

**TOWN BOARD MEETING AGENDA
July 14, 2022**

CALL TO ORDER: _____ PM

PLEDGE OF ALLEGIANCE:

APPROVAL OF AGENDA:

RESOLUTION 22-081 to approval of Town Board Agenda for July 14, 2022

Motion by Councilor _____; Second Councilor _____,

| | |
|---|---------------------------|
| Roll call vote: Councilor Cornelius _____ | Councilor Gucciardi _____ |
| Councilor VeVone _____ | Councilor Vitale _____ |
| Supervisor Wagner _____ | |

APPROVAL OF MINUTES:

RESOLUTION 22-082 approval of Town Board Minutes for Town Board Meeting on June 9, 2022

Motion by Councilor _____; Second Councilor _____,

| | |
|---|---------------------------|
| Roll call vote: Councilor Cornelius _____ | Councilor Gucciardi _____ |
| Councilor VeVone _____ | Councilor Vitale _____ |
| Supervisor Wagner _____ | |

**RESOLUTION 22-083 to open the public hearing for Local Law #2
MORATORIUM ON COMMERCIAL WIND AND SOLAR ENERGY FACILITIES"**

Motion by Councilor _____; Second Councilor _____,

| | |
|---|---------------------------|
| Roll call vote: Councilor Cornelius _____ | Councilor Gucciardi _____ |
| Councilor Vitale _____ | Councilor VeVone _____ |
| Supervisor Wagner _____ | |

PUBLIC PARTICIPATION:

OLD BUSINESS:

NEW BUSINESS: Presentation by Matt Dennis HALCO – Geothermal
Playground vandalism and additional cameras update

RESOLUTION 22-084 To withdraw or expend up to \$18,000.00 toward the cost of Grinder Pumps and accessory equipment for Owasco Sewer District No. 3 from the Sewer District No. 3 Grinder Pump and other Sewer Equipment Reserve Fund.

WHEREAS, on 6.8.17 by Resolution 17-101 the Town Board Established a Capital Reserve Fund to Finance a “Type” of Capital Improvement or Equipment; Sewer District No. 3 Grinder Pump and other Sewer Equipment Reserve Fund.

RESOLVED: To withdraw or expend up to \$18,000.00 toward the cost of the Grinder Pumps and accessory equipment for Owasco Sewer District No. 3 from the Sewer District No. 3 Grinder Pump and other Sewer Equipment Reserve Fund.

This purchase is being made pursuant to the Town’s Procurement Policy.
The Town Board is making this expenditure subject to permissive referendum and directs the Town Clerk to publish a notice in The Citizen.

Motion by Councilor _____ ; Second Councilor _____ ,

Roll call vote: Councilor Cornelius _____ Councilor Gucciardi _____
Councilor Vitale _____ Councilor VeVone _____
Supervisor Wagner _____

RESOLUTION 22-085 to approve and authorize Supervisor Wagner to sign the proposal for Consulting Services for Development of a Solar Facilities with Barton & Loguidice.

Motion by Councilor _____ ; Second Councilor _____ ,

Roll call vote: Councilor Cornelius _____ Councilor Gucciardi _____
Councilor Vitale _____ Councilor VeVone _____
Supervisor Wagner _____

RESOLUTION 22-086 to approve Budget Mods for the Month of July.

Budget Modifications Recommendations

After Closing: June 2022

General Fund

| Notes | Acct # | Account Description | (-) | (+) |
|-------|-------------|----------------------------------|--------------------|--------------------|
| | | | Debit | Credit |
| | | #N/A | | |
| | A1220.403 | SUPERVISOR - Training | \$ 753.00 | |
| | A1410.411 | TOWN CLERK - Training | \$ 753.00 | |
| | A7140.110 | PLAYGROUND - SUMMER LABOR | \$ 1,750.00 | |
| | <i>A599</i> | <i>Appropriated Fund Balance</i> | <i>\$ -</i> | <i>\$ -</i> |
| | A5010.400 | SUPER OF HIGHWAYS - CONTRACTUAL | | \$ 115.00 |
| | A7140.110 | PLAYGROUND - SUMMER LABOR | | \$ 1,750.00 |
| | A8160.410 | REFUSE & GARBAGE - LANDFILL | | \$ 1,105.00 |
| | A8160.430 | REFUSE & GARBAGE - MISCELLANEOUS | | \$ 286.00 |
| | | | | |
| | | | | |
| | | Totals: | \$ 3,256.00 | \$ 3,256.00 |

