

**Incorporated Village of Plandome
65 South Drive
Plandome, NY 11030**

RESOLUTION 11-2019-A

Resolution and Findings Supporting the Denial of Special Use Permit for a Proposed Wireless Telecommunication Distributed Network within the Incorporated Village of Plandome

WHEREAS, the Incorporated Village of Plandome (the “Village”) received an application from ExteNet Systems, Inc. (“ExteNet”) for a Special Use Permit Application, as amended and supplemented, for the installation of wireless telecommunications facilities within the Village; and

WHEREAS, ExteNet’s application, as amended and supplemented, seeks to install ten (10) separate wireless facilities (a/k/a nodes) at various locations throughout the Village; and

WHEREAS, the Village maintains that the various amendments and supplements to the application are deemed integral parts of the application; and

WHEREAS, the Village and ExteNet had previously executed various tolling agreements to defer a decision on ExteNet’s application to, ultimately, November 18, 2019 and ExteNet had declined to further extend the tolling agreement except for two (2) nodes referenced below;

WHEREAS, ExteNet has previously agreed to the Village’s request to further defer consideration of two (2) of the nodes (Node 42 and 46) to a date certain in January 2020 in order to continue discussions concerning the location and design of those two interrelated nodes given the multiple alternatives available for those two (2) nodes; and

WHEREAS, in light of the expiration of the tolling agreement as to eight (8) nodes, the Village is obligated to render a decision on the applications for those eight (8) nodes; and

WHEREAS, the Village Board and its consultants have reviewed the original application and its multiple amendments and supplements for consistency with the Village Code and the relevant criteria governing wireless siting applications, including, *inter alia*, with respect to aesthetics, mitigation efforts, available alternatives, and, in accord with paragraph 3 below, wireless service coverage and alleged gaps and/or improvements in respect thereof; and

WHEREAS, the Village Board permitted ExteNet and all other interested parties to be heard and to submit evidence and materials in connection with ExteNet’s application and submissions; and

WHEREAS, ExteNet previously indicated that the proposed nodes should be viewed together for purposes of achieving its proposed wireless coverage and capacity goals, and acknowledged the interdependency of the proposed nodes in its submissions and testimony to the Village Board on November 18, 2019.

WHEREAS, the Village Board retained the following outside consultants to assist it with respect to its comprehensive review and consideration of ExteNet's application, to wit: Susan Rabold and Anthony Lepore, of CityScape Consultants Inc; and

WHEREAS, the Village Board, having completed a comprehensive review and consideration of the record, and having fully deliberated thereon, has determined to deny the application for the eight (8) nodes under consideration at this time via two separate votes, one for Node 53 and a second for Nodes 44, 47, 50, 51, 52, 56 and 57 collectively for the reasons set forth hereinbelow;

NOW, THEREFORE, BE IT

RESOLVED, that the Village Board hereby adopts the following written findings in support of its denial of the eight (8) nodes in ExteNet's application under current consideration:

1. The Village Board has fully considered the intent and criteria for Special Use Permits for wireless communications facilities as set forth in the Village Code, §152-1 *et seq.*

2. In rendering its decision, the Village Board specifically excluded from its consideration or reasoning for denial any comments, statements, submissions, or any other materials or information regarding any potential adverse health concerns or effects over radio frequency (RF) emissions, other than to seek certification from ExteNet that ExteNet's application complies with applicable federal standards contained in 47 CFR 1.1310.

3. While the Village Board recognizes that the FCC's most recent guidelines contain various pronouncements with respect to effective prohibition of wireless services and which purport to provide that providers are no longer required to establish a substantial gap in coverage, the Village Board maintains that such guidelines are invalid, unlawful and unconstitutional. Nevertheless, the Village Board determines that no effective prohibition exists with respect to the instant denial of ExteNet's application even if the FCC's most recent guidelines were deemed to fully apply, including with respect to attempted upgrades and improvements to wireless networks, due to the availability of alternate solutions, including, *inter alia*, a traditional "macro" monopole to provide service to the same geographic area as the application's ten (10) node proposal and the alternative of locating the proposed facilities in private utility easements parallel to rear property lines.

4. Section 152-1 entitled "Telecommunications Facilities, Wireless" states: "The intent of this chapter is to minimize the impact of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the Village of Plandome.

5. Section 152-8 states: "Applicants for wireless telecommunications facilities shall locate, site and erect said wireless telecommunications facilities in accordance with the following priorities, one being the highest priority and four being the lowest priority.

- (1) On existing towers or other structures on Village-owned properties, including within the Village right-of-way.
- (2) On existing towers or other structures on other property in the Village.
- (3) A new tower or any other structure on Village-owned properties, including the Village right-of-way.
- (4) A new tower or any other structure on properties in areas zoned for residential use.”

6. Section 152-8 further states: “If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.”

7. In addition, Section 152-7 entitled “Special Use Permit Application and Other Requirements” provides a list of criteria that each applicant must address during the application and Special Use Permit process to minimize visual impacts of new small wireless facilities inside the Village's zoning jurisdiction. Section 152-7(R) requires that “All proposed wireless telecommunications facilities shall contain a demonstration that the facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the wireless telecommunications facility.”

