

## Zoning Board of Appeals Decisions Decisions for: 06-11-2015

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AMENDED

FALMOUTH ZONING BOARD OF APPEALS

DECISION

Special Permit No: 100-13

Applicants: INDUSTRIAL TOWER and WIRELESS, LLC of Marshfield, MA

Property Address: 284 Old Meeting House Road, East Falmouth, MA  
Assessor's Map: Map 28, Section 05, Parcel 001, Lot 000

Date of Hearing(s): December 5, 2013, February 20, 2014, May 1, 2014 and June 5, 2014

Summary: Denied (Motion did not carry with a 2 - 2 vote)  
Denial appealed.  
U.S. District Court ordered Special Permit to issue

Zoning: Agricultural A  
Groundwater Overlay: Green Pond Coastal Pond Overlay

### PROCEDURAL HISTORY

1. On October 21, 2013, Industrial Tower and Wireless, LLC (hereinafter referred to as Applicant) of 40 Lone Street, Marshfield, MA through their representative, John Champ, filed an application, plans and information with the Board of Appeals (hereinafter referred to as Board) for a Special Permit pursuant to Section 240-38 and 240-163 of the Code of Falmouth to construct a wireless communications 150' monopole on subject property known as 284 Old Meeting House Road, East Falmouth, MA – Map 28, Section 05, Parcel 001, Lot 000. The subject property is owned by Midway Trap and Skeet Club of Falmouth, Inc. A letter of authorization from Midway for Applicant has been submitted to the file. The subject property consists of 19.7 acres that is zoned Agricultural A and is located within the Green Pond Coastal Pond Overlay District and is partially located in the Search and Rescue Overlay.
2. A duly advertised public hearing was opened on December 5, 2013 and continued to February 20, 2014 as the Zoning Administrator sent this to Cape Cod Commission (hereinafter referred to as CCC) as a DRI. On February 20, 2014 the application was still before the CCC so the Board continued the hearing to May 1, 2014. At the May 1, 2014 hearing testimony was given and public comment heard. The Board required further information and continued the hearing to June 5, 2014 where further testimony and public comment was heard. Waivers were filed with the Town Clerk that continued the hearing process to July 28, 2014 (see file).
3. On June 5, 2014 the Board closed the hearing and took it under advisement until July 17, 2014 at a duly posted meeting of the Board where the Board reviewed and discussed for possible vote.
4. On July 17, 2014 at a duly posted open meeting of the Board of Appeals, voting members discussed and voted 2 – 2 to grant the application. The motion did not carry; application denied.
5. On or about July 29, 2014 the Board filed its Decision with the Town Clerk. The Decision is incorporated herein by this reference thereto for informational purposes.
6. On or about August 21, 2014 Industrial Tower and Wireless, LLC filed a judicial appeal with the United States District Court in Boston, MA. The judicial appeal was heard on April 28, 2015 and a decision, judgment and order was issued by the Court on May 18, 2015.

7. The Court vacated the Board's Decision and stated as follows:

"The Court further ORDERS that within forty-five (45) days from the issuance of this Order, the Defendant members of the Zoning Board of Appeals for the Town of Falmouth shall issue all necessary permits allowing ITW to construct and operate the Proposed Facility, in accordance with ITW's application and plans therefore."

A copy of the Court's Decision is on file at the Board of Appeals' Office.

June 11, 2015:

At a duly posted meeting of the Board of Appeals held on June 11, 2015 the Board discussed the Decision of the United States District Court in the case of Industrial Tower and Wireless, LLC, Plaintiff v. Zoning Board of Appeals of the Town of Falmouth, Massachusetts.

NOW THEREFORE

The Board of Appeals in accordance with the Court Decision and by unanimous vote hereby approves application 100-13 for Industrial Tower and Wireless, LLC to construct a cell tower located at 284 Old Meeting House Road, East Falmouth, MA as shown on plans entitled:

- "Industrial Communications Falmouth, MA" consisting of Sheet Number T 'Title Sheet', Sheet 1 'Aerial Overlay', Sheet 2 Proposed Site Plan', Sheet 3 'Tower Elevation & Details', Sheet 4 'Site Construction Details' – all dated 9/25/2012 with a final revision date of 10/3/2013 for all plan sheets except Sheet 2 with a final revision date of March 21, 2014.

The Board of Appeals, by the Chairman's signature below, represents that the Board voted unanimously to Grant the Special Permit in accordance with Industrial Tower and Wireless, LLC application and plans.

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Kenneth Foreman, Chairman Date filed with Town Clerk

**Notes:**

100-13 SP - Industrial Tower and Wireless, LLC, filed w/T.C. 6/12/15