



TOWN OF PENFIELD

3100 Atlantic Avenue, Penfield, NY 14526-9798

PENFIELD TOWN BOARD MEETING AGENDA

Wednesday, May 16, 2012 7:30PM

Supervisor R. Anthony La Fountain, presiding

- I Call to Order - Pledge of Allegiance - Roll Call
- II Public Hearing –To Allow a Birding/Nature Store and Engineering Office at 1807 Penfield Road, located in the Four Corners (FC) Zoning District
- III Communications and Announcements
- IV Public Participation
- V Additions and Deletions to Agenda
- VI Approval of Minutes – April 18, 2012
- VII Petitions
- VIII Resolutions by Function
 - Law and Finance
 - #12T-127 2012 Budget Amendment – Town Court Renovation
 - #12T-128 Authorization to Maintain Properties and Assess the Charges to the 2013 Property Tax Bills
 - #12T-129 Setting a Public Hearing for a Special Permit to Allow a Restaurant with Outdoor Dining at 1778 Penfield Road
 - #12T-130 Adoption of Amendments to the Penfield Zoning Ordinance
 - Public Works
 - #12T-131 Authorization for Barton & Loguidice, PC to Provide Supplemental Sewer Capacity Evaluation; and Authorization for an Engineering Fee Escrow Agreement with Morgan Acquisitions, LLC
 - Public Safety - None
 - Community Services
 - #12T-132 Authorization for Supervisor to Sign Recreation Contracts
- IX Old Business
- X New Business
- XI Public Participation
- XII Adjournment

PENFIELD TOWN BOARD RESOLUTION NO. _____

DATE May 16, 2012

BY Councilman Moore

Law & Finance COMMITTEE

NAME Setting a Public Hearing for a Special Permit to Allow a Restaurant With

Outdoor Dining at 1778 Penfield Road – SBL# 139.05-2-27– Christofer Collard

WHEREAS, an application has been received by the Penfield Town Board for the issuance of a Special Permit pursuant to Article III-3-97 of the Code to allow a restaurant with outdoor dining at 1778 Penfield Road, located in the Four Corners (FC) zoning district;

NOW, THEREFORE, BE IT

RESOLVED, that the Penfield Town Board is best suited to act as “lead agency” within the meaning of the State Environmental Quality Review Act (SEQRA) and does hereby designate itself as “lead agency” pursuant to SEQRA; and be it further

RESOLVED, that the Town Board of the said Town of Penfield shall hold a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on June 6, 2012, at 7:30 PM on said date, to consider the said application and to hear all persons interested on the question of the issuance of a Special Permit to allow a restaurant with outdoor dining at 1778 Penfield Road, in the Four Corners (FC) zoning district; and be it further

RESOLVED, that a copy of this Resolution, certified by the Town Clerk, shall be published at least once in the official newspaper of the Town, the first publication thereof to be not less than ten (10) nor more than twenty (20) days before the date set for said hearing as aforesaid. A copy of this Resolution shall be posted on the official signboard of the Town as prescribed by Law.

Moved: _____

Seconded: _____

Vote: Kohl _____

LaFountain _____

Metzler _____

Moore _____

Quinn _____

PENFIELD TOWN BOARD RESOLUTION NO. _____

DATE May 16, 2012

BY Councilwoman Metzler

Public Works COMMITTEE

NAME Authorization for Barton & Loguidice, PC to provide supplemental sewer capacity evaluation; and authorization for an engineering fee escrow agreement with Morgan Acquisitions, LLC.

WHEREAS; in September 2010 the Town of Penfield authorized Barton & Loguidice, PC to prepare a sewer capacity study for three sanitary sewer basins which could potentially provide sewer service to the mixed use area at the intersection of S.R. 286 & S.R. 250, as recommended in the most recent update of the Town's Comprehensive Plan, and

WHEREAS; the Capacity Study was completed in the fall of 2011, with hydraulic modeling and three sewer unit distribution scenarios to be used for future sewer planning within these basins, and

WHEREAS; based on a recent inquiry by a local engineering firm representing Morgan Acquisitions, LLC, a corporate entity having interests in a parcel of land within this sewer service area, they have requested that the Town further evaluate one of the three unit distribution alternatives, and

WHEREAS; this level of detail is outside the original scope of study and any and all costs should not be borne by the taxpayers of the Town, and

