

William Wenzel, Town Supervisor
Dale Warner, Deputy Supervisor
Jennifer Howe, Town Clerk
Carol Sowycz, Deputy Town Clerk



Michael Santulli, Council Member
Dianne Grant, Council Member
Andrew Lucks, Council Member

Thursday March 14, 2024
Regular Town Board Meeting
Meeting Time: 7:00PM

Meeting called to order by Supervisor Wenzel at 7:00PM

Present: Supervisor Wenzel, Council Members Lucks, Grant and Santulli, Town Clerk Howe and Town Attorney Terresa Bakner.

Absent:

Call to Order
Pledge of Allegiance
Prayer/Moment of Reflection

Public Hearing: "Moratorium on Utility Scale Battery Energy Storage Systems over 600 kWh."

Council Member Santulli motioned, seconded by Council Member Lucks to open the floor for comments.

Motion carried, 4 ayes

Greg Harkenrider gave brief overview and spoke on research that was done to come up with these recommendations.

Bob Cuttita of Mariaville Lake thinks it is a great idea that there is a moratorium on this.

Council Member Grant motioned, seconded by Council Member Santulli to close the floor for comments.

Technology: Council Member Santulli reported that we are in the home stretch to get everyone connected in the town with Broadband. We have a resolution for tonight that will get 12 more homes connected. Still trying to work on a portion of Sheldon Road to get those homes served.

Business Meeting:

Resolution 51-24: Council Member Grant motioned, seconded by Council Member Lucks to approve and authorize the Town Supervisor to sign the Broadband Infrastructure Grant Agreement.

Motion carried, 4 ayes.

Resolution 52-24: Council Member Lucks motioned, seconded by Council Member Santulli to introduce amendments to the Solar Energy Facilities Law and set public hearing.

Motion carried, 4 ayes.

Resolution 53-24: Council Member Santulli motioned, seconded by Council Member Lucks to introduce a moratorium on Wind Energy Facilities and set a public hearing.

Motion carried, 4 ayes.

Resolution 54-24: Council Member Grant motioned, seconded by Council Member Lucks to appoint Nicholas Passonno as a Town Board Member.

Motion carried, 4 ayes.

Swearing in of Council Member Passonno done by Supervisor Wenzel.

Privilege of the Floor:

No one wished to speak.

Supervisor Wenzel stated that we have a letter from Lynne Bruning regarding the moratorium on battery energy storage (see attached).

Motion to adjourn by Council Member Lucks, Seconded by Council Member Santulli.

Motion carried, 4 ayes

I, Jennifer Howe, Town Clerk of the Town of Duanesburg, hereby certify that this is a true and accurate transcript of the Regular Town Board Meeting held on Thursday March 14, 2024.

LEGAL NOTICE
NOTICE OF PUBLIC HEARING
TOWN BOARD
TOWN OF DUANESBURG

PLEASE TAKE NOTICE, that the Town Board of the Town of Duanesburg, New York, will meet at the Town Offices of Duanesburg, 5853 Western Turnpike, Duanesburg New York, on **Thursday, March 14 , 2024 at 7:00 p.m.** for the purpose of hearing all persons interested in the adoption of:

Local Law No. 2 of 2024 entitled “MORATORIUM ON UTILITY SCALE BATTERY ENERGY STORAGE SYSTEMS OVER 600 kWh,” establishing a moratorium on such systems in the Town of Duanesburg because the State is currently evaluating such systems and whether to impose public health and safety measures for such systems. The proposed local law is posted on the Town Website and on the Town Bulletin Board.

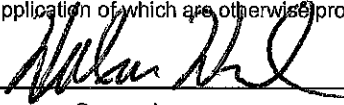
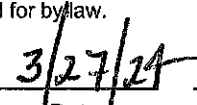
BY ORDER OF THE TOWN BOARD

TOWN OF DUANESBURG

Account#	Account Description	Fee Description	Qty	Local Share
	Building Permit Renewal	Building Permit Renewal	1	230.00
	Marriage License Fee	Marriage License Fee	1	17.50
	Misc. Fees	Certified Copies - Death	8	200.00
	Planning & Zoning Fees	Planning & Zoning Fees	4	575.00
	subdivision minor	Subdivision	1	100.00
		Sub-Total:		\$1,122.50
690.01	Village Of Delanson	Village Of Delanson	2	410.00
		Sub-Total:		\$410.00
A1255	Conservation	Conservation	2	1.66
		Sub-Total:		\$1.66
A2544	Dog Licensing	Female, Spayed	13	182.00
		Female, Unspayed	2	44.00
		Male, Neutered	11	154.00
		Male, Unneutered	1	22.00
		Sub-Total:		\$402.00
B2555	Building Permits	Building Permits	6	460.00
		Sub-Total:		\$460.00
			Total Local Shares Remitted:	\$2,396.16
Amount paid to: NYS Ag. & Markets for spay/neuter program				33.00
Amount paid to: NYS Environmental Conservation				28.34
Amount paid to: State Health Dept. For Marriage Licenses				22.50
Total State, County & Local Revenues:			\$2,480.00	
		Total Non-Local Revenues:		\$83.84

To the Supervisor:

Pursuant to Section 27, Sub 1, of the Town Law, I hereby certify that the foregoing is a full and true statement of all fees and monies received by me, Jennifer Howe, Town Clerk, Town of Duanesburg during the period stated above, in connection with my office, excepting only such fees and monies, the application of which are otherwise provided for by law.

