

**Town of Elba  
Regular Meeting  
June 9, 2022**

Supervisor Hynes called the meeting to order at 7:00 p.m.; followed by the Pledge to the Flag.

Those in attendance included:

Supervisor Hynes  
Councilman Augello  
Councilman Chamberlain  
Councilman Coughlin  
Councilwoman Marshall

**Others Present:**

Town Clerk Werth  
Superintendent of Highways Yungfleisch  
Chuck Hoover, Planning Board Chair  
CEO/ZEO Mike Morris, left meeting at 7:06 p.m.

**Minutes of May 12, 2022 Town Board Meeting**

**MOTION** Councilman Chairman, second by Councilman Coughlin to approve the minutes as written.

**Ayes:** Augello, Chamberlain, Coughlin, Hynes, Marshall

**MOTION CARRIED by unanimous vote (5-0)**

Supervisor Hynes introduced Mike Morris, CEO/ZEO. Councilman Chamberlain discussed his concerns regarding 4478 Lockport Road. CEO/ZEO Morris will investigate.

**RESOLUTION #17-2022:**

Councilman Chamberlain, second by Councilman Coughlin to approve the following:

**AUTHORIZING THE ADOPTION OF LOCAL LAW NO. 3 of 2022**  
**PRIOR WRITTEN NOTICE MODEL**

**BE IT ENACTED** by the Town Board of the Town of Elba, Genesee County, New York met at a regular board meeting at the Elba Town Hall located at 7133 Oak Orchard Road, Elba, NY 14058 in the Town of Elba, NY on June 9, 2022 commencing at 7:00 p.m. and a public meeting before was held at 6:50 p.m., and chose adopt Local Law No. 3 of 2022 as follows:

**WHEREAS**, pursuant to the Public Officers Law, said meeting was open to the general public and due and proper notice of the time and place of the meeting was given as required by law; and

**WHEREAS**, the Town Board is considering a proposed local law entitled: **Local Law No. 3 of 2022: Prior Written Notice Model**; and

**WHEREAS**, the purpose of the proposed local law is to provide “Prior Written Notice Model”, also known as Town of Elba Local Law No. 3 of 2022. This Law essentially makes a plaintiff provide written notice to the Town prior to an incident/accident to make a claim against the Town for the condition of highways, etc.

**WHEREAS**, notice of said public hearing was duly advertised in the Batavia Daily News, the official newspaper of the Town, on or about May 27, 2022; and

**WHEREAS**, said public hearing was duly held on June 9, 2022 at 6:50 p.m. at the Town Hall and all parties in attendance were permitted an opportunity to speak on behalf of, or in opposition to, said proposed local law, or any part thereof; and

**WHEREAS**, the Town Board, after due deliberation, finds it in the best interest of the Town to adopt said local law;

**RESOLVED**, that the Town Board hereby adopts **Local Law No. 3 of 2022: Prior Written Notice Model**; and be it further

**RESOLVED**, that the Town Clerk be and hereby is directed to enter said local law in the minutes of this meeting and give due notice of the adoption of said local law to the Secretary of the State of New York.

Ayes: Supervisor Hynes  
Council Member Augello  
Council Member Chamberlain  
Council Member Coughlin  
Council Member Marshall

Quorum Present:   5   Yes                             No      Carried:   5   Yes                             No

Local Law Filing New York State Department of State  
99 Washington Avenue, Albany, NY 12231  
\_\_\_\_\_  
(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~County~~  
~~City~~ of Elba, Genesee County, New York  
~~Town~~  
~~Village~~  
Local Law No.       3       of the year 2022.

A local law for Prior Written Notice Model  
(Insert Title)

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No.   3   of 2022, of the ~~(County)~~ ~~(City)~~ ~~(Town)~~ ~~(Village)~~ of Elba, New York was duly passed by the   Town Board   on June 9, 2022, in accordance with the applicable provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No.        of 20    of the ~~(County)~~ ~~(City)~~ ~~(Town)~~ ~~(Village)~~        was duly passed by the        on          20  , and was ~~(repassed after disapproval)~~ by the        and was deemed duly adopted on          20  , in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County) (City) (Town) (Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was submitted to the people by reason of a (mandatory) (permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special) (annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County) (City) (Town) (Village) of \_\_\_\_\_ was duly passed by the Board of Trustees (Name of Legislative Body) on \_\_\_\_\_ 20\_\_\_\_, and was (approved) (~~not disapproved~~) (~~repassed after disapproval~~) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.**

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36) (37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special) (general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_, State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

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.