WHEREAS; Morgan Acquisitions, LLC has agreed to fully fund this additional evaluation and to place said fees in an engineering fee escrow account with the Town of Penfield for any and all costs associated with this additional engineering analysis, and

WHEREAS; Barton & Loguidice PC, has prepared a separate proposal, which they have submitted to the Town to undertake this additional engineering service for the amount of \$6,000, and

WHEREAS; the Town of Penfield has prepared an agreement which is in a form and substance acceptable to the Town Attorney that requires Morgan Acquisitions, LLC to cover 100% of the costs of this expanded study and specifically states this additional work does not obligate future approvals for any type of proposed development in this area for this developer or any other individuals or developers, and

WHEREAS; upon mutual execution of said agreement the Town of Penfield shall authorize Barton & Loguidice, PC to undertake this additional engineering work identified above and as more fully outlined in their proposal and all of their information and details shall be submitted to the Town for their records and files.

NOW THEREFORE BE IT RESOLVED; that the Town Supervisor be and hereby is authorized to execute an agreement with Barton & Loguidice, PC to perform engineering services in a form acceptable to the Town Attorney, and

BE IT FURTHER RESOLVED; that the Town Supervisor be and hereby is authorized to execute an engineering fee escrow agreement with Morgan Acquisitions, LLC in a form acceptable to the Town Attorney.

Moved: _____

Seconded: _____

Vote: Kohl _____

LaFountain _____

Metzler _____

Moore _____

Quinn _____

PENFIELD TOWN BOARD RESOLUTION NO. _____

DATE May 16, 2012

BY Councilman Moore

Law and Finance Committee

NAME Authorization to Maintain Properties and Assess the Charges to the 2013 Property Tax Bills

WHEREAS, on October 2, 1996, the Town Board of the Town of Penfield adopted Article IV-4-28 of the Penfield Zoning Ordinance entitled “Property Maintenance”; and

WHEREAS, the purpose of Article IV-4-28 of the Penfield Zoning Ordinance is to prevent the gradual encroachment of blight, deterioration, unsightliness and property devaluation and to assure that all premises within the Town of Penfield are maintained in a manner that will assure the health, safety and welfare of the general public; and

WHEREAS, the property owners of 23 Alden Glen Drive, SBL #094.02-1-43.122, 50 Braunston Drive, SBL #140.01-4-34.14, 54 Braunston Drive, SBL #140.01-4-34.012, 48 Chippenham Drive, SBL #125.03-1-2.183, 71 Chippenham Drive, SBL #125.03-1-2.129, 1800 Clark Road, SBL #123.08-2-64, 1399 Creek Street, SBL #093.19-2-18, 31 Grace Marie Drive, SBL #094.03-3-9, 102 Hitchcock Lane, SBL #108.12-2-41, 1892 Penfield Road, SBL #139.06-3-52, 4 Tilsit Way, SBL #094.01-2-68 have failed to maintain the lawn and exterior areas at the subject properties which continues to be a concern for the health, safety and welfare of the surrounding neighbors; and

WHEREAS, the town staff has continually requested the property owners to maintain at these locations with no result:

NOW, THEREFORE BE IT RESOLVED, that the Town Board of the Town of Penfield hereby authorizes the Building and Zoning Administrator to have the properties appropriately maintained; and

BE IT FURTHER RESOLVED, that the Town Board further authorizes that the cost of said maintenance and any necessary subsequent maintenance during the 2012 season also be charged to the 2013 property tax bill for the subject properties.

Moved: _____

Seconded: _____

Vote: Kohl _____

LaFountain _____

Metzler _____

Moore _____

Quinn _____

PENFIELD TOWN BOARD RESOLUTION NO. _____

DATE: May 16, 2012

BY: Councilman Moore

Law & Finance COMMITTEE

NAME: Adoption of Amendments to the Penfield Zoning Ordinance

WHEREAS, a public hearing was held at 7:30 PM on March 7, 2012 at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield New York to consider amendments to the Zoning Ordinance regarding updating and strengthening current Articles V and VI relating to Environmental Protection and Excavation and Mining; and

WHEREAS, no negative input regarding said amendments was received at said public hearing and all persons were afforded an opportunity to be heard; and