Supervisor Date Town Clerk Date

TOWN OF DUANESBURG
CASH REQUIREMENTS PER FUND
3/14/24

FUND		AMOUNT
General Fund A		13,897.89
General OV B		783.58
Highway Fund DA		3,031.90
Lighting District #1		511.83
Lighting District #2		1,009.67
Lighting District #3		450.48
Sewer District #1		2,506.74
Sewer District #2		4,378.89
Sewer District #3		24,452.65
Trust & Agency		1,621.10
	TOTAL TRANSFERS TO AP	52,644.73

Town of Duanesburg Town Board

RESOLUTION NO. 51 - 2024

March 14, 2024

WHEREAS, the Town of Duanesburg (the "Town") received funding from the federal government under the American Rescue Plan Act of 2021 and from Schenectady County for broadband expansion (the "Broadband Funds"); and

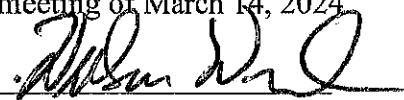
WHEREAS, the Town desires to retain Spectrum Northeast, LLC, by its manager, Charter Communications, Inc. to implement a broadband buildout and expansion project using the Broadband Funds; and

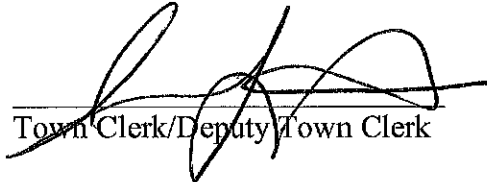
WHEREAS, the Town has reviewed the attached proposed "Broadband Infrastructure Grant Agreement;" and

WHEREAS, the Town has determined that this is a Type II action under the New York State Environmental Review Act ("SEQRA") per 6 NYCRR 617.5(c)(7).

NOW, THEREFORE, BE IT RESOLVED, the Town Board approves and authorizes the Town Supervisor to sign the attached "Broadband Infrastructure Grant Agreement."

By (unanimous/majority) vote of the Town Board of the Town of Duanesburg at its regular meeting of March 14, 2024


William Wenzel, Supervisor


Town Clerk/Deputy Town Clerk

Date

Date: March 14, 2024

Present: ALL
Absent:

Town Board Members:

Dianne Grant	<u>Yea</u>	Nay	Abstain
Michael Santulli	<u>Yea</u>	Nay	Abstain
Andrew Lucks	<u>Yea</u>	Nay	Abstain
William Wenzel	<u>Yea</u>	Nay	Abstain

BROADBAND INFRASTRUCTURE GRANT AGREEMENT

This Broadband Infrastructure Grant Agreement ("Agreement") is entered into on this 14th day of March, 2024 (the "Effective Date") by and between the Town of Duanesburg, New York, situated in the County of Schenectady (hereinafter referred to as the "Grantor") and Spectrum Northeast, LLC by its Manager, Charter Communications, Inc. (hereinafter referred to as "Grantee").

WHEREAS, the Grantor asserts that it has the requisite funding and authority to enter into and carry out its obligations under this Agreement with Grantee; and

WHEREAS, Grantor has determined that the broadband infrastructure buildout project described in the Scope of Work provided in Exhibit A of this Agreement ("Broadband Project") is in the public interest.

WHEREAS, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1) **PURPOSE.** The purpose of this Agreement is to implement the Broadband Project described in the Scope of Work at **Exhibit A**.
- 2) **TERM.** This Agreement shall automatically expire ninety days after Grantee receives Final Payment per the Milestone Payment Schedule in **Exhibit A**. No provision of this Agreement shall survive the termination of this Agreement unless expressly stated herein.
- 3) **FUNDING.** The Grantor agrees it will remit a total payment of \$105,165.56 to Grantee to fund the Broadband Project, subject to the payment schedule, terms and conditions set forth in this Agreement and terms and conditions provided in **Exhibit A**. Grantor represents that the Broadband Project falls within an appropriate use of state or federal grant funding (as may be applicable) and bears any and all risks associated with that determination. The Grantee shall use such grant funds for the sole purpose of implementing the Broadband Project. Grantor shall be entitled to a reasonable accounting and/or audit of all relevant invoices, disbursements and payments associated with the grant by promptly providing all relevant records and information as may be reasonably requested by such firm on behalf of the Grantor.
- 4) **PROJECT DURATION.** Grantee shall commence performance of this Agreement as soon as practicable and, subject to the terms and conditions set forth herein, Grantee shall complete the Broadband Project no later than 1 year(s) from the last approved pole permit required to complete the entire Broadband Project, subject to Excusable Delay (as defined below). Excusable Delay means a delay to the construction of the Broadband Project that materially affects completion and is directly caused by (1) make-ready work that is not received by Spectrum within 45 days of Spectrum's submission of a completed application for utility pole attachments; or (2) any delay in receiving governmental, regulatory and third party permits,

licenses and approvals, despite Spectrum's good faith efforts to secure timely approvals, or (3) pursuant to Section 12 ("Force Majeure") and agreed to by Grantee and Grantor as constituting an Excusable Delay.

