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LISA SMITH, COUNTY RECORDER  
MADISON COUNTY IOWA

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Type of Document

**CONDITIONAL USE PERMITS 013-20, 014-20, 015-20 016-20**

**PREPARER INFORMATION:**

Zoning Office for

**TAXPAYER INFORMATION:**

Martens, Helen I  
1167 Hwy 169  
Winterset, IA 50273

McKibbin, Shawn & Julie  
2737 PERU RD.  
PERU, IA 50222

Braman, Donald E Trust 1/2 Int  
Braman, Martha Trust 1/2 Int  
3916 N. POTSDAM APT. # 966  
SIOUX FALLS, SD 57104

Keating, William G & Shirley A  
2407 255TH ST  
PERU, IA 50222

✓ **RETURN DOCUMENT TO:**

Zoning Office

**GRANTOR:**

**GRANTEE:**

**LEGAL DESCRIPTION:**

Section 12 T77N R28W-Madison Township, Section 14 T74N R29W-Grand River  
Township, Section 12 T74N R27W-Walnut Township, Section 24 T75N R27W-Scott  
Township

**Document or instrument of associated documents previously recorded:**  
(if applicable)

# MADISON COUNTY BOARD OF ADJUSTMENT

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## Application for Conditional Use Permit DECISION

Martens, Helen I  
1167 Hwy 169  
Winterset, IA 50273

McKibbin, Shawn & Julie  
2737 PERU RD.  
PERU, IA 50222

Braman, Donald E Trust 1/2 Int  
Braman, Martha Trust 1/2 Int  
3916 N. POTSDAM APT. # 966  
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2407 255TH ST  
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On March 3, 2020 at 7:00 p.m., pursuant to the rules of procedure of the Board of Adjustment, a public hearing was held and conducted on the Application for Conditional Use permits filed by Windstream Communications submitted on January 21, 2020 regarding four properties described as Section 12, SW SE T77N R28W Madison Township, Section 14 T74N R29W-Grand River Township, Section 12 T74N R27W-Walnut Township, Section 24 T75N R27W-Scott Township. At the hearing the Board of Adjustment, reviewed the completed application form(s), relevant provisions of the Madison County Ordinances, all documents constituting the record from the Zoning Administrator, documents received from the Applicant, heard the statements, remarks and comments by the Zoning Administrator, the Applicants representative, as well as statements, remarks and comments by others in attendance. After all information had been received and all interest parties heard by the Board of Adjustment, the hearing was closed pursuant to the rules of procedure of the Board of Adjustment.

Following the close of the hearing a motion was made by Mindy to Approve the request for Conditional Use. Randal seconded this motion. A roll call vote was conducted on the motion to Approve the request for variance with the following votes:

	Yes	No	Absent
Mindy Nelson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Randal Johnson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carrie Larson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fred Howell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vacant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

A motion was then made by Mindy to approve as written the “Board of Adjustment Findings of Fact and Legal Principals Upon Which the Board Acts,” which are attached hereto and incorporated herein by its reference. Randal seconded the motion and a roll call vote was conducted with the following votes:

	Yes	No	Absent
Mindy Nelson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Randal Johnson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carrie Larson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fred Howell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vacant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Accordingly, the “Board of Adjustment Findings of Fact and Legal Principals Upon Which the Board Acts” were approved as written and therefore adopted by the Board of Adjustment.

**DECISION:**

As the motion to approve the request for Conditional Use was passed, the Conditional Use request is therefore Approved.

Dated this 3rd day of March 2020

Acknowledged as to Accuracy:

  
Chair

  
Secretary

Original Filed with the Secretary of the Board of Adjustment on March 3, 2020.

Written Notification of Decision sent to:

Martens, Helen I  
1167 Hwy 169  
Winterset, IA 50273

McKibbin, Shawn & Julie  
2737 PERU RD.  
PERU, IA 50222

Braman, Donald E Trust 1/2 Int  
Braman, Martha Trust 1/2 Int  
3916 N. POTSDAM APT. # 966  
SIOUX FALLS, SD 57104

Keating, William G & Shirley A  
2407 255TH ST  
PERU, IA 50222

## **BOARD OF ADJUSTMENT FINDINGS OF FACT AND LEGAL PRINCIPLES UPON WHICH THE BOARD ACTS:**

Section 14 of the Madison County Zoning Ordinance defines the Exceptions, Modifications, Interpretations and Conditional Uses that are permitted when authorized by the granting of a conditional use permit by the Board of Adjustment.