NOW, THEREFORE, BE IT RESOLVED that the Zoning Ordinance amendments as set forth on Schedule "A" attached hereto and made part of this Resolution, be and the same are hereby approved and the pertinent sections of the Zoning Ordinance be amended to read as provided on said schedule; and

BE IT FURTHER RESOLVED, that the Town Clerk be, and she is hereby is, authorized and directed to give necessary notices of such amendments to the Zoning Ordinance to the departments, agencies and offices having jurisdiction in this matter and to cause said amendments to be entered into the minutes of these proceedings and be published as prescribed by law; and

BE IT FURTHER RESOLVED, that the Town Board, acting as lead agency pursuant to the State Environmental Quality Review Act, has classified the adoption of these amendments as an Unlisted Action and has determined that these amendments will not have a significant effect on the environment.

Moved: _____

Seconded: _____

Vote: Kohl _____

LaFountain _____

Metzler _____

Moore _____

Quinn _____

PENFIELD TOWN BOARD RESOLUTION NO. _____ DATE May 16, 2012

BY: Andy Moore _____ Law and Finance _____ COMMITTEE

NAME: 2012 Budget Amendment-Town Court Renovation

WHEREAS, during 2012, the Town of Penfield received a \$19,097 State Grant from the Office of Court Administration in Albany, New York, and

WHEREAS, during 2012, the Town Board has authorized to use these funds to renovate the Town Court facilities, and

WHEREAS, the Town Board desires to have an up to date budget in relation to current income and expenditures,

NOW BE IT RESOLVED, that the following 2012 Budget Amendment be approved for the General Funds as follows:

General Fund Revenue:

Descriptions	Amount	Revised Amount
NYS Grant	\$19,100	\$19,100
01-1110-3089-0000		
Total	\$19,100	\$19,100

General Fund Appropriations:

Descriptions	Amount	Revised Amount
Renovate Court Offices	\$19,100	\$19,100
01-1110-0002-2200		
Total	\$19,100	\$19,100

BE IT FURTHER RESOLVED, that the following 2012 Budget Transfer be approved as follows:

General Fund Appropriations:

From	Amount	To	Amount
Justice Court Contractual		Renovate Court	
01-1110-0004-4090	\$2,000	01-1110-0002-2200	\$2,200
01-1110-0004-4089	\$ 200		

Moved: _____
Seconded: _____

Vote: Kohl _____
LaFountain _____
Metzler _____
Moore _____
Quinn _____

PENFIELD TOWN BOARD RESOLUTION NO. 12T

DATE 05/16/12

BY LINDA KOHL

COMMUNITY SERVICES COMMITTEE

NAME AUTHORIZATION FOR SUPERVISOR TO SIGN RECREATION CONTRACTS

BE IT RESOLVED, that the Town Board authorizes the Town Supervisor to sign the following recreation contracts:

Marilyn Kerstjens, 42 Peaceful Harbor Lane, Webster NY 14580, Active Yoga, 3/12-4/25/12 for a fee of 70% of the total program revenue. Voucher to be submitted 5/16/12.

Mark Banford, 1534 State Road, Webster, NY 14580, Instructor for youth and adult tennis instruction, 6/25/12 – 11/3/12, for a fee of 70% of program revenues. Vouchers to be submitted on 7/4/12, 8/1/12, 9/5/12 and 10/3/12.

Steve Grills, 245 Cypress Street, Rochester, NY 14620, to provide entertainment “Steve Grills and the Roadmasters” and special guest Joe Beard Saturday, September 15, 2012 for “Tastin the Blues” for a fee of \$1,550.00. Voucher to be submitted on 8/15/12.

Shadow Lake Golf Course, 1850 Five Mile Line Road, Penfield NY 14526, to provide golf starting times for Senior 50’s + program, 5/15/12- 7/31/12 for a fee of \$8.50 per paid participant. Voucher to be submitted on 8/1/12.

Eugene Renner, 783 Liberty Street, Penfield, NY 14526, to provide supervision for 50 Plus golf program 5/15/12 – 7/31/12 for a fee of \$23.00 per golf date. Voucher to be submitted on 8/1/12.

Kathleen Covell, 1745 Baird Road, Penfield, NY 14526, Instructor for Youth Culinary Kids Camp 8/6/12 – 8/9/12 for a fee of 75% of class revenues. Voucher to be submitted on 8/1/12.