Highway Fund

| Acct # | Account Description | (-) | (+) |
|------------|-----------------------------------|-------------|-------------|
| | | Debit | Credit |
| DA5110.110 | GENERAL REPAIRS PERSONAL SERVICES | \$ 1,000.00 | |
| DA5112.414 | IMPROVEMENTS COLD MIX | \$ 6,660.00 | |
| DA5112.415 | IMPROVEMENTS HOT MIX | \$ 8,920.00 | |
| | | | |
| | <i>DA599</i> | <i>\$ -</i> | <i>\$ -</i> |
| | | | |
| DA5112.412 | IMPROVEMENTS HAULING | | \$ 1,010.00 |
| DA5112.413 | IMPROVEMENTS STONE | | \$ 8,570.00 |

| | | | | |
|----------------|-----------------------------|---------------------|---------------------|-----------|
| DA5130.110 | MACHINERY PERSONAL SERVICES | | \$ 1,000.00 | |
| DA5130.417 | MACHINERY EQUIPMENT RENTAL | | \$ 6,000.00 | |
| | | | | |
| | | | | |
| Totals: | | \$ 16,580.00 | \$ 16,580.00 | \$ |

Sewer District 1

| Acct # | Account Description | (-) Debit | (+) Credit | |
|----------------|---|-----------------|-----------------|-----------|
| SS1-8197.200 | Equipment & Capital Outlay | \$ 38.00 | | |
| SS1-9785.001 | INSTALLMENT PURCHASE DEBT 2021 Freightliner Sewer Truck | | \$ 38.00 | |
| | | | | |
| Totals: | | \$ 38.00 | \$ 38.00 | \$ |

Sewer District 2

| Acct # | Account Description | (-) Debit | (+) Credit | |
|----------------|-------------------------------------|-----------------|-----------------|-----------|
| SS2-8120.110 | SEWAGE COLLECTION PERSONAL SERVICES | \$ 75.00 | | |
| SS2-8110.400 | SEWER ADMIN CONTRACTUAL | | \$ 75.00 | |
| | | | | |
| Totals: | | \$ 75.00 | \$ 75.00 | \$ |

Sewer District 3

| Acct # | Account Description | (-) Debit | (+) Credit |
|----------------|---|--------------|---------------|
| SS3-1440.110 | Engineer - Personnel Service | \$ 478.00 | |
| SS3-8120.200 | SEWAGE COLLECTION EQUIPMENT | \$ 478.00 | |
| SS3-599 | <i>Appropriated Fund Balance</i> | | |
| SS3-1420.421 | LEGAL Special Projects | | \$ 37.00 |
| SS3-8110.400 | SEWER ADMIN CONTRACTUAL | | \$ 730.00 |
| SS3-9040.800 | WORER'S COMPENSATION | | \$ 189.00 |

RESOLUTION 22-087 AUDIT AND PAYMENT OF CLAIMS: authorizing the audit and payment of the following claims: General and Highway Funds, Special Districts, (Water and Sewer Districts), Capital Project and Reserve Fund claims, and ratifying the payment of the prepaid claims as authorized by resolution 16-006 adopted January 4, 2016, all in accordance with the attached abstract of claims.

