

MINUTES OF THE 1157<sup>th</sup> MEETING  
OF THE BOARD OF TRUSTEES OF THE VILLAGE OF KINGS POINT  
JUNE 21<sup>st</sup>, 2022  
ADOPTED July 27<sup>th</sup>, 2022

The 1157<sup>th</sup> meeting of the Board of Trustees of the Village of Kings Point was called to order by Mayor Michael C. Kalnick at 9:05 p.m. on June 21, 2022, at the Village Hall of the Village of Kings Point, 32 Steppingstone Lane, Kings Point, New York 11024.

**PRESENT:** Michael C. Kalnick, Mayor  
David Harounian, Deputy Mayor  
Hooshang Nematzadeh, Trustee  
Kouros Torkan, Trustee  
Ira S. Nesenoff, Trustee

**ALSO PRESENT:** Gomie Persaud, Village Clerk-Treasurer  
Stephen G. Limmer, Esq., McLaughlin & Stern, LLP,  
General Counsel

Village Clerk Gomie Persaud informed the Board that the Inspectors of Election had completed their canvass of the votes cast at the **annual Village election** and had filed with her their certificates setting forth the holding of the election, the total number of votes cast for each office, and the number of votes cast for each person for such office, as follows:

<u>Office</u>	<u>Candidate</u>	<u>Machine Ballots</u>	<u>Absentee Ballots</u>	<u>Total Ballots</u>
Mayor	Kouros Torkan	324	2	326
Trustee	Tedi Kashinejad	304	2	306
Trustee	Shahriar Victory	287	2	289

Upon motion by Trustee David Harounian, seconded by Trustee Ira S. Nesenoff, by resolution # **2022-65** the Board unanimously accepted and, to the extent, if any, required, certified the results of the 2022 Village Election as set forth by the Inspectors of Election. The Inspectors of Election Statements of Canvass for Voting Machine Summary of Results and Statement of Canvass for Voting Machines for the 2022 Village Election are on file with the Village Clerk.

Mayor Michael C. Kalnick opened the public hearing on the **proposed Bill 8A of 2022**, a local law defining word “person” in the Code of the Village of Kings Point. No one asked to be heard and the Mayor closed the public hearing. Upon motion by Trustee Hooshang Nematzadeh, seconded by Trustee David Harounian, by resolution # **2022-66**, the Board unanimously approved the proposed Bill as **Local Law 9 of 2022**. A copy of the Local Law is on file with the Village Clerk.

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General Counsel Stephen Limmer provided the following update with regard to the action commenced on October 15, 2021, by ExteNet Systems, LLC, against the Village, claiming that the Village unlawfully denied its application for a special exception permit to install 31 small wireless facilities in the Village and seeking its damages, attorneys' fees, costs, and expenses:

After the commencement of the action, on January 28, 2022, ExteNet filed a motion for a preliminary injunction, requesting that the Court order the Village to issue the special exception permits for its proposed 31 facilities. While the motion was pending, on March 4, 2022, a motion was made on behalf of some Village residents to intervene in the action.

On May 31, 2022, the Court denied the motion to intervene, finding in part, in substance, the issues the intervenors sought to argue with regard to their reduction in property values and adverse aesthetic impact were without merit in this action. The Court noting, in substance, that even if the residents may experience hardship as a result of the purported aesthetic and visual impacts of the facilities, such hardships are outweighed by the harm to ExteNet if the relief it seeks is not granted. The attorney for the intervenors has filed a notice of appeal. In my opinion, there is no likelihood of success if that attorney pursues that appeal. That attorney did not seek a stay of the Court's order pending the appeal. Accordingly, that appeal does not relieve the Village from its obligation to issue the permits and ExteNet has the right to install its facilities while the appeal is pending.

As the Board is aware, ExteNet first approached the Village with regard to its desire to install its facilities in the Village more than 5 years' ago, in the middle of 2017. On January 3, 2019, ExteNet filed its first application with the Village. Federal law requires that a determination on small cell facilities' applications be determined within 60 days. It is now three and half years since that filing. The Village has been diligent in reviewing the application, meeting with residents, and denying the application when it had good reason to believe that it was entitled to additional information. The Court has rendered its decision and the Village must issue the permits. In my opinion, based upon the Court's decision, the Village would not be successful in obtaining a stay of the issuance of the permits, nor, with one possible exception, in appealing the Court's decision. That one possible exception is solely with regard to the Court's order to issue the permits for the facilities within Kennilworth.

There is one error, in my opinion, in the Court's decision. I think the court misread the law in finding that the Village should issue the permits for ExteNet's

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facilities in Kennilworth, without Kennilworth's permission. I have spoken with the attorney for Kennilworth and he informed me that Kennilworth is not willing to give ExteNet permission to install any of its facilities in Kennilworth.

