

**Council Meeting**  
**September 20, 2021**

A duly warned meeting of the Newport City Council was held on Monday, September 20, 2021, in the council room in the Newport Municipal Building. Present were Mayor Paul Monette, Council President Melissa Pettersson, council members John Wilson, Kevin Charboneau and Christopher Vachon, City Manager Laura Dolgin, City Clerk/Treasurer James D. Johnson, Fire Chief John Harlamert, and members of the Press and Public.

Mayor Monette called the meeting to order at 6:30 PM.

**Approval of Minutes**

Mr. Charboneau moved to approve the minutes of September 13, 2021. Seconded by Mr. Wilson, motion carried unanimously.

**Comments by the Public**

None

**Extra Mile Day Proclamation**

Ms. Pettersson moved to sign the Extra Mile Day Proclamation. Seconded by Mr. Vachon, motion carried unanimously.

**Executive Session for Attorney Client Communications**

Ms. Pettersson moved that for the board's specific finding that premature public knowledge of the subjects of the anticipated executive session tonight would clearly place the board and/or persons involved at a substantial disadvantage. Seconded by Mr. Charboneau, motion carried unanimously.

Ms. Pettersson moved to enter executive session to discuss confidential attorney-client communications made for the purpose of providing professional legal services to the body. 1 VSA 313(a)(1). Seconded by Mr. Charboneau, motion carried unanimously.

In open session, Ms. Pettersson moved to approve the Settlement Agreement with Kevin Kincaid that will lead to bringing his property at 531 West Main St. into compliance with the City's Zoning Bylaw and

curing of the Notice of Violation that was issued to him and to authorize the City Manager to sign the Settlement Agreement. Seconded by Mr. Wilson, motion carried unanimously.

**New Business**

Ms. Petterson commented on the work being done on Main St. is well organized.

Ms. Dolgin mentioned the Fall Foliage Festival this coming weekend.

**Old Business**

Mr. Wilson asked if the police chief had looked at Bluff Rd. and Prouty Dr. Ms. Dolgin stated they had done extra patrols and Chief Bingham had tried to contact Mr. Bergeron twice..

**Next Meeting Date**

October 4, 2021

**Adjourn**

Mr. Charboneau moved to adjourn at 6:56 PM. Seconded by Mr. Vachon, motion carried unanimously.

Attested James Johnson this 4<sup>th</sup> day of October 2021

  
\_\_\_\_\_  
Mayor

**EXTRA MILE DAY**  
**Proclamation**  
**City of Newport**

**WHEREAS**, the City of Newport, VT, is a community which acknowledges that a special vibrancy exists within the entire community when its individual citizens collectively “go the extra mile” in personal effort, volunteerism, and service; and

**WHEREAS**, City of Newport, VT, is a community which encourages its citizens to maximize their personal contribution to the community by giving of themselves wholeheartedly and with total effort, commitment, and conviction to their individual ambitions, family, friends, and community; and

**WHEREAS**, City of Newport, VT, is a community which chooses to shine a light on and celebrate individuals and organizations within its community who “go the extra mile” in order to make a difference and lift up fellow members of their community; and

**WHEREAS**, City of Newport, VT, acknowledges the mission of Extra Mile America to create 550 Extra Mile cities in America and is proud to support “Extra Mile Day” on November 1, 2021.

**NOW THEREFORE**, I, Mayor of the City of Newport, VT, do hereby proclaim November 1, 2021, to be Extra Mile Day. I urge each individual in the community to take time on this day to not only “go the extra mile” in his or her own life, but to also acknowledge all those who are inspirational in their efforts and commitment to make their organizations, families, community, country, or world a better place.

DATED this 20<sup>th</sup> day of September, 2021.

  
Paul Monette, Mayor

  
Melissa Pettersson, Council President

  
Kevin Charboneau

  
John Wilson

  
Christopher Vachon

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement"), dated as of the date the last party signs below, is made and entered into by and among the **City of Newport**, a Vermont municipality in the County of Orleans and State of Vermont, (the "City" herein) and **Kevin Kincaid**, a resident of the City of Newport, County of Orleans and State of Vermont, ("Kincaid" herein and collectively with the City, the "Parties" herein).

WITNESSETH:

**WHEREAS**, Kincaid owns the property known and numbered as 531 West Main Street in the City (the "Property"); and

**WHEREAS**, on December 23, 2020, the City issued a Notice of Violation to Kincaid by Certified U.S. Mail (the "NOV") for violations of City Zoning Bylaw § 414 B (Abandonment of Structures) and § 409 A (Landscaping Requirements) due to the deteriorating condition of the house and the overgrown yards and driveway on the Property; and

**WHEREAS**, a good faith dispute exists between the City and Kincaid as to Kincaid's liability for the violations cited in the NOV that the Parties wish to resolve through this binding and enforceable Agreement that will lead to a cure of the violations cited in the NOV.