SEAL

\_\_\_\_\_  
Trisha Werth, Town Clerk

**TOWN OF ELBA**

**LOCAL LAW NUMBER 3 OF 2022**

**PRIOR WRITTEN NOTICE MODEL LOCAL LAW**

## NOTICE OF HIGHWAY DEFECTS

### BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF ELBA AS FOLLOWS:

A Local Law providing for written notification of defects and obstructions on Town highways, bridges, streets, sidewalks, crosswalks and culverts in the Town of Elba.

Be it enacted by the Town Board of the Town of Elba.

Section 1. No civil actions shall be maintained against the town or town superintendent of highways for damages or injuries to person or property sustained by reason of any highway, bridge, street, sidewalk, crosswalk or culvert being defective's, out of repair, unsafe, dangerous, or obstructed unless written notice of such defective, unsafe, dangerous, or obstructed condition of such highway, bridge, street, sidewalk, crosswalk or culvert was actually given to the town clerk or town superintendent of highways, and there was a failure or neglect within a reasonable time after giving of such notice to repair or remove the defect, danger, or obstruction complained of.

No such action shall maintained for damages or injuries to person or property sustained solely in consequence of the existence of snow or ice upon any highway, bridge, street, sidewalk, crosswalk or culvert, unless written notice thereof, specifying the particular place, was actually given to the town clerk of town superintendent of highways and there was failure or neglect to cause such snow or ice to be removed, or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.

Section 2. The superintendent of highways shall transmit in writing to the town clerk within five days after the receipt thereof all written notices received pursuant to this local law. The town clerk shall cause all written notices received pursuant to this local law to be presented to the town board within five days of the receipt thereof or at the next succeeding town board meeting, whichever shall be sooner.

Section 3. This local law shall supersede in its application to the New York Law 65-a of the Town Law.

Section 4. This local law shall take effect immediately upon its filing in the office of the Secretary of State.

Please note that Town Law Section 65-a requires the Clerk to keep a separate indexed record (by location) of all such notices received. In the event of litigation, the Town will be expected to demonstrate compliance with this provision.

Such a local law must contain a requirement that any prior written notice of dangerous or defective conditions that is submitted pursuant to its terms must be transmitted to the town clerk or highway superintendent.

The locally adopted law must comply with the requirements for adoption of local laws generally, such as it must be filed with the Secretary of State.

The Town Clerk must keep a separate indexed (according to location) record of all notices received pursuant to the prior written notice statute or superseding local law.

### **RESOLUTION #18-2022:**

Councilwoman Marshall, second by Councilman Augello to approve the following:

### **WATER DISTRICT #2 PROJECT BUDGET MODIFICATIONS**

WHEREAS, the Town of Elba has received funding from Rural Development for their Water District #2 Project ("Project"); and

**WHEREAS**, the Town Board wishes to adjust project budget items to more accurately reflect actual costs and;

**WHEREAS**, Rural Development requires the Town Board to authorize all changes to the Administrative Budget as shown on the Form E; NOW, therefore be it

**RESOLVED**, that the Town Board of the Town of Elba authorizes the following Budget modifications for the Project:

Atlantic Underwater Services Increase of \$2,200.00

I, Trisha Werth, Town Clerk of the Town of Elba, do hereby certify that the aforementioned resolution was adopted by the Town Board of the Town of Elba on \_\_\_\_\_, 2022, by the following vote:

	AYE	NAY
Donna Hynes, Supervisor	<u>  X  </u>	_____
Wade Chamberlain, Councilmember	<u>  X  </u>	_____
Dan Coughlin, Councilmember	<u>  X  </u>	_____
Maureen Marshall, Councilmember	<u>  X  </u>	_____
Michael Augello, Councilmember	<u>  X  </u>	_____

Dated: \_\_\_\_\_

Trisha Werth  
Town Clerk – Town of Elba

**ABSTRACT 6-2022**

**MOTION**, Councilman Chamberlain second by Councilman Augello approve the following:

General Fund	134-158	\$14,831.69
Highway	70-77	\$57,467.03
WD2	8-9	\$6,095.00
	<b>Total</b>	<b>\$78,403.72</b>

**Ayes:** Augello, Chamberlain, Coughlin, Hynes, Marshall  
**MOTION CARRIED by unanimous vote (5-0)**

**COMMITTEE REPORTS**

**Building and Grounds**

Mr. Yungfleisch reported:

- He has received two bids to have the three trees behind the salt shed removed. Wheatville Blacksmith Tree Service currently has the lowest bid. Mr. Yungfleisch would like to take care of this soon as the trees are dead. There is currently \$28k in for building repairs/updates left. He would like to use this line to pay for the removal of these trees and to finish updating the heaters in the old building. He will also use that line to tile around the office this summer.

