

Town of Windsor, County of Broome, State of New York

A Resolution Approving the Application by Thomas White (Peg Bandwidth), and Independent Wireless One (Cingular) for a Tower Special Use Permit for Wireless Telecommunications Facilities to authorize Applicant to co-locate antennas to an existing wireless telecommunications facility on property owned by Independent Wireless One Corp. and situated at 190 Cresson Hill Road in the Town of Windsor, County of Broome, State of New York (Tax Map Number 183.00-1-4.3).

Resolution #49-2013

PRESENT Supervisor Carolyn W. Price
Councilman Timothy J. Bates
Councilman George B. West
Councilman William J. McIntyre
Councilwoman Lesa Hawk-Shuler

At a regular meeting of the Town of Windsor Town Board, held at the Town Hall on the **4th of December, 2013**, the following resolution was

OFFERED BY:
SECONDED BY:

The Town Board (hereinafter “Town Board”) of the Town of Windsor (hereinafter “Town”), duly convened in regular session, does hereby resolve as follows:

Section 1. Pursuant to, and in accordance with, the provisions of Article XV-2 (Telecommunications Tower Siting and Special Use Permit Law) of Chapter 93 of the Town Code, the Town Board of the Town hereby:

- A. Finds and determines that Thomas White (Peg Bandwidth), and Independent Wireless One (Cingular) (hereinafter “Applicant”) has filed an application (hereinafter “Application”) with the Town for a Tower Special Use Permit and Site Plan Approval for Wireless Telecommunications Facilities (hereinafter “Special Use Permit and Site Plan Approval ”) to authorize Applicant to Applicant add one 8 foot microwave antenna and one 6 foot microwave antenna and the related hardware and equipment; the antennas will be at 105 feet (hereinafter “Wireless Facility”) on property owned by Independent Wireless One Corp. and situated at 190 Cresson Hill Road in the Town of Windsor, County of Broome, State of New York (Tax Map Number 183.00-1-4.3). (hereinafter “Property”).

B. Finds and determines that the application consists of the application and a site plan (hereinafter referred to in total as “application”), which includes the necessary information and representations required under Article XV-2.

C. Applicant must comply with access road and parking requirements and has provided a Certification that the Tower are designed and constructed (“As Built”) to meet all County, State and Federal structural requirements for loads, including wind and ice loads; and other Special Use Permit and Site Plan Approval requirements.

D. Upon the advice of Ronald B. Lake, P.E., the Town’s Consultant, the Town waives the following requirements. Good cause has been shown that these waivers, where necessary, are appropriate as this is a collocation on an existing tower.

- 1) A pre-application meeting,
- 2) Visual Impact Assessment,
- 3) Zone of Visibility Map,
- 4) Pictorial representations,
- 5) Screening requirements,
- 6) Underground utility requirements,
- 7) Certification of a topographic and geomorphologic study and analysis requirements,
- 8) Drainage plan requirements, propagation studies,
- 9) The requirement that the applicant disclose any agreement precluding or limiting sharing any new Telecommunications Tower that is constructed,
- 10) Shared use plans,
- 11) Certification that the tower is designed with a break point that would result in the tower falling or collapsing within the boundaries of the property on which it is placed,
- 12) Certification that the tower is grounded and bonded,
- 13) Feasibility study for future collocation or sharing, and
- 14) Lot size and setbacks.
- 15) A pre-application meeting,
- 16) Visual Impact Assessment,
- 17) Zone of Visibility Map,
- 18) Pictorial representations,
- 19) Screening requirements,
- 20) Underground utility requirements,
- 21) Certification of a topographic and geomorphologic study and analysis requirements,
- 22) Drainage plan requirements, propagation studies,
- 23) The requirement that the applicant disclose any agreement precluding or limiting sharing any new Telecommunications Tower that is constructed,
- 24) Shared use plans,
- 25) Certification that the tower is designed with a break point that would result in the tower falling or collapsing within the boundaries of the property on which it is placed,
- 26) Certification that the tower is grounded and bonded,
- 27) Feasibility study for future collocation or sharing, and
- 28) Lot size and setbacks.

E. Finds and determines that the Property is located in an Agricultural (A) zoning district.

F. Finds and determines that the Town Board duly conducted a public hearing on the proposed Wireless Facility at the Windsor Town Hall, 124 Main Street, Windsor, NY, which was opened in and closed on December 4, 2013; notice of the public hearing was duly published in the official newspaper of the Town; and a copy of the notice of public hearing was duly posted on the Town Clerk's signboard.

G. Based on the representations made by the Applicant finds and determines that this existing tall structure can accommodate the antennas proposed to be installed by Applicant. A collocation is preferred by the Town to new construction.

H. Finds and determines that the Town Board has duly considered the environmental significance of the proposed Wireless Facility; and the Town Board has carefully reviewed the Short Environmental Assessment Form, which was filed by the Applicant

I. Finds and determines that the project will not result in any large and important impacts and, therefore, is one, which will not have a significant impact on the environment.