**NOW THEREFORE**, in consideration of the mutual covenants and agreement listed above and set forth below, the sufficiency of which is hereby acknowledged by each of the Parties and subject to the conditions set forth herein, the Parties agree as follows:

1. **Zoning Enforcement Action.** In exchange for Kincaid undertaking and completing the curative activities described in Sections 2 and 3, below, the City agrees not file a zoning enforcement action with the Environmental Division of Vermont Superior Court, unless Kincaid repeats the violations described in the NOV or the filing of such action is necessary to due to Kincaid's violation of the terms and conditions of this Agreement.

2. **Securing the Structures on the Property.** Kincaid shall secure the house and garage at the Property within thirty (30) days of the date of approval of this Agreement by the City Council by:

- a. Boarding up, using plywood or similar material, all entryways to the house, including the front and back doors, completely so that entry to the house is prohibited; and
- b. Removing the front steps; and

- c. Locking the garage; and
- d. Keeping all utility services (water, sewer, electric) shut off until the first of the following occurs:
  - 1. The house is repaired so it is habitable and safe for occupancy,
  - 2. The house and garage are demolished, or
  - 3. The Property transferred to an uninterested third party in an arms-length sale;
 and
- e. Boarding up, using plywood or a similar material, any and all broken windows. The obligation to board up the windows shall be continuing and shall survive this Agreement. In other words, whenever a window is broken, it shall be boarded up within fifteen (15) days, or within seven (7) days of written notice from the City, whichever is sooner.
- f. If any of the boards on windows or doors that were previously installed become broken, dislodged or no longer secure the opening, then they shall be replaced within fifteen (15) days of discovery by Kincaid or within seven (7) days of written notice from the City, whichever shall first occur.

3. **Landscaping Maintenance and Mowing.** Kincaid shall clean up and maintain the yard on the Property by:

- a. Brush-hogging or mowing the front yard on the Property within fifteen (15) days of approval of this Agreement by the City Council; and
- b. Regularly mow or brush-hog the front yard on the Property at least every three weeks between May 1<sup>st</sup> and November 1<sup>st</sup> to ensure grass does not grow to taller than one foot (1') in height; and
- c. Regularly mow or brush-hog the driveway on the Property in accordance with Section 3(b), above, so the garage remains accessible for its use as storage; and
- d. Regularly maintain the vegetation and/or trees so that they do not come in contact with the house on the Property, or grow on or upon the exterior of the house on the Property.

4. **Cure of NOV.** Kincaid's obligations under Section 2, above, shall be continuing until such time as the house on the Property is occupied, demolished, or whenever he transfers the Property to an uninterested third party in an arms-length sale. Kincaid's obligations under Section 3, above, shall continue until the Property is transferred to an uninterested third party in an arms-length sale. If the Zoning Administrator determines that Kincaid completed the actions under Sections 2 and 3, above, within the time periods provided, the City will issue and record in the City's records a cure of the NOV within forty-five (45) days of the City Council's approval of this Agreement.

5. **Compliance Inspection.** If Kincaid complies with the foregoing terms, no stipulated penalty shall be due. In most instances, the City's Zoning Administrator can visit the site to confirm compliance with Sections 2 and 3, above, within two business days' notice from Mr. Kincaid that the landscaping maintenance and mowing has been completed and that all doors, windows and entry ways have been boarded up.

6. **Violations of this Agreement and Stipulated Penalty.** In the event Kincaid violates or fails to comply any of the foregoing terms and conditions of this Agreement, then the City shall provide Kincaid written notice of the violation, and a fifteen (15) day cure period from the date of the notice. If the non-compliance continues beyond the fifteen-day cure period, Kincaid shall pay the City a stipulated penalty in the amount of \$1,000 for the first violation of the foregoing terms and conditions of this Agreement. This \$1,000 stipulated penalty shall be due thirty (30) days after the date of written notice from the City of the violation of the foregoing terms and conditions of this Agreement. A violation of this Agreement includes Kincaid's failure to meet any of the foregoing fifteen- or thirty-day deadlines and/or his failure to perform any of the tasks listed in Sections 2 and 3, above. In addition, the NOV shall not be discharged or "cured" if the violation of the foregoing terms and conditions of this Agreement occurs within forty-five (45) days of the City Council's approval of this Agreement. If Kincaid's non-compliance occurs or continues after the date the City has cured the NOV, the City reserves its rights to issue a new notice of violation. If Kincaid cures the violation of the foregoing terms and conditions of this Agreement within the fifteen-day cure period, then the \$1,000 stipulated penalty shall not be due unless Kincaid commits another violation of the foregoing terms and conditions of this Agreement that goes uncured.

7. **City Reservation of Rights.** The City reserves any and all rights to seek enforcement of the NOV, or a subsequently issued notice of zoning violation, in the event of noncompliance with Sections 2 and 3, above.