**Zoning Board**

Councilman Chamberlain shared there will be a Public Hearing next month for a side yard variance on Maltby Road.

**Planning Board**

Councilman Coughlin reported:

- Joe Bridge (18.-1-27.2) land separation and merger was reviewed and approved
- Cider Solar PILOT discussions ongoing
- Forefront Power's Norton Rd Solar project construction is delayed due to supply chain issues
- BW Solar has not applied for their state applications for the Route 98 solar project

### **GAM**

No report.

### **Cemetery**

Councilman Chamberlain spoke with Steve Davis. They agreed to an extra \$125 a month for the next five months to cover the increase in fuel prices.

### **DEPARTMENT REPORTS**

#### **Highway**

Mr. Yungfleisch reported:

- Oil and stone was done, turned in for POP (Pave our Potholes), will turn into the State once he receives the bill.
- Extreme winter was \$22,852.00, turning it to the State and should get approximately \$43k back.
- Watching oil costs before scheduling any black top. Last year it was \$78k to do a mile and now it would be cost approximately \$110k.
- Will put the new attachment on the current John Deere mower for now and do the ditch banks, in the places they are unable to reach. Will arrive in the fall.
- Need to consider purchasing a flail mower to help with keeping grass off the road.

#### **Assessor**

Mr. Flansburg report was emailed and is also available in the Town Clerk's office.

#### **ZEO/CEO**

Mr. Morris monthly report was emailed and is also available in the Town Clerk's office.

#### **Town Clerk**

Town Clerk Werth reported that she took in \$880.40 and remitted \$845.40 and \$35.00 to NYS Ag. & Markets for spay/neuter program.

#### **Supervisor**

Supervisor Hynes reported:

- Mr. Flansburg will retire on September 30, 2022. The Board will continue to discuss it further.
- Fuel Pumps – Supervisor Hynes and Mr. Yungfleisch believe it is in the best interest of the Town to keep the fuel pumps on town property. Councilman Augello shared that the Village and Fire District have agreed to move forward with buying the software package as the school has proposed. The contract is in effect until 2024. He would like to have an MOA with the school stating they pay 75% of all costs for the fuel pumps (maintenance, costs, internet, etc.) and the Village, Fire District and Town would split the remaining 25%. The school will put the order in by the end of June to start the reimbursement process. It will be approximately \$250 for the Village, Fire District and Town to pay next year as it will be reimbursed by the State. Discussion ensued. Councilwoman Marshall would like to see monitoring of the system monthly versus a quarterly basis. Councilman Augello will pass this request onto the school.
- NY Green and Mayor Norm Itjen met with Supervisor Hynes this week for a second meeting regarding the comprehensive plan. Waiting to see if we are awarded the grant.

**COUNCILPERSONS**

Councilman Coughlin asked if WD2 Phase 7 was complete. Supervisor Hynes stated it was.

Councilwoman Marshall thanked the Board for approving the youth basketball voucher for Sports Boosters. They had record attendance this year. Sports Boosters was able to make up the difference.

**PUBLIC PARTICIPATION**

Mr. Hoover shared a handout from Mr. Kanyuck. It was a synopsis of what took place with Hecate's application. This also discussed that LaBella and Mr. Kanyuck made sure Hecate was in compliance with the local law because there were a number of items that were not clear.

Supervisor Hynes made a **MOTION**, seconded by Councilman Chamberlain to continue assessing at 100% for 2023.

**Ayes:** Augello, Chamberlain, Coughlin, Hynes

**No:** Marshall

**MOTION CARRIED by unanimous vote (4-1)**

**ADJOURNMENT**

**MOTION** was offered from Councilman Chamberlain second by Councilman Coughlin to adjourn the meeting at 7:52 p.m.

**Ayes:** Augello, Chamberlain, Coughlin, Hynes, Marshall

**MOTION CARRIED by unanimous vote (5-0)**

Respectfully Submitted,

Trisha Werth  
Town Clerk