Present: Chairman Theobert Ahlberg; Vice-Chairman Gary Davy; Members James Theodorakos,

Molly Preston, Jennifer Stilwell

Guests: Attorney Daniel Spitzer, Constance Mosher, Carol Culhane, Marilynn Miller,

Douglas Syck, Mary Jo Syck, Mary Neilans, David Allchin, Carol Patterson, Charleen Stillwell, Dale Swindon, Russ Benzin, Robert Neilans, Maria Neilans, Richard Neilans, Kathy Kast, David Kast, Walter Jokubowski, Gretchen Sepik

Excused: Member Mike Grabowski and Christopher Watt

Chairman Ahlberg called the meeting to order at 5:00 p.m. with the Pledge of Allegiance to the Flag.

Conditions for Allchin/Beam Site Plan On a motion of Member Stilwell, seconded by Member Preston, the following was

Carried Ayes 5 Ahlberg, Davy, Preston, Stilwell, Theodorakos

Navs 0

Last meeting the Planning Board approved the site plan for the Allchin/Beam application; however, the conditions of the site plan were not mentioned. The conditions are as follows:

- 1. The applicants will comply with all conditions listed in the resolution prepared by the Town Attorney for the Town of Gaines Zoning Board.
- 2. The applicants will comply with all New York State regulations, Orleans County Health Code regulations and Town of Gaines Zoning regulations pertaining to parking and signage.

Connie Mosher asked/pointed out the following:

First, there are two copies of the wind laws that have discrepancies between them. The law filed in Gaines, local law number 1, says "special use" while the same local law filed in Albany says "site plan review". Secondly the copy in Gaines that was passed is 18 pages long and the one registered in Albany is missing the last 8 pages. Connie believes there was never a resolution here from the boards to change/fix the discrepancies and that it is still a matter that should be investigated and settled before any other wind issues are done.

Chairman Ahlberg says that the correct version says "site plan" not "special use" and it was the version passed by the Town Board and sent to Albany. The Town Clerk put the correct version in the Local Law book in July, the wrong copy that most people have was being handed out unknowingly. Attorney Spitzer mentioned that the change from "special use" to "site plan" was made at the very end and the one he signed that went to Albany was the correct one saying "site plan". Chairman Ahlberg also feels this is a Town Board issue not a Planning Board one.

Next Connie brought up that she spoke with Code Enforcement Officer Bob McGaffick about the fees submitted for the turbines and he told her that the fee for Watt and Kast were returned and he could not go on Watt's property because there was not a valid permit.

Attorney Spitzer replied that the board has site plan applications signed by the applicants and the goal is to do the site plan which is supposed to be the first part of the process. Collecting fees and issuing permits is not this boards issue but are issues for the Town Board and Code Enforcement. A site plan can be done without the permit.

Connie also spoke about the zone in which Mr. Watt's turbine is located. He is in a commercial zone not an agricultural one, so she wonders if he would need a special use permit, public hearing, and a use variance for being over 80 feet.

Attorney Spitzer mentioned that the turbine is an exception to the law as it is in a farming and state-ag district. The turbine being allowed is not a zoning thing and at no time has Bob McGaffick treated the area as commercial. Attorney Spitzer spoke with Bob Somers from Ag & Markets and they feel Watt's turbine is for agricultural use, not commercial, as the farm itself will be the main beneficiary of the tower. The tower is on a working farm in a state-ag district.

Lastly, Connie mentioned that the September Planning Board minutes say that all the necessary inspections have been done, but CEO Bob McGaffick did not do them as he was not allowed on property. She wanted to know who did the inspections.

Chairman Ahlberg believes the inspections were done by a New York State engineer and electric was done by National Grid. Last Chairman Ahlberg knew Bob McGaffick was waiting for copies of the inspections to put in his files. Attorney Spitzer made note of the fact that many Code Enforcements use outside agencies. Overall the issue about inspections is not in the Planning Boards jurisdiction but Code Enforcements and the Town Board and concerns should go before them. Right now the only issue the Town Board has put before the Planning Board is the site plan and setbacks.

