

TOWN OF GAINES

Regular Board Meeting – October 4, 2021

The regular meeting of the Town Board of the Town of Gaines, Orleans County, State of New York was called to order by Supervisor Tyler J. Allport at 7:00 P. M. on the 4th day of October, 2021.

The following town officials were present:

Tyler Allport	Supervisor
James Kirby	Deputy Supervisor
Ronald Mannella	Councilperson
Mary Neilans	Councilperson
Kenneth Rush	Councilperson
Susan Heard	Town Clerk
Mark Radzinski	Highway Superintendent

Absent: Douglas Heath, Town Attorney

The following were present: Three (3) Town residents; Dan Strong, Code Enforcement Officer; Tim Hungerford, Town Bookkeeper

The Supervisor opened the meeting with the Pledge to the Flag.

OPEN PUBLIC HEARING – LOCAL LAW NO. 3 OF 2021 – IMPOSING MORATORIUM ON THE INSTALLATION OF FREESTANDING OR GROUND-MOUNTED SOLAR ENERGY SYSTEMS IN THE TOWN OF GAINES

Moved by Councilperson Kirby and seconded by Councilperson Neilans to Open the Public Hearing at 7:00 P. M.

Ayes 5; Nays 0

The Supervisor read a section of the Local Law and explained the purpose of the moratorium was to allow the town time to review the existing codes and language, etc. and to make changes as needed. Doug Bower said he is in favor of the moratorium; rules for notifying the adjoining property owners is very important, as well as protecting the Town. Chris Watt, Chairman of the Planning Board said the law has some flaws, which are only known as the process is worked through. He said there's a place for Solar projects, and a place which is not for them. We are learning as we go. Supervisor Allport agrees and looks forward to the process to fix the Solar Law.

No further comments.

Moved by Councilperson Rush and seconded by Councilperson Kirby to Close the Public Hearing at 7:05 P. M.

Ayes 5; Nays 0

The following resolution was then presented:

RESOLUTION NO. 77 – 1021
ADOPTION OF LOCAL LAW NO. 3 OF THE YEAR 2021

RESOLUTION NO. 77-1021 duly adopted at a regular meeting of the Gaines Town Board held on the 4th day of October, 2021, at which meeting the following were:

PRESENT: Allport, Neilans, Kirby, Mannella and Rush
ABSENT: None

Councilperson Mannella moved the adoption of the following resolution; Councilperson Rush, seconded the motion;

WHEREAS, Local Law No. 3 of the Year 2021 of the Town of Gaines, Orleans County, New York, being a local law “Imposing a Temporary Town-Wide Moratorium on the Installation of Freestanding or Ground-Mounted Solar Energy Systems in the Town of Gaines” was introduced and placed on the desks and the table of the members of the Town Board at least seven (7) days prior to final adoption, and

Be it enacted by the Town Board of the Town of Gaines, Orleans County, New York as follows:

LOCAL LAW NO. 3 OF THE YEAR 2021

A Local Law entitled Local Law No. 3 of the Year 2021, Imposing a Temporary Town-Wide Moratorium of the Installation of Freestanding or Ground-Mounted Solar Energy Systems.

BE IT ENACTED by the Town Board of the Town of Gaines as follows:

Section I: TITLE.

This Local Law shall be known and cited as Town of Gaines Local law No. 3 of 2021 entitled “A Temporary Town-Wide Moratorium on the Installation of Freestanding or Ground-Mounted Solar Energy Systems.”

Section II: PURPOSE AND INTENT.

- A. It is the intention of the Town Board of the Town of Gaines in enacting this Local law to temporarily suspend the installation of Freestanding or Ground-Mounted Solar Energy Systems; as defined in Section IV herein, by the imposition of a temporary moratorium on the issuance of permits and approvals for such installations for a period of six (6) months from the effective date of this Local Law. Provision is made in the Local Law to allow for extension of the six (6) month moratorium if necessary.
- B. The purpose of this temporary moratorium is to enable the Town of Gaines to temporarily halt the installation of Freestanding or Ground-Mounted Solar Energy Systems, for a reasonable period of time to enable the Town to adopt appropriate regulations of ground mounted solar panels which are not currently regulated in the Town of Gaines zoning and land use regulations, including but not limited to Local Law No. 1 of the Year 2019, entitled “Solar Energy Systems and Solar Energy Farm”, and all subsequent amendments thereto.
- C. In recent years, the installation of solar energy systems on commercial and residential properties has become wide spread due to various tax incentives and leasing options, Solar

panels are promoted by New York State and the Federal Government as sustainable energy sources that reduce dependence on fossil fuels.