Mandy Elliot, 73 Chippenham Drive, Penfield, NY 14526, Instructor for Camp music Train 6/25 – 8/9/12 for a fee of 70% of program revenues. Vouchers to be submitted on 6/20/12, 7/18/12 and 8/1/12.

Sarah Gorton, 686 Laurelton Road, Rochester, NY 14609, Instructor for adult Zumba, 6/18/12 – 12/21/12 for a fee of 70% of program revenues. Vouchers to be submitted on 6/20/12, 10/3/12, 11/7/12.

Amend Resolution 12T-076

Footnote Productions, should read: James Warlick, 128 Brentwood Lane, Fairport, NY 14450

Moved: _____

Seconded: _____

Vote:
Kohl _____

LaFountain _____

Metzler _____

Moore _____

Quinn _____

SCHEDULE "A"

ARTICLE 5 FILL AND EXCAVATION PERMITS

5-1. Title.

This article shall be entitled and known as "Fill and Excavation Permits".

5-2. Purpose.

It is the purpose of this article to protect the Town of Penfield, its residents, and its natural environment from the negative effects of land development and land uses and ensure an accurate and permanent record of the placement of fill material. This article outlines the defined procedures and standards established by the Town of Penfield to protect the environment from the adverse impacts of land disturbances including, but not limited to the following:

- a) Clearing of land,
- b) Prolonged exposure of soil,
- c) Changes in drainage characteristics,
- d) Changes in rate and volume of water runoff from the land,
- e) Obstructing the natural flow of water courses and natural runoff patterns,
- f) Soil compaction,
- g) Land filling, and
- h) Land excavation.

5-3. Applicability.

A permit is required for any of the following operations prior to the commencement of any earth disturbance, except as otherwise provided in this article:

- a) Fills and excavations that exceed 50 cubic yards of soil, greater than 4 feet in depth, impair surface drainage, or have slopes steeper than 1' vertical to 2' horizontal.
- b) Earth grading/clearing that exceeds 5,000 square feet of area, cause a grade change of greater than 12" at any point, or change existing surface drainage.
- c) Construction of any aesthetic, recreational, fire protection, fishing pond, or other pond with a depth greater than three feet or meets the above requirements.
- d) Other activities deemed necessary by the Town of Penfield.
- e) Any earth disturbance activity occurring over a twelve month period.

5-4. Permit Provisions.

The Town Clerk shall, upon presentation of a duly verified application for a Fill and Excavation Permit, accompanied by the consent, in writing, of the owner, shall request a review and determination from the Town Board. The Town Clerk shall, upon obtaining the Town Board's approval, issue the permit upon any conditions as may be imposed by the Town Board in a particular case. The applicant shall pay all associated fees, as set by Town Board resolution, and shall provide a financial guarantee (cash or letter or credit from an approved financial institution) as determined and approved by the Town Board.

Each permit issued pursuant to the terms and conditions set in this article shall be granted for no more than three (3) months after the date of its issuance unless further extended by the Town Board, with input from Town staff. Any extensions of the permit shall require payment of all fees as determined by the Town Board. Any financial guarantee shall ensure the faithful performance of the terms and conditions of this article and any conditions noted in the permit. Each permit shall be conditioned on the observance of all municipal ordinances. Further, the applicant shall indemnify and hold harmless the Town Board, the Town of Penfield, and its employees and its agents from and against any damage to property of the town, and for compliance with the terms and conditions of said permit. The cash proceeds of any guarantee, in the event of default, shall be conveyed to the Town of Penfield, which shall be entitled to maintain any action thereupon. Said guarantee shall remain in full force and effect until a certificate of completion has been issued by the Town Engineer certifying that all provisions of this article and the conditions of any permit issued have been fully complied with.

5-5. Permit Application.