Marilynn Miller asked that her time be given to Mary Neilans.

Mary Neilans lives at the cobblestone home just north of Watt farms on route 98 where her relatives have lived since 1809 and hopefully where her brother's descendants will live in the future. They have found the local enjoyable since they have been here for so long and up to this point have had no quarrel's with the Town of Gaines. She was aghast to here in August by the Town Attorney, at a Town Board meeting, citizens and tax payers had no say in the projects that directly affected their quality of life, were in large part paid for by tax payer dollars and utility company funds, and we are in an Ag district, so therefore exempt from usual check and balances. This seems beyond reasonable and she now believes this is not exactly the way the Gaines town law should work or was meant to work. She would suggest that if you are at all aware of the surroundings of where you currently live and have normal hearing and vision, having a wind energy conversion system 500 feet from your home will negatively affect you. Mary Neilans had a list of grievances for the board to consider before approving the site plan for Christopher Watt (she read them aloud and they can be viewed on pages 3-5). She thinks they will directly affect decisions upon whether the Planning Board wants a site plan review authorized this evening for Watt or any of the other wind turbines. These grievances should be taken into consideration by the board when they are making their decision upon the site plan review because the main issue is it's not in their backyard but hers and it definitely affects her life.

Town of Gaines Planning Board c/o Mr. Tibbs Ahlberg 14087 RIDGE ROAD ALBION, NY 14411

Dear Mr. Ahlberg:

I write this letter for the Planning Board's consideration at its November 18, 2011 special meeting. I understand the Planning Board has convened this meeting to attempt compliance with the Gaines Wind Law and Zoning Ordinance relative to a wind turbine on Mr. Christopher Watt's property.

To begin, I bring to the Board's attention what appear to be various procedural errors that have occurred relative to Mr. Watt's permit application:

- First, and perhaps most obvious, the wind turbine was erected before the Planning Board's first attempt at site plan review. I believe the Planning Board has recognized this error and is now attempting to correct it;
- Second, I understand that Mr. Watt has not submitted a complete permit application and application fee to Mr. Robert McGaffick, the code enforcement officer. Section 1003 of the Zoning Ordinance requires Mr. McGaffick to transmit a complete application to the Planning Board before the Planning Board can take action. Without a complete application and receipt of the fee, the Planning Board cannot legally proceed with site plan review;
- Third, I do not believe the Planning Board has completed the General Municipal Law Section 239(m) referral to the County Planning Board. If this is the case, the Planning Board's review of Mr. Watt's site plan is a violation of Section 840 of the Zoning Ordinance;
- Fourth, Mr. Watt's wind turbine is not exempt from the special use permit procedures and criteria under the Wind Law. The exemption from a special use permit only applies to wind turbines solely used for agricultural purposes. Mr. Watt's property is used to operate his commercial business. The wind turbine is actually in a local commercial zoning district;
- The fact that Mr. Watt's property is as of 2009 -- in a county agricultural district does not mean a special use permit is unnecessary. Only when a local law is an unreasonable restriction on farming can it be determined a conflict with Agricultural and Markets Law. Here, the Wind Law, with its exemption, does not unreasonably restrict farming. It just so happens that the exemption does not apply to Mr. Watt's property because it is utilized for commercial operations.

• Fifth, there is moratorium in place that forbids the review and approval of any permits, with one limited exception that does not apply to Mr. Watt's wind turbine. The Planning Board's review of Mr. Watt's site plan is a clear and direct violation of the moratorium.