In my discussions with the attorney for ExteNet, it appears that ExteNet understands Kennilworth's position and can provide the cell service it desires by eliminating the five proposed facilities in Kennilworth and raising the height of five of its facilities outside of Kennilworth. In my opinion that if that reconfiguration of its plan was presented to this Board and it was denied, based upon the Court decision, that denial similarly would be overruled.

For clarity, it must be understood that there is a distinction between ExteNet's right to place its facilities on public property and its lack of such right to place its facilities on private property. The federal law has substantially limited any ability of the Village to deny the placing of small wireless facilities on its property. The same is not true of private property. The streets of Kennilworth are private property. ExteNet has no more right to place its facilities on Kennilworth streets than it could on your patio in your back yard.

I have negotiated a settlement of the litigation that both protects the property interests of Kennilworth from a misreading of the Court's order and saves the Village from a possible Court order that would award to ExteNet its damages, attorneys' fees, costs, and expenses. Those attorneys' fees alone could be significant.

I have circulated a proposed Consent Judgment to you implementing that proposed settlement. If you have had a chance to review it, and you agree, you can vote on it at this time. Note that the Court directed ExteNet and the Village to meet and confer and advise the Court by June 7, 2022, how they plan to proceed with this case. Counsel for ExteNet and I advised the Court that we were in the process of negotiating a settlement and the Court extended our time to file a response to its direction until July 7, 2022. Since this will probably be the Board's last meeting before July 7, 2022, I suggest that action be taken tonight.

Based upon the foregoing and the recommendation of General Counsel Stephen Limmer, upon motion by Trustee Ira S. Nesenoff, seconded by Trustee David Harounian, by resolution # **2022-67**, the Board unanimously approved the proposed Consent Judgment and authorized General Counsel Stephen Limmer and Mayor Michael C. Kalnick to sign it on behalf of the Village. Copies of the referenced Court decision and Consent Judgment are on file with the Village Clerk.

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Mayor Michael C. Kalnick opened the public hearing on the **proposed Bill 10 of 2022**, a local law to amend § 137-35, Community Benefits Fund Fee, of Article VIII, Community Benefits Fund of Chapter 137, Subdivision of land and the Code of the Village of Kings Point. No one asked to be heard and the Mayor closed the public hearing. Upon motion by Trustee Ira S. Nesenoff, seconded by Trustee David Harounian, by resolution # **2022-68**, the Board unanimously approved the proposed Bill as **Local Law 10 of 2022**. A copy of the Local Law is on file with the Village Clerk.

Upon motion by Trustee Ira S. Nesenoff, seconded by Trustee Hooshang Nematzadeh, by resolution # **2022-69**, the Board unanimously approved the minutes as presented of the **Board of Trustees meetings** of May 23, 2022.

Upon motion by Trustee David Harounian, seconded by Trustee Kouros Torkan, by resolution # **2022-70**, the Board unanimously approved the payment of **audited claims** as follows:

- |                  |                 |
|------------------|-----------------|
| a. General Fund: | \$ 1,295,578.43 |
| b. Trust Fund:   | \$ 17,638.07    |

Copies of the abstract of claims are on file with the Village Clerk.

Upon motion by Trustee Kouros Torkan, seconded by Trustee David Harounian, by resolution # **2022-71**, the Board unanimously accepted the **Building Department report** for the period of May 2022, showing the total fees deposited of **\$49,195.00** into the General Fund and **\$68,000.00** into the Trust Fund. A copy of the report is on file with the Village Clerk.

Upon motion by Trustee Kouros Torkan, seconded by Trustee Ira S. Nesenoff, by resolution # **2022-72**, the Board unanimously accepted the **Village Justice Court report** for the period of May 2022, showing the total fees and surcharges deposited of **\$41,415.00** into the General Fund. A copy of the report is on file with the Village Clerk.

Because of the scheduled court dates prior to the next Board of Trustees meeting/organization night, upon motion by Trustee Ira S. Nesenoff, seconded by Trustee Hooshang Nematzadeh, by resolution # **2022-73**, the Board unanimously approved Mayor Michael C. Kalnick's appointment of Michael Zimmerman as the **Acting Village Justice** from June 23, 2022, until the annual meeting, when an appointment for a one-year term for the official year beginning Monday, July 1, 2022, will be made.

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Upon motion by Trustee Kouros Torkan, seconded by Trustee Ira S. Nesenoff, by resolution # **2022-74**, the Board unanimously adopted the following resolution:

WHEREAS there is now pending in the Supreme Court, Nassau County, a proceeding by the owner of certain property within the Village of Kings Point to reduce the assessed valuation placed on its property for Village tax purposes; and

WHEREAS the General Counsel to the Village recommends that said proceeding be settled in accordance with a written memorandum to this Board dated June 3, 2022.