### ***Section 14 Exceptions, Modifications, Interpretations and Conditional Uses***

#### ***E. Conditional Uses.***

*The development and administration of a comprehensive zoning ordinance is based upon the division of the County into zoning districts with uniform regulations defining permitted uses of land and structures within each district. It is recognized, however, that there are occasions when in addition to the principal permitted uses, conditional uses may be allowed after careful consideration of the impact of the particular uses upon the neighborhood and public facilities therein. The following uses may be authorized by a conditional use permit granted by the Board of Adjustment. Under no conditions shall the sum or any part thereof be refunded for failure of said application to be approved.*

Section 6-2(a) of the Madison County Zoning Ordinance states the following regarding height:

### **SECTION 6 – APPLICATION OF DISTRICT REGULATIONS**

The regulations set by this Ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, as hereinafter provided:

1. No building, structure or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered unless in conformity with all of the regulations herein specified for the district in which it is located except agricultural uses are exempt.
2. ***No building or other structure shall hereafter be erected or altered:***
  - a. ***To exceed the height;***
  - b. To accommodate or house a greater number of families;
  - c. To occupy a greater percentage of lot area;
  - d. To have narrower or smaller rear yards, front yards, side yards, or other open spaces;
  - e. In any other manner contrary to the provisions of this Ordinance.

Section 9-(C) of the Madison County Zoning Ordinance states the following regarding height:

### **SECTION 9 – AGRICULTURAL DISTRICT REGULATIONS**

#### ***C. Height Regulations.***

***No building shall exceed two, and one-half (2 ½) stories or thirty-five (35) feet in height, except as provided in Section 14.***

Section 14 of the Madison County Zoning Ordinance defines the Exceptions, Modifications, Interpretations and Conditional Uses that are permitted when authorized by the approval and authority of the Madison County Board of Adjustment.

## SECTION 14 EXCEPTIONS, MODIFICATIONS, INTERPRETATIONS AND CONDITIONAL USES

### C. Structures Permitted Above Height Limits

The building height limitations of this Ordinance shall be modified as follows:

12. Chimneys, cooling towers, elevator bulkheads, fire towers, grain elevators, monuments, penthouses, stacks, silos, tanks, water towers, ornamental towers and spires, radio or television tower or necessary mechanical appurtenances may be erected to a height approved by the Board of Adjustment.

### E. Conditional Uses.

The development and administration of a comprehensive zoning ordinance is based upon the division of the County into zoning districts with uniform regulations defining permitted uses of land and structures within each district. It is recognized, however, that there are occasions when in addition to the principal permitted uses, conditional uses may be allowed after careful consideration of the impact of the particular uses upon the neighborhood and public facilities therein. The following uses may be authorized by a conditional use permit granted by the Board of Adjustment Under no conditions shall the sum or any part thereof be refunded for failure of said application to be approved.

12. Any structure or land used by public or private utility service company or corporation for public utility purpose, including sewage lagoons, or for purposes of public communication may be permitted in any district. The basis for such permit shall be public convenience.

### F. General Requirements and Conditions Applicable to All Special Use Permits.

In granting any special use permit, the Board of Adjustment may prescribe such restrictions and conditions with respect to the permitted use as the Board deems reasonable to further the objectives of this Ordinance. The following general requirements are applicable to all special use permits that may be granted by the Board:

- a. Required Findings. No special use permit shall be granted by the Board of Adjustment unless the Board first finds that all of the following conditions exist:
  - i. Surrounding Area. The value and qualities of the area (or neighborhood) surrounding the conditional use are not substantially injured, and the establishment of a special use will not impede the normal and orderly development and improvement of surrounding undeveloped property for uses predominant in the area. In reviewing and acting upon each application for a special use permit, the Board shall each give due consideration to the proximity of the proposed use to public parks, schools, licensed day care facilities, dwellings and residential districts.
  - ii. Infrastructure. Adequate utilities, access roads, drainage, and other necessary facilities have been or are being provided.
  - iii. Intent of Ordinance. The special use is consistent with the intent and purpose of this Ordinance to promote public health, safety, and general welfare.
  - iv. Nuisance Factors. Adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration, so that none of these will constitute a nuisance and to control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result.