Applications for Fill and Excavation Permits shall be submitted to the Town Board by the owner or the owner's agent and must be accompanied with the following materials:

- a) A letter describing the project and its purpose,
- b) A survey map, prepared by a surveyor licensed in NY State, showing the location of the work with the property boundary lines and topography of the site within 100 feet of proposed fill/excavation for which the permit is requested,
- c) Location of any buildings, structures, and utilities on the site where work is to be performed,
- d) Location of any wetlands, flood plains, steep slopes, watercourse, or other environmentally sensitive areas within 100 feet of the site,
- e) Location of adjacent buildings and structures within 100 feet of the site,
- f) Proposed contours of the fill/excavation limits,
- g) Show all proposed drainage improvements, erosion and sedimentation control measures, topsoil storage locations, construction entrances, haul roads, security fencing, retaining walls, and other features associated with the work,
- h) Estimates of the cubic feet of material to be removed or brought onto the site,
- i) Time schedule and sequence of the work,
- j) Name and phone no. of contractor who is doing the work,
- k) Name and phone no. of trucking company(s) and subcontractor(s) assigned to the project,
- l) Source of fill or disposal location of material to be excavated,
- m) An Environmental Assessment Form (EAF) in compliance with the New York State SEQRA Act or an Environmental Impact Statement, if required,
- n) Erosion and sedimentation control plan,
- o) Restoration plan, and
- p) Other materials, plans, soil testing data, or any other data as required by the Town Board.

5-6. Permit Requirements.

No excavation or fill activities shall commence until a permit has been issued, fees paid, and a financial guarantee has been received.

The Town Board shall find that the request is in harmony with the general purpose of this article, taking into account the site location, quantity of fill, proximity to EPOD areas, truck traffic impacts, and neighborhood character. The Town Board shall find that the operation, maintenance, and restoration procedures will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity of the operation and the operation is not detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town of Penfield.

Applications shall be reviewed by the Town Board, which shall make a determination, in its discretion, for the need to require a public hearing on this matter. Such public hearing will be held not less than three (3) nor more than thirty (30) days after the public hearing notice has been given prescribing the time, date, and place of the public hearing. Such notice shall be given by the Town Clerk by causing the same to be published in the official newspaper of the town and by posting said notice on the bulletin board in the Town Hall. Such notice shall contain a brief explanation regarding the application. Approval or denial of the permit application by the Town Board shall be rendered after the conclusion of any public hearing on said application.

In granting any permit, the Town Board may attach such conditions as deemed necessary to protect public and private property, utility, watercourse, or other environmentally sensitive area. The work shall be conducted as to not be hazardous to life or property or in a manner that will create a nuisance.

A separate permit is required for each separate, non contiguous site.

The Town Board may waive any of the requirements for noted herein if the applicant can provide sufficient information on the application to show that the work will conform to the requirements of this article.

In addition to the requirements for a Fill and Excavation Permit, the applicant shall be required to obtain an Environmental Protection Overlay District (EPOD) permit for work located within a steep slope, regulated wetland, woodlot, or watercourse overlay district.

Fill material shall include inert fill materials, gravel, sand, silt, clay, and /or loam. Fill material shall exclude solid waste, hazardous waste, organic materials, tires, refuse, offal, hazardous waste, electronic waste, or any deleterious materials as defined by the Town of Penfield. Inert fill material shall include rocks, bricks, concrete, or asphalt that does not exceed 12" in size. All fill/excavated areas shall be covered with a minimum of 6" of topsoil upon completion of the filling or excavation to the approved grades. No topsoil sales are permitted without a permit as described in Article 6.

Hours of operation for filling, grading, or excavation work shall only be permitted between 7:00 AM and 5:00 PM Monday through Friday and between 8:00 AM and 1:00 PM on Saturday, except for Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. Material hauling trucks shall enter or exit the premises only within the hours permitted. All equipment operations shall be restricted to the above hours.

The applicant shall limit access to the premises at all times to prevent unauthorized dumping. Failure to do so may result in the revocation of the permit.

A copy of all permits, if required, from the NYSDOT and/or MCDOT shall be obtained and submitted prior to start of work.

All public roadways shall be cleaned of spillage or windblown materials, as ordered by the Town representative. Owner shall have sweeper and water truck on site within 24 hours of request by Town officials. Construction access and haul roads shall be maintained at all times and shall be constructed of stone capable of supporting H-20 loading, as defined by the American Association of State Highway and Transportation Officials (AASHTO).

Dust control shall be addressed by use of water, mulch, stone, or other materials as approved by the Town. These shall be used on haul and access roads and disturbed areas as ordered by the Town official.

Any proposed modifications to the approved plans after a permit has been granted shall be submitted to the Town Board for review. Field changes shall be requested with a change order to the town for review and approval. No field changes shall occur until the change order is approved in writing by the Town Board or Authorized Official.

No permit shall be transferable without the written consent of the Town Board.

