

VILLAGE OF PELHAM BOARD OF TRUSTEES
SPECIAL MEETING
THURSDAY, NOVEMBER 6, 2014, **7:00PM**
VILLAGE HALL – 195 SPARKS AVENUE, PELHAM, NY

Minutes

1. Call To Order
2. Pledge of Allegiance
3. Mayor's Report
4. Trustees' Reports
5. Village Administrator's Report
6. Public Comment

Agenda Items:

Non-Recurring Items		
7.	Adjournment to Executive Session	Approved
7A.	Public Hearing on ExteNet's Wireless Telecommunication Permit Application	Tabled
Reports and other Business		
8.	No Items	Tabled
Recurring Items		
9.	No Items	Tabled
10.	Adjournment to Executive Session (if needed)	Tabled

Next Regularly Scheduled BOT Meetings:

Wednesday, November 12, 2014
Tuesday, November 18, 2014

Item #1 – Meeting called to order: The meeting of the Board of Trustees was called to order by Mayor Cassidy at 7:00 p.m.

The following members of the Board of Trustees were present:

Mayor Cassidy, Trustees Volpe, Senerchia, Mutti, Reim, and Kagan

The following members of the Board of Trustees were absent:

Trustee Marty (arrived at 7:56 p.m.)

Village staff in attendance:

Village Administrator Robert Yamuder, Secretary to the Village Administrator Peter Bonington

Item #7– Adjournment to Executive Session

A motion was made by Trustee Mutti with a second by Trustee Volpe to adjourn the public portion of the Special meeting at 6:45 pm and go into Executive Session to discuss a current litigation matter after which time the Board would adjourn for the evening. The motion was approved by vote of four in favor, none opposed. Trustees Reim, Senerchia, and Marty were absent.

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Minutes

- 7. Call To Order
- 8. Pledge of Allegiance
- 9. Mayor’s Report
- 10. Trustees’ Reports
- 11. Village Administrator’s Report
- 12. Public Comment

Agenda Items:

	Non-Recurring Items	
7.	Public Hearing on ExteNet’s Wireless Telecommunication Permit Application	Tabled
	Reports and other Business	
8.	No Items	None
	Recurring Items	
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10.	Adjournment to Executive Session (if needed)	None

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Wednesday, November 12, 2014
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The following members of the Board of Trustees were present:

Mayor Cassidy, Trustees Volpe, Senerchia, Mutti, Marty, and Kagan

The following members of the Board of Trustees were absent:

Trustee Reim

Village staff in attendance:

Village Administrator Robert Yamuder, Secretary to the Village Administrator Peter Bonington

Item #2 – Pledge of Allegiance:

The Pledge of Allegiance was led by Mayor Cassidy.

Reports:

Mayor Cassidy Report

Mayor Cassidy stated the Board is working to finalize its proposed agreement with United Water over the Pelham Heights water district.

He said there will be a presentation on November 12th for the Wolfs Lane Park redesign schematic.

Trustees Reports:

Trustee Kagan

None

Trustee Marty

Absent

Trustee Mutti

Trustee Mutti reported there is a site meeting scheduled with the MTA to discuss track noise at the railroad station. She stated that there have been some positive developments including MTA work on the bridge and decorative paneling.

She stated the Pelhamwood Association will be paying for work on the Harmon Clock Tower.

She added there will be a meeting on November 12 to discuss the redesign schematic for Wolfs Lane Park.

Trustee Reim

Absent

Trustee Senerchia

None

Trustee Volpe

Trustee Volpe stated the new firefighter hired at the prior meeting has begun working with the department. He stated the Board will be keeping a close eye on the overtime budget.

Village Administrator's Report

None

Item #6– Public Comment

None

Item #7– Public Hearing on ExteNet's Wireless Telecommunication Application

Mayor Cassidy stated the Board will be hearing from ExteNet's attorney's and engineers as well as Village counsel and engineering consultants on the merits of ExteNet's special permit application.

Mr. Spolzino, the Village's legal counsel, said the Board can determine the merits of the special permit application based on two questions; has ExteNet shown that there is there a significant gap in service and has ExteNet utilized the least intrusive means to fix that gap. He further advised that we can not consider the health effects of the Radio Frequency Emissions if the DAS nodes are compliant with the FCC guidelines.

Mr. Spolzino cautioned that under Federal law, the Board cannot interfere or prevent the transmission of radio frequencies between telecommunications nodes or facilities. He added that there other legal constraints as well.

Mr. Fisher of Cuddy and Fedder, the law firm representing ExteNet, gave a brief presentation to the Board and the public on the background and nature of these three nodes that were placed around the Village. He stated these nodes are a method to avoid a cell tower site and are by far less intrusive while providing better service to the area. Trustee Kagan inquired into the source data of the maps presented and whether they were based on actual drive test data or computerized predictions. Mr. Fisher was unable to confirm whether the maps were based on drive test date or computerized predictions.