- D. Solar panels have become, or will become, typical accessory uses for residential and commercial properties but they are not specifically regulated by the zoning and land use regulations in the Town of Gaines.
- E. The Town of Gaines recognizes that solar panels have many benefits for the property owner and the community in general but wise regulation regarding the placement of ground mounted panels is required.
- F. The installation of solar energy systems, particularly Freestanding or Ground-Mounted Solar Energy Systems, has impacts on neighboring properties. Solar panels are not always visually compatible with their setting and they require the clearing of trees and structures to ensure that sunlight reaches to solar collectors.
- G. The temporary moratorium is being limited to Freestanding or Ground-Mounted Solar Energy Systems, because solar energy systems that are mounted on rooftops or existing buildings require less tree clearing and they can be more readily integrated into the existing structure.
- H. During the period of this temporary moratorium, the Town Board intends to suspend zoning and land use regulations in the Town of Gaines which conflict with the effect and intent of this Local Law.

Section III: LEGISLATIVE FINDS OF FACT.

- A. The Town Board hereby finds that, pending completion of the necessary studies, meetings, hearings, environmental review and other actions necessary and incident to proper consideration and adoption of a Local Law regulating the installation of Freestanding or Ground-Mounted Solar Energy Systems, and any revisions and amendments of the zoning and land use regulations of the Town, reasonable measures must be taken to maintain the status quo in order to protect the public interest, to preserve and protect the aesthetic and visual resources of the property values within the Town of Gaines and ensure that future Freestanding or Ground-Mounted Solar Energy System installations will be consistent with these findings.
- B. The Town Board finds that it is in the long-term interest of the public and its welfare to prevent the premature and inappropriate installation of Freestanding or Ground-Mounted Solar Energy Systems that would cause impacts to aesthetic and visual resources and properties located with the Town of Gaines.
- C. The Town Board finds that the temporary moratorium should be limited to Freestanding or Ground-Mounted Solar Energy Systems, because solar energy systems that are mounted on rooftops of existing buildings require less tree clearing and site preparation and can be visually integrated more readily into the existing structure.

Section IV: DEFINITIONS.

- A. FREESTANDING OR GROUND-MOUNTED SOLAR ENERGY SYSTEM.

Structures, facilities, systems and/or equipment, or any combination thereof, including, but not limited to, solar panels and the hardware with or on which such panels are mounted, the purpose of which is to collect, absorb, concentrate or direct solar energy, which structures, facilities, systems and/or equipment , or any combination thereof, are located,

installed, constructed or developed on the ground of a parcel, or on a pad or base substantially on grade with the ground. Freestanding or Ground-Mounted Solar Energy Systems shall not include structures, facilities, systems and/or equipment, or any combination thereof that are located, installed, constructed or developed on or above the roof of an existing improvement.

Section V: SCOPE OF CONTROLS.

- A. During the effective period of this Local law, the Town Board, the Planning Board, the Zoning Board of Appeals, the Building Department and the Code Enforcement Officer shall not permit, accept, process, interpret, deliberate upon, decide or approve any application for the installation of Freestanding or Ground-Mounted Solar Energy Systems except as set forth in Section VII below.
- B. This moratorium shall apply to all currently pending and future applications for the installation of Freestanding or Ground-Mounted Solar Energy Systems.

Section VI: HARDSHIP.

- A. Should any owner of property affected by the Local Law suffer any unnecessary hardship in way of carrying out the strict letter of the Local Law, the owner of said property may apply to the Town Board of the Town of Gaines in writing for a waiver from strict compliance with Local Law upon submission of proof of such unnecessary hardship. For the purposes of the Local Law, unnecessary hardship shall not be the mere delay in being permitted to make an application or waiting for a decision on the application for a special permit, site plan, subdivision, variance or other permit during the period of the moratorium imposed by this Local Law.
- B. Procedure.
 - 1. Upon submission of a written application to the Town Clerk by the property owner seeking a waiver from this Local Law, the Town Board shall, within thirty (30) days of receipt of said application, schedule a public hearing on said application upon five (5) days written notice in the official newspaper of the Town.
 - 2. At the public hearing, the property owner and any other parties wishing to present evidence with regard to application shall have any opportunity to be heard, and the Town Board shall, within thirty (30) days of the close of the public hearing, render its decision granting or denying the application for variation from the strict requirements of this Local law.
 - 3. If the Town Board determines that a property owner will suffer unnecessary hardship if this Local Law is strictly applied to a particular property, then the Town Board shall waive the application to this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with the Local Law.