ABSTRACT #07 2022 Vouchers #518-617 in the amount of \$242,997.92

Trust & Agency Voucher # 6066-6076 in the amount of \$23,074.08

for a grand total of \$266,072.00

Motion by Councilor _____; Second Councilor _____,

**Roll call vote: Councilor Cornelius _____ Councilor Gucciardi _____
Councilor VeVone _____ Councilor Vitale _____
Supervisor Wagner _____**

**RESOLUTION 22-088 to close the public hearing for Local Law #2
MORATORIUM ON COMMERCIAL WIND AND SOLAR ENERGY FACILITIES”**

Motion by Councilor _____; Second Councilor _____,

**Roll call vote: Councilor Cornelius _____ Councilor Gucciardi _____
Councilor Vitale _____ Councilor VeVone _____
Supervisor Wagner _____**

**RESOLUTION 22-089 TOWN OF OWASCO TOWN BOARD RESOLUTION ENACTING
PROPOSED LOCAL LAW #2 OF 2022 ENTITLED
“MORATORIUM ON COMMERCIAL WIND AND SOLAR ENERGY FACILITIES”**

WHEREAS, the Town Board of the Town of Owasco (“Town Board”) has found that it is necessary and prudent to adopt a new local law regarding a moratorium on commercial wind and solar energy facilities for the purposes of allowing time for the Town to review, clarify and update the Town’s zoning laws and regulations pertaining to commercial wind and solar development; and

WHEREAS, the Town Board has caused there to be prepared proposed Local Law #2 of 2022, entitled “Moratorium on Commercial Wind and Solar Energy Facilities” and the same has been referred to the Town of Owasco Planning Board (“Planning Board”) for advisory review and comment; and

WHEREAS, The Planning Board has reviewed and considered Local Law #2 of 2022 and on July 6, 2022, provided its recommendation to the Town Board that the Town Board should adopt Local Law #2 of 2022, as drafted; and

WHEREAS, this proposed Local Law is a “Type II” action under the New York State Environmental Quality Review Act (SEQRA) and pursuant to 6 NYCRR §617.5(c)(30) is exempt from environmental review thereunder; and

WHEREAS, this action involves the adoption or amendment of a zoning ordinance or local law and was therefore referred to the Cayuga County Planning Board (“County Planning Board”) pursuant to General Municipal Law § 239-m(3)(ii), which resulted in the County Planning Board issuing its comments/recommendations on June 16, 2022, finding that the adoption of Local Law #2 of 2022, was of local concern only and thus, no County input or review was necessary; and

WHEREAS, a properly noticed and convened public hearing was held by the Town Board on proposed Local Law #2 of 2022, on July 14, 2022, commencing at approximately 4:00 pm, and proof of publication of such notice was submitted and filed, and all persons desiring to be heard in connection with said proposed local law having been heard; and

WHEREAS, said local law, in its final form, has been in the possession of the members of the Town Board in the manner and duration required by Section 20 of the Municipal Home Rule Law of the State of New York.

NOW, THEREFORE BE IT RESOLVED, that:

1. The foregoing recitals are hereby incorporated herein as if set forth at length.
2. The Town Board finds and determines that it has properly noticed and convened a public hearing on proposed Local Law #2 of 2022 on July 14, 2022, and that sufficient consideration has been given to all comments (if any) received during the public hearing.
3. Proposed Local Law #2 of 2022 is a Type II action under SEQRA §617.5(c)(30) and thus requires no environmental review.
4. The Cayuga County Planning Board has deemed the proposed local law to be of no inter-municipal impact and thus, via Decision dated June 16, 2022, determined that no recommendation(s) or comment(s) were required.
5. Local Law #2 of 2022, as set forth in its entirety as attached hereto, is hereby enacted, waiving any and all defects and informalities in the adoption thereof and shall take effect immediately upon filing with the Secretary of State.
6. The Town Clerk is hereby authorized and directed to file a copy of said Local Law #2 of 2022 with the Secretary of State.

The question of the foregoing Resolution was duly put to a vote and upon roll call was as follows:

Motion by Councilor _____ ; Second Councilor _____ ,

Roll call vote: Councilor Cornelius _____ Councilor Gucciardi _____
Councilor Vitale _____ Councilor VeVone _____
Supervisor Wagner _____

ADJOURNMENT:

RESOLUTION 22-90 to adjourn the meeting:

Motion by Councilor _____ ; Second Councilor _____,

**Roll call vote: Councilor Cornelius _____ Councilor Gucciardi _____
Councilor VeVone _____ Councilor Vitale _____
Supervisor Wagner _____**

Meeting adjourned at _____ PM

TOWN OF OWASCO LOCAL LAW # 2 OF 2022

A “MORATORIUM ON COMMERCIAL WIND AND SOLAR ENERGY FACILITIES”

Section 1. Enactment and Title.

