



IN CITY COUNCIL

Marlborough, Mass., NOVEMBER 20, 2006

ORDERED:

NOTICE OF DECISION GRANT OF SPECIAL PERMIT

In City Council
Order No. 06100-1241C

Application of:
Fiber Tower Corporation
185 Berry Street, Suite 4800
San Francisco, CA 94107

Locus:
75 Donald Lynch Boulevard
Marlborough, Ma 01752
Assessor Map 13, Parcel 2

DECISION

The City Council of the City of Marlborough voted to **GRANT** a Special Permit to Fiber Tower Corporation to allow an unmanned telecommunications facility (WCF) consisting of installing a new cabinet inside the existing compound and one dish antenna mounted to the existing monopole at 75 Donald Lynch Boulevard as provided in the DECISION and subject to the following FINDINGS OF FACTS AND CONDITIONS.

Decision filed: November 27, 2006

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the 27th day of November, 2006

APPEALS

Appeals, if any shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17 and shall be filed within twenty (20) days after the date of the filing of this Notice of Decision in the Office of the City Clerk of the City of Marlborough, Ma.

ATTEST:

City Clerk



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DECISION ON A SPECIAL PERMIT FINDINGS OF FACTS AND RULING

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to FIBERTOWER CORPORATION, having a usual place of business at 185 Berry Street, Suite 4800, San Francisco, CA 94107, as provided in the Decision and subject to the following Findings of Fact and Conditions.

EVIDENCE

1. The Applicant is FIBERTOWER CORPORATION which has a business address of 185 Berry Street, Suite 4800, San Francisco, CA 94107.
2. Through its Application for a Special Permit, the Application seeks permission to allow co-location of one (1) dish antenna to the existing cell tower as well as placement of the associated cabinet within the existing compound (hereinafter "Project"), as depicted on a set of plans entitled "FIBERTOWER BOS1219 75 Donald J. Lynch Boulevard" by Hudson Design Group, LLC, as submitted with the Special Permit Application (hereinafter "Plans").
3. The location of the proposed Project is 75 Donald J. Lynch Boulevard and the tower owner at this site is Cingular Wireless. The site is more particularly identified on the Assessor's Map of the City of Marlborough as Parcel No. 2 of Plate 13.
4. The Applicant is a lessee of the Owner, Cingular Wireless, for the purposes of this Special Permit Application.
5. The Site is zoned LI. Wireless communication devices are allowed by grant of Special Permit in LI Zoning Districts.
6. The Special Permit is being sought pursuant to Article VI, Section 200-25 and Article VIII, Section 200-59 of the Zoning Code of the City of Marlborough.
7. Pursuant to the Rules and Regulations of Application for Special Permit ("Rules and Regulations"), the City Planner certified that the Special Permit application materials are complete and conform to said Rules and Regulations and that the Plans conform in all respects to the City code.



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8. The Applicant has complied with all of the applicable rules of the Rules and Regulations.
9. The City of Marlborough City Council held a public hearing on the Project on August 28, 2006, for which proper notice had been published and for which proper notice had been given to all parties entitled to notice under the law.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing demonstrating that the Project meets all the applicable Special Permit criteria of Article VI, Section 200-25 and Article VIII, Section 200-59.
11. The Applicant provided further oral testimony and demonstrative evidence to the City Council's Wireless Communications Committee regarding the Project's compliance with the applicable Special Permit criteria.
12. The Council, in reviewing the Applicant's Special Permit application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the City of Marlborough Zoning Ordinance, applicable to the proposed Wireless Communications Device.

**BASED UPON THE ABOVE, THE MARLBOROUGH CITY
COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT
AND TAKES THE FOLLOWING ACTIONS**

- A) The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council pertaining to the said Application for a Special Permit.
- B) The Site is an appropriate location for the Project and the Project is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions of this Approval.
- C) The Applicant has complied with the applicable Review Standards and Development Requirements pertaining to Wireless Communications Devices, enumerated in Article VI, Section 200-25 and Article VIII, Section 200-59 of the City of Marlborough Zoning Ordinance, by siting, designing and screening its proposed WCD to minimize the adverse impact of the proposed WCD on the abutting neighborhood and on nearby residential properties.



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D) The Council, pursuant to its authority under M.G.L. Chapter 40A and the City of Marlborough Zoning Ordinances, **GRANTS** the Applicant its Special Permit, **SUBJECT TO THE FOLLOWING CONDITIONS NUMBERED 1 THROUGH 11:**

- 1) The WCD shall be constructed, maintained and operated according to the specifications, terms and conditions of the Applicant's Special Permit Application, as amended during the application/hearing process, and in compliance with the Conditions of the Grant of Special Permit as well as with the conditions set forth in Chapter 200-25F of the Marlborough Zoning Ordinance.
- 2) All Plans, photo renderings, site evaluations, briefs and other documentation provided by the Applicant as part of this Special Permit Application are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
- 3) The Applicant shall comply with all rules, regulations, ordinances and statutes of the City of Marlborough, the Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance and operation of the Applicant's WCD.
- 4) All terms, conditions, requirements, approvals, plans and drawings required hereunder are hereby made a part of and incorporated herein as a condition to the issuance of this Special Permit.
- 5) Applicant shall minimize the visual impacts of the WCD by screening and/or color coordination as depicted on the Plans and other demonstrative evidence submitted as part of the Application for Special Permit.
- 6) Applicant shall pay to the City of Marlborough Open Space Account #100-2410-44515, as mitigation for the alleged impacts caused by the subject of this Permit, the annual sum of One Thousand Five Hundred (\$1,500.00) dollars, the first payment due and payable at the time of the issuance of the building permit hereunder or within one year of approval of Special Permit, whichever is earlier, and the subsequent payments to be due and payable on or immediately after January 2 of each calendar year in which the WCD referenced to in this Permit is still in operation.



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- 7) Applicant shall not utilize a permanent electrical generator, of any type, in connection with the operation of the WCD. Applicant shall be permitted to use a temporary electrical generator in connection with the operation of the WCD only in cases of power outages to the WCD beyond Applicant's control and not caused by the Applicant or any of its agents. In the event a temporary generator is used pursuant to this Condition, the noise produced by said temporary generator shall not be audible beyond the boundaries of the Site. Batteries used in the operation of the facility shall be disposed of off-site at the expense of Applicant.
- 8) The Applicant shall not permit any other party to utilize the screening or color coordination, in any fashion or manner, for any WCD or associated equipment other than the WCD and the associated equipment expressly allowed by the grant of Special Permit.
- 9) No operation of this WCD shall commence until the Applicant has received written approval from the Building Inspector that all the above conditions have been satisfied.
- 10) Applicant should be subject to site plan review as may be applicable and in accordance with this permit.
- 11) In accordance with the provisions of Mass. Gen. Laws c.40A, s. 11, the Applicant at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the city clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed.

Yea: 11 – Nay: 0

Levy, Ossing, Schafer, Clancy, Vigeant, Pope,
Juaire, Webster, Ferro, Katz, Towle

ADOPTED

In City Council

Order No. 06100-1241C

A TRUE COPY

ATTEST:

City Clerk