



CHAMBERS OF
BARBARA G. ZAMBELLI
JUDGE

COUNTY COURT OF THE COUNTY OF WESTCHESTER
RICHARD J. DARONCO
WESTCHESTER COUNTY COURTHOUSE
111 DR. MARTIN LUTHER KING, JR. BOULEVARD
WHITE PLAINS, NEW YORK 10601

FACSIMILE TRANSMITTAL

DATE: January 5, 2015

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MATTER: Matthew Kaplan and Aimee Linn v. Village of Pelham, Robert Yamuder, in his capacity as the Administrator of the Village of Pelham; and Extenet Systems
Index No.: 13-3827

COMMENTS:

Annexed please find a Decision and Order.

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WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

In the Matter of the Application of MATTHEW
KAPLAN and AIMEE LINN,

Petitioners,

DECISION & ORDER

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

Index No. 13 / 3827

-against-

VILLAGE OF PELHAM, ROBERT YAMUDER, in
his capacity as the Administrator of the Village of
Pelham; and EXTENET SYSTEMS,

Respondents.

-----X

ZAMBELLI, A.J.S.C.

The following papers numbered 1-8 read on this on this "motion for supplemental relief":

PAPERS NUMBERED

Notice of Motion for Supplemental Relief, Barshov	
Affirmation in Support;	1-2
Spolzino Affirmation	3
Fisher Affirmation in Opposition with Exhibits 1-2	4-5
Barshov Reply Affirmation	6
December 23, 2014 letter of Robert Spolzino, Esq with attached resolution	7-8

Upon the foregoing papers it is ordered that this application is disposed of as follows:

Petitioners Matthew Kaplan and Aimee Linn ("petitioners") commenced an Article 78 proceeding against the respondents Village of Pelham ("Village") and Robert Yamuder ("Yamuder"), the Village Administrator, seeking to 1) annul and vacate the September 19, 2013 Right of Way Agreement entered into between the Village and respondent ExteNet Systems, Inc. ("ExteNet"), 2) seeking to annul and vacate the determination of Yamuder which authorized the construction and installation of ExteNet's wireless telecommunications facilities in the Village, 3) seeking to enjoin the construction, installation and operation of the wireless telecommunications facilities in the Village unless and until ExteNet obtains a special use permit pursuant to Ch. 87 of the Village Code, and 4) ordering the Village and ExteNet to remove the three wireless telecommunications facilities that have been installed without a special permit. By Decision and Order dated June 20, 2014, this Court (Zambelli, J.) granted the petition solely to the extent of annulling and vacating the September 17, 2013 resolution of the Village Board which authorized Yamuder to enter into the ROW Agreement with ExteNet, annulling and vacating the ROW Agreement itself and the construction permits which were issued thereunder and remitting the matter to the Village to act upon ExteNet's Ch. 87 application and to apply SEQRA to it. However, the Court declined to grant petitioners' requested relief for the removal of the monopole and equipment from the relevant locations and held that part of the petition in abeyance pending the Village's decision on ExteNet's application (June 20, 2014 Decision

and Order)¹. After this motion was submitted to this Court, on December 16, 2014, the Village Board adopted a resolution which, inter alia, granted ExteNet a permit to locate, operate and maintain its telecommunications facilities at the already existing locations, which locations include the monopole located across from petitioners' residence. According to the text of the resolution, on that same date, the Board also adopted a negative SEQRA resolution in regard to ExteNet's application (Village Board's December 16, 2014 resolution).

By motion filed on September 2, 2014, petitioners move "for supplemental relief" and seek an order directing the immediate removal of the monopole located in the Village right of way across from petitioners' residence. While the Village takes no position on the motion, respondent ExteNet opposes the motion. ExteNet submits that the motion is actually one for reargument and is untimely pursuant to CPLR §2221; they also argue that the motion substantively lacks merit.

Petitioners' motion is denied. While petitioners couch their motion as one for supplemental relief, they requested the removal of the monopole in their petition and this Court declined to grant that relief. Accordingly, petitioners are seeking reargument of that determination. Pursuant to CPLR §2221(d)(3), such motions to reargue must be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. Petitioners' motion was commenced outside of this thirty day

¹ By previous Decision and Order dated November 26, 2013, this Court (Zambelli, J.) denied petitioners' request for a TRO and a preliminary injunction in this matter, noting, inter alia, that the system had already been constructed prior to the filing of the petition.

period. Accordingly, the motion is denied as time-barred. In any event, the Court notes that this matter has been rendered moot by the December 16, 2014 resolution of the Village Board which granted ExteNet the requested permit.

This Decision constitutes the Order of the Court.

Dated: White Plains, New York
January 5, 2015


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A.J.S.C.

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