The Town Council of the Town of Owasco does hereby enact the Town of Owasco “Moratorium on Commercial Wind and Solar Energy Facilities” local law. This Local Law shall impose a moratorium on applications or proceedings for applications for, the review of applications for, or the issuance of approvals or permits for the construction of any Commercial Wind or Solar Energy Facilities that are not Residential Wind or Solar Energy Installations, within the Town of Owasco.

The capitalized terms in the foregoing sentence, and as used throughout this local law, shall have the following meanings ascribed to them:

Commercial Wind Energy Facilities- Any individual or collection of Wind Turbine Generators designed to convert the kinetic energy in wind into a usable form of electricity, and any and all related infrastructure, electrical lines, substations, access roads and accessory structures, which are designed with the intent of producing electricity to be consumed off site.

Commercial Solar Energy Facilities- Any collection of solar panels which are designed to capture photons or sunlight and transform it into electricity and any and all related infrastructure, electrical lines, substations, access roads and accessory structures, which are designed with the intent of producing electricity to be consumed off site.

Residential Wind Energy Installations- Any wind turbine generator consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW, and which is primarily intended to reduce consumption of utility power at that location and requires less than ¼ acre of land.

Residential Solar Energy Installations- Any collection of solar panels which are designated to capture sunlight and transform it into electricity and requires less than ¼ acre of land.

Residential Wind and Solar Energy Installations shall also include, for purposes of this local law, all traditional agricultural uses and alternative agricultural energy uses that are intended to principally generate power for the agricultural enterprise when located within a designated Agriculture District, or as otherwise protected or recognized under New York State Agriculture and Markets Law Article 25-AA, including, without limitation § 305(3), § 305(4) and § 305-a therein, and all implementing regulations and rules, and further including policies therein implemented and hereby adopted relative to supporting traditional and generally acceptable farming practices, further including but not limited to heat recovery from composting systems, biogas recovery systems, anaerobic digester gas-to-electricity systems, and other alternative energy systems that significantly support or advance agriculture and agribusinesses within the Town and its Agricultural Districts.

Applicant- All landowners and all those claiming through or on behalf of the owner(s), whether by license, lease, easement, contract, or by owner's designation as an agent for purposes of making any application or any land use review or approval, whether for a permit or otherwise.

Section 2. Authorization, Purpose and Intent.

Pursuant to the authority and provisions of the New York State Constitution, and Section 10 of the Municipal Home Rule Law, and the statutory powers vested in the Town of Owasco to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Council (the "Council") of the Town of Owasco hereby declares a six (6) month moratorium on applications or proceedings for applications for, the review of applications, or the issuance of approvals or permits for the construction of Commercial Wind Energy Facilities or Commercial Solar Energy Facilities within the Town of Owasco (the "Town").

This moratorium will allow time for Town officials to review, clarify, and update the Town's need for regulations for commercial wind and solar development. Additionally, this moratorium will allow the Town to adopt such other regulations as may be necessary to promote and preserve the health, safety and welfare of the Town and its citizens.

The Town Council has determined that it is necessary to address community concerns regarding acceptable locations for certain Wind and Solar Energy Facilities and to address other issues relating to the siting of certain Wind and Solar Energy Facilities, including but not limited to the allowable setbacks and heights of Wind Turbine Generators, collections of solar panels and accessory structures for said development.

The Town has further determined that recent technological advances in the manufacture and construction of renewable energy generators render it necessary and advisable to evaluate the need for land use regulations pertaining to renewable energy development such as Commercial Wind Energy Facilities and Commercial Solar Energy Facilities. The Town Council desires to address, in a careful manner, the establishment, placement, construction, and development of Commercial Wind Energy Facilities and Commercial Solar Energy Facilities through a comprehensive and up-to-date review of wind and solar energy facilities and their effects on land use, orderly and planned development, and the public welfare.