8. **Notice.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notices are to be sent or if sent by electronic mail, with a read receipt requested, to the following addresses:

To the City: City Manager: [laura.dolgin@newportvermont.org](mailto:laura.dolgin@newportvermont.org)  
With a copy to David W. Rugh, Esq.: [drugh@firmspf.com](mailto:drugh@firmspf.com)

To Kincaid: Kevin Kincaid: [kf.kincaid6@gmail.com](mailto:kf.kincaid6@gmail.com)

Either party may change their mailing address by giving the other party notice of the new address in the manner described herein. Copies of notice provided to the attorneys listed above shall not constitute notice under this Agreement.

9. **Cooperation Required.** The Parties acknowledge that various documents may need to be created, shared and executed to consummate this settlement. The Parties shall cooperate to bring all pending matters between them regarding this settlement to a close in a manner that will allow the Parties to consummate this settlement.

10. **Time is of the Essence.** The Parties acknowledge that time is of the essence in the Parties' compliance with the terms of this Agreement. Accordingly, the City and Kincaid each expressly agree that in any instance where their respective cooperation, action and/or approval is required pursuant to this Agreement, such cooperation, action and/or approval will not be unreasonably withheld or delayed.

11. **Sole Agreement.** This Agreement constitutes the sole and entire Agreement between the Parties in regard to the Property and the NOV. Any and all prior or contemporaneous promises, representations, agreements or understandings, whether oral or written, between the parties related to the subject matter of this Agreement are expressly merged herein and superseded and terminated hereby. This Agreement may only be modified by a written instrument signed by the Parties hereto or their duly authorized representatives.

12. **Heirs, Successor and Assigns.** This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by any heirs, successors or assigns of the Parties.

13. **Enforceability.** If any provision of this Agreement shall be determined to be invalid or unenforceable, it shall be interpreted to the maximum extent feasible so as to avoid such invalidity or unenforceability. If such interpretation is not possible and if the provision is a material provision of this Agreement, then unless the Parties agree in writing otherwise, this Agreement shall be deemed null and void, the NOV shall be deemed reissued without a cure period, and an action may be brought pursuant to 24 V.S.A. § 4451(a) as if the violation was repeated.

14. **Representations.** The undersigned, by voluntarily affixing their signatures hereto, hereby represent and acknowledge that they are fully authorized to execute this Agreement on behalf of the party indicated, and further acknowledge that they have fully read and fully understand this Agreement and that upon and after consultation with their legal counsel, they consent and agree to each and all of its provisions.

15. **Counterparts.** This Agreement may be executed in counterparts and shall be effective upon the date of the last party affixing its signature hereto.

16. **No Waiver.** No failure to exercise, and no delay in exercising any right, power or remedy hereunder or under any document delivered pursuant hereto shall impair any right, power or remedy which the Parties hereto may have, nor shall any such delay be construed to be a waiver of any of such rights, powers or remedies, or an acquiescence in any breach or default under this Agreement, nor shall any waiver of any breach or default of any party hereunder be deemed a waiver of any default or breach subsequently occurring.

17. **Attorneys' Fees.** The Parties understand and agree that each party shall bear its own attorneys' and witness fees, costs, and expenses related to, incurred in connection with, or arising from a dispute among the Parties regarding this Agreement or the enforcement or interpretation of rights under this Agreement, except that the City may submit evidence of its costs of enforcement, including attorneys' fees, as the basis for any penalties that a court may award in a zoning enforcement action connected to the NOV or a repeat of the violations described in the NOV.

18. **Interpretation Presumption.** This Agreement has been negotiated by the Parties hereto. The Parties represent and warrant to one another that each has individually, or through legal counsel, actively participated in the finalization of this Agreement, and in the event of a dispute concerning the interpretation of this Agreement, each of the Parties hereby waives the doctrine that an ambiguity should be interpreted against the party which has drafted the document

19. **Sufficiency of Consideration.** Each of the Parties acknowledge they have received good and satisfactory consideration for the agreements contained herein, and the Parties agree that the consideration recited in this Agreement shall be a complete bar to any subsequent action or proceeding to set aside or vacate this Agreement because of a mistake in fact or otherwise.

20. **Headings.** Section headings are for convenience of reference only and shall in no way affect the interpretation of this Agreement.

21. **Waiver of Jury Trial.** TO THE EXTENT ALLOWED BY LAW, THE PARTIES HERETO WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO INTERPRET OR ENFORCE THIS AGREEMENT. This waiver shall not apply to any future litigation between the parties relating to any other matter.

IN WITNESS WHEREOF, Kevin Kincaid hereunto sets his hand and seal this 17<sup>th</sup>  
day of Sept 2021.

KINCAID

Kevin Kincaid  
Kevin Kincaid

IN WITNESS WHEREOF, the City hereunto sets its hand and seal this 20<sup>th</sup> day of  
September 2021.

CITY OF NEWPORT

Approved as to form:

By: Laura Dolgin  
Laura Dolgin, City Manager  
and Duly Authorized Agent

David W. Rugh  
David W. Rugh, Esq.  
Stitzel, Page & Fletcher, P.C.

September 21, 2021  
Date