I believe that until there is a resolution through the Article 78 Petition pending in Supreme Court, it is premature for the Planning Board to take any action regarding Mr. Watt's wind turbine. In anticipation of the Planning Board decision to nevertheless proceed, I offer the following information, which must be considered per Section 1004, subparagraphs b(7) and b(8) of the Zoning Ordinance:

- The wind turbine causes extreme noise disturbances. It is worse in early morning, evening and during the night. It disturbs my sleep. It is similar to oscillating lug tires of a truck on a wet off-ramp of the thruway. The noise easily penetrates the 100 plus year old building where I work all day. Occasionally there is also swish-swish noise, which is softer but equally irritating. There have been reports that cobblestone walls such as mine -- promote the sound waves being retained inside the structure worse than a traditional clapboard house.
- The wind turbine noise disturbs my clients and their animals. The horses and exotics have been spooked the most. I fear one may rear or bolt if large intrusion of noise comes as I am drawing blood or some other way in a vulnerable position. I work on the large animal clientele outside, so I am vulnerable to the environment.
- Russ has been a 20 plus year member of the Laboratory of Ornithology at Cornell. His
  observatory is upstairs in the garage, south bay of windows, which now directly faces
  the wind turbine.
- This visual impact is intrusive and disturbing. Any view to our south is now filled with the wind turbine.
- My property is listed on the Eligible List of National Historical Properties Registry.
  One of the features that makes it such is that all parts of the house are original to
  the early 1800's. Maintaining the wavy single-paned windows is one of this
  registry's recommendations; thus changes to more sound efficient windows is not
  on the list of possibilities. Virginia Bartos inspected the property in 2011 and
  finalization into the national group will take place in 2012.
- My backyard activities are now invaded by the noise of the wind turbine. They include gardening, dog-walking, cross-country skiing, and picnics. My own dogs, especially at night, act frightened and run back toward the house. Bike rides around the block are now accompanied by the droning noise. The wind turbine can be heard on Rt. 279, Rt. 98, and Bacon Rd through 5 Corners.

- There are safety concerns. A blade broke 9 days after installation. According to Dan Sherwood, a retired electrical worker for National Grid, windmills in the southern tier, blades have been known to fly off and destroy whatever it lands on. Ice-sling off the blades is a known problem. How far will that ice by carried in the wind?
- Twice I have seen a strobe-light effect. Both times it was when the sun was low in the sky. This is very distracting, especially while driving.
- Our own horse spends way more time inside his walk in/ out barn when the wind turbine is making noise. Normally he would be outside grazing on pasture.

The Planning Board should not act in complete disregard of these most relevant circumstances. If there is any practical alternative to the placement of the wind turbine that will mitigate these negative impacts, it is incumbent upon the Planning Board to condition Mr. Watt's permit with the mitigating measures. It would be an arbitrary and capricious act to allow the construction of a wind turbine in a location that causes harm to a neighboring property while a practical alternative exists such that the harm can be eliminated or reduced.

Thank you.

Dr. Mary Neilans

In regards to some of the issues brought up by Mary Neilans, Attorney Spitzer said that NY state legislature has said farm operations are largely exempt and it is them who make up the rules not the Town Board. According to section 239m the site plans were submitted to the County Planning Board and they waived their review (informing Gaines by letter); the Gaines Planning Board has done their part. When reading the exemption language, it doesn't mention zoning districts at all; it says if you are in an agricultural district you get an exemption. The location in a commercial zone is irrealvant.

Chairman Ahlberg noted that Watts Farm Market is operating under Ag & Markets rules. Also, the law does not look at setbacks from buildings, but rather setbacks from property lines which are what the Planning Board is reviewing.

Dave Allchin asked about health and safety and expressed his concern about the noise of the wind turbines. He was curious about how much research went into making their decision. Member Stilwell stated that lots of research was done in making the laws and the Planning Board is here to enforce laws that were created. Attorney Spitzer agreed with Member Stilwell, saying that the Planning Board interprets the law from the Town Board and there are limits to what they can do and the Town Board can only do what is allowed within the States laws, this is a right to farm state. He also remarked that unfortunately there was a mix up, but the Town cannot say no-one can build a wind turbine because of it. The towers met the correct setbacks and there were no health and safety concerns brought up when the tower was put up. This board can only consider the site plan.

**Enter Executive Session** 

On a motion of Member Preston, seconded by Member Theodorakos, the following was

Carried Ayes 5 Ahlberg, Davy, Preston, Stilwell, Theodorakos

Nays 0

The board will go into executive session at 5:39 pm for legal matters and to talk with Attorney Spitzer.

