

REGULAR MEETING – ATHENS TOWN BOARD – April 3, 2023

The regular meeting of the Athens Town Board was called to order on April 3, 2023, at 7:00 p.m. by Supervisor Michael N. Pirrone, with the Pledge of Allegiance to the Flag, at the Athens Volunteer Fire House on 39 Third Street, Athens, NY.

The following people were present: Supervisor Pirrone; Councilmember Mary H. Brandow; Councilmember Michael Ragaini; Councilmember Anthony Paluch and Linda M. Stacey, Town Clerk. (Councilmember Shannon Spinner was absent.)

These people were also present: Attorney George McHugh; Financial Officer/Budget Officer Don Pierro; Fran McCusker; Barb Trembacz; Melissa Beck; Karen Dudley; Scott Fischer; Karen Haas; George Greiner; Russell Nadler; Robert Brunner; Margaret Muenkle; James & Allen Hale; Rebecca Pine; Paulette Miller-Travis; Chris & Carol Pfister; Patrick Doyle; Bettine Hansel; Kevin Roth; Lee Palmateer; Donald Gardner; Michael Campbell and M. K. Garvey.

Public Hearing Notices for Proposed Local Laws No. 2 and No. 3 for 2023 were read by **Financial/Budget Officer Don Pierro.**

No. 2: A Local Law to Establish a Moratorium, to Temporarily Halt, the processing and issuing of any application, permits, certificates of occupancy, approvals, denials, determinations, or interpretations for any land use relating to Solar Energy, including but not limited to Solar Farms, allowing the Town Board to analyze and determine potential appropriate revisions and amendments to the Town of Athens Zoning Code concerning this use.

No. 3: Local Law to Establish the Residency Requirements for certain appointed Offices, for the for the Town of Athens.

The floor was then open to questions on proposed local law No.2:

Margaret Muenkle spoke about all the trees that are being removed by Freeport Solar.

George Greiner said that on High Hill there is gray shale not suitable to installing solar panels. The increase in water runoff will be a problem with all the trees removed. There are only three (3) major culverts to handle the runoff now.

Others who spoke were Melissa Beck; Karen Dudley; Scott Fischer and Lee Palmateer.

Councilmember Michael Ragaini made a motion seconded by Councilmember Mary H. Brandow *to close the Public Hearing for proposed local law No. 2.* Ayes-4 (Pirrone; Brandow; Ragaini; Paluch) Noes-0 Absent-1 (Spinner) Abstentions-0

Resident Carol Pfister asked what positions was being talked about in proposed local law No. 3.

Councilmember Anthony Paluch asked why the Board can't use Town Residents.

Attorney George McHugh stated that the Board can use local residents, however this gives you a much larger area to search for qualified people.

Others who spoke were; Karen Dudley; George Greiner and Robert Brunner.

Councilmember Michael Ragaini made a motion seconded by Councilmember Mary H. Brandow *to close the Public Hearing for proposed local law No. 3.* Ayes-4 (Pirrone; Brandow; Ragaini; Paluch) Noes-0 Absent-1 (Spinner) Abstentions-0

Councilmember Anthony Paluch made a motion seconded by Councilmember Michael Ragaini to approve the following vouchers that were audited by the Board:

General Abstract #7, vouchers #143 through #171 inclusive for **\$45,979.70.**

Highway Abstract #6, vouchers #54 through #59 inclusive for **\$12,215.26.**

Trust & Custodian:

ARX Wireless: Abstract #5, voucher #5 for **\$59.36.**

Ayes-4 (Pirrone; Brandow; Ragaini; Paluch) Noes-0 Absent-1 (Spinner) Abstentions-0

Councilmember Mary H. Brandow made a motion seconded by Councilmember Michael Ragaini to approve the *minutes of March 20, 2023*, as read. Ayes-4 (Pirrone; Brandow; Ragaini; Paluch) Noes-0 Absent-1 (Spinner) Abstentions-0

Councilmember Mary H. Brandow made a motion seconded by Councilmember Michael Ragaini to **approve the Town Clerk's Report for the month of March** as presented. Ayes-4 (Pirrone; Brandow; Ragaini; Paluch) Noes-0 Absent-1 (Spinner) Abstentions-0

Supervisor Pirrone reported on the Landfill Committee which was held March 21, 2023. Attending were-Dale Finch, from the Town of Catskill; Jeff Ruso, Town of New Baltimore; Amy Serrago, Village of Athens; Darik Jordan, of Barton & LoGuidice; Ted Hilscher, of Hilscher & Hilscher. The main topic of discussion was the revision to NYS Regulation 360 (2017) regarding the closing of landfills. Prior regulation called for closing after 30 years, however, current regulation calls for determination based upon current gas & liquid discharge test results and Analysis. Further, since the site is very close to Catskill Creek, prudent continued monitoring and a will guide the participants. There is \$900,000. Other issues discussed: Leachate systems & procedures should always be monitored.

