

October 22, 2013

**LEAGUE OF WOMEN VOTERS OF SCARSDALE  
STATEMENT CONCERNING THE PROPOSED AMENDMENT TO ARTICLE  
XII. WIRELESS TELECOMMUNICATIONS FACILITIES  
OF THE VILLAGE CODE**

The League of Women Voters of Scarsdale (the “League”) has followed the work of the Village Planning Board (the “Planning Board”) in connection with amending Article XII. Wireless Telecommunications Facilities of the Village Code (“Article XII”) to allow for the installation of distributed antenna systems (“DAS”) technology on Village rights of way (“ROW”).

Background

In the Telecommunications Act of 1996 (the “1996 Act”), Congress set forth its intent to “accelerate deployment” of wireless telecommunications services throughout the United States, and to promote competition by removing barriers to entry. Under the 1996 Act, municipalities are pre-empted from enacting local laws that prohibit or have the effect of prohibiting the ability of any entity to provide telecommunication services. Additionally, municipalities may not consider the potential effects of installations of wireless telecommunications facilities on health. Municipalities retain their authority, however, to manage their public rights of way, for example through regulation of the siting of the facilities, such as the height and footprint of a facility, aesthetics, and separation of the facilities. These considerations come within the purview of the Planning Board.

In 2010, NextG approached the Village seeking to install DAS facilities within ROW. DAS is a type of wireless technology that uses a node, which consists of a box on a pole with an antenna extending from the top of the pole. These nodes may be installed on existing utility poles or street lights. Under Article XII, such an installation is not permitted since no wireless telecommunications facility may be installed “less than 350 feet from the nearest dwelling unit, school, day-care center or place of worship.” Article XII §310-79.D(2). The issue was tabled.

The following year, Crown Castle International Corp. (“Crown Castle”) submitted to the Village a proposed amendment to Article XII to enable the installation of DAS technology in ROW. (Note that Crown Castle acquired NextG in 2012.) The Village Board referred the proposed amendment to the Planning Board for review and recommendation.

The Planning Board initially considered Crown Castle's proposed amendment to Article XII at its board meeting in March 2012. Thereafter, the Planning Board held work sessions to review additional information requested from Crown Castle and sought the assistance of an engineering firm to, among other things, evaluate existing wireless coverage in the Village and the ability to use existing sites for the installation of DAS technology without amending Article XII, as well as outside counsel to understand the proposed amendment to Article XII within the framework of applicable federal and state laws. The Village retained engineering firm ctc technology and engineering ("CTC") and outside counsel Best, Best & Krieger, LLP ("BBK").

CTC submitted to Village Planner Elizabeth Marrinan a report dated December 12, 2012 and made a presentation to the Planning Board at its work session on February 11, 2013. BBK made presentations to the Planning Board at its work sessions on May 7, 2012, February 11, 2013 and June 18, 2013. The report and presentations are posted on the Village website. We understand that representatives from Crown Castle attended the work sessions and meetings of the Planning Board from March 2012 to date relating to the proposed amendment to Article XII. In addition, Village Planner Marrinan informed the League that the Village has involved representatives of Crown Castle throughout the process of developing the Proposed Amendment in the spirit of collaboration.

The Planning Board requested BBK to draft a proposed amendment to Article XII. An initial draft dated May 15, 2013 was submitted by BBK and revised in August 2013. The revised draft reflects certain stated goals of the Village in light of public comment received on the initial draft, including protecting residential property values against harms caused by placement of obtrusive facilities and maintaining the character of the community - avoiding the proliferation of large towers. The draft dated August 8, 2013 and posted on the Village website as of this date is referred to in this Statement as the "Proposed Amendment."

The Planning Board met on September 25, 2013 to make a recommendation to the Village Board regarding the Proposed Amendment. However, in light of objections voiced for the first time by Crown Castle at that meeting and pending the outcome of anticipated proposed modifications by the Federal Communications Commission ("FCC") to the rules and regulations under the 1996 Act, the Planning Board held over making a recommendation to the Village Board regarding the Proposed Amendment. For a more detailed chronology of events as known to the League based on information available on the Village website and discussions with Village staff, please see Attachment A to this Statement.

The League held a public information meeting on September 18, 2013 at which a panel comprised of League Planning & Zoning Chair Deb Pekarek, Village Planner Marrinan, and Village Attorney Wayne Esannason presented information regarding DAS technology, the Proposed Amendment and the existing legal framework under applicable law, and responded to questions from the audience.