**Exit Executive Session** 

On a motion of Vice-Chairman Davy, seconded by Member Preston, the following was

Carried Ayes 5 Ahlberg, Davy, Preston, Stilwell, Theodorakos

Nays 0

The board will leave executive session and resume the regular meeting at 6:36 pm.

Kirby: Resolution Issuing a Negative Declaration of Environmental Significance On a motion of Vice-Chairman Davy, seconded by Member Stilwell, the following was

Carried Ayes 5 Ahlberg, Davy, Preston, Stilwell, Theodorakos Nays 0

#### The following Resolution was passed:

Resolution of the Planning Board of the Town of Gaines Issuing a Negative Declaration of Environmental Significance For the Proposed Wind Tower at 14684 Ridge Road, Town of Gaines

WHEREAS, the Town Planning Board of the Town of Gaines has reviewed a site plan for the placement of a 152.5 foot tall wind turbine to generate electrical power for the use of a farm at 14684 Ridge Road, Town of Gaines

WHEREAS the Planning Board has reviewed the Short Environmental Assessment Form and considered the potential environmental impacts of the wind turbine, which is an Unlisted Action pursuant to the State Environmental Quality Review Act.

NOW, THEREFORE, BE IT RESOLVED by Town Planning Board of the Town of Gaines as follows:

- 1. The Board finds the proposed wind tower will not have a significant adverse impact on the environment. The tower installation requires a very minimal impact on land and no impact on water or groundwater resources. The turbine is an as of right use on a farm if up to 120 feet tall, and the marginal increase in height, necessary for the operation of the turbine, does not present a significant visual impact, nor does the tower itself, as wind turbines are typical uses on agricultural properties. Noise levels and tower falling concerns are mitigated by the required setbacks, and noise levels are typical of agricultural operations.
- 2. This Resolution is effective immediately.

PASSED AND ADOPTED the 18<sup>th</sup> day of November 2011.

In regards to all of the site plan approvals it's the understanding of the board that the 140 foot refers to the height of the tower but the board has also considered that there is a 12 ½ foot blade that goes above that, the board is aware of what the total height is.

Kirby: Resolution Approving the Site Plan For the Proposed Wind Tower On a motion of Vice-Chairman Davy, seconded by Member Preston, the following was

Carried Ayes 5 Ahlberg, Davy, Preston, Stilwell, Theodorakos Nays 0

#### The following Resolution was passed:

Resolution of the Planning Board of the Town of Gaines Approving the Site Plan For the Proposed Wind Tower at 14684 Ridge Road, Town of Gaines

WHEREAS, the Town Planning Board of the Town of Gaines has reviewed a site plan for the placement of a 152.5 foot tall wind turbine to generate electrical power for the use of a farm at 14684 Ridge Road, Town of Gaines

WHEREAS the Planning Board has reviewed the Short Environmental Assessment Form and considered the potential environmental impacts of the wind turbine, which is an Unlisted Action pursuant to the State Environmental Quality Review Act and issued a Negative Declaration.

NOW, THEREFORE, BE IT RESOLVED by Town Planning Board of the Town of Gaines as follows:

- 1. The Board waives any part of the application required by Section 1003 of the Zoning Code not submitted because the site plan required herein is under an exemption for wind turbines in the Code on farms, except for turbines over 120 feet. The exemption only imposes one requirement, that of a setback from property lines, and the additional information is not required to review this application.
- 2. The Site Plan is approved because
- a) there is no impact on vehicular traffic or pedestrian traffic, nor does the application involve off-street parking, storm water and drainage facilities, water or sewer facilities. It does not interfere with emergency access or involve solar access.
- b) No landscaping is necessary.
- c) The separation of the tower from the property line by the distance required by the setback adequately protects the neighboring properties from impacts, including noise and visual impacts
- 3. This Resolution is effective immediately.

PASSED AND ADOPTED the 18th day of November 2011.