J. Adopts a negative declaration in connection with the project and the underlying action.

Section 2. The Town Board hereby approves the Application, subject to the provisions and conditions set forth hereinafter. The Town Board hereby authorizes the issuance to Applicant of the requested Special Use Permit and Site Plan Approval, subject to the following provisions and conditions with which Applicant must comply before any building permit shall be issued to Applicant for the Wireless Facility:

A. Applicant must secure and furnish to the Town all of the insurance required to be secured and currently maintained in accordance with the provisions of Section 93-99 of the Town Code, including the appropriate certificates of insurance demonstrating that the insurance coverage of Applicant is currently in full force and effect; and further demonstrating that the insurance carrier of Applicant has specifically included therein the Town and its officers, boards, employees, committee members, attorneys, agents, and consultants as additional named insureds as to said insurance policies.

B. Applicant recognizes, understands and agrees that the Special Use Permit and Site Plan Approval is non-exclusive, cannot be assigned or transferred without the express written consent of the Town Board, that such consent shall not be unreasonably withheld and that the Special Use Permit and Site Plan Approval may be revoked,

canceled or terminated for a violation of the conditions and provisions of the Special Use Permit and Site Plan Approval or for a material violation of the Town Law.

C. Applicant must secure and furnish to the Town a removal bond in the amount of \$15,000.00, the form of which shall be subject to the approval of the Attorney for the Town. The requirement of a removal bond in the amount of \$75,000 is hereby waived due to the nature and scope of the removal that would be required for this collocation.

D. Applicant must deposit with the Town, in accordance with the provisions 93-89 of the Town Code, such additional reasonable sums as the Town shall request in order to reimburse the Town for the additional Town Consultant expenses the Town has incurred and will incur in connection with the Town Consultant's review of the Application.

E. The Applicant must reimburse the Town for any expenses incurred by the Town in publishing the original notice of public hearing and in mailing notices to neighboring property owners in connection with the public.

F. Applicant must furnish proof that the project complies with applicable Federal Aviation Administration rules and regulations, which said proof shall be subject to the approval of the Attorney for the Town.

G. The Wireless Facility must be fully operational by one year from the issuance of the building permit. If the Wireless Facility is not fully operational by said date, the Special Use Permit and Site Plan Approval authorized by this resolution shall be null and void. Time is of the essence with respect to said date.

H. Perform all action required by New York State Department of Environmental Conservation, if any.

I. Comply with also requirements of Article XV-2 of the Town Code, unless specifically herein waived, including: security of the applicant's property, applicant's signage requirements, recertification, annual Nier certification, allowing inspections and reimbursing the Town for inspections.

J. Comply with all application, local, state, and federal law, statutes, regulations and requirements. Operate, maintain, repair, modify or restore the permitted collocation in strict compliance with all current technical, safety and safety-related codes adopted by the Town, County, State or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the national Electrical Code, as well as accepted and responsibly workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The code referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health and land use codes.

K. The applicant shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulations or Law, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.

L. The applicant, by apply and accepting this approval to the following, as required by Section 93-100:

The applicant, as a holder of a Special Use Permit and Site Plan Approval, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town and its officials, servants, officers, boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of a wireless telecommunications facilities within the Town. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.

Section 3. In view of the fact that applicable sections of Article XV-2 already make provision for the granting of waivers, relief and exemption from any aspect or requirement of Article XV-2, the Town Board finds and determines that the granting of an area variance to the Applicant is not required or necessary in this situation.

Section 4. In no event shall Applicant enlarge the Wireless Facility or add any additional antennas, cabling or related equipment to the Wireless Facility (beyond the number of antennas, cabling and related equipment set forth in the Application) unless and until Applicant has applied for and obtained the express prior written approval therefore from the Town and reimbursed the Town for any reasonable expenses the Town has incurred by having such proposed enlargement reviewed by the Town's Consultant.

Section 5. Town Board shall review all of Town Consultant's invoices to determine whether they are reasonable and consistent with New York State law. Any determination by the Town Board that such invoices are reasonable shall be final and binding on Applicant.

Section 6. The Town Clerk is hereby directed to send certified copies of this resolution to the Applicant.

Section 7. This Resolution shall take effect immediately.

Vote of the Board:

Supervisor Carolyn W. Price

Councilman Timothy J. Bates
Councilman George B. West
Councilman William J. McIntyre
Councilwoman Lesa Hawk-Shuler
Motion Approved.

Resolution Adopted: December __, 2013

CERTIFICATION

I, Barbara Rajner Miller, do hereby certify that I am the Town Clerk of the Town of Windsor and that the foregoing constitutes a true, correct and complete copy of a resolution duly adopted by the Town Board of the Town of Windsor at a meeting thereof held at the Windsor Town Hall, 124 Main Street, Windsor, NY on the **4th day of December 2013**. Said resolution was adopted by the following roll call vote:

Supervisor Carolyn W. Price
Councilman Timothy J. Bates
Councilman George B. West
Councilman William J. McIntyre
Councilwoman Lesa Hawk-Shuler
Dated: December __, 2013
Town of Windsor Seal

Barbara Rajner Miller
Town Clerk of the Town of Windsor