With regard to the new pole, Mr. Fisher stated that ExteNet looked very hard at its options. He said the location chosen would supply the best service and succeed in filling the gap in cell service. He added however that in the interest of the community, ExteNet could consider another location farther up Cliff Avenue however this could compromise the service in the area.

Lee Afflerbach, the engineering consultant retained by the Village, responded that he had reviewed ExteNet's application for a special permit. Based on the documents provided and his own site visits to each of the node locations, he stated that felt ExteNet had done a professional job on the installation. He stated whether there is a gap in service and how much will it improve is for ExteNet to prove and the Board to decide.

Trustee Senerchia stated that based on the data provided by ExteNet regarding emissions from these nodes, they appear to be far below the threshold of how much the Federal Communications Commission's (FCC) regulations allow.

Mr. Frederick, an engineer with ExteNet, confirmed that the emissions are very low and the analysis done to provide that data is based off real-time information.

Trustee Volpe asked if the node is the least intrusive means for ExteNet to clear this gap, why can it not be placed elsewhere.

Mr. Frederick responded that the nodes service the immediate area that they are in. He said coordinates are generated and placed to provide the most efficient service for a given area. He said while ExteNet tries to utilize existing poles, certain utility companies do not allow these nodes to be placed on their poles which means a new one must be erected.

Mayor Cassidy stated that he did not understand why the node couldn't have been moved to another area.

Mr. Frederick stated that moving the pole will compromise the service in the immediate area.

Trustee Volpe asked about possible locations closer to the train station.

Mr. Frederick responded that ground elevation, both above and below the surface level, make a big difference with installing utility poles; requiring larger poles and deeper placement pits. He added that poles placed too closely together can create a crowding effect on other cellular frequencies nearby.

Mr. Afflerbach agreed that utility companies sometimes preclude the installation of cellular facilities on their poles.

Trustee Volpe asked Mr. Fisher if ExteNet feels that their application is procedurally complete.

Mr. Fisher responded that he believes ExteNet considers the application procedurally complete however they are willing to provide more documentation upon request from the Board.

Mayor Cassidy invited the public to comment at this time. He asked that comments be kept to a maximum of three minutes and encouraged constructive comments. He reminded the public that the Board cannot consider potential health and safety concerns as a matter of Federal law in their decision making.

Teddy Johnson of 29 Nyac Avenue asked if there are any T-mobile customers in the area and are the nodes necessary.

Trustee Kagan stated the Board cannot consider that argument due to prior court decisions. Even if there are no T-mobile customers in the area; the Board cannot deny an application if it has shown that there is a significant gap in their service. Mr. Spolzino confirmed that is the case.

Trustee Kagan asked ExteNet if there were any plans for more nodes to be placed around the Village.

Rick Angelini of ExteNet stated that he was not aware of any other proposed nodes for the Village.

Trustee Volpe stated there had been some discussion around town that there might be another one placed by the Colonial School.

Mr. Angelini said he was not aware of any new requests however if a cellular provider does decide they need more nodes that would be a new application that would have to go before the Board.

Trustee Volpe stated that based on the information provided this evening, he would not be prepared to vote on the application this evening. He suggested tabling the resolution until Tuesday, November 18th and asked ExteNet to confirm with Justice Zambelli, whose ruling prompted these hearings, the extra time to make their case before the Board prior to the expiration of the mandated 150 days.

Steven Barshov, attorney for the Kaplan's, said his clients would consent to an adjournment to give time for more information and presentation on the part of ExteNet. He said the Board needs "straight" answers to work toward a situation that is favorable to all parties.

Trustee Senerchia asked if Mr. Barshov was referring just to the utility pole with the node placed on it or all three locations.

Mr. Barshov responded that all three were illegally placed based on the decision of the court.

Stacey Kaplan of 34 5th Street asked if the Board considers the application complete.

Mayor Cassidy responded that he considers the application complete. Trustee Kagan added that the Board can ask for more information however.

Ms. Kaplan asked about the data presented and whether that is real data or a simulation. She also asked about the effect on property values.

Mr. Frederick responded that the data presented is simulated however it is based on actual data collected from the nodes.

Mayor Cassidy responded that there are utility transformers and transmitters on many poles around the Village. He said the alternative to this node is a cell tower installation. Based on these instances, he said it would be hard to make a case that the node itself has an adverse effect on property values.

Heidi Carey of Harmon Avenue said she would like all the nodes removed.

Mike Carpenter of Chester Park asked the Board what protection the Village has against more incoming utility poles.

Trustee Kagan responded that Chapter 87 of the Village Code is the Village's protection. He said however that it is subject to FCC regulations. He urged residents to contact their elected Federal officials to make sure they are aware of their concerns.

Trustee Mutti added that the public is driving the demand for faster, more accessible cellular service through cell phones, iPads, Tablets, and other cellular devices.

Carol Spawn-Desmond of the Pelham Preservation and Garden Society stated the Board has the discretion to deny the application. She said she felt the nodes should be placed in the commercial district. She said the danger in approving this application is it will be "as of right" for utility companies to bring in more telecommunications devices.