The landfill area is twenty-three (23) acres. Water Testing can be done one (1) time a year.

Gas Testing can be done two (2) times a year,

The companies that do the testing are fine.

The new issue of emerging contaminants is in everyone's radar.

This landfill will remain open and will need to be monitored.

The Greene County Industrial Development Agency held a Public Hearing on Tuesday, March 29, 2023, at 6:00 pm, at E. J. Arthur Elementary School, Athens, NY. The sign in The attendance sheet showed ninety-two (92) people signing in. There were obviously more people present due to the standing room attendance.

Many speakers, comments and issues were presented.

For presenting their Statement of Findings pertaining to a project of New Athens Generating Company (NAGC). New Athens Generating Company is a limited liability Company organized in 2004, for the sole purpose of owning and operating the Facility, which is fully permitted and operational located in the Town of Athens. The GCIDA is proposing to provide incentives to the project in the form of a Payment in Lieu of Taxes (PILOT). The application submitted by the company and relevant supporting documents submitted to the GCIDA in connection with the Project may be reviewed by the public on the IDA's website at www.greeneida.com.

Comment period will be open until April 12, 2023.

Highway Superintendent John J. Farrell advised the Board that the estimate of repairs on truck #2 will be approximately \$1,000 (+-) more, due to unforeseen additional work. The previous cost was approximately \$5,000 (+-).

Councilmember Mary H. Brandow made a motion seconded by Councilmember Michael Ragaini to *approve the extra \$1,000 to finish repairs to truck #2 for the Town Highway*. Ayes-4 (Pirrone; Brandow; Ragaini; Paluch) Noes-0 Absent-1 (Spinner) Abstentions-0

Mr. Carl Ublacker, of NYSDOS, Local Efficiency Grant Program, will be attending our April 17, 2023, meeting, to explain the program. The Local Government Efficiency (LGe) Program, administered by the New York Department of State, provides technical assistance and competitive grants to local governments for projects that will achieve savings and improve municipal efficiency through shared services, cooperative agreements, consolidations, and dissolutions. The Department of State is committed to working with our partner municipalities to control costs while maintaining the quality of local service delivery.

Resident Michael Campbell asked Attorney George McHugh about Quarry Road. He was told that there was nothing the Town could do, as it is a 911 Road, a private Road.

Patrick Doyle of Flint Mine Solar gave the Board a status update.

Supervisor Pirrone stated that the Planning Board meeting will be held at E J. Arthur Elementary School, 51 Third Street, Athens, NY, at 7:00 pm on April 27, 2023.

Donald Gardner informed the Board that the Iroquois Compressor Station wants to double their intake. They want to do this in spite of the risk of health and explosion. There is a Rally in Albany RE: the Pipeline.

On the motion of Councilmember Michael Ragaini seconded by Councilmember Mary H. Brandow the following **RESOLUTION # 2023-24 Local Law No. 2 for 2023 was adopted.**

SOLAR MORATORIUM LAW

Section 1. PURPOSE AND INTENT.

The purpose of this Local Law is to protect the public health, safety, and welfare of the residents of the Town of Athens and to maintain the status quo as to certain solar energy uses, as the present zoning regulations in the Town do not adequately address this type of use. The moratorium will stop the processing of applications for, and the issuance of any permits, certificates of occupancy and approvals for certain land uses relating to solar energy, including but not limited to solar farms. The moratorium is for an initial period of six (6) consecutive months with an additional Twelve (12) months from its effective date, allowing the Town Board to analyze and determine potential appropriate revisions and amendments to the Town of Athens Zoning Code concerning this use.

Section 2. LEGISLATIVE FINDINGS.

The Town of Athens Town Board does hereby find that without a temporary halt on the processing, permitting, and approvals for certain solar land uses there is the potential that such uses could be in unsuitable areas within the Town and/or on particular lots without adequate dimensional regulations in place. The potential for the unsuitable location of and lack of proper dimensional regulations for, such uses would have materially adverse and irreversible impacts on the Town.