NOW, THEREFORE, the General Counsel is hereby authorized to settle the following tax certiorari proceeding on the basis indicated.

Zar Trust  
Address: 22 Sinclair Drive  
Section 1, Block 169, Lot 5

Tax Year	Present Assessment	Proposed Assessment	Total Tax Reduction	Rate/Refund
2012/13	\$54,600	\$39,300	\$15,210	Lump Sum Settlement of <b><u>\$2,500</u></b> , with no change in assessment of \$54,600
2013/14	\$54,600	\$42,510	\$12,090	
2014/15	\$54,600	\$43,680	\$10,920	
2015/16	\$54,600	\$44,850	\$ 9,750	
2016/17	\$54,600	\$46,410	\$ 8,190	
2017/18	\$54,600	\$46,800	\$ 7,800	
2018/19	\$54,600	\$41,730	\$12,870	
2019/20	\$54,600	\$40,950	\$13,650	
2020/21	\$54,600	\$42,120	\$12,480	
2021/22	\$54,600	\$38,610	\$15,990	
2022/23	\$54,600	\$35,880	\$18,720	

Based upon the varying tax rates for each year,  
Petitioner sought a total refund of **\$137,670**

Trustee David Harounian introduced **Bill No. 11 of 2022**, a local law amending subdivision 1, of subsection F, of § 161-34.1, Signs and certain lighting, of Chapter 161 Zoning, of the Code of the Village of Kings Point. Upon motion by Trustee Ira S. Nesenoff, seconded by Trustee Hooshang Nematzadeh, by resolution # **2022-75**, the Board unanimously found that the adoption of **Bill No. 11 of 2022**, as a local law would not be an action as defined in 6 NYCRR Part 617 and would not have an adverse impact upon the environment if enacted, and authorized General Counsel to prepare, mail, and

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publish all of the necessary legal notices for a public hearing for Bill No. 11 of 2022, a local law amending subdivision 1, of subsection F, of §161-34.1, Signs and certain lighting, of Chapter 161, Zoning, of the Village of Kings Point, at a meeting of the Board of Trustees to be held on **July 27, 2022, at 6:00 p.m.** A copy of the bill is on file with the Village Clerk.

Upon motion by Trustee Kouros Torkan, seconded by Trustee Ira S. Nesenoff, by resolution # **2022-76**, the Board unanimously adjourned the public hearing on the proposed contract with the Alert Engine, Hook and Ladder and Hose Company No.1, Inc. until its meeting on July 27, 2022, at 6:00 p.m. A copy of the proposed contract is on file with the Village Clerk.

The Board reviewed the letter dated June 7, 2022, from Mr. Mehran Dayanzadeh, who resides at 205 West Shore Road, and the enclosed photographs showing soil, sediment, and other debris that flowed from the premises at 201 West Shore Road, shown as Section 1, Block 201, Lot 8 on the Nassau County Land and Tax Map, onto the Village property between the paved portion of West Shore Road and Mr. Dayanzadeh's property line. The owner of 201 West Shore Road, in allowing, permitting, or tolerating the soil, sediment, and other debris to flow onto the adjacent Village property violated § 117-2(M) of chapter 117, Property Maintenance, of the Village Code. Based upon the foregoing, upon motion by Trustee David Harounian, seconded by Trustee Hooshang Nematzadeh, by resolution # **2022-77**, the Board unanimously directed the Superintendent of the Building Department, as Building Inspector, if he deemed it appropriate, to issue a notice of violation to the owner of 201 West Shore Road to cause the aforesaid violation to be corrected by performing the necessary removal of the soil, sediment, and other debris from the Village property; and directed the Village Clerk to take all necessary and appropriate actions to recoup the Village's costs and expenses in correcting the violation in accordance with Village Code §177-11; and, in the event within the next twelve-month period there is a second or any subsequent offense of chapter 117 of the Village Code on such property, pursuant to §177-11(D) of the Village Code, it shall not be necessary for the Building Inspector to issue an appearance ticket or a notice of violation or obtain the permission of the Board of Trustees or the Mayor to effectuate compliance with Chapter 117, and the Clerk shall again, in such event, take all necessary and appropriate actions to recoup the Village's costs and expenses in correcting those violations in accordance with Village Code §177-11.

Mayor Michael C. Kalnick announced that the next regular meeting of the Board of Trustees would be on July 27<sup>th</sup>, commencing at 6:00 a.m. at the Village Hall

There being no further business to come before the Board, the Mayor adjourned the meeting at 9:15 p.m.

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Gomie Persaud  
Village Clrk/Treasurer