards but do not pose an appreciable danger to the public due to the setbacks from residences and existing public roads. The Public Works shop and yard, if constructed, will not increase hazards from fire or other dangers.

4.) *Will not increase traffic on streets beyond their capacity.*

Both uses will not generate vehicle trips beyond the capacity of Kill Creek Road.

5.) *Will not increase potential for flood damages to adjacent property or lead to additional public expense for flood protection, rescue or relief.*

There is no regulatory floodplain on the property.

6.) *Will not otherwise unduly impair the public health, safety, comfort, morals, or general welfare of the inhabitants of the County, or otherwise create a nuisance or nuisance-like situation.*

Renewal of this CUP will not impair the public health, safety, comfort, morals or general welfare of the inhabitants of the County.

7.) *Will not pollute the air, land, or water.*

Both uses will not pollute the air, land or water.

**City of DeSoto:** Please see the attached memorandum.

## **RECOMMENDATION**

Planning staff recommends **approval** of the renewal of the Conditional Use Permit, subject to the following stipulations:

1. Use of Property. Allowed uses on the property include: (1) an existing 120-foot tall, lattice communication tower with associated antennae and accessory equipment; (2) with an allowance for a 30-foot future extension, associated antennae, and accessory equipment; and (3) new antennas with antenna base installed at 120 ft. and a new microwave dish installed at 85 ft.(without Administrative Development Plan approval); and (4) a public works shop and yard (not yet constructed). Development of the site shall be constructed and continue to be used per the site plans (attached hereto as “Exhibit A”), except as modified by these stipulations.
2. Operation. The existing communication tower and antennas, as well as any future equipment co-located within the lease area, shall continually operate in accordance with all FAA and FCC regulations.
3. Site Lighting. Exterior lighting shall be directed down onto the site and shall not produce bulb glare off site. Lighting shall be used only when necessary by and for persons working at the site and shall be switched off at all other times.
4. Tower Lighting. If the FAA requires aircraft lighting, it shall be a soft pulsing red light.
5. Performance Standards. The communication tower, associated antennas and associated equipment structures shall be operated in accordance with Article 23, Section 6(B)(4) of the *Johnson County Zoning and Subdivision Regulations*, including, but not limited to, the following:
  - a. The term of this permit shall be for a period not to exceed 20 years commencing from the date of Board of County Commissioners approval of this resolution.
  - b. Excess capacity of the existing communication tower shall accommodate additional communication antennas and shall be made available equally and fairly to compatible users (and a fair portion of the cost of the excess capacity and the maintenance of the tower may be recouped by the owner). The applicant shall exercise good faith in co-locating with other communication companies and sharing the permitted site.
  - c. In the event that the tower owner or its successors do not renew their lease option with the landowner, if any; or if there are no communication antennas utilizing the communication tower and the communication tower itself is no longer used for communication services for a period of six (6) months, then a cessation of use shall have occurred, and the communication tower shall then be removed from the property by the tower owner or its successors, at their own cost and expense and at no cost to the County, within ninety (90) days of said cessation. If, however, communication antennas are still utilizing the

communication tower, then said antennas and the communication tower need not be removed from the property for the remaining term of the conditional use permit, provided: (1) lease arrangements have been made with the landowner, if any; and (2) the communication antennas utilizing the communication tower remain functional and in operation.

d. The communication tower, associated antennas and associated ground equipment shall be continuously maintained and painted when necessary.

6. Screening of Existing Communication Tower. Prior to issuance of the zoning permit, the perimeter of the base of the existing tower shall be screened with landscaping on the outside of the fence. Said landscaping shall be evergreen trees, at least 5 ft. tall at time of planting, on 25 ft. centers. The trees shall be maintained in healthy condition and any dead trees shall be replaced.

7. Screening of Future Public Works Shop and Storage Yard. Prior to issuance of the zoning permit, the perimeter of the Public Works shop (equipment building) and yard area shall be screened with landscaping. Said landscaping shall be evergreen trees, at least 5 ft. tall at time of planting, on 25 ft. centers. The trees shall be maintained in healthy condition and any dead trees shall be replaced. Solid fencing (6-foot tall minimum) may be used instead of trees in the utility easement (75 ft. wide easement for overhead power lines) area. Fencing shall be continuously maintained and painted when necessary.

#### **REASONS FOR RECOMMENDATION:**

1. The existing communication tower use is consistent with the current surrounding zoning and land uses. The future Public Works shop and yard will be consistent with the current surrounding zoning and land uses, if screened.
2. The existing communication tower is compatible with the current surrounding zoning and land uses. If screened, the future Public Works shop and yard will be compatible with the current surrounding zoning and land uses.
3. The existing communication tower is designed to support co-location as required by the Regulations.
4. The communication tower has existed on-site for 20 years and has had no apparent detrimental effects upon nearby landowners.
5. The communications tower provides a necessary service to the public and plays an important role in providing emergency communications, and as such, a longer term permit is warranted.
6. Both uses will not affect public health and safety.

Attachments: Vicinity map  
Site Plans and Applicant's Narratives  
City of DeSoto Memo