- 5) **PROGRESS REPORTS.** No later than thirty (30) calendar days after the last calendar day of each quarter prior to completion of the Broadband Project, upon written request and subject to reasonable confidentiality protections, Grantee shall provide Grantor with a report reflecting Grantee's assessment of the Broadband Project's progress during the prior quarter and its current status.
- 6) **OWNERSHIP OF PROJECT INFRASTRUCTURE AND PRICING.** Grantee shall retain all ownership interests and rights in the network, materials, equipment, supplies and facilities constructed and deployed in connection with the Scope of Work. Grantee reserves the right to modify the terms and conditions, data usage, speeds and pricing for any of Grantee's services.
- 7) **DESIGN AUTHORITY.** Grantee, in its sole discretion, shall determine the optimal network design and configuration for the Resulting Network, as well as how to build it so as to fulfill its obligations under this Agreement.
- 8) **NOTICE OF VIOLATION OR DEFAULT.**
 - a) In the event the Grantor believes that the Grantee has not complied with the material terms of the Agreement, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.
 - b) **Grantee's Right to Cure or Respond.** The Grantee shall have forty-five (45) days from the receipt of the Grantor's written notice: (A) to respond to the Grantor, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that the cure will be completed.
 - c) **INSURANCE AND INDEMNIFICATION.** Grantee shall maintain throughout the Broadband Project a policy(ies) of general and contractual liability insurance in the amount of at least Two Million Dollars (\$2,000,000) to cover its performance of the Scope of Work and its responsibilities under this Agreement, and shall name the Grantor as an additional insured on said policy(ies). Grantee shall provide Grantor a certificate of insurance evidencing such insurance prior to or concurrently with the commencement of construction of the Broadband Project.

Unless prohibited under applicable law, the Grantee agrees to defend, indemnify and hold Grantor and Grantor's affiliates, officers, directors, agents and employees, harmless from and against any and all claims, losses, damages and liabilities (including, but not limited to,

reasonable attorneys' fees and court costs) on account of any claim by a third party for bodily injury or property damage against the Grantor to the extent caused by the negligent act or omission, or willful misconduct of, or breach of this Agreement by, the Grantee or the Grantee's employees, contractors, subcontractors or agents, in connection with the performance of their respective obligations under this Agreement.

- 9) ENTIRE AGREEMENT. This Agreement, and any attachments hereto, embodies the entire understanding and agreement of the Grantor and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Agreement are superseded by this Agreement.
- 10) COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS. In its operations under this Agreement, Grantor and Grantee shall comply with all applicable tribal, state and federal laws. In carrying out the Broadband Project, the Grantee shall at all times be in compliance with all applicable legal requirements of any applicable governmental authority and applicable federal state and local environmental laws to the extent not waived by or subject to an exemption. The Grantee shall cooperate with the Grantor in promptly completing and submitting all documents and records as may be reasonably required by the New York State Comptroller, the NYS Authority Budget Office, or federal government and to otherwise comply with all applicable orders, administrative rules, regulations, and procedures of the Grantor, in effect on the Effective Date of this Agreement, directly affecting the proper administration of the Broadband Project.
- 11) FORCE MAJEURE. Neither Grantor nor Grantee shall be liable to the other, or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control. Such causes may include, but are not limited to, acts of God or of a public enemy, fires, floods, epidemics, quarantine restrictions, material shortages, pandemics, strikes, freight embargoes, or unusually severe weather.
- 12) LIMITATION OF LIABILITY. SUBJECT TO THE FOLLOWING SENTENCE, NEITHER GRANTEE NOR GRANTOR SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL, ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION DOES NOT APPLY TO, AND SHALL NOT LIMIT: (a) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9, OR (b) DAMAGES ATTRIBUTABLE TO CRIMINAL MISCONDUCT, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF A PARTY.

- 13) NO THIRD-PARTY BENEFICIARIES. This Agreement is intended for the benefit of the Parties only and nothing contained herein will be deemed to give any third party any intended or incidental claim or right of action that does not otherwise exist without regard to this Agreement, against either Party.
- 14) INDEPENDENT CONTRACTOR. The Grantee and its officers, employees, members and agents, for all purposes hereunder, shall be deemed independent contractors and not employees of the Grantor.
- 15) GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York without regard to the rules of conflict of laws thereof. The Parties agree that any dispute involving this Agreement shall be heard only in the Supreme Court of Schenectady County, New York or the Federal District Court for the Northern District of New York.
- 16) CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS. Grantee acknowledges and agrees that the Broadband Project is to be funded, in whole or in part, using American Rescue Plan Act, Coronavirus State and Local Fiscal Recovery Funds. Grantee ensures that no costs of the Broadband Project will be sought for or reimbursed by other federal or state funding streams. Grantee is subject to the applicable provisions and requirements of the following documents, which are incorporated herein by reference. Where the U.S. Department of Treasury issues exceptions or waivers to any of the federal requirements stated in the documents below, such exceptions and waivers shall automatically be incorporated by reference in this Agreement and control over any conflicting provisions of this Agreement:
- .1 U.S. Department Of The Treasury Coronavirus Local Fiscal Recovery Fund Award Terms And Conditions (OMB Approved 1505-0271)
 - .2 Assurances Of Compliance With Civil Rights Requirements (OMB Approved 1505-0271).

Grantee further acknowledges that the Broadband Project may also be funded, in whole or in part, using franchise fees and/or grants received from the County of Schenectady.