- v. Comprehensive Plan. The special use is not inconsistent with the comprehensive plan and land use policies of the County.
  - vi. Cumulative Impact. The Board shall make a determination that the proposed use would not cause a significant adverse cumulative impact when considered together with other uses previously permitted by special use permit. While the impact of a single use permitted by conditional use permit may be deemed acceptable by the Board, the location of more than one conditional use in close proximity to another conditional use may have the potential of causing a significant adverse cumulative impact in the neighborhood.
- b. Conditions on Use. In granting any special use permit, the Board of Adjustment may set minimum requirements, and/or specify conditions and restrictions on the proposed use. Violations of such conditions and requirements, when made a part of the terms under which the special use is granted, shall be deemed a violation of this Ordinance and punishable under Section 16 of this Ordinance. In addition, the Board is authorized to revoke any special use permit under circumstances where the special use is being conducted in violation of the conditions and restrictions of the permit or of any other applicable legal requirements.
  - c. Time. The Board shall determine whether or not the conditional use shall be limited in duration and/or hours of operation. The terms of the conditional use permit shall specify any such limitation.
  - d. Landscaping. Appropriate landscaping berms and buffers are included if necessary to minimize the impact of the conditional use on adjacent property.
  - e. Financial Guarantees. The Board shall determine whether or not the special use permit applicant should be required to submit a plan to rehabilitate the subject tract once the special use has terminated, and provide for the funding of said restoration. If the Board requires such a plan, then the special use permit may not be granted until such time as the plan as the plan has been submitted to the Board and approved.
  - f. Review by County Zoning Commission. All applications for special use permit shall be submitted to the County Zoning Commission for its review prior to the public hearing before the Board of Adjustment. Each application shall be considered by the Zoning Commission at a public hearing. After the public hearing, the Zoning Commission promptly shall submit a report to the Board of Adjustment on its findings and recommendations regarding the application. No final action shall be taken by the Board of Adjustment on any application for special use permit until such time as the Board has received and reviewed the report of the Zoning Commission.
  - g. Report by Conservation Department. All applications for conditional use permit shall be submitted to the Conservation Department for review. The Conservation Department shall submit a report on the impact of the proposed use on the environment and on conservation issues prior to the public hearings before the County Zoning Commission and Board of Adjustment. The Board shall consider all recommendations included in the report before determining appropriate environmental protections. The Board shall require reasonable measures to control noise, odor, and dust adequately and to prevent the operation from posing an environmental risk for neighboring properties or waterways. The terms of the conditional use permit shall specify any such required measures.

- h. Report by County Engineer. All applications for conditional use permit shall be submitted to the County Engineer for review. The County Engineer shall submit a report on the impact of the proposed use on roads and other infrastructure matters prior to the public hearings before the County Zoning Commission and Board of Adjustment. The Board may require reasonable measures to be taken by the applicant to address the impact on roads and other infrastructure matters. The terms of the conditional use permit shall specify any such required measures.
- i. Proximity to City Limits. In determining whether to allow or deny a conditional use permit, the Board of Adjustment shall consider the proximity of the subject property to the corporate limits of any city or town.

**SECTION 17 D JURISDICTION AND POWERS OF THE BOARD OF ADJUSTMENT**

D. Jurisdiction and Powers of the Board of Adjustment.

- 1. The Board of Adjustment shall have the following powers and duties.
  - b. To hear and decide applications for conditional use permits and exceptions upon which the Board is required to address by other sections of this Ordinance.

After careful consideration of all the information that has been presented, and for the factual reasons set forth in the above noted Sections 14 & 17 both of which are incorporated by this reference herein, the Board of Adjustment hereby finds:

The applicant Windstream Communications request for Conditional Use Permits has X / has not \_\_\_\_\_ met the requirements of the Madison County Zoning Ordinance.

