

GAINES TOWN BOARD MEETING
Gaines, NY September 6, 2011

A Public Hearing and a Regular Town Board Meeting of the Town of Gaines, County of Orleans and the State of New York were held at the Gaines Town Hall, 14087 Ridge Road, Gaines, New York on the 6th day of September 2011.

PRESENT: Bill Lattin ----- Supervisor
David Kast ----- Councilperson
James Kirby ----- Councilperson
Susan Smith ----- Councilperson
Lorraine Oakley ----- Councilperson
Ron Mannella ----- Highway Superintendent
Jean Klatt ----- Town Clerk
Douglas Heath ----- Council

EXCUSED: None

OTHERS PRESENT: Ray Burke, Jerry & Carol Culhane, Doug & Mary Jo Syck, Marilynn Miller, Mary Neilans, Lisa Mannella, Tibbs Ahlberg, Jim Krencick, Guy Smith, Christopher Watt, Jim Theodorakas, Mike Gradbowski

Supervisor Lattin called the meeting to order with the Pledge to the Flag at 7:30PM.

RESOLUTION 65 -11

APPROVAL OF MINUTES

On a motion of Councilperson Oakley, seconded by Councilperson Kast the following resolution was

ADOPTED Ayes 5 Smith, Kast, Kirby, Lattin, Oakley
Nays 0

Resolved that the minutes of August 9th, 2011 meeting are approved as presented by the clerk.

RESOLUTION 66 -11

APPROVAL OF ABSTRACTS

On a motion from

General Councilperson Kirby and seconded by Councilperson Kast

Highway Councilperson Kast and seconded by Councilperson Smith

Water Councilperson Oakley and seconded by Councilperson Kirby

ADOPTED Ayes 5
Nays 0

Resolved that the bills on abstract #9 will be paid as presented.

General	Abstract # 190 - # 217	in the amount of \$ 8,479.45
Highway	Abstract # 85 - # 94	in the amount of \$ 88,366.95
Water 1	Abstract # 37 - # 40	in the amount of \$ 1,691.54
Water 9	Abstract # 1	in the amount of \$ 1,025.00

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RESOLUTION 67 -11

APPROVAL OF SUPERVISOR'S SIGNATURE FOR OLRC GRANT

On a motion of Councilperson Oakley, seconded by Councilperson Kast the following resolution was

ADOPTED Ayes 5 Smith, Kast, Kirby, Lattin, Oakley
Nays 0

Resolved that the Supervisor Lattin is authorized to sign the OLRC Grant Agreement for Intergrow.

RESOLUTION 68 -11

APPROVAL OF SUPERVISOR'S MONTHLY REPORT

On a motion of Councilperson Kast, seconded by Councilperson Kirby the following resolution was

ADOPTED Ayes 5 Smith, Kast, Kirby, Lattin, Oakley
Nays 0

Resolved that the July 2011 Supervisor's Monthly report is approved as submitted by the Supervisor Lattin.

RESOLUTION 69 -11

TENTATIVE BUDGET TO PRELIMINARY BUDGET

On a motion of Councilperson Kast, seconded by Councilperson Kirby the following resolution was

ADOPTED Ayes 5 Smith, Kast, Kirby, Lattin, Oakley
Nays 0

Resolved that the 2012 Tentative Budget is adopted as the 2012 Preliminary Budget and a public hearing is scheduled for October 11, 2012 @ 7:30 PM.

Tibbs Ahlberg asked the board for some direction in handling a new application for a special use permit. He is concerned about the moratorium. The board would like to meet on September 20, 2011@7:30 PM to discuss zoning changes to address the moratorium.

Attorney Heath addressed the board regarding the clarification needed by Dan Spitzer regarding Local Government Regulations of Wind Turbines in State Agricultural Districts. The following in a copy of memorandum:

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MEMORANDUM FROM

Daniel A. Spitzer
Direct Dial: 716.848.1420
Facsimile: 716.819.4650
Email: dspitzer@hodgsonruss.com

Site Plan Review vs. Special Use Permits

When the Gaines Wind Law was originally drafted, the requirement for permits for facilities over 120 feet located on agricultural properties was for a Special Use Permit. When it was presented to the County Planning Board, that body requested the Special Use Permit be changed to a Site Plan. The request was supposedly made at the behest of the Department of Agriculture and Markets. It was my understanding that the local law was so changed before adoption, but my understanding from Mr. Heath's e-mail is that the local law requires Special Use Permits. I note this site plan versus special use permit discussion only involved towers exempt as farm towers, not any other Small Wind Energy Conversion System ("WECS").

Under New York law there is virtually no difference between special use permits and site plans. Both reflect allowable uses that may be conditioned to reduce impacts on the neighborhood. As Mr. Heath surmised, the comments in my prior memo applied regardless of the form of approval. The Board can, of course, adopt a local law amendment changing special use permit to site plan. But the particular method should not impact the current inquiry, as the question in either case is solely compliance with setbacks.

I have attached a draft local law addressing this issue, should the Board wish to change the approval for a farm tower over 120 feet to site plan.