- 17) NOTICE. Any notice required under this Agreement shall be provided via US Mail and Email to the following addresses:

GRANTEE:
Charter Communications, Inc.
Attn: Samuel Parker, Government Affairs
20 Century Hill Drive
Latham, NY 12110
Mark Leibowitz

Charter Communications
AVP, Field Operations

GRANTOR:

Attn: Town Clerk
Town of Duanesburg
5853 Western Turnpike
Duanesburg, NY 12056

- 18) SEVERABILITY. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.
- 19) MODIFICATION. No provision of this Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Grantor and the Grantee, which amendment shall be authorized on behalf of the Grantor through the adoption of an appropriate resolution or order by the Grantor, as required by applicable law.
- 20) TERMINATION. Grantor may terminate this Agreement for material breach by Grantee that Grantee fails to cure within thirty (30) days of receipt of notice of such breach from the Grantor. Grantee may terminate this Agreement upon thirty (30) days written notice to Grantor. Upon termination by Grantee, Grantee shall remit the pro rata amount of funding for the portion of the Project area not yet built to Grantor through the date of Termination.
- 21) NO WAIVER OF RIGHTS. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantor or Grantee may have under federal or state law unless such waiver is expressly stated herein.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Broadband Infrastructure Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

For Grantor: Town of Duaneburg

By: 

Name: William Wenzel

Title: Town Supervisor

Date: 3/27/24

For Grantee: Spectrum Northeast, LLC By: Charter Communications, Inc., its Manager

By: _____

Name: Mark Leibowitz

Title: AVP, Field Operations

Date: _____

Exhibit A

Scope of Work

The following project description will define the scope of work to be completed in accordance with the Agreement. Grantee will install a high speed broadband network capable of providing at least 300/25 Mbps and designed to be scalable to 100/100Mbps speeds to the following Project Area:

Project addresses to be served to the premises - -

2933 Schoharie Turnpike
592 Bozen Kill Road
504 Bozen Kill Road
914 Duanesburg Churches Road
894 Duanesburg Churches Road
1004 Duanesburg Churches Road
850 Duanesburg Churches Road
780 Duanesburg Churches Road
716 Duanesburg Churches Road
579 Duanesburg Churches Road
334 Duanesburg Churches Road
275 Duanesburg Churches Road

FUNDING:

Grantor shall be obligated to pay a total of \$105,165.56 per the Milestone Payment Schedule. Grantee shall not be obligated to construct and install the Broadband Project within the Project Area until it receives payment.

MILESTONE PAYMENT SCHEDULE		
Milestone	Percentage (%)	Amount
Contract Execution	50%	\$52,852.78
Within fifteen (15) business days from the date of Written Notice by Grantee of Activation of the Project Area	50%	\$52,852.78
Total Grantor Payment	100%	\$105,165.56

The term "Activation" as used herein is defined as the capability of an address to receive broadband service from the Resulting Network.

The Parties acknowledge that this Scope of Work and Grantee's cost estimates are preliminary in nature, and are subject to revision based on archeological findings or other factors identified during final engineering, including but not limited to changes in route or construction materials or techniques, and/or changes to the Scope of Work mutually agreed upon by the Parties or necessitated by circumstances causing Excusable Delay. The Parties further agree to promptly meet and discuss in good faith appropriate modifications to this Scope of Work upon the request of either Party.

PAYMENT INSTRUCTIONS:

To transfer funds:

Bank Address for ACH
US Bank
7th and Washington
St. Louis, MO 63101

Account Title: Charter Communications Operations LLC
Account Number: 152319781067
Routing Number: 081000210
SWIFT: USBKUS44STL

To send a check, mail to:

Attn: Sundry Billing, Grants
Charter Communications
12405 Powerscourt Drive
St. Louis, MO 63131

TOWN OF DUANESBURG TOWN BOARD

RESOLUTION NO. 52-2024

March 14, 2024

**Resolution Introducing Amendments
to Solar Energy Facilities Law in the Town of Duanesburg**

WHEREAS, since the time the Town of Duanesburg Town Board adopted local law no. 3 of 2023 which regulates solar energy facilities, concerns have arisen regarding soil suitability and deforestation;

WHEREAS, the Town Board would like to ensure that any new projects in Town which have not yet submitted an application for a Solar Energy Facility prior to the date of the introduction of this local law will be subject to these proposed amendments when adopted;

WHEREAS, the attached Local Law entitled “Amendment to the Solar Energy Facility Law” has been reviewed and considered by the Town Board as the most reasonable step it can take with regard to the Town Board’s responsibility to ensure the public health and safety;

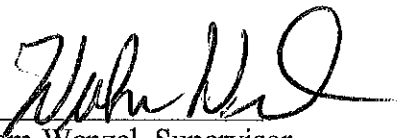
WHEREAS, the adoption of this minor amendment is a Type 2 action pursuant to the NYS Environmental Quality Review Act moreover the amendment is consistent with the negative declaration issued by the Town Board as SEQRA lead agency for the adoption of the original local law back in 2023—the purpose of these amendments is to further protect the environment and to ensure that applications for solar facilities address existing soil conditions;

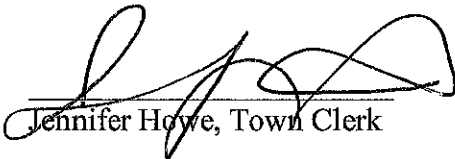
NOW, THEREFORE, BE IT RESOLVED, that the Town Board hereby introduces the attached local law 3 of 2024 for the Town of Duanesburg entitled “Amendments to the Solar Energy Facility Law;”

BE IT FURTHER RESOLVED that a public hearing shall be held on the adoption of the moratorium local law at the next regularly scheduled meeting of the Town Board on April 11, 2024, at the Town of Duanesburg Town Offices at 5853 Western Turnpike, Duanesburg, New York at 7:00 p.m. and that all public comments submitted in writing by 4:00 p.m., or made during the public hearing shall be considered by the Town Board;

BE IT FURTHER RESOLVED that the local law shall be provided to the Schenectady County Planning Department for a recommendation pursuant to the NYS General Municipal Law and that the notice of public hearing shall be posted on the Town website, on the Town notice board and in the Daily Gazette as required by law.