  
Chair

  
Secretary

Original Filed with the Secretary of the Board of Adjustment on March 3, 2020.



## **Madison County Zoning Department**

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C.J. (Jeff) Nicholl, Zoning Administrator

# ***CONDITIONAL USE PERMIT WITH HEIGHT AUTHORIZATION***

PERMIT NO: 016-20

DATE: March 3, 2020

After a properly held Public Hearing on March 3, 2020, the Madison County Board of Adjustment hereby grants a Conditional Use Permit and Height Authorization as required for land used by a public service utility company for public utility purpose to Windstream Communications/ William & Shirley Keating Trust on the following described real estate: **Section 24 T75N R27W-Scott Township** for the purpose of:

Construction of a utility pole not to exceed 100 feet, associated antenna's and utility equipment located in the Madison County Road Right of Way as shown on the attached map.

*A Conditional Use permit with height authorization is granted as required by the Madison County Zoning Ordinance under Sections: 14C (1) & 14-E (12).*

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C.J. Nicholl, Zoning Administrator  
Secretary to the Madison County Board of Adjustment

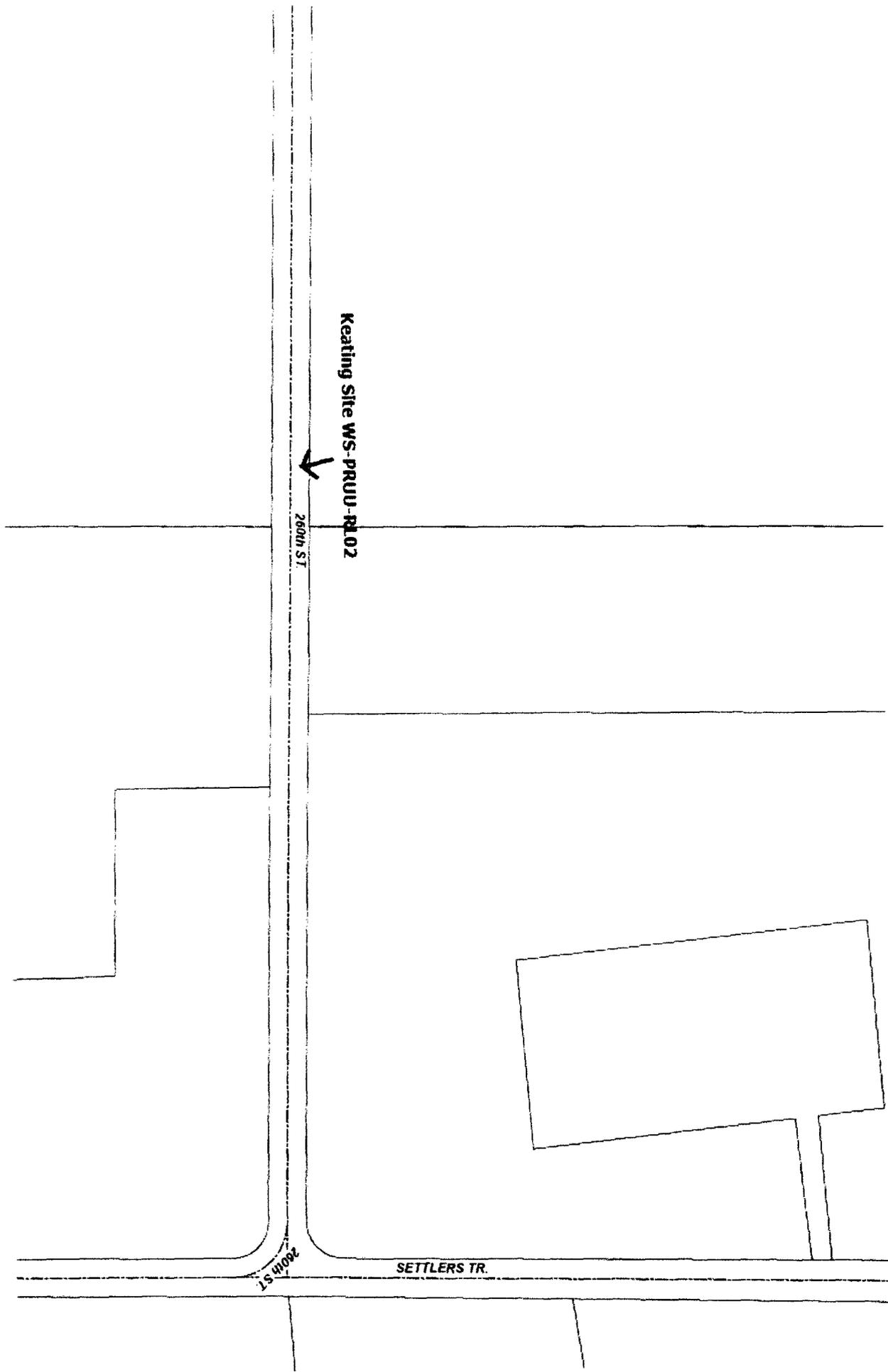
Keating Site WS-PRUU-RI 02



260th ST

260th ST

SETTLERS TR.





## **Madison County Zoning Department**

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C.J. (Jell) Nicholl, Zoning Administrator

# ***CONDITIONAL USE PERMIT WITH HEIGHT AUTHORIZATION***

PERMIT NO: 015-20

DATE: March 3, 2020

After a properly held Public Hearing on March 3, 2020, the Madison County Board of Adjustment hereby grants a Conditional Use Permit and Height Authorization as required for land used by a public service utility company for public utility purpose to Windstream Communications/ Shawn & Julie McKibbin Trust on the following described real estate: **Section 12 T74N R27W-Walnut Township** for the purpose of:

Construction of a utility pole not to exceed 100 feet, associated antenna's and utility equipment located in the Madison County Road Right of Way as shown on the attached map.

*A Conditional Use permit with height authorization is granted as required by the Madison County Zoning Ordinance under Sections: 14C (1) & 14-E (12).*

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C.J. Nicholl, Zoning Administrator  
Secretary to the Madison County Board of Adjustment