Section VII: PENALTIES FOR OFFENSES.

Any person, firm, entity or corporation that shall construct, erect, enlarge or alter any building or structure in violation of the provisions of this Local Law or shall otherwise violate any of the provisions of this Local Law shall be guilty of a violation and subject to a fine of not less than \$200.00 nor more than \$1,000.00. Each day that the violation continues shall be a separate offense.

Section VIII: CONFLICTING LAWS SUPERSEDED.

All local laws, ordinances, or parts of local laws and ordinances of the Town of Gaines that are in conflict with the provisions of this Local Law are hereby suspended to the extent necessary to give this Local Law full force and effect during the effective period of the moratorium.

Section IX: SUPERSESION OF THE TOWN LAW.

This Local Law is adopted pursuant to Municipal Home Rule Law 10(1)(l) and 10 (1)(ii)(a)(14) and Statute of Local Governments 10(6) of the State of New York. It is the intent of the Town Board to supersede the following provisions of the New York State Town Law, Chapter 16 relating to time limits in connection with zoning and planning determinations:

- A. Town Law 267-a(5) (Time for ZBA to act on variance);
- B. Town Law 274-a(8) (Public Hearing on Site Plan);
- C. Town Law 274-a(10) (SEQRA requirements for Site Plan);
- D. Town Law 274-b(6) (Public Hearing on Special Permit); and
- E. Town Law 274-b(8) (SEQRA requirements for Special Permit).

Section X: STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA).

The Town Board has considered the provisions of Article 8 of the Environmental Conservation Law ("SEQRA") and the Regulations promulgated thereunder and determines that adoption of the Local Law is a Type II Action as defined therein; therefore, no further review under SEQRA is required.

Section XI: SEVERABILITY.

- A. If a court of competent jurisdiction finds any provision(s) of this law invalid, in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid, and all other provisions of the law shall continue to be separately and fully effective.
- B. If a court of competent jurisdiction finds the application of any provision of this law to any building, other structure or tract of land to be invalid, in whole or in part, the effect of such decisions shall be limited to the person, property or situation involved in the controversy, and the application of any such provision to any other person, property or situation shall not be affected.
- C. The provisions of the Local Law are separate and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional or inapplicability, shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law of their application to other persons or circumstances. It is hereby declared to be the legislative intent of the Town Board of the Town of Gaines that this Local Law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part thereof is held inapplicable had been specifically exempt therefrom.

Section XII: TERM.

This Local Law shall remain in force for a period of six (6) months from its effective date. This Local Law is subject to review and renewal by the Town Board of the Town of Gaines for two (2) additional three (3) month extensions by Town Board resolution.

Section XIII: EFFECTIVE DATE.

This Local Law shall take effect upon its adoption and filing with the Secretary of State.

Upon being put to a vote, the following voted "Aye" in favor of adoption:

Allport, Neilans, Kirby, Mannella and Rush

The following voted "No" in opposition thereto: None

The resolution was declared adopted.

Dated: October 4, 2021

Gaines Town Board

CERTIFICATION OF THE CLERK

STATE OF NEW YORK:

COUNTY OF ORLEANS: ss.:

TOWN OF GAINES:

I, Susan M. Heard, Town Clerk of the Town of Gaines, County of Orleans, and State of New York, DO HEREBY CERTIFY that I have compared the foregoing resolution duly adopted by the Town Board of the Town of Gaines, on the 4th day of October, 2021, with the original now on file in the office of the Town Clerk, and the same is a correct and true copy of said resolution and of the whole thereof.

DATED: October 12, 2021

Town of Gaines

Susan M. Heard, Gaines Town Clerk

(seal)

**RESOLUTION NO. 78 -1021
SETTING JUSTICE SALARY EFFECTIVE FOR 2022 FISCAL YEAR**

Moved by Councilperson Rush and seconded by Councilperson Kirby to approve the Justice salary for Fiscal Year 2022 at \$14,400.

Ayes 5; Nays 0

**RESOLUTION NO. 79 – 1021
APPROVAL OF MINUTES**

Moved by Councilperson Neilans and seconded by Councilperson Mannella to approve the minutes of the September 13, 2021 regular meeting.