By (unanimous/majority) vote of the Town Board of the Town of Duanesburg at its regular meeting on March 14, 2024.


William Wenzel, Supervisor


Jennifer Howe, Town Clerk

Present: ALL
Absent:

Council Members:

William Wenzel	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Michael Santulli	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Dianne Grant	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Andrew Lucks	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain

**TOWN OF DUANESBURG
LOCAL LAW NO. X OF THE YEAR 2024**

Amending local law 1 of 2023, "The Solar Energy Facilities Law of the Town of Duanesburg."

BE IT ENACTED by the Town Board of the Town of Duanesburg in the County of Schenectady as follows:

Section 1. Title of the Local Law.

This local law shall be entitled "A Local Law Amending the Solar Energy Facilities Law of the Town of Duanesburg."

Section 2. Authorization.

This local law is enacted pursuant to the Municipal Home Rule Law and Article 16 of the Town Law of the State of New York.

Section 3. Purpose.

The purpose of this local law is to clarify certain provisions within the existing Town of Duanesburg Solar Energy Facilities law meant to protect forested areas from clearcutting for solar energy facilities and to prevent the placement of solar energy facilities on unsuitable soils.

Section 4. Deforestation Revisions

1. Add to Definitions

Clear Cutting - The removal of trees more than three inches in diameter at breast height in an area containing either: (1) more than 500 trees per acre; or (2) more than 60 square feet per acre of tree trunks.

2. Revised Provision Section 7.2.Q

Forested sites shall not be deforested and sites deforested less than five years before application submittal shall not be used to construct solar energy facilities. Brush, hedgerows and isolated trees or stands of trees in otherwise open fields or scrubland may be cut, however clear cutting of trees more than three inches in diameter at breast height (as defined herein) in a single contiguous area exceeding 20,000 square feet is prohibited. This clearing restriction shall not apply to trees cleared for the access road.

Any portion of a property that has been clear-cut in excess of the area described in the paragraph above, regardless of the reason for such clear cutting, shall not be included in an application for a utility-scale solar project for a period of five years following such clear cutting.

Site disturbance, including but not limited to, grading, soil removal, excavation and soil compaction in connection with installation of utility-scale solar energy facilities shall be minimized to the extent practicable.

Section 5. Addition of Soil Testing

Additional Provision under Section 7.1.F (part of application requirements)

A description of the characteristics and suitability for construction purposes of the site's subsurface conditions, including such factors as soil corrosivity (for both steel and concrete), bedrock competence, and subsurface hydrologic characteristics and groundwater levels. Analysis should be based on a geotechnical engineering report verifying subsurface conditions, including the results of borings and/or test pits at a subset of solar array locations that are representative of mapped soil and bedrock formations within the facility site. The applicant shall identify appropriate mitigation measures required in locations with highly corrosive soils, soils with a high frost risk, and soils with high shrink/swell potential.

The applicant shall provide maps, figures and analyses delineating depth to bedrock and underlying bedrock types, including vertical profiles showing soils, bedrock, water table and typical foundation depths on the facility site, based on information to be obtained from available published maps and scientific literature, review of technical studies conducted on the facility site, and on-site field observations, test pits and/or borings as available.

Section 6. Supersession.

Pursuant to the powers granted by the Municipal Home Rule, this Local Law supersedes all provisions of the Town of Duanesburg Town Code, in so far as such statutes are inconsistent with this Local Law and any other laws or regulations of the Town of Duanesburg are superseded to the extent necessary to give this Local Law full force and effect. All other provisions shall remain the same.

Section 7. Severability.

Each separate provision of this Local Law shall be deemed independent of all other provisions therein, and if any provisions shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable.

Section 8. Effective date

This article shall take effect upon its filing with the New York Secretary of State.

**LEGAL NOTICE
NOTICE OF PUBLIC HEARINGS
TOWN BOARD
TOWN OF DUANESBURG**

PLEASE TAKE NOTICE, that the Town Board of the Town of Duanesburg, New York, will meet at the Town Offices of Duanesburg located at 5853 Western Turnpike, on **Thursday, April 11, 2024 at 7:00 p.m.** for the purpose of hearing all persons interested in the matter of:

The Town will amend the “Town of Duanesburg Solar Energy Facilities Law.” To effectuate the amendments, the Town is introducing Local Law No. 1 of 2024 establishing prohibitions against deforestation and a new submission requirement, a comprehensive soil study, for solar energy facility applications in the Town of Duanesburg.