Colleen Maiberger of 19 Walnut asked what the concern was if the Board denied the application and is the Village relying solely on ExteNet for its information.

Mr. Spolzino responded that the Village could potentially be sued by ExteNet. He said the Village Code defines the two areas that the Board can judge an application under. If those requirements are met, the Village cannot deny the application.

Trustee Marty stated the Village hired an engineer to review all technical matters related to the application before the Board. He asked Mr. Afflerbach if he had performed his own studies on the application.

Mr. Afflerbach responded that his firm was not commissioned to perform its own study of ExteNet's facilities, only to review what information has been provided by ExteNet. He said however that the

findings of the reports provided by ExteNet are reasonable and have shown a need for service in the affected areas.

Mark Moraes of 205 Pelhamdale Avenue asked if there had been any errors measurements provided to the Board.

Mr. Frederick responded that the equipment is calibrated regularly and is within industry standards. Mr. Afflerbach added that measuring these emissions is not a precise science and a variation in the amount of emissions from these nodes may not make a substantial difference. He said there are industry standards that engineers rely on. While there are no precise numbers, there are supportable numbers and ExteNet appears to be supplying supportable numbers in their documentation.

Terry DeMarco asked about safety concerns related to the utility poles and who is responsible if they fall.

Mr. Spolzino responded that the Village's Building Inspector issues permit certifying their stability and safety. He added that the utility that erected the pole would be responsible in the event that it falls. Trustee Kagan also noted there is an engineering report in Extenet's application signed by a professional engineer, certifying the structural integrity of the newly installed utility pole.

Christian Privat of Young Avenue spoke about resources available that detail the potential health risks associated with cellular transmissions. He said although the Board cannot formally consider these issues, he said it can be kept in mind.

Mr. Spolzino reiterated that the Board cannot prohibit wireless telecommunications. He said to the Board can manage the aesthetic without interfering with the transmissions.

Cathy Woods-King, the Village attorney, quoted the Code language as saying the utility company must prove there is a need to improve their service and have elected the least intrusive means to correct that need.

Mr. Carpenter asked if the "need" has been defined.

Trustee Kagan responded that the FCC has not defined the nature of a need that warrants a node or other cellular device. He asked why they can't place a tower by the Hutchinson Parkway and cover all of Pelham.

Mr. Frederick stated it is antiquated technology to put a 100 foot tower to in the area to cover all of Pelham. There are more users today than there were when they began building those towers. Nodes provided a less intrusive answer to that issue however too many nodes placed too closely together creates the drowning effect discussed earlier.

Mr. Afflerbach agreed that balance is important in designating where these nodes are located.

Mr. Barshov asked the Board to hold the hearing open and push the consultants for firm answers to the questions raised tonight.

A motion was made by Trustee Senerchia and seconded by Trustee Mutti to continue the public hearing to the next meeting on Tuesday, November 18, 2014. The vote was approved by a vote of six in favor, none opposed. Trustee Reim was absent.

Item #8– Other Business

None

Item #9– Authorizing the Accounts Payable

Trustee Kagan audited the Accounts Payable.

A motion was made by Trustee Mutti and seconded by Trustee Kagan to approve the resolution. The vote was approved by a vote of six in favor, none opposed. Trustee Reim was absent.

RESOLUTION

WHEREAS, pursuant to Section 5-524 of the New York State Village Law, the Board of Trustees shall audit all claims against the Village.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the Board of Trustees after audit of the following claims, authorizes payment for services rendered and materials received, for the following items that have been submitted to the Treasurer's Office for payment and authorized by the Village Administrator:

<u>Fund Name:</u>	<u>Amount</u>
General Fund	\$80,744.74
Water Fund	\$349.00
Capital Projects Fund	\$6,262.00
Trust and Agency Fund	\$1,782.50
CD NYS Main Street Fund	\$0.00
H3 Fund	\$0.00
TE Expand Trust Fund	\$0.00
Grand Total	\$89,138.24

NOW, THEREFORE, BE IT RESOLVED, that this Board hereby approves payment of the above mentioned claims and authorizes payment thereof.

Item #10– Authorizing Minutes of: September 30, 2014, October 7, 2014, and October 21, 2014

A motion was made by Trustee Volpe and seconded by Trustee Senerchia to approve the resolution. The vote was approved by a vote of six in favor, none opposed. Trustee Reim was absent.

September 30, 2014- Approved

A motion was made by Trustee Marty and seconded by Trustee Kagan to approve the resolution. The vote was approved by a vote of six in favor, none opposed. Trustee Reim was absent.

October 7, 2014- Approved

October 21, 2014- Tabled

Item #11–Adjournment to Executive Session

A motion was made by Trustee Volpe with a second by Trustee Kagan to adjourn the public portion of the Board meeting at 10:22 pm and go into Executive Session to discuss a pending legal matter after which time the Board would adjourn for the evening. The motion was approved by vote of six in favor, none opposed. Trustee Reim was absent.

Respectfully submitted,
Peter Bonington, Secretary to the Village Administrator