Current Applications for Wind Turbine Construction

It is our understanding that two building permits have been issued for construction of wind turbines. The wind energy law provides an exemption for wind turbines constructed as part of a farm operation. (Section 728.E(E)). This section provides as follows: "No permit or other approval shall be required under this Chapter for WECS utilized solely for agricultural operations in a state or county agricultural district, as long as the facility is set back at least one and a half times its Total Height from a property line, and does not exceed 120 feet in height. Towers over 120 feet in Total Height utilized solely for agricultural operations in a state or

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site plan (see Section 728. N(B)). This is my understanding whether we are talking about towers over 120 feet on farms in state agricultural districts, or any other Small WECS.

2. "Section 728.1 refers to " ..in the countryside and open space zones". We do not have any zoning districts defined as such nor does the local law define these areas. To what do "countryside and open space zones" refer?"

I went back and checked my notes and they indicate I was directed to permit towers in two zones, the Countryside Zone and the Open Space Zone. I cannot otherwise account for the error. I understand from Ms. Smith the correct district is the Agricultural Residential District. A proposed local law is attached

3. "The local law clearly permits tower heights of up to 120' for farm use (up to 80' for home/small commercial). However, Section 728.K(7) was called into question last night, particularly where it provides that "facilities" shall not exceed ridgeline level. I looked at the definition of "facilities" which appears to include towers. Can you provide clarification?"

At the time of adoption, the goal was to provide two limits on height, the specific height limits and a ridge line limit. But as to towers that are part of farm operations, the exemption provision was intended to apply. Under that section, there is no height limit, only a permit requirement above 120 feet. Section 728.K(7) does not apply to such towers.

Please contact me if you have any questions.

Cc: Charles Malcomb

county agricultural district shall apply for a special use permit (or site plan) in accordance with this Local Law, but shall not require a height variance. Prior to the construction of a WECS under this exemption, the property owner or a designated agent shall submit a sketch plan or building permit application to the Town to demonstrate compliance with the setback requirements. "

In light of the forgoing exception, the following is recommended for the two current applications: (1) determine if the applicants qualify as a "farm operation" in a State-certified, County-adopted agricultural district; (2) determine if the proposed turbines are set back at least 1.5 times their total height from a property line, and do not exceed 120 feet. If the application meets these requirements to the satisfaction of the building inspector, the inquiry is over and the projects may proceed. If the turbine is over 120 feet, the project must go through site plan review before the Planning Board.

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In summary, if the applicants qualify as "farm operations" in an agricultural district, if the proposed turbine is less than 120 feet and complies with the setbacks, and if the applicants submitted a sketch plan or a building permit application showing the setbacks (or if the Town knows the turbines comply with the setbacks), there is nothing further that needs to be done. If the tower is over 120 feet, special use permit review by the Planning Board is required, and the Department's guidelines for such review must be followed. If the proposed turbines are over 120 feet, but never went through special use permit review, I recommend conducting the review based on a sketch plan of the proposed turbine showing compliance with the setbacks. In this case, it appears no more need be provided to the Planning Board than the information provided to the building inspector. If the setbacks (permitted by the Department for public safety reasons) are met, the applicants have a right to construct the turbines.

The Local Law need not be amended because the exemption section cited above ensures compliance with the Ag & Mkts Law.

Other Questions

Mr. Heath also had several other inquiries:

1. "Which body/official would issue special use permit? Our planning board issues special use permits under existing zoning ordinance. This local law is silent as to who reviews and issues special use permit. Is it your thought that the Code Enforcement Officer would issue the special use permit using the standards set forth in the ordinance or should the Town Board designate the Planning Board pursuant to section 728.Q(A)?"

I believe the correct body is the Planning Board. My understanding was the Town Board did not intend to change the Planning Board's authority to issue special use permits, unless a court ordered that an application for a utility-scale wind farm be considered, in which case the Town Board would consider the special use permit and the Planning Board the site plan (see Section 728.N(B)). This is my understanding whether we are talking about towers over 120 feet on farms in state agricultural districts, or any other Small WECS.

2. "Section 728.1 refers to " .. .in the countryside and open space zones". We do not have any zoning districts defined as such nor does the local law define these areas. To what do "countryside and open space zones" refer?"

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At the time of adoption, the goal was to provide two limits on height, the specific height limits and a ridge line limit. But as to towers that are part of farm operations, the exemption provision was intended to apply. Under that section, there is no height limit, only a permit requirement above 120 feet. Section 728.K(7) does not apply to such towers.

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PRIVILEGE OF THE FLOOR/PUBLIC CONCERNS

Christopher Watt asked the board to re-examine the new fee schedule passed last month regarding Small Wind Turbines for Agricultural Use. He feels the asking an applicant to pay for engineering and electrical inspections is unfair and unnecessary because the state does these inspections. If the town required these inspections the applicant would be charged by the town and by the turbine company. The board said they would consider the matter at the recessed portion of the meeting on September 20th, 2011 @ 7:30.

With no further business, on a motion from Councilperson Kirby, seconded by Councilperson Oakley the following resolution was

ADOPTED Ayes 5 Smith, Kast, Kirby, Lattin, Oakley
 Nays 0

Resolved that the September 6, 2011 board meeting was recessed at 8:32PM and scheduled to resume on September 20th, 2011 @ 7:30 PM.

Respectfully Submitted,

Jean Klatt
Gaines Town Clerk