BY ORDER OF THE TOWN BOARD
TOWN OF DUANESBURG

Dated: March 14, 2024

TOWN OF DUANESBURG TOWN BOARD

RESOLUTION NO. 53 -2024

March 14, 2024

**Resolution Introducing a Moratorium
on Wind Energy Facilities in the Town of Duanesburg**

WHEREAS, Local law no. 1 of 2008 which regulates wind energy facilities needs to be updated with respect to the wind energy facility technology and to the siting issues that these changes in technology may raise;

WHEREAS, the Town Board would like to ensure that no new wind energy facility projects in Town are reviewed and approved until the Local Law no. 1 of 2008 has been updated;

WHEREAS, the attached Local Law entitled "Moratorium on Wind Energy Facility" has been reviewed and considered by the Town Board as the most reasonable step it can take with regard to the Town Board's responsibility to ensure the public health and safety;

WHEREAS, the adoption of Moratoria are Type 2 actions pursuant to the NYS Environmental Quality Review Act;

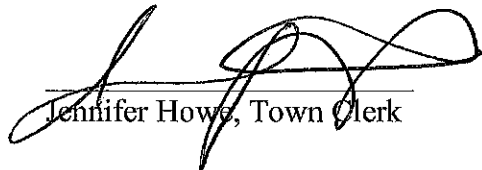
NOW, THEREFORE, BE IT RESOLVED, that the Town Board hereby introduces the attached local law 4 of the Town of Duanesburg entitled "Moratorium on Wind Energy Facilities;"

BE IT FURTHER RESOLVED that a public hearing shall be held on the adoption of the moratorium local law at the next regularly scheduled meeting of the Town Board on April 11, 2024, at the Town of Duanesburg Town Offices at 5853 Western Turnpike, Duanesburg, New York at 7:00 p.m. and that all public comments submitted in writing by 4:00 p.m. April 11, 2024 or made during the public hearing shall be considered by the Town Board;

BE IT FURTHER RESOLVED that the moratorium local law shall be provided to the Schenectady County Planning Department for a recommendation pursuant to the NYS General Municipal Law and that the notice of public hearing shall be posted on the Town website, on the Town notice board and in the Daily Gazette as required by law.

By (unanimous/majority) vote of the Town Board of the Town of Duanesburg at its regular meeting on March 14, 2024.


William Wenzel, Supervisor


Jennifer Howe, Town Clerk

Present:

Absent:

Council Members:

William Wenzel	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Michael Santulli	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Dianne Grant	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Andrew Lucks	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain

Proposed by Supervisor Wenzel

Proposed Town of Duanesburg Local Law (Introductory) No. 4 of 2024

March 14, 2024

**Town of Duanesburg
County of Schenectady, New York**

Be it enacted by the Town Board of the Town of Duanesburg, Schenectady County, New York as follows:

Section A Title and Enactment

The title of this Law is: MORATORIUM ON WIND ENERGY FACILITIES IN THE TOWN OF DUANESBURG.

Section B Intent and Effect of Moratorium

The Town of Duanesburg Local Law No. 1 of 2008 “The Town of Duanesburg Wind Energy Facility Law” currently regulates Wind Energy Facilities. This moratorium will affect all such Wind Energy Facilities, by placing a moratorium on the review of any application or approval of any applications for special use permit or site plan review for such facilities.

The Board’s need for additional information and assurance about the adequacy of the current local law regarding wind energy facilities, including, but not limited to, ensuring the law reflects new technologies, sufficient fees for review of proposals, and the adequacy of the law with regard to siting these facilities, has persuaded the Town Board to institute this moratorium. This moratorium shall be in place for six months and may be extended for an additional six months by resolution of the Town Board to allow a sufficient period of time for the Town Board to amend Local Law no. 1 of 2008 and/or to adopt a new law pertaining to Wind Energy Facilities.

Section 1 Moratorium.

No new applications pursuant to Local Law 1 of 2008 for Wind Energy Facilities shall be accepted by the Town during the period of the moratorium.

Section 2 Moratorium Period.

The moratorium established under Section 1 shall be in effect during the period between the adoption of this Local Law and for a period of 6 months following adoption of this local law, and the filing of the same with the Secretary of State. The same may be extended for periods of six months by resolution of the Town Board.

Section 3 Applications that may be exempted.

- (1) Small Wind Energy Facility Applications may be exempted from the Moratorium provisions of this Local Law upon application to the Town Board of the Town of Duaneburg.
- (2) The Town Board shall have the authority, after a public hearing, to vary or modify the application of any provision of this Local Law upon its determination that strict application of this Local Law would impose practical difficulties or extraordinary hardships upon an applicant and that the variance granted would not adversely affect the health, safety or welfare of the citizens of the Town or significantly conflict with the general purpose and intent of this Local Law. Any request for a variance shall be in writing and filed with the Town Clerk and shall include a fee of Two Hundred Fifty Dollars (\$250.00) for the processing of such application. All such applications shall promptly be referred to the Town Board, which shall conduct a Public Hearing on the application on not less than five (5) days public notice and shall make its decision within thirty (30) days after the close of the Public Hearing.

Section 4 Statutory Authority/Supersession.

This MORATORIUM ON WIND ENERGY FACILITIES IN THE TOWN OF DUANESBURG with respect to Wind Energy Facilities is adopted pursuant to Municipal Home Rule Law §10(1)(ii)(a)(11) and (12) and expressly supersedes any inconsistent provisions of Local Law No. 2 of 2008.