The Town Council has further determined that it is important to address land use impacts from larger-scaled commercial operations, including those that are being proposed, funded, or developed in response to the increasing pressures for renewable energy development to meet the clean energy goals set forth by New York State and Cayuga County.

This moratorium will allow time for the Town to balance the benefit of such clean energy goals with the public interest and welfare of the Town and its residents, including allowing for a more comprehensive review of specific local impacts due to the unique history, land development patterns, soil, geology, topography, and significant natural areas, communities, and resources of cultural, historic, agricultural, or ecological value in the Town.

Section 3. Scope of Controls.

During the effective period of this Local Law:

A. Neither the Town Council, the Code Enforcement Officer, nor the Variance Board shall conduct any review or consider or grant any special permit or other approval that will result in the approval, establishment or construction of any Commercial Wind Energy Facility or Commercial Solar Energy Facility within the Town.

B. To the extent permitted by law, this moratorium shall supersede all relevant provisions of the New York State Town Law, the New York State Building Code, any relevant Town local law and any other applicable law, rule or regulation, that may be in conflict herewith. If any ambiguity or conflict exists, this local law shall govern, and the presumption shall in each case be that the moratorium is in effect.

Section 4. No Consideration of New, Revised, or Renewal Applications.

No new, revised, or renewal applications shall be accepted for filing, review, or consideration, and no site plans, authorizations, special permits, permits, building permits, variances, waivers or other approvals that purport to allow or advance the development, siting, or construction of any Commercial Wind Energy Facility or any Commercial Solar Energy Facility shall be undertaken, reviewed, considered or issued by any board, officer, employee or agent of the Town, except for the temporary location of weather monitoring and/or data collection equipment, and as may specifically be set forth in Section 10 of this local law. Nor shall any language or term in this moratorium effect, or be construed to result in, any default approval, and any matter now pending shall be stayed in place during the pendency of this moratorium, with all deadlines or other timelines suspended for the same number of days that this moratorium is in effect."

Section 5. Term.

The moratorium imposed by this Local Law shall be in effect for a period of six (6) months from the effective date of this Local Law. This moratorium may be extended, or rescinded or removed, by local law.

During the period of this moratorium the Town shall endeavor to:

1. Adopt a comprehensive set of regulations for the siting, establishment and construction of Solar Energy Facilities
2. Update existing regulations for the siting, establishment and construction of Commercial Wind Energy Facilities

Section 6. Location.

The moratorium imposed by this Local Law shall apply to the territorial limits of the Town of Owasco. Any dispute as to whether a property is encompassed within the geographic area detailed above shall be resolved by reference to the Cayuga County Office of Assessment and the official New York corporate boundary maps for the Town of Owasco.

Section 7. Penalties.

The following provisions shall apply generally, and the violation of this Local Law shall allow and permit enforcement in any one or more of the following manners:

A. When any term, provision, or requirement of this Local Law is violated the Enforcement Officer may issue a written notice of violation to the Applicant (or other Person in violation hereof). The notice of violation shall contain; (i) the name and address of the Person alleged to have violated this Local Law; (ii) the address, when available, or a description of the building, structure or parcel upon which the violation occurred or is occurring; (iii) a brief statement specifying the nature of the violation; (iv) a statement of the fine or penalty that may or could be assessed against any Person to whom the notice of violation is directed; and (v) a clear statement identifying whether the notice commences or may commence a civil or criminal proceeding. The failure to comply with a written notice of violation by correcting the violation is in itself a separate violation of this Local Law and may be further enforced as such. In addition, Executive Law§ 382 may be duly enforced separately from any such notice, and both notices may take the form of a single notice which must, in addition to the above, contain the information and be served as required by said § 382.

B. The Enforcement Officer may issue stop work orders for violations of this Local Law. Any Person receiving a stop work order shall be required to halt all clearing, grading, construction, and any other or related activities, until the Enforcement Officer or a court of competent jurisdiction allows work to re- commence.