CH 668 & R21 PERU RD

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MCKIBBIN SITE WE - PRUD R101

15 WING



## **Madison County Zoning Department**

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C.J. (Jeff) Nicholl, Zoning Administrator

# ***CONDITIONAL USE PERMIT WITH HEIGHT AUTHORIZATION***

PERMIT NO: 014-20

DATE: March 3, 2020

After a properly held Public Hearing on March 3, 2020, the Madison County Board of Adjustment hereby grants a Conditional Use Permit and Height Authorization as required for land used by a public service utility company for public utility purpose to Windstream Communications/ Donald E. & Martha Braman Trust on the following described real estate: **Section 14 T74N R29W-Grand River Township** for the purpose of:

Construction of a utility pole not to exceed 100 feet, associated antenna's and utility equipment located in the Madison County Road Right of Way as shown on the attached map.

*A Conditional Use permit with height authorization is granted as required by the Madison County Zoning Ordinance under Sections: 14C (1) & 14-E (12).*

C.J. Nicholl, Zoning Administrator  
Secretary to the Madison County Board of Adjustment

NORTH ST

ELMWOOD AVE.

CH 661 MACKSBURG RD

Brannan Site WS MKBG RI 01





## **Madison County Zoning Department**

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C.J. (Jeff) Nicholl, Zoning Administrator

# ***CONDITIONAL USE PERMIT WITH HEIGHT AUTHORIZATION***

PERMIT NO: 013-20

DATE: March 3, 2020

After a properly held Public Hearing on March 3, 2020, the Madison County Board of Adjustment hereby grants a Conditional Use Permit and Height Authorization as required for land used by a public service utility company for public utility purpose to Windstream Communications/Helen Martens on the following described real estate: **Section 12, SW SE T77N R28W Madison Township** for the purpose of:

Construction of a utility pole not to exceed 100 feet, associated antenna's and utility equipment located in the Madison County Road Right of Way as shown on the attached map.

*A Conditional Use permit with height authorization is granted as required by the Madison County Zoning Ordinance under Sections: 14C (1) & 14-E (12).*

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C.J. Nicholl, Zoning Administrator  
Secretary to the Madison County Board of Adjustment

Martens Site WS-DEST -R102



US HWY 169

CH G14 120th ST