5-7. Inspections.

The Town reserves the right to inspect all operations to verify that the terms and conditions of any permit are being complied with and the cost of inspections shall be reimbursed by the permittee. Failure to allow access to Town personnel or their agents may result in the revocation of the permit.

Applicant shall provide inspections in accordance with the current NYS Department of Environmental Conservation SPEDS Permit for Stormwater Discharges. Any disturbance of one acre or more shall require the filing of a Notice of Intent (NOI) with the NYSDEC prior to the start of work. A copy of the NOI shall be provided to the Town of Penfield along with a copy of the approved Stormwater Pollution Prevention Plan (SWPPP).

All active excavation and fill areas shall not exceed five acres at any one time. Applicant may request a five acre disturbance waiver from the Town of Penfield. If granted, all

provisions of the current NYS Department of Environmental Conservation SPEDS Permit for Stormwater Discharges shall be followed.

5-8. Exceptions.

A permit shall not be required in the following instances:

- a) Operations and activities not exceeding the criteria established herein,
- b) Sites subject to town subdivision and site plan review process, provided that the application is approved by the appropriate board or authorized official,
- c) Activities subject to permit requirements in article XI; Variances, Special Permits, and/or a Conditional Use Permit,
- d) Construction, modification, or replacement of individual septic systems which do not alter the natural terrain,
- e) Grading, filling, or excavation within the right of way pursuant to a permit issued by the Highway Department for work associated with utilities, road work, or other system for public use,
- f) Grading and trenching for utility installation, maintenance or inspections, only to the extent of any exemption from the provisions of this article required by state law and provided that plans are submitted to the Engineering and/or Planning Department and found to be acceptable,
- g) Excavation for the purpose of constructing a cellar wall, building, or part thereof of a structure for which a permit has been issued by the Town of Penfield Building Department,
- h) Any capital or public works improvement project authorized by the NYSDOT, Monroe County, or Town of Penfield, and
- i) Agricultural operations that are not located in an environmental protection overlay district (EPOD).

5-8. Penalties for offenses.

The Authorized Official shall notify the applicant, in writing, of any violations of this article. Applicant shall have seven calendar days to remedy any violations.

Any person, firm, or corporation who or which violates any provisions of this article shall be subject to the penalties set forth in section 14.28 of the Zoning Ordinance, or as may be amended.

5-9. Repealer.

Article V, entitled "Environmental Protection" is hereby repealed upon the effective date of this article.

ARTICLE 6
MINING AND TOPSOIL SALES

6-1. Title.

This article shall be entitled and known as “Mining and Topsoil Sales”.

6-2. Purpose.

It is the purpose of this article to regulate the manner of construction on, removal of materials from, filling of, draining, cleaning, operating, and using any lands or other premises for sand or gravel pits, stone quarries, topsoil sales or for any other mining and sale of excavated materials and prohibiting the use of any lands or other premises for the aforesaid purposes, which do not comply with this article.

6-3. Applicability.

All mining and topsoil excavation activities shall be in conformity with the provisions of this article and shall be located only within areas specifically permitted according to the provisions of the Zoning Ordinance.

The provisions of this article shall regulate any mining activity that does not fall within the NYSDEC’s jurisdiction as defined in the Environmental Conservation Law.

6-4. Permit Provisions.

Before any mining or topsoil sales activities are commenced and before any topsoil, earth, sand, gravel, rock or other naturally occurring material is removed from the ground, the owner or lessee of the premises or the agent of either, duly authorized in writing, for such purposes, shall obtain a permit therefore, and for that purpose shall file with the Town Clerk an application for a permit in such form as the Town Board may prescribe. Each application shall include a detailed report of the proposed work and a plan setting forth in detail the nature and extent of the proposed excavation. Such report and plan shall show the exact condition of the subject plot or premises of land both before and after the proposed excavation, including location of haul roads, impoundment areas, screening operations, water control features, erosion control measures, and the sequence of operations. There shall be filed with such application a legal description of said premises, together with the name and address of the owner of record of such premises and the names and addresses of the holders of any mortgages thereon. The location of all buildings upon said premises shall be set forth upon the plan accompanying said application, which shall be drawn to scale giving the location and dimension of any and all buildings or other structures thereon. Such plan shall further indicate any and all public or private streets or right of way adjacent to, in or upon said premises. A letter of intent shall be submitted outlining the estimated amount of material to be removed and the schedule for the work.