C. The Town may also maintain actions or proceedings in the name of the Town in a court of competent jurisdiction to compel compliance with, restrain by injunction the violation of any provision or requirement of this Local Law, including to prevent, enjoin, correct, enforce, or abate any violation of, or non-conformance with, any provision or requirement of this local law or the terms and conditions set forth in any waiver or approval issued hereunder. In any such proceeding the Town shall not be required to: (i) prove the lack of an adequate remedy at law; or (ii) to post a bond or other undertaking as a condition or requirement for any preliminary, interim, or permanent restraining order or injunction. No such action or proceeding shall be commenced without the appropriate authorization from the Town Council.

D. This Local Law may be enforced civilly or criminally by seeking fines, penalties, and like punishments to deter future violations and sanction offenders. All provisions of New York law and process generally applicable to misdemeanors shall apply to any criminal proceeding brought upon any violations of this Local Law, including for purposes of conferring jurisdiction. The following civil and criminal fines and penalties shall apply to any violation of the requirements or terms of this Local Law:

1. For a first offense, any Person that violates any of the provisions of this Local Law shall be (i) guilty of a violation and subject to a fine of not more than \$500, or (ii) subject to a civil penalty of not more than \$1,000.000 to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate offense for each week that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall

apply and be assessable for each week that such violation, disobedience, omission, neglect or refusal shall continue.

2. For a second offense, being any violation that is found to have occurred within 2 years of any prior civil or criminal determination of any violation of this Local Law, a Person shall be (i) guilty of an unclassified misdemeanor and subject to a fine of not more than \$2,500, or (2) subject to a civil penalty of not more than \$5,000 to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate unclassified misdemeanor for each week that such violation, disobedience, omission, neglect, or refusal shall continue. Similarly, a separate civil penalty shall apply and be assessable for each week that such violation, disobedience, omission, neglect, or refusal shall continue.

3. The above fines are in addition to any penalty, fine, or sentence allowed or impossible pursuant to said Executive Law§ 382.

E. Upon any violation of this Local Law by an Applicant or any Person, the Town may, and the Enforcement Officer shall, decline and refuse to issue any approvals, endorsements, certifications, building permits, certificates of occupancy, certificates of compliance, and any similar or other document or approval until the Applicant or Person rectifies and cures such violation.

F. Any Person violating this Local Law may be required to restore land to its prior or undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town may take necessary corrective action, the cost of which shall become a lien upon the property until paid. In addition, the Town may commence any one or more civil proceedings in the Town Court, or any other court or tribunal of competent jurisdiction, to recover the costs of such restoration.

G. For purposes of this Local Law the Justice Court of the Town is hereby vested and imbued with jurisdiction to: (i) issue administrative or other warrants in compliance with the New York Criminal Procedure Law and administrative codes of the State of New York; and (ii) hear and adjudicate allegations relating to the criminal or civil violation of this Local Law and to thereafter, if appropriate, impose any fine, penalty, or sanction.

H. Criminal matters arising in relation to enforcement matters under this local law shall be and be classified as offenses per the following guidelines: (i) first offenses shall be deemed violations; (ii) second offenses shall be deemed unclassified misdemeanors; and (iii) violations of Executive Law§ 382 shall be classified as set forth by New York State in such § 382.

I. No remedy or penalty specified in this local law shall be the exclusive remedy available to the Town to address any violation of, or non-compliance with, the requirements of this local law. The rights and remedies of the Town are independent of each other and cumulative. The grant of any right or remedy in this Local Law is in addition to, and not in limitation of or in substitution for any other right or remedy of the Town, whether sounding in law, equity, or admiralty. Further, the election by the Town of any one right or remedy does not

forestall or prevent the simultaneous or future election of any other right or remedy, whether relating to enforcement, sentencing, or otherwise.

Section 8. Exemptions and Non-Conforming Uses.

Notwithstanding any provision hereof to the contrary, any Commercial Solar Energy Facility or Commercial Wind Energy Facility that has already been issued all necessary approvals or permits from the Town Council or the Variance Board (the "Town Approvals") may continue such projects and such support activities that are being conducted in the Town as of the effective date of this Local Law, so long as such supporting activities are in all respects being conducted in accordance with all applicable laws and regulations and any conditions of approval, including all Town Approvals. Such limited right to proceed when Town Approvals have been issued shall include the right to apply for and obtain a building permit, so long as the same is or are in conformance with any existing Town Approvals.