The Town Board also finds that it is in need of time to perform the necessary analysis of the potential types of solar energy facilities that could be located in the Town. By maintaining the status quo regarding such uses the Town Board can provide for the planned orderly growth and development of the Town.

Section 3. MORATORIUM IMPOSED, APPLICABILITY.

Any application properly pending before any board or official of the Town as of the effective date of the adoption of this Local Law may be processed, and permitted, certificates of occupancy, approvals, denials, determinations, or interpretations may be issued or granted for any land uses relating to solar energy, including but not limited to solar farms.

The term “land uses relating to solar energy” shall be broadly construed to include any facility designed to generate electric power to be marketed, sold, or used for other than the power demands for improvements on the property on which such facility is located. Not included within the scope of this moratorium are solar energy facilities designed to generate electric power solely for the use of the improvements located on the same property.

The term “solar farm” shall mean “a collection of solar panels covering one-quarter (1/4) acres or more of land that are designed to capture sunlight and transform it into electricity. This definition includes freestanding and ground pole-mounted photovoltaic and parabolic solar installations. This definition does not include photovoltaic panels that are mounted on or affixed to residential dwellings for their uses, or municipal buildings, or existing panels mounted on commercial or industrial buildings.

This Local Law shall be binding on the Town Board, Planning Board/Zoning Board of Appeals, Building Inspector, all Town officials and employees, and any applicant or real Property owner in the Town desiring to apply for or receive a permit, certificate of occupancy or approval in the Town of Athens.

During the period of the moratorium, the Town Board shall endeavor to complete all reasonable and necessary review, study, analysis and, if warranted, revisions to the Town of Athens Code. During the period of the moratorium, no applications will be accepted, nor permits, certificates of occupancy or approvals issued, which would authorize development within the Town for land uses relating to solar energy as described above.

Section 4. TERM.

This moratorium shall be in effect for an initial period of six (6) consecutive months with an additional Twelve (12) months from its effective date.

This Local Law shall be subject to renewal for a cumulative period of up to an additional Twelve (12) months, if necessary, through two (2) successive six (6) month extensions by Resolution(s) of the Town Board.

Section 5. EFFECT ON OTHER LAWS.

To the extent that any law, ordinance, rule or regulations, or parts thereof are in conflict with the provisions of this Local Law, including all provisions of Article 16 of the New York State Town Law concerning special use permit, site plan, building permit and certificate of occupancy procedure and requirements, this Local Law shall control and supersede such law ordinance, rule, or regulation.

Section 6. WAIVER.

Owing to the limited scope and duration of this moratorium, there is no provision being made in this Local Law for any waives to its applicability. However, the Town Board may, but is not obligated to promulgate regulations by a Resolution of the Board authorizing a hardship waiver process to this moratorium.

Section 7. SEVERSBILITY.

If any clause, sentence, paragraph, section, or part of this Local Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgement shall be confined in its operation to the clause, paragraph, section, or part thereof directly involved in the controversy in which such judgement shall have been rendered, and the remaining provisions shall remain in full force and effect.

Section 8. EFFECTIVE DATE.

This Local Law shall take effect immediately upon its filing with the Secretary of State in accordance with New York Municipal Home Rule.

I hereby certify that the local law annexed hereto, designated as Local Law No. 2 of 2023 of the Town of Athens was duly passed by the Town Board on March 20, 2023, in accordance with the applicable provisions of law.

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law and was finally adopted in the manner indicated in paragraph 1, above.

Ayes-4 (Pirrone; Brandow; Ragaini; Paluch) Noes-0 Absent-1 (Spinner) Abstentions-0

On the motion of Councilmember Michael Ragaini seconded by Councilmember Mary H. Brandow the following **RESOLUTION #2023-25, Local Law No. 3 of 2023**, was adopted.

“TO ESTABLISH THE RESIDENCY REQUIREMENTS FOR APPOINTED OFFICERS IN THE TOWN OF ATHENS.”

SECTION 1: TITLE:

This Law shall be known as Local Law No. 3 of the year 2023 entitled “TO ESTABLISH THE RESIDENCY REQUIREMENTS FOR APPOINTED OFFICERS IN THE TOWN OF ATHENS.”

SECTION 2: LEGISLATIVE AUTHORIZATION:

This local law is authorized by the Municipal Home Rule Law sections 10(1)(ii)(a)(1), which grants to local governments the authority to enact local laws regarding the qualifications of local Officers.

SECTION 3. SUPERCESSION:

This local law shall supersede Town Law, Section 23(1) in its application to local appointed officials for the Town of Athens.