Section C Severability

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

Section D Effective Date

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

LEGAL NOTICE
NOTICE OF PUBLIC HEARINGS
TOWN BOARD
TOWN OF DUANESBURG

PLEASE TAKE NOTICE, that the Town Board of the Town of Duanesburg, New York, will meet at the Town Offices of Duanesburg located at 5853 Western Turnpike, on **Thursday**, April 11, **2024** at **7:00 p.m.** for the purpose of hearing all persons interested in the matter of:

The Town will enact a “Moratorium on Wind Energy Facilities in the Town of Duanesburg.” To effectuate the moratorium, the Town is introducing Local Law No.4 of 2024 establishing a timeframe for comprehensive study of the existing wind energy facility law in the Town of Duanesburg to ensure that it is up to date on such facilities and that the Town is appropriately regulating the facilities.

BY ORDER OF THE TOWN BOARD
TOWN OF DUANESBURG

Dated: March 14, 2024

Town of Duanesburg Town Board

RESOLUTION NO. 51 - 2024

March 14, 2024

Moved by Grant; Seconded by Lucks;

WHEREAS, the Town of Duanesburg Town Board has a vacancy because James Mugits resigned his position as Town Board member;

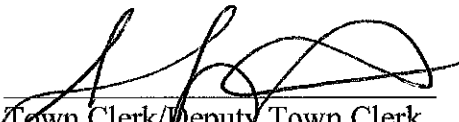
WHEREAS, NY Town Law Chapter 62, Article 4, Section 64 (5) provides in relevant part as follows:

Whenever a vacancy shall occur or exist in any town office, the town board or a majority of the members thereof, may appoint a qualified person to fill the vacancy.... If the appointment be made to fill a vacancy in an elective office, the person so appointed shall hold office until the commencement of the calendar year next succeeding the first annual election at which the vacancy may be filled.

NOW THEREFORE BE IT RESOLVED, that the Town Board of the Town of Duanesburg appoints Nicholas Passonno as Town Board member.


William Wenzel, Supervisor

Date


Town Clerk/Deputy Town Clerk

Date

March 14, 2024

Present: ALL

Absent:

Town Board Members:

William Wenzel	<input checked="" type="radio"/> Yea	Nay	Abstain
Michael Santulli	<input checked="" type="radio"/> Yea	Nay	Abstain
Dianne Grant	<input checked="" type="radio"/> Yea	Nay	Abstain
Andrew Lucks	<input checked="" type="radio"/> Yea	Nay	Abstain

PO Box 160
Quaker Street, NY 12141

William Wenzel, Supervisor
Town Board Members
Town of Duanesburg
5853 Western Turnpike
Duanesburg, NY 12056

Transmitted via email: jhowe@duanesburg.net, wwenzel@duanesburg.net

March 14, 2024

Re: Comments for March 14, 2024 Public Hearing “MORATORIUM ON UTILITY SCALE
BATTERY ENERGY STORAGE SYSTEMS OVER 600kWh.”

Dear William Wenzel and Town Board members,

The February 22, 2024 Town Board Agenda, https://www.duanesburg.net/sites/g/files/vyhlf4351f/agendas/february_22_2024_tb_agenda.pdf, pages 3 - 4 of 8 pages total provides a “Resolution Introducing a Moratorium on Utility Scale Battery Energy Storage in the Town of Duanesburg”.

The same Agenda pages 5 - 7 of 8 pages total provides Proposed Town of Duanesburg Local Law (Introductory) No. 2 of 2024 February 22, 2024 “MORATORIUM ON UTILITY SCALE BATTERY ENERGY STORAGE SYSTEMS OVER 600kWh.”

It appears that the exact same document is available in the DRAFT February 22, 2024 Town Board Meeting Minutes pages 5-9 of 10 pages total. https://www.duanesburg.net/sites/g/files/vyhlf4351f/minutes/february_22_2024_tb_draft_meeting_minutes.pdf

After careful and thoughtful review of the documents my two comments are:

1. SECTION B PARAGRAPH 1 SENTENCE 2

The language should include wind energy facilities. BESS may be a stand alone facility, integrated into a solar + storage facility, or integrated into a wind + storage facility. Clear simple language may protect the town.

Proposed revision:

“This moratorium will affect all such Utility Scale BESS, whether associated with solar **(INSERT AND WIND)** or not, by placing a moratorium on the review of any new application or the approval of any application for special use permit or site plan review for such facilities.”

2. SECTION B PARAGRAPH 1 SENTENCE 3

To equally protect the public health and safety for *all* taxpayers from a known fire risk the moratorium should include approved, under construction, and existing utility scale battery energy storage systems (“BESS”) that are stand alone and/or integrated with solar energy facilities and/or integrated with wind energy facilities.

As written the draft moratorium may provide diminished public health, safety, and environmental protection to the landowners neighboring permitted, under construction, and existing solar, wind and BESS facilities.

The draft moratorium may protect some taxpayers, but not all taxpayers. The town should provide equal and fair protection to all taxpayers by providing a moratorium that includes all utility scale energy projects regardless of permitting status, construction status, or operational status.

Additional reasons for including all energy projects in the moratorium are:

MORE THAN 25% OF BESS MAY CONTAIN DEFECTS AND DEVIATE FROM INDUSTRY BEST PRACTICES.

BESS projects may be equipped with state-of-the-art fire suppression and other safety features, but these features are only as effective as their design, quality control, installation, and maintenance may allow.

