

CITY OF LOWRY CROSSING, TEXAS

ORDINANCE NO. 216

AN ORDINANCE OF THE CITY OF LOWRY CROSSING, TEXAS, AMENDING THE ZONING ORDINANCE OF THE CITY, THE SAME BEING ORDINANCE NO. 110, AS AMENDED, BY CHANGING THE ZONING ON A CERTAIN TRACT OF LAND GENERALLY DESCRIBED AS 1080 OVERLAND DRIVE WITHIN THE CITY AND AS MORE PARTICULARLY DESCRIBED HEREIN, WHICH PROPERTY IS ZONED “R-1” SINGLE FAMILY RESIDENTIAL DISTRICT, BY GRANTING THEREON A SPECIAL USE PERMIT FOR ONE (1) RADIO, AMATEUR SENDING OR RECEIVING DEVICE; ESTABLISHING CONDITIONS RELATED TO THE SPECIAL USE PERMIT; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, a tract of land located within the City of Lowry Crossing, Texas (the “City”), which contains approximately 1.0 acre of land and which is generally described as 1080 Overland Drive within the City and is more particularly described in Exhibit A attached hereto and incorporated herein (the “Property”), is zoned “R-1” Single-Family Residential District; and

WHEREAS, the owner of the Property filed an application with the City requesting a change of zoning on the Property by the granting of a special use permit for a radio, amateur sending or receiving device; and

WHEREAS, Section 18 of the City Zoning Ordinance, the same being Ordinance No. 110, as amended (the “Zoning Ordinance”), provides for certain uses to be permitted only upon the grant of a Special Use Permit Zoning District Classification (which may include and be subject to certain conditions) following the processing of an application for a change of zoning to such classification in the same manner as any other request for a zoning change, including the holding of a public hearing before the City’s Planning and Zoning Commission and the City Council, and the adoption by the City Council of an ordinance amending the Zoning Ordinance and the zoning map of the City; and

WHEREAS, the City Planning and Zoning Commission and the City Council, in accordance with State law and the Zoning Ordinance, have given the required notices and have held the required public hearings regarding the change of zoning of the Property as described herein; and

WHEREAS, after public notices were given in compliance with State law and the Zoning Ordinance and public hearings were conducted, and after considering the information

submitted at the said public hearings and all other relevant information and materials, the Planning and Zoning Commission of the City recommended to the City Council the change in zoning of the Property as set forth in this Ordinance, subject to the conditions set forth herein; and

WHEREAS, after due deliberations and consideration of the recommendation of the Planning and Zoning Commission and the information and other materials received at the public hearing conducted by the City Council, the City Council has concluded that the adoption of this Ordinance is in the best interests of the City and of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOWRY CROSSING, TEXAS:

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Amendment.

A. Ordinance No. 110, as amended, of the City is hereby amended by changing the zoning on the Property, generally described as 1080 Overland and more particularly described in Exhibit A attached hereto and incorporated herein (and zoned “R-1” Single Family Residential District), by granting thereon a Special Use Permit Zoning District Classification for one (1) radio, amateur sending or receiving device (“Radio Device”).

With the said amendment, the zoning on the Property is “R-1” Single Family Residential District, with a special use permit for one (1) Radio Device subject to all of the conditions set forth herein and to all of the provisions of this Ordinance, the Zoning Ordinance, and all other ordinances of the City and all applicable laws, ordinances, codes, rules, regulations, orders, and standards of the City and of any governmental entity, agency or authority having jurisdiction over the Property.

B. The said special use permit for the one (1) Radio Device is subject to all of the following conditions:

1. The only use authorized by this Ordinance is one (1) radio, amateur sending or receiving device.
2. Use of the Property must comply with the site plan attached hereto as Exhibit B and incorporated herein for all purposes (“Site Plan”).
3. The height of the Radio Device shall at no time exceed thirty-five (35) feet, and proper guy wire securement of the Radio Device shall be followed.
4. The Radio Device shall consist of and be only a US Tower TX-455 crank up (a 3-section tower, having a minimum retracted height of 21 feet, 6 inches; the sections having 4 foot overlap when fully extended, allowing retraction by hand even in very strong

winds; the total weight being 670 pounds; the wind load being rated greater than 87 miles per hour at full height and much greater when retracted).

5. The Radio Device shall be kept and remain in a fully retracted state (i.e., at a height not greater than 21 feet, 6 inches) when the same is not being directly used by a person on the Property. The Radio Device shall be installed and located so that, if the same fell, it would at all times remain on and within the boundaries of the Property.

6. A rebar-reinforced concrete slab for support of the Radio Device, and on which the Radio Device will be placed, shall be constructed prior to the installation of the Radio Device in the location shown on the Site Plan. The concrete slab shall have the following dimensions: 5 feet long, 5 feet wide, 6 feet deep.

7. The Radio Device and the concrete slab shall be installed, maintained, removed, operated and used in accordance and compliance with, and subject to, this Ordinance and all applicable ordinances, codes, rules, regulations and standards of the City and of any governmental entity, agency or authority having jurisdiction over the Property. A local structural engineer with tower experience shall be retained by the Property owner for the installation of the Radio Device and shall engineer and oversee such installation. Installation, maintenance and removal of the concrete slab and of the Radio Device shall be performed and completed to the satisfaction of the City's building inspector.

8. The Radio Device and the concrete pad on which it is placed shall be maintained and kept in good condition at all times.

Section 3. Building Permit, Certificate of Occupancy, Development and Use. As applicable, no building permit or certificate of occupancy relating to the Radio Device and/or the Property shall be issued until there has been full compliance with this Ordinance and all other ordinances, codes, rules, regulations, and standards of the City. The development and use of the Property and of the concrete slab and the Radio Device shall be only in the manner and for the purpose and in accordance with the terms and conditions of this Ordinance (including, without limitation, the Site Plan) the Zoning Ordinance, and all other applicable ordinances, codes, laws, rules, regulations, and standards of the City.

Section 4. Zoning Map. The Zoning District Map of the City shall be amended to reflect the change in zoning made by this Ordinance.

Section 5. Penalty. It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this Ordinance, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not more than Two Thousand and No/100 Dollars (\$2,000.00), and a separate offense shall be deemed committed each day during or on which a violation occurs or continues.

Section 6. Savings. That Ordinance No. 110, as amended, shall remain in full force and effect. This Ordinance shall be cumulative of all other ordinances of the City and shall not

repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance.

Section 7. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid, void, unlawful or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, voidness, unlawfulness or unconstitutionality, which remaining portions shall remain in full force and effect.

Section 8. Effective date. This Ordinance shall become effective from and after its passage and approval and after publication as provided by law.

PASSED AND APPROVED by the City Council of the City of Lowry Crossing, Texas this ____ day of _____, 2010.

Derek Stephens, Mayor

ATTEST:

By: _____
Janis Cable, City Secretary

APPROVED AS TO FORM:

By: _____
John Hill, City Attorney

EXHIBIT A
TO ORDINANCE NO. 216

That property generally described as 1080 Overland Drive, Lowry Crossing, Texas and more particularly described as follows:

Lot 38, Block D, of the Settler's Creek #5 subdivision of the City of
Lowry Crossing, Texas, the final plat of which is filed of record in Volume G,
Page 212 of the Real Property Records of Collin County, Texas.

EXHIBIT B
TO ORDINANCE NO. 216