Any expansion of a lawful, pre-existing, non-conforming use shall not be grandfathered under this Section and instead shall in all respects be prohibited as contemplated by Section 3 hereof. "Grandfathered" and allowed lawful pre-existing uses neither have nor possess any right to expand such non-conforming use whether above or below ground, and no such right shall be deemed, construed, or implied to exist.

Section 9. Validity.

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 10. Hardship.

The Town Council of the Town is hereby authorized to accept and review (after public notice and hearing and in accordance with the requirements of law and of this Local Law) requests for a waiver application of the provisions of this Local Law by persons aggrieved hereby. No such waiver shall be granted by the Town Council without a showing by the Applicant that applicable regulations and restrictions have caused unnecessary hardship.

- A. Unnecessary Hardship. In order to prove such unnecessary hardship the Applicant is required to demonstrate to the Town Council that, with respect to every permitted use under Town land use, each of the following four criteria is satisfied: (i) the Applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence; (ii) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- (iii) the requested waiver, if granted, will not alter the essential character of the rural, hamlet, or other neighborhood; and (iv) the alleged hardship has not been self-created.

B. Reasonable Rate of Return. In evaluating whether the Applicant can realize a reasonable rate of return, the Town Council must examine whether the entire original or

expanded property holdings of the Applicant are incapable of producing a reasonable rate of return (and not just the site of the proposed development project). No waiver shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Town Council finds that the Applicant has clearly demonstrated by detailed "dollar and cents" proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) and for each and every permitted use in the area of the Town the property is located.

C. Unique Hardship. No waiver shall be granted unless, in addition to satisfying all other applicable provisions of the law and this Law, the Town Council finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the area.

D. Essential Character of the Neighborhood. In making its determination, of whether the proposed development project will alter the essential character of the neighborhood, the Town Council shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (i) the rural residential and agricultural character of the Town, (ii) its irreplaceable recreation, historic, and tourism sites, (iii) the extent of hazard to life, limb or property may result from the proposed development project, (iv) health impacts, (v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (vi) the impact on property values, and (viii) whether the Applicant will engage in the type of development that will result in degradation to the air quality, water quality or scenic or other natural resources of the Town. In order to find that the proposed development project does not alter the essential character of the neighborhood, the Council shall interpret the public interest in said essential character of the neighborhood to require, at a minimum, that the project will not do any of the following: (x) pose a threat to the public safety, including public health, water quality or air quality, (y) cause an extraordinary public expense, or (z) create a nuisance.

E. Self-Created Hardship. The Town Council may find that the Applicant suffers from a self-created hardship in the event that the Council finds that (i) the Applicant's inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (ii) the Applicant previously divided the property and is left with only a portion which suffers from some unique conditions for which relief is sought and which did not apply to the parcel as a whole; (iii) when the Applicant purchased the property, he or she knew or should have known the property was subject to the land use restrictions; or (iv) that the Applicant transferred or obtained property rights with only a unilateral expectation of development or return on investment, particularly if the development or project envisioned was speculative or of an investment character, and it shall be material to this question to examine the degree to which the investment in land rights or use rights was partial (such as leasing, easements, or licensure) as opposed to in fee (actual acquisition of fee simple title), and whether the anticipated income, profits, or receipts were conditional, contingent, or guaranteed.

In the event the Town Council grants a waiver from the provisions of this Local Law to the Applicant, the Applicant shall be required to comply with all provisions of the Town's then applicable land use regulations and other laws and regulations, together with any amendments to such law or regulations which may be enacted during the term of this Local Law. Any waiver that is granted shall grant only the minimum waiver that the Town Council deems necessary and adequate to address the unnecessary hardship proven by the Applicant, and at the same time preserve and protect the character of the neighborhood and health, safety, and welfare of the community.

Section 11. Effective Date.

This Local Law shall take effect immediately.