Ayes 5; Nays 0

The Town Clerk Report and the Highway Superintendent reports for September will be available at the next meeting.

**RESOLUTION NO. 80 – 1021
PRESENTATION AND ACCEPTANCE OF THE SUPERVISOR’S REPORT**

The Supervisor gave the Board the Supervisor’s Report with a breakdown of each Fund and Account, including General Fund, Highway Funds, and all Water Districts. Looking into a water loss, maybe in District 6. The Highway Superintendent is not present to discuss but will be advised.

Moved by Councilperson Neilans and seconded by Councilperson Kirby to accept the monthly report of the Town Supervisor.

Ayes 5; Nays 0

**RESOLUTION NO. 81 – 1021
APPROVAL OF ABSTRACTS**

Moved by Councilperson Kirby and seconded by Councilperson Rush to approve the abstracts, as follows:

General	\$ 13,046.68
Highway	\$ 12,784.96
Water	\$ 6,217.83

Ayes 4; Nays 0; Abstain 1, Neilans (arrived late)

PRESENTATION OF TENTATIVE BUDGET FOR 2022

Supervisor Allport asked the Town Bookkeeper, Tim Hungerford, to discuss the 2022 Town Budget. Mr. Hungerford said on Page 1, you can see the Tentative Budget in a glance. The 2022 Budget calls for a total levy of \$636,593.50, which is \$6,545.50 over the total 2021 of \$630,048 (or a 1.04% increase). The increase in the Fire Contract with the Village of Albion consumes most of this increase. Departments kept their costs at a bare minimum, and the Town will continue to be under the Tax Cap. Supervisor Allport thanked the bookkeeper for his work on the budget.

RESOLUTION NO. 82 – 1021

ADOPTION OF THE 2022 TENTATIVE BUDGET

Moved by Councilperson Neilans and seconded by Councilperson Kirby to approve and adopt the 2022 Tentative Budget as presented, with a Public Hearing set for Thursday, November 4, 2021 (as scheduled at the January 2021 meeting, in accordance with Town Law). The Clerk will publish the legal notice.

Ayes 5; Nays 0

RESOLUTION NO. 83 – 1021

AUTHORIZING THE JUSTICE COURT TO APPLY FOR JCAP GRANT FUNDING FOR THE 2021/22 GRANT CYCLE

Moved by Councilperson Kirby and seconded by Councilperson Neilans to authorize the town court to make application to the New York State JCAP Grant Program for improvements to the court facilities.

RESOLVED, the Town of Gaines Town Board authorizes the Gaines Town Court to apply for a JCAP Grant in the 2021/2022 grant cycle up to \$30,000.

Ayes 5; Nays 0

OTHER NEW BUSINESS FROM THE TOWN BOARD - None

PRIVILEGE OF THE FLOOR

Charlene Stilwell asked if the Town was going to do anything regarding the Cannabis laws, opting in or out of allowing dispensaries in Gaines. The Supervisor said he will discuss with the Town Attorney and look to see what steps we need to do to “opt-out”.

Moved by Councilperson Kirby and seconded by Councilperson Mannella to set a public hearing on November 4, 2021 regarding a Local Law entitled “Opting Out of Adult Use Cannabis Retail Dispensaries and On-Site Consumption Sites”. The Clerk to advertise said Public Hearing.

Dan Strong, Code Enforcement Officer discussed the recent County Housing Report, which includes the housing stock, meeting the public needs for housing, population decline, etc. and encourages the Town Board to look at the report with ideas regarding our Town. Chris Watt said many of the old homes are being rehabbed, and everyone benefits from the rehabs. He also mentioned that Gaines is 50% Agriculture.

Chris Watt briefly touched on the Solar Projects and wanted to know where we stand on PILOT agreements. We are not in the PILOT programs. Mr. Watt then invited the Town Board to the Planning Board meeting at the Carlton Rec. Hall for them to see what the Planning Board is working on.

No further business to be conducted, the Board called for an Executive Session to discuss collective negotiations pursuant to Article 14 of the Civil Service Law.

Moved by Councilperson Mannella and seconded by Councilperson Rush to move to Executive Session at 7:38 P. M.

Ayes 5; Nays 0

ADJOURNMENT

Moved by Councilperson Mannella and seconded by Councilperson Kirby to close the Executive Session at 8:45 P. M. and adjourn meeting.

Ayes 4; Nays 0, Absent 1, Neilans (left early)