

**TOWN OF GAINES**  
**REGULAR MEETING – May 9, 2022**

The regular meeting of the Town Board of the Town of Gaines, County of Orleans, State of New York was called to order by Supervisor Tyler James Allport at 7:00 P. M. on the 9<sup>th</sup> day of May, 2022.

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
Douglas Heath	Attorney for the Town

The following individuals were present during the meeting: Janet Ward, NextEra; Joyce Riley, Kevin Overton

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

**OPEN PUBLIC HEARING – LOCAL LAW NO. 2 OF 2022 – EXTENDING MORATORIUM ON INSTALLATION OF FREESTANDING OR GROUND-MOUNTED SOLAR ENERGY SYSTEMS IN THE TOWN OF GAINES**

Moved by Councilperson Neilans and seconded by Councilperson Mannella to open the public hearing at 7:00 P.M.

Ayes 5; Nays 0

No public comments. The Supervisor advised the Board that he had received a letter from the County Planning Board with their approval. The County Planning Board would like to be updated as the work on the Solar Law continues.

No further questions.

Moved by Councilperson Kirby and seconded by Councilperson Mannella to close the public hearing at 7:03 P.M.

Ayes 5; Nays 0

**RESOLUTION NO. 43 – 0522**  
**ADOPTION OF LOCAL LAW NO. 2 OF THE YEAR 2022**

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

WHEREAS, Local Law No. 2 of the Year 2022 of the Town of Gaines, Orleans County, New York, being a local law “Extending the 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. 2 OF THE YEAR 2022**

A Local Law entitled Local Law No. 2 of the Year 2022, Extending the 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. 2 of 2022 entitled “Extending the 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 wavier 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 form 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)(I) 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, work 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: May 9, 2022

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 9<sup>th</sup> day of May, 2022, 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: May 9, 2022

Town of Gaines

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Susan M. Heard, Gaines Town Clerk

(seal)

**RESOLUTION NO. 44 - 0522**  
**APPROVAL OF MINUTES OF THE APRIL 11, 2022 REGULAR MEETING**

Moved by Councilperson Neilans and seconded by Councilperson Rush to approve the minutes of the April 11, 2022 meeting.

Ayes 5; Nays 0

**RESOLUTION NO. 45 – 0522**  
**PRESENTATION AND ACCEPTANCE OF THE TOWN CLERK’S REPORT**

The Town Clerk reported the local shares paid to the Town Supervisor as \$2,288.45 (another big month for Building permits); NYS Ag & Markets was paid \$35.00 and State Health Dept. was paid \$22.50 for one Marriage License. Tax Collection is now over at the Town level, and just waiting for any final postmarked payments to arrive before turning the books over to the County.

Moved by Councilperson Kirby and seconded by Councilperson Rush to accept the monthly report of the Town Clerk.

Ayes 4; Nays 0; Absent 1, Rush

**PRESENTATION AND ACCEPTANCE OF THE SUPERVISOR’S REPORT**

The Town Supervisor didn’t receive the Bookkeeper’s report in time to present to the Board. He will do a “catch up” next month.

**RESOLUTION NO. 46 – 0522**  
**HIGHWAY SUPERINTENDENT’S REPORT**

The Town Highway Superintendent reported the total fuel usage as Diesel 126 gallons; Gas 164 gallons. He told the Board he has three bids for a new Pickup Truck; he gave each Board member the quotes. He would like to order the 2022 Chevy. Still looking at the Water reading system that would be covered by the American Rescue Plan money. Also mentioned they had a fire hydrant hit, and it has been repaired.

Moved by Councilperson Kirby and seconded by Councilperson Rush to accept the Highway Superintendent report.

Ayes 5; Nays 0

**RESOLUTION NO. 47 – 0522**  
**AUTHORIZING HIGHWAY SUPERINTENDENT TO ORDER NEW PICK-UP TRUCK**

Moved by Councilperson Rush and seconded by Councilperson Mannella to authorize the Highway Superintendent to place an order for the Chevy Silverado Work Truck, from the 2023 State Bid pricing at a cost not to exceed \$50,000 from Joe Basil Chevrolet, Inc.

Ayes 5; Nays 0

**RESOLUTION NO. 48 - 0522**  
**APPROVAL OF ABSTRACTS**

Moved by Councilperson Neilans and seconded by Councilperson Mannella to approve the abstracts, as follows:

General Fund	\$ 25,678.60
Highway	\$ 5,210.10
Water	\$ 70,939.83

Ayes 5; Nays 0

**RESOLUTION NO. 49 – 0522**  
**POSTPONEMENT OF REASSESSMENT ON REAL PROPERTY UNTIL 2023**

Moved by Councilperson Rush seconded by Councilperson Kirby to support the decision of the Town Assessor to postpone the reassessment of real properties until the 2023 Assessment Roll.

Discussion: The Supervisor explained the problem the Assessors around the County and State were having with the housing market and trying to get the 100% revaluation with the housing sales off the charts. Many across the County were also postponing. This resolution approves this postponement.

Ayes 5; Nays 0

**RESOLUTION NO. 50 – 0522**  
**AUTHORIZING TOWN CLERK TO ADVERTISE FOR SEAT ON THE ZONING BOARD OF APPEALS**

Moved by Councilperson Neilans and seconded the Councilperson Kirby to authorize the Town Clerk to place an advertisement for filling the vacant seat on the Zoning Board of Appeals.

Ayes 5; Nays 0

**RESOLUTION NO. 51 – 0522**  
**ACCEPTING THE DECOMMISSIONING PLAN AND DECOMMISSIONING BOND VALUE**

Moved by Councilperson Mannella and seconded by Councilperson Neilans to accept the Decommissioning Plan and Decommissioning Bond Value for the DG New York CS, LLC Community Solar Project for the Uderitz Solar Project in the amount of \$944,328.

Discussion: MRB Group (Town Engineer) signed off on the amount; Doug Heath, Town Attorney also agreed with the Plan and Bond Value.

Ayes 5; Nays 0

**RESOLUTION NO. 52 – 0522**

**ACCEPTING INTERMUNICIPAL WATER AGREEMENT BETWEEN THE TOWN OF ALBION AND THE TOWN OF GAINES AND AUTHORIZING THE SUPERVISOR TO SIGN AGREEMENT**

Moved by Councilperson Manella and seconded by Councilperson Kirby to authorize the Town Supervisor to sign the Intermunicipal Water Agreement between the Town of Albion and Gaines, subject to review by the Town Attorney.

Discussion: Doug Heath, Town Attorney stated this would be a five (5) year agreement.

Ayes 5; Nays 0

**OTHER NEW BUSINESS**

The Supervisor discussed the letter from the Orleans County Board of Elections (copies placed in each Board member's mailbox). The County will be taking over the Election Inspectors wages, employee benefits, as well as the training costs. The County will then bill back the Town for these costs. The County will discount the cost to Towns for the 2022 election expenses.

**EXECUTIVE SESSION**

Moved by Councilperson Kirby and seconded by Councilperson Neilans to enter into an Executive Session for a Personnel matter at 7:30 P. M. 5 Ayes; 0 Nays

Moved by Councilperson Neilans and seconded by Councilperson Kirby to close the Executive Session and return to the Regular Meeting at 7:38 P. M.

**ADJOURNMENT**

Moved by Councilperson Mannella and seconded by Councilperson Kirby to adjourn the meeting at 7:39 P.M.