8. ExteNet’s proposal called for four (4) completely new vertical poles to host nodes (Nodes 42, 44, 46 and 53), four replacements of existing vertical poles with new vertical poles (Nodes 47, 52, 56 and 57), one node to be located on the Village fire tower or a replacement thereof (node 51) and one node to be located on an existing vertical pole (node 50). While ExteNet provided examples of possible types of decorative poles for the new installations proposed for the Village's consideration, the design examples that were provided were better suited for urban and suburban land use areas not characteristically similar to the Village’s single-family dwellings which are located along narrow local roads with no overhead electrical utilities inside the street rights-of-way, and whereas overhead electrical utilities in most of the geographic area of the proposed small-cell facilities are designed and proposed are located among alternative private utility easements parallel to rear property lines.

9. Further illustrative of the foregoing, the proposed new nodes would be decorative metal poles of varying heights in the range of 25-35 feet. However, no existing street lights or utility poles are currently existing in the vicinity of these proposed nodes.

10. ExteNet did not adequately address the purported unavailability of the alternate private utility easements parallel to rear property lines for locating the desired nodes, which would be more consistent with the nature and character of the Village, nor did ExteNet adequately consider the alternative of a traditional “macro” monopole to provide service to the same geographic area as the application’s ten (10) node proposal.

11. ExteNet further did not adequately explore additional options for the placement of Node 53 within Nassau County property or adjacent thereto which may have provided greater consistency with Section 152-7(R) referenced above.

12. Although ExteNet addressed the locational priorities set forth in Section 152-8 and purported to provide explanations as to why a site of higher priority was not selected in accordance with Section 152-8, of the eight (8) nodes under current consideration, only 1 node (node 50) met the highest priority of utilization of an existing pole, with the possibility that node 51 (the Village fire tower) might also meet that priority dependent on a structural analysis, and the remainder of the nodes under consideration involved either completely new structures or the replacement of existing poles with new poles. ExteNet did not provide adequate information on its ascertainment as to the feasibility of utilization of other existing poles within the Village for its proposed nodes, such as the infrastructure contained in the existing utility easement areas.

13. The Village received written comments and heard public comments on November 18, 2019 from affected residents regarding the deleterious effect that the selected locations and aesthetic designs would have on residents' viewsheds and property values and potential alternatives which would minimize the adverse effects on viewsheds and property values.

14. In accord with the most recent tolling agreement and in compliance with the request of ExteNet, the public hearing as to eight (8) of the nodes in its application in this matter was closed on November 18, 2019. By virtue of the foregoing analysis, ExteNet's application does not minimize adverse aesthetic and visual impacts. ExteNet was obligated to show that its stated goals and objectives could not be met by other designs that would have lesser adverse aesthetic and visual impacts. ExteNet failed to do so, as was demonstrated by the comments by ExteNet and residents in the November 18, 2019 public hearing concerning alternatives available for, inter alia, Node 53.

15. ExteNet has identified Verizon as the proposed network provider, and although it is not conclusive, Verizon's website data and information reflects no substantial coverage gaps in respect of the proposed alternative locations and no genuine need or basis to upgrade or improve wireless services in respect of any of the proposed alternative node locations.

16. In accord with paragraph 3 above and Section 152-7(K), ExteNet has failed to demonstrate how each of the proposed nodes will specifically upgrade or improve existing wireless services, and failed to submit the type of data and information (e.g., detailed coverage and propagation maps with respect to each of the proposed nodes, drive test results, dropped-call data, or dropped-call records) which are reasonably required to establish a substantial coverage gap, or alternatively a reasonable upgrade or improvement in wireless services.

17. ExteNet's generic submissions regarding the purported lack of reduction in property values are part of an analysis offered to the City of Rye, New York, using data from the Town of Pelham and other locations, as well as material from Santa Clara County, California regarding right-of-way installations and are not specifically applicable to the Village of Plandome, and are outweighed by the more detailed, specific and compelling submissions in the record by licensed real estate professionals who are more familiar with the Village, the latter whom provided

credible and persuasive evidence that the proposed nodes will have a substantial negative impact on local property values for the areas immediately surrounding the proposed nodes.

18. The Village Board also finds as credible and persuasive the letters and testimony submitted by local resident homeowners with respect to the adverse aesthetic impacts that the proposed installations would entail, including with respect to their own and neighboring properties. As noted above, the Village Board has disregarded and specifically excludes from its consideration or reasoning for denial any comments, statements, submissions, or any other materials or information regarding any potential adverse health concerns or effects over RF emissions, other than to obtain ExteNet's certification that its application complies with applicable federal standards contained in 47 CFR 1.1310.

19. ExteNet's representative acknowledged at a Village meeting that ExteNet was contracted by Verizon to build a specific number of nodes in the surrounding area, that no overall reduction in nodes can be made even if less overall or specific nodes would provide the same coverage, and that if a node were eliminated somewhere then a node would need to be added elsewhere. ExteNet further acknowledged in its submissions and testimony to the Village Board on November 18, 2019 that the proposed nodes should be viewed together for purposes of achieving ExteNet's proposed wireless coverage and capacity goals.

20. Accordingly, for the foregoing reasons, the Village DENIES the application for special use permit for the eight (8) nodes under consideration at the November 18, 2019 public hearing and DEFERS to a date certain in January 2020 consideration and adjudication of the application for special use permit for Nodes 42 and 46 in accordance with its previous written agreement with the applicant.

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Resolution approved unanimously by the Board of Trustees, filed with the Village Clerk, and to be appended to the minutes of the meeting.

Approved November 19, 2019

Barbara Feibles 11/20/2019  
Village Clerk/Treasurer Date