Vice-Chairman Davy reclused himself from discussion and voting on all resolutions regarding David Kast.

Kast: Resolution Issuing a Negative Declaration of Environmental Significance On a motion of Member Stilwell, seconded by Member Preston, the following was

Carried Ayes 4 Ahlberg, Preston, Stilwell, Theodorakos Navs 0

### The following Resolution was passed:

Resolution of the Planning Board of the Town of Gaines Issuing a Negative Declaration of Environmental Significance For the Proposed Wind Tower at 2911 Densmore Road, Town of Gaines

WHEREAS, the Town Planning Board of the Town of Gaines has reviewed a site plan for the placement of a 152.5 foot tall wind turbine to generate electrical power for the use of a farm at 2911 Densmore Road, Town of Gaines

WHEREAS the Planning Board has reviewed the Short Environmental Assessment Form and considered the potential environmental impacts of the wind turbine, which is an Unlisted Action pursuant to the State Environmental Quality Review Act.

NOW, THEREFORE, BE IT RESOLVED by Town Planning Board of the Town of Gaines as follows:

- 1. The Board finds the proposed wind tower will not have a significant adverse impact on the environment. The tower installation requires a very minimal impact on land and no impact on water or groundwater resources. The turbine is an as of right use on a farm if up to 120 feet tall, and the marginal increase in height, necessary for the operation of the turbine, does not present a significant visual impact, nor does the tower itself, as wind turbines are typical uses on agricultural properties. Noise levels and tower falling concerns are mitigated by the required setbacks, and noise levels are typical of agricultural operations.
- 2. This Resolution is effective immediately.

Attorney Spitzer wanted to clarify that the Planning Board is not judging the building permit, the accuracy of the permit or if it should be issued, they are only looking at the site plan. If people have concerns this is not the body to be talking to and if they question the legality of the building permit and have other issues they should be directed to the Town Board and Code Enforcement.

Kast: Resolution Approving the Site Plan For the Proposed Wind Tower On a motion of Member Preston, seconded by Member Stilwell, the following was

Carried Ayes 4 Ahlberg, Preston, Stilwell, Theodorakos Nays 0

### The following Resolution was passed:

Resolution of the Planning Board of the Town of Gaines Approving the Site Plan For the Proposed Wind Tower at 2911 Densmore Road, Town of Gaines

WHEREAS, the Town Planning Board of the Town of Gaines has reviewed a site plan for the placement of a 152.5 foot tall wind turbine to generate electrical power for the use of a farm at 2911 Densmore Road, Town of Gaines

WHEREAS the Planning Board has reviewed the Short Environmental Assessment Form and considered the potential environmental impacts of the wind turbine, which is an Unlisted Action pursuant to the State Environmental Quality Review Act and issued a Negative Declaration.

NOW, THEREFORE, BE IT RESOLVED by Town Planning Board of the Town of Gaines as follows:

- 1. The Board waives any part of the application required by Section 1003 of the Zoning Code not submitted because the site plan required herein is under an exemption for wind turbines in the Code on farms, except for turbines over 120 feet. The exemption only imposes one requirement, that of a setback from property lines, and the additional information is not required to review this application.
- 2. The Site Plan is approved because
- a) there is no impact on vehicular traffic or pedestrian traffic, nor does the application involve off-street parking, storm water and drainage facilities, water or sewer facilities. It does not interfere with emergency access or involve solar access.
- b) No landscaping is necessary.
- c) The separation of the tower from the property line by the distance required by the setback adequately protects the neighboring properties from impacts, including noise and visual impacts
- 3. This Resolution is effective immediately.

Vice Chairman Davy will now participate in discussion and voting again.

Member Stilwell stated that she feels it's unfortunate that these issues have been dropped in the Planning Boards laps and she sympathizes with Dr. Neilans. While looking for another option to place the tower on Watt's property she can't see where it could be moved to.