SECTION 4. RESIDENCY:

Requirements for appointed positions in the Town of Athens shall be determined by the Town Board on a case-by-case basis.

SECTION 5. INCONSISTENCY:

All other local laws and ordinances of the Town of Athens that are inconsistent with the provisions of this local law are hereby repealed; provided however, that such repeal shall only be to the extent of such inconsistency and in all other respects this local law shall be in addition to such other local laws or ordinances regulating and governing the subject matter covered by this local law.

SECTION 6. SAVINGS CLAUSE:

If any clause, sentence, paragraph, word, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal, or invalid, such judgment shall not affect, impair, or invalidate the remainder, thereof, but shall be confined in its operation of the clause, sentence, paragraph, worked section or part thereof directly involved in the controversy in which such judgement shall have been rendered.

SECTION 7. EFFECTIVE DATE:

This Local Law shall become effective immediately upon filing with the NYS Secretary of State in conformity with NYS Municipal Home Rule Law.

Ayes-4 (Pirrone; Brandow; Ragaini; Paluch) Noes-0 Absent-1 (Spinner) Abstentions-0

Councilmember Michael Ragaini made a motion seconded by Councilmember Mary H. Brandow *to go into Executive Session to discuss pending Litigation*. Planning Board Chairman, Scott Fischer and Town Clerk Linda M. Stacey were asked to remain. Ayes-4 (Pirrone; Brandow; Ragaini; Paluch) Noes-0 Absent-1 (Spinner) Abstentions-0 **Time: 7:47.**

Councilmember Anthony Paluch made a motion seconded by Councilmember Michael Ragaini to come out of Executive Session and reconvene the regular meeting. Ayes-4 (Pirrone; Brandow; Ragaini; Paluch) Noes-0 Absent-1 (Spinner) Abstentions-0 Time:8:28 pm.

On the motion of Councilmember Anthony Paluch seconded by Councilmember Mary H. Brandow the following **RESOLUTION #2023-26** was adopted as follows:

HOST COMMUNITY AGREEMENT

This HOST COMMUNITY AGREEMENT (the “Agreement”) by and among the TOWN OF ATHENS, a municipal corporation existing under the laws of the State of New York, having offices at 2 First Street, Athens, NY 12015 (“Athens” or “Town”) and Flint Mine Solar, LLC, a Delaware limited liability company, having offices at 575 Fifth Ave, 35th Floor, New York, NY 10017(the “Company”). The Company and the Town may sometimes be referred to herein, Individual as a “Party” and collectively as the “Parties”.

After extensive prior meeting, discussions, and tenacious negotiations among the principal Parties, a mutually accepted resolution was presented to the Town Board.

RECITALS

WHEREAS, the Company was granted a Certificate of Environmental Compatibility and Public Need pursuant to Article 10 of the Public Service Law (the “Certificate”) from the New York State Board on Electric Generation on Siting and the Environment (the “Siting Board”), Case No. 18-F-0087, (“Article 10 Process”) to construct an up to 100 megawatt alternating current (“MW-AC”) solar-powered electric generating facility in the Towns of Athens and Coxsackie, Greene County, New York, comprised of photovoltaic (“PV”) solar panels, buried and overhead collection lines, access roads, inverters, transformers, fencing, visual mitigation plan plantings, an electrical interconnection switchyard and substation, and associated appurtenances, equipment, facilities, and improvements, including potential energy storage (collectively the “Project”); and

WHEREAS, the Article 10 required the Company to identify the municipal officials responsible for reviewing and approving compliance with the New York State Fire Prevention and Building Code and Energy Conservation Code of New York State; and

WHEREAS, the Siting Board is not qualified to certify compliance with New York State Uniform Fire Prevention and Building Code; and

WHEREAS, the Town’s Code Enforcement Officer and/or the Town’s Engineer are qualified to certify compliance with the New York State Uniform Fire Prevention and Building Code and the Town has adopted and incorporated the New York State Uniform Fire Prevention and Building Code for administration into its local codes; and

WHEREAS, the Parties believe that their mutual interests will be served by this Agreement which specifies their respective rights, interests, and obligations relative to the Town’s review and certification of the Project in accordance with the New York State Uniform Fire Prevention and Building Code and input related to visual mitigation; and

WHEREAS, in order to secure the benefits of the Project for the Town and its residents and Memorialize the Company’s commitments to avoid of otherwise mitigate certain potential impacts from the Project, the Parties believe that their mutual best interests will be served by the execution of this Agreement which specifies their respective rights, interests, obligations regarding operation and decommissioning of the Project, as well as visual mitigation.