As you are probably aware by now, the Clean Energy Associates report *BESS Quality Risks: A summary of the most common Battery Energy Storage System manufacturing defects* (February 2024) of the BESS inspected had factory quality issues related to the fire detection and suppression system, and 18% had quality issues related to the thermal management system. If confirmed, these numbers are obviously unacceptable and indicate that not only is much better quality control needed at the manufacturing level, but that projects currently under construction cannot be assumed to be operating at an optimal safety level.

To protect the safety, use, enjoyment, and future development for all taxpayers the moratorium should include any and all utility scale BESS energy projects in the Town of Duanesburg that are permitted, under construction, or constructed.

RAPIDLY CHANGING TECHNOLOGY

The most recent energy project that the Town of Duanesburg Planning Board granted a Special Use Permit for was in September 2019. The meeting minutes referred to “solid state battery energy storage systems.” An energy storage system so advanced that five years later it is still *not available*.

The 2019 application documents to support this permit did not provide BESS.

- The May 17, 2018 Conceptual Site Plan sheet 1 of 1 did not provide the required buildings.
- The 2018 “APPLICATION FOR SITE/SKETCH DEVELOPMENT PLAN APPROVAL” page 2 states “There are no buildings proposed.”
- The August 5, 2019 FEAf page 4 Section D.1.g.i. “Total Number of Structures” is answered “N/A.”
- The September 17, 2019 Site Plan Sheets 1 through 10 of 10 does not provide the required buildings and HVAC for BESS.
- Multiple documents obtained through Freedom of Information from NYSERDA and Schenectady County confirmed that BESS was not shown on the September 2019 application documents.

The renewable energy industry is rapidly changing. Projects permitted last year may already be obsolete. Equipment ordered may be deteriorating in warehouses. Warranty timelines may be expired. It is possible that permitted, under construction, and constructed energy projects in our town may not be safely operated.

The safety of our volunteer emergency responders, landowners, neighbors, and town should be of utmost importance to the town board. All utility scale energy projects in the Town of Duanesburg, regardless of project status, should be included in the moratorium.

WATER SUPPLY

Project sites and town resources may not have adequate water to cool surrounding areas for days on end while an electrical fire burns itself out. The town should plan for the worst case conditions.

None of the energy projects approved by the town provide an on-site water supply. Based upon the documents accessible to me, it appears that the nearest source of water sufficient to fight a electrical fire at an energy facility may be at the Delanson Reservoir. It is unclear if the town has an agreement with the Village of Delanson to use this water source for energy facility fires.

COMPLIANCE WITH NEW YORK STATE'S ANNUAL BURN BAN

Since 2009 the New York State Department of Environmental Conservation has enforced an annual burn ban mid-March to mid-May. The Town of Duanesburg typically extends the ban several weeks into June.

In the past two weeks there were reports of brush fires requiring volunteer fire department resources. The fire season has already begun.

Allowing the construction of and the operation of a known fire risk, BESS, which is typically sited in remote locations without an on-site water supply, places emergency responders, neighbors, and the town at great risk.

PROJECTS OWNERS MAY LACK OF CONSIDERATION FOR THE TOWN AND ENVIRONMENT

The owners/operators of existing energy facilities in the Town of Duanesburg have shown themselves to do what is best for their investors. Not the town. Not the neighbors. Not the environment.

According to New York State records one project in the town has not generated electricity since April of 2022. It is not clear if the owner/operator has informed the town of its generation status. Freedom of Information shows that the project has not made PILOT payments as promised.

Another project in the Town of Duanesburg left at least 2,000 solar panels, many of them broken, on the ground for at least ten months. Reports show that broken panels may leach Hazardous materials into the surrounding soil and water. Freedom of Information requests to the town have not yielded the project's soil test results, water test results, or where the panels were disposed of. It is unclear if the project's failure has resulted in environmental damage to the project site, neighbors, the underlying aquifer, or downstream of the National Wetland Inventory riverine found on the project site.

It appears that operators/owners of energy projects have little, if any concern, for the town, neighbors, soils, or water. Past behavior of owner/operators may indicate that if there is a catastrophic failure of an energy system the town should not expect the owner/operator to cooperate or work for the best interest of the town.

CONCLUSION

To provide assurance that the town is doing everything possible to protect the volunteer emergency service responders, the neighbors, the environment, and the town, the moratorium should include stand alone or integrated BESS projects that are already permitted, under construction, operational, or non-operational.

Energy developers, owners/operators, and the projects should show good faith to the town and community by putting the town's safety first. Anything less may be considered placing the taxpayers at risk for the developer's and their investor's profit.

The Town of Duanesburg should provide equal public health and safety measures for all taxpayers by including all BESS projects regardless of status in the moratorium.

Failure to do so may allow some landowners to suffer under inadequate laws and safety measures while other landowners may benefit. Unequal representation and protection may allow areas of our town to become disadvantaged. This may diminish some property owners, use, enjoyment and future development of their lands. It may decrease some property values and some taxes generated.

I look forward to the March 14, 2024 public hearing and hearing the town board members' comments.

Thank you for your time and consideration.

Respectfully,
Lynne Bruning
720-272-0956
lynnebruning@gmail.com

CC: Jeffery Schmitt, Chair Duanesburg Planning Board
Nelson Gage, Chair Duanesburg Zoning Board
Jennifer Howe, Clerk Town of Duanesburg