

RESOLUTION# 3 - 2020
DETERMINATION AND FINDINGS OF FACT OF THE
BOARD OF TRUSTEES REGARDING THE
APPLICATIONS OF EXTENET SYSTEMS, INC.

WHEREAS, the Incorporated Village of Plandome Manor (the “Village”) received applications from ExteNet Systems, Inc. (“ExteNet”) for Special Use Permits, which were subsequently amended and supplemented, for the installation of “Wireless Telecommunications Facilities” in the form of a “Distributed Antenna System” as those terms are defined in the Village Code; and

WHEREAS, in June 2018, the Village Board adopted §225-15 of the Village Code entitled “Wireless Telecommunications Facilities,” and set forth the following as its intent:

In order to insure that the placement, construction or modification of wireless telecommunications facilities is consistent with the Village's land use policies, the Village is adopting a single, comprehensive, wireless telecommunications facilities application and permit process. The intent of this section 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 Manor.

WHEREAS, ExteNet filed its applications in March 2019, seeking permission to install twenty (20) separate antenna nodes at various locations throughout the Village; and

WHEREAS, the Village Board retained the services of the Center for Municipal Solutions (“CMS”) to assist the Village with its review and consideration of ExteNet’s applications: and

WHEREAS, the Village Board conducted public hearings on October 10, 2019 and October 15, 2019 and heard testimony and took evidence from both ExteNet and members of the public in connection with ExteNet’s applications; and

WHEREAS, prior to the public hearings, CMS reviewed each of ExteNet’s applications to determine whether the proposed infrastructure complied with the Village Code requirements and whether ExteNet provided sufficient information for the Village to properly review the requested special permits; and

WHEREAS, during the public hearings additional questions were raised by the Village Board and its residents, which ExteNet agreed to address following the public hearings by providing documentation and/ or written responses; and

WHEREAS, ExteNet amended and supplemented its applications by providing some, but not all, of the information and answers sought by CMS, the Village Board and the residents; and

WHEREAS, ExteNet’s refusal to submit the information requested by CMS constitutes a failure on the part of ExteNet to provide proper clarification to questions posed by the Village Board and residents of the surrounding community during the review process and did not satisfy its burdens to obtain the special permit; and

WHEREAS, the Village Board and CMS have identified numerous ways in which ExteNet’s applications are incongruous with the intent of the Village Code and the relevant criteria governing wireless siting applications, including the consideration of things such as aesthetics, mitigation efforts, available alternatives, and, as set forth in further detail hereinafter, wireless service coverage and alleged gaps and/or improvements in respect thereof; and

WHEREAS, by virtue of the numerous failures with respect to ExteNet’s application set forth in the specific findings below, the Village Board is unable to make a determination under the State Environmental Quality Review Act (“SEQRA”) with respect to a proposed action; and

WHEREAS, ExteNet has taken the position that the hearing, application and review process are complete and that the Village Board is required to render a decision on its application by March 2, 2020;

WHEREAS, based on this position has no other option but to consider the applications as submitted; and

WHEREAS, the Village Board, having completed a comprehensive review and consideration of the record, and having fully deliberated thereon, has determined to deny each of the applications for the reasons set forth hereinbelow, and without waiver of the Village’s position that ExteNet has refused to complete the review process as required by the Village Code, SEQRA and applicable law;

NOW, THEREFORE, BE IT

RESOLVED, that the Village Board hereby adopts the following written findings in support of its denial of ExteNet’s application:

1. The Village Board has fully considered the intent and criteria for Special Use Permits for Wireless Telecommunications Facilities as set forth in the Village Code, §225-15.
2. In reaching this decision, the Village Board did not, in any way, consider any comments, statements, submissions, or any other materials or information regarding any potential adverse health concerns or effects of radio frequency (RF) emissions, other than to determine whether ExteNet’s applications comply with applicable federal standards.
3. While the Village Board recognizes that the Federal Communications Commission’s (“FCC”) Declaratory Ruling and Third Report and Order seeks to clarify what constitutes an effective prohibition of wireless services and which purports to state 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. However, with this decision, the Village Board determines that no effective prohibition exists with respect to the instant denial of ExteNet's applications even if the FCC's most recent guidelines were deemed to fully apply, including with respect to attempted upgrades and improvements to wireless networks.

4. Pursuant to Village Code Section 225-15(E), a special use permit for any new, co-location or modification of a wireless telecommunications facility is required.

5. Also, pursuant to Sec. 225-15(E)(5), "wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of stealth technology to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances." ExteNet has made almost no effort to consider the visual impacts of its infrastructure on the surrounding community.

6. The applicant proposes to install twenty (20) new DAS nodes throughout the Village. Only one (1) location (Node# 31) is proposed as a concealment pole, while the remaining Nodes are proposed to be attached existing wood utility poles¹ within the Village. Each DAS node consists of an equipment shroud (35.2" x 15.6"x9") and an omni-directional antenna (24"x14.6") mounted to either the top of the pole or on a stand-off support. Additional conduits, cables and hardware are also proposed. Each of the proposed locations is in a residential neighborhood with many locations directly in front of single-family homes and driveways.

7. ExteNet did provide some examples of the types of decorative poles for the Village's consideration and offered to discuss the various alternatives with the Village prior to construction. However, it is not consistent with the special use permit process for an applicant to engage in vague alternative development proposals with more detailed site plans of what will be installed to be provided at a later date.