Watt: Resolution Issuing a Negative Declaration of Environmental Significance On a motion of Member Preston, seconded by Vice-Chairman Davy, the following was

Carried Ayes 4 Ahlberg, Davy, Preston, Stilwell

Nays 1 Theodorakos

The following Resolution was passed:

Resolution of the Planning Board of the Town of Gaines Issuing a Negative Declaration of Environmental Significance For the Proposed Wind Tower at 3121 Oak Orchard Road, Town of Gaines

WHEREAS, the Town Planning Board of the Town of Gaines has reviewed a site plan for the placement of a 152.5 foot tall wind turbine to generate electrical power for the use of a farm at 3121 Oak Orchard Road, Town of Gaines

WHEREAS the Planning Board has reviewed the Short Environmental Assessment Form and considered the potential environmental impacts of the wind turbine, which is an Unlisted Action pursuant to the State Environmental Quality Review Act.

NOW, THEREFORE, BE IT RESOLVED by Town Planning Board of the Town of Gaines as follows:

- 1. The Board finds the proposed wind tower will not have a significant adverse impact on the environment. The tower installation requires a very minimal impact on land and no impact on water or groundwater resources. The turbine is an as of right use on a farm if up to 120 feet tall, and the marginal increase in height, necessary for the operation of the turbine, does not present a significant visual impact, nor does the tower itself, as wind turbines are typical uses on agricultural properties. Noise levels and tower falling concerns are mitigated by the required setbacks, and noise levels are typical of agricultural operations.
- 2. This Resolution is effective immediately.

In regards to voting on Christopher Watt's site plan, Member Theodorakos believes there are valid concerns which may not necessarily be the Planning Boards call, but he is not comfortable voting in favor of approval with the concerns that are out there.

Watt: Resolution Approving the Site Plan For the Proposed Wind Tower On a motion of Vice-Chairman Davy, seconded by Member Preston, the following was

Carried Ayes 4 Ahlberg, Davy, Preston, Stilwell

Nays 1 Theodorakos

#### The following Resolution was passed:

Resolution of the Planning Board of the Town of Gaines
Approving the Site Plan For the Proposed Wind Tower at 3121 Oak Orchard Road,
Town of Gaines

WHEREAS, the Town Planning Board of the Town of Gaines has reviewed a site plan for the placement of a 152.5 foot tall wind turbine to generate electrical power for the use of a farm at 3121 Oak Orchard Road, Town of Gaines

WHEREAS the Planning Board has reviewed the Short Environmental Assessment Form and considered the potential environmental impacts of the wind turbine, which is an Unlisted Action pursuant to the State Environmental Quality Review Act and issued a Negative Declaration.

NOW, THEREFORE, BE IT RESOLVED by Town Planning Board of the Town of Gaines as follows:

- 1. The Board waives any part of the application required by Section 1003 of the Zoning Code not submitted because the site plan required herein is under an exemption for wind turbines in the Code on farms, except for turbines over 120 feet. The exemption only imposes one requirement, that of a setback from property lines, and the additional information is not required to review this application.
- 2. The Site Plan is approved because
- a) there is no impact on vehicular traffic or pedestrian traffic, nor does the application involve off-street parking, storm water and drainage facilities, water or sewer facilities. It does not interfere with emergency access or involve solar access.
- b) No landscaping is necessary.
- c) The separation of the tower from the property line by the distance required by the setback adequately protects the neighboring properties from impacts, including noise and visual impacts
- 3. This Resolution is effective immediately.

Attorney Spitzer will forward a copy of the approved resolutions to the Town Clerk and notify the County Planning Board and Town Board so that they can proceed as they see fit.

| With no | o further  | business of | on a motion | from Me | ember S | tilwell, | secondec | l by V | ice-Chairm/ | an Da | avy the |
|---------|------------|-------------|-------------|---------|---------|----------|----------|--------|-------------|-------|---------|
| meeting | g is adjou | irned at 6: | 49 P.M.     |         |         |          |          |        |             |       |         |

| Res | spectfully Submitted,  |
|-----|------------------------|
| ——  | ry Pettit              |
|     | retary, Planning Board |