On October 7, 2013, the League held a general membership meeting at which Village Planner Marrinan was present to respond to questions and update members regarding the Proposed Amendment. Members reached consensus as set forth below.

## Consensus Statement

The League commends the Planning Board for its efforts to ensure that the Village addresses the issue of the installation of DAS technology propounded by federal law in a way that reasonably protects the interests of our community.

The Planning Board has engaged in a transparent and thoughtful process and proceeded with care in seeking to act proactively so that the Village retains the ability to determine how to reasonably regulate DAS installation within the constraints imposed on municipalities by federal law and regulations. It has, for example, held several work sessions, inviting the participation of the public and Crown Castle in order that the concerns of community members as well as potential permit applicants could be heard and addressed, and requested the assistance of professionals experienced in DAS technology and telecommunications law.

In addition, the League acknowledges and agrees with the intent of the Village

“to protect and promote the health, safety and general welfare of its residents by establishing an orderly process for regulating the siting of wireless telecommunications facilities while balancing the need for adequate service levels.”

as articulated in Article XII §310-77. We believe that the Proposed Amendment is consistent with the articulated intent.

In conclusion, the League supports the adoption of the Proposed Amendment.\*

We note that this Statement is limited to the provisions as reflected in the Proposed Amendment. To the extent that the Planning Board and/or Village Board considers an amendment to Article XII that differs from the Proposed Amendment in any material respect as determined by the League board, the League takes no position on such amendment and cannot take a position without further study and consensus on the amendment.

It should be noted further that our study regarding the Proposed Amendment did not include addressing whether municipalities are prohibited under federal law from considering health concerns when determining whether to allow the installation of a wireless telecommunications facility or whether there are health concerns in connection with such installations.

We thank Village Planner Elizabeth Marrinan and Village Attorney Wayne Esannason for their participation in our information meeting and consensus meeting. We also appreciate the presence of Trustee Stacey Brodsky at the information meeting.

The League appreciates the opportunity to comment on the Proposed Amendment.

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\* We understand that the issue regarding the distance between antennas has not yet been resolved pending determination of how such distance may be measured.

Sincerely,

Planning & Zoning Committee  
Deborah Pekarek, Chair  
Linda Doucette-Ashman  
Kitt Rosenthal  
Carolyn Stevens

Susie Rush  
LWVS President

ATTACHMENT A - Chronology 2010 - 2013

**Late 2010** – Next G (later acquired by Crown Castle International Corp., together, “CCC”) approaches the Village with a proposal to install DAS facilities within the Village ROW. Because the proposal did not meet the 350-foot distance requirement in Article XII, the issue was tabled.

**Late 2011- early 2012** – CCC submits to the Village a proposed amendment to Article XII to allow the installation of DAS within the Village ROW. The Village Board considers the proposal on 2/13/12 and refers the matter to the Planning Board (PB) for review and recommendation.

**March 21, 2012** – PB first considers referral of proposed amendments. CCC makes presentation about DAS technology and its proposed amendments to Article XII and its intention to install DAS nodes/antennas at 15 locations in Scarsdale. PB requests assistance from outside attorney specializing in telecommunications law.

**May 7, 2012** – PB work session to review additional information from CCC. Outside attorneys Best, Best & Krieger (BBK) retained by the Village explains applicable laws and other DAS related issues. PB requests assistance from outside engineer to evaluate Village wireless coverage and potential to use existing sites for DAS without amending the Village Code. The Village retains CTC technology and engineering (CTC).

**December 12, 2012** – Village receives engineers report.

**Jan 2013** – PB receives engineers report.

**Feb 11, 2013** - PB work session for CTC to present report. BBK also makes presentation. PB requests BBK to report back on policy options and to draft specific Article XII amendment language.

Over some months up to Feb. 2013 CCC installs five antennas in New York State Rights of Way without notice to Village.

**May 15, 2013** – BBK draft Article XII amendments available for review.

**June 2013**- PB reviews BBK proposed draft. BBK makes presentation to PB June 18, 2013.

**July 2013** - PB reviews BBK proposed draft.

**August 2013** – Revised draft of amendments to Article XII available for review.

**Sept 25, 2013** – BBK makes presentation to PB summarizing proposed amendments to Article XII. CCC voices objections to the revised draft and indicates it will provide these to the PB before the next PB meeting on Oct 23. PB decides to hold over recommendation to Board of Trustees regarding proposed amendments.

**October 23, 2013** – PB meeting.