8. In any event, to the extent design examples were provided, they were suited for urban and suburban land use areas. Critically, the Node# 31 concealment pole is proposed in front of 8 Luquer Road. Luquer Road is a narrow local road with no poles or overhead electrical utilities on the public right-of-way and the overhead electrical utilities are located within alternative private utility easements parallel to rear property lines. In other words, this "concealment" pole will actually stand out in the surrounding community because there is no similar infrastructure in the vicinity.

¹ It should be noted that many of the exiting wood utility poles ExteNet is proposing to use, are being replaced with new wood poles of undetermined height width and exact location. As noted by ExteNet at the public hearing these determinations are made by the utility company, not by ExteNet.

9. Each DAS node consists of an equipment shroud (35.2” x 15.6” x 9”) and an omni-directional antenna (24” x 14.6”) mounted to either the top of the pole or on a stand-off support. Additional conduits, cables and hardware are also proposed. Each of the proposed locations is in a residential neighborhood with many locations directly in front of single-family homes and driveways.

10. As noted by CMS in its multiple reports regarding these applications, due to the dimensions of the antennas and equipment shroud, as well as the placement of many facilities and new poles directly adjacent to or in front of homes, the proposed installations will have a significant visual impact to these neighborhoods. As proposed, this project would create a significant impact to the aesthetic values and the nature and character of the community and less visually obtrusive designs and locations should be considered.

11. The Village sought other remedies to reduce visual impacts as well. Specifically, the Village requested that ExteNet provide less intrusive structures and/ or locations for the nodes. Further, the Village sought to have all utilities at or to the proposed DAS locations to be installed underground.

12. ExteNet refused provide less obtrusive alternatives to the proposed locations and facility design currently proposed for new and/ or existing poles. Moreover, it would not specifically agree to place installations underground. In fact, ExteNet has told that Village that it is Village’s responsibility to advise ExteNet of proposed alternatives to its proposed locations.

13. ExteNet’s attempt to shift the burden to the Village Board to select and finalize the proposed design and location for each node for purposes of seeking and obtaining the Board’s approval or denial thereof is improper. It is not the Village’s responsibility to choose locations and designs of infrastructure that will have the least possible impact on the surrounding community. As set forth in the Village Code that is clearly the responsibility of the entity seeking relief from the Village Board. *See*, Village Code §225-15(R)(3)

14. ExteNet has the ability to select and finalize the proposed design and location for each node for purposes of seeking and obtaining the Board’s decision thereon. The fact that ExteNet would not consider these changes runs contrary to Village Code §225-15(E)(5).

15. In addition to the visual impacts that will be created by these nodes, the Village is also concerned that the equipment will generate noise in excess of acceptable levels under the Village Code. ExteNet acknowledged that internal fans used to cool equipment within the shroud would generate noise and submitted a generic sound level report, but ExteNet could not provide any specific details regarding times that these fans would operate or for how long they would operate during the course of a day. This makes it nearly impossible to determine whether noise levels and mitigation efforts in respect of noise levels are adequate.

16. Village Code §225-15(H)(11)(b), requires the submission of documentation that “demonstrates and proves the need for the wireless telecommunications facility to provide

service primarily and essentially within the Village. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage.”

17. ExteNet did submit an RF Map, but this map only shows Verizon wireless service for 700 MHz LTE. There is no data to indicate whether this project is needed to remedy Verizon Wireless’ gap in coverage and/or capacity needs. Moreover, only one propagation map for 700 MHz LTE service was submitted. The Village specifically requested that Verizon submit propagation maps for all frequencies that it is authorized to operate in this area, showing all existing and proposed adjacent sites. ExteNet failed to provide this information.

18. The Village also requested current drive test data be provided, as well as detailed proof of need to operate at the proposed signal strength. Strangely, ExteNet attempted to satisfy this requirement by referring to an article that appeared in a local newspaper, where some reporters allegedly conducted their own drive test. Ignoring the fact that there is no way to verify the standards employed while conducting this test, to the Village’s knowledge, this alleged drive test was not conducted within the Village of Plandome Manor at the locations proposed by ExteNet.

19. The Village and its consultants have reviewed the information regarding the need for the proposed DAS Nodes and have concluded that the data indicates that service for Verizon is sufficient within the Village of Plandome Manor. Thus, ExteNet has failed to meet its burden with regard to demonstrating that the proposed DAS nodes are needed by Verizon to fill any gaps in coverage.

20. Based on the foregoing, ExteNet has failed to establish a substantial gap in coverage. In addition, with respect to attempted upgrades and improvements to wireless networks, 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.

21. By virtue of the foregoing, 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.

22. ExteNet has identified Verizon as the 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.

23. ExteNet’s generic submissions regarding the purported lack of reduction in property values are not based on locations in the Village of Plandome Manor and regarding right-of-way installations, 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.

24. The Village Board’s foregoing findings are further supported and corroborated by reports prepared by CMS and dated March 2, 2020 for each location for a proposed DAS Node. These reports are attached hereto and made a part hereof.

25. Finally, with respect to Node# 20, this application is denied for the same reasons set forth above. However, it should be noted that this particular Node is located on a County right-of-way within a County Park. Therefore, it is not clear if the Village has jurisdiction over this area.

WHEREFORE, the Board resolves to deny each of the special permit applications submitted by ExteNet Systems, Inc.

Approved by the Board of Trustees on March 2, 2020

Barbara Donno, Mayor	-	Aye
Matthew Clinton, Trustee	-	Aye
Antonio DeSousa, Trustee	-	Aye
Patricia O’Neill, Trustee	-	Aye
James Baydar, Trustee	-	Aye

Filed with the Village Clerk on March 2, 2020.