WHEREAS, Supervisor Pirrone, in consultation with Town Attorney McHugh, has negotiated a Town Impact Fee of \$120,000, for the Administrative, Technical, Clerical and Professional services expended by the Town, in the declaration of their mutually accepted Host Community Agreement.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the Parties hereto agree.

Ayes-4 (Pirrone; Brandow; Ragaini; Paluch) Noes-0 Absent-1 (Spinner) Abstentions-0

On the motion of Councilmember Michael Ragaini seconded by Councilmember Anthony Paluch the following **RESOLUTION #2023-27** was adopted as follows:

WHEREAS, the Town of Athens, New York (“Town”) has been engaged, through retained outside counsel, in the defense of certain contested Real Property Tax Law Article 7 assessment review proceedings filed by the Association of Property Owners of Sleepy Hollow Lake, Inc. (“Association”) in Greene County Supreme Court for the years of 2016 through 2022, inclusive; and

WHEREAS, the several land parcels owned by the Association are located in both the Town of Athens, New York and the neighboring Town of Coxsackie, New York; and

WHEREAS, the Town has retained E. Stewart Jones Hacker Murphy LLP, David Murphy, Of Counsel, to act as its attorney of record in these proceedings for purposes of defending the contested assessments for all pending years of litigation; as well as advise the Town on the risks versus rewards of said litigation; and

WHEREAS, the Town has authorized its counsel to engage the services of Francis & Co., Charles I. Francis, Principal, to render valuation reports and its opinion on the merits of the Association’s legal arguments and claims; and

WHEREAS, the Town’s counsel, David Murphy, has engaged in protracted good faith settlement negotiations with counsel for the Association concerning all of the legal issues and financial consequences pertinent to the proceedings; and

WHEREAS, the Town’s counsel has advised this Town Board that a tentative, comprehensive, long-term agreement has been reached by and between the negotiating counsel, with full and direct access to and communication with their respective clients, which agreement resolves all of the proceedings pending between 2016 and 2022, as well as providing for mutually acceptable future assessments upon the Association-owned and any after-acquired common area parcels for the years 2023 through 2042; inclusive; and

WHEREAS, the Town’s counsel recommends the adoption of the proposed settlement to this Town Board as being fair, equitable and beneficial to the interests of the Town in terms of saving future litigation costs, avoiding the severe financial consequences of an adverse outcome, and further providing the Town with long-term stability of tax revenue from the Association, as well as the avoidance of costly, protracted, and repetitious similar litigation in future years; and

WHEREAS, the essential terms, provisions and mutual promises and covenants between the Town have been fully disclosed, and fully explained by, the Town’s counsel in these several matters, and a proposed Consent Agreement and Order have been made available to this Board for its review and discussion;

NOW, BE IT THEREFORE RESOLVED:

1. that, in consideration for the mutual promises provided, and good faith concessions made, in the prior negotiations between the parties as to these past disputes, David Murphy, Esq. is authorized and empowered, as the legal representative and agent of this Board, to complete and subscribe to a formal Agreement of Settlement as to these matters; and
2. Michael Pirrone, the Supervisor of the Town, is hereby authorized and directed, after final review and consultation with counsel, to endorse the Agreement of Settlement on this Town's behalf, thereby binding this Town Board, and its successors and assigns, to the written expressions of its rights and responsibilities in fulfillment of the same; and
3. The Town's Supervisor is further directed to authorize and make the payment of the sum of \$15,750 to "Monaco, Cooper, Lamme & Carr, PLLC;" or such other payee(s) as counsel may direct, within forty-five (45) business days of the filing of a Supreme Court Order approving of all essential settlement terms and conditions; and

IT IS FINALLY RESOLVED, that David Murphy, Esq. be, and he is, authorized to do any and all things necessary and appropriate to finalize and preserve the settlement made by the parties herein, including such further consultation with the Town Supervisor or any other interested party as may be required and appropriate. Town Board unanimously cast their votes: Ayes-4 (Pirrone; Brandow; Ragaini; Paluch) Noes-0 Absent-1 (Spinner) Abstentions-0

As there was no further business to come before the meeting a motion to adjourn was made by **Councilmember Mary H. Brandow** seconded by Councilmember Michael Ragaini. Ayes-4 (Pirrone; Brandow; Ragaini; Paluch) Noes-0 Absent-1 (Spinner) Abstentions-0

The meeting adjourned at 8:31 PM.