Any permit issued hereunder shall be conditioned that the premises, upon the conclusion of such excavation, shall be filled within a period to be specified therein with clean, non-burnable fill containing no garbage, refuse, offal, hazardous waste, electronic waste, or any deleterious materials.

Dust preventive measures shall be used to prevent the dust from spreading from said premises. The restoration of the premises shall be graded to provide a safe and stable grade. The restoration shall provide at least six inches of topsoil over all excavated areas and shall be immediately reseeded with a permanent seed mixture or other fast growing surface vegetation until growth is reestablished.

The Town Clerk shall, upon presentation of a duly verified application for a mining or topsoil sales permit accompanied by the consent, in writing, of the owner, shall request a review from the Town Board. The Town Clerk shall issue the permit upon obtaining the Town Board's approval for the issuance of a permit upon any conditions as may be imposed by the Town Board in a particular case. The applicant shall pay all associated fees as set by Town Board resolution and provide a financial guarantee (cash or a letter of credit from an approved financial institution) in an amount determined and approved by the Town Board. Any financial guarantee shall ensure the faithful performance of the terms and conditions of this article and any conditions noted in the permit. Each permit shall be conditioned on the observance of all municipal ordinances. Further, the applicant shall indemnify and hold harmless the Town Board, the Town of Penfield, and its employees and its agents for any and all damage to property of the town, and for compliance with the terms and conditions of such permit. The cash proceeds of any guarantee, in the event of default, shall be conveyed to the town and the Town of Penfield shall be entitled to maintain any action thereupon. Said guarantee shall remain in full force and effect until a certificate of completion has been issued by the Town Engineer certifying that all provisions of this article and the conditions of any permit issued have been fully complied with.

Applicants shall complete and submit an Environmental Assessment Form (EAF) or an Environmental Impact Statement, if required, and meet any and all requirements of the New York State Environmental Quality Review Act (SEQR), the New York State Department of Environmental Conservation (NYSDEC), and the US Army Corps of Engineers (USACOE).

Each permit issued pursuant to the terms and conditions set forth in this article shall be granted for no more than six (6) months after the date of its issuance unless further extended by the Town Board, upon receipt of input from the Town staff. Any extensions shall require payment of fees as may be determined by the Town Board.

All applications for mining or topsoil sales shall be reviewed by the Town Board, which shall make a determination in its discretion for the need to require a public hearing on the matter. Such public hearing will be held not less than three (3) nor more than thirty (30) days after the public hearing notice has been given prescribing the time, date, and place of the public hearing. Such notice shall be given by the Town Clerk, by causing the same to be published in the official newspaper of the town and by posting said notice on the bulletin board in the Town Hall. Such notice shall contain a brief explanation regarding the application. Approval or denial of the permit application by the Town Board shall be rendered after the conclusion of any public hearing on said application.

Any proposed modifications to the approved plans after a permit has been granted shall be submitted to the Town Board for review and approval. No action shall be taken until a written approval of the Town Board or Authorized Official has been issued.

6-5. Dimensional and Safeguard Requirements.

No mining or topsoil sales operation shall be conducted closer than 100 feet to a public right of way or an adjoining property line except that grading may be conducted within such limits in order to provide adequate access to and buffer of the premises. The setback/buffer area shall not be used for any use in conjunction with the excavation and appurtenant activities except for one public notice sign for identifying use, buffering, and those conditions stated in the permit.

All equipment, structures, and other operational facilities including sedimentation ponds, shall not be closer than 100 feet from the public right of way or from an adjoining property line.

Access and haul roads shall be constructed of a stone base able to support an H-20 loading, as defined by the American Association of State Highway and Transportation Officials (AASHTO). All access and haul roads leading to public highways shall be dust and mud free. Mining/topsoil screening operations shall be located to minimize impacts of noise and dust to adjoining residents. Contractor/operator shall provide dust control measures at all times.

Verification of volume of materials to be removed and sufficient reserve of topsoil for restoration work shall be provided, in writing, from a licensed professional engineer, surveyor, or landscape architect.

Fencing shall be required on all sides of the excavation area with a depth greater than four (4) feet (vertical).

The hours of operation for mining and topsoil sales operations shall only be permitted between 7:00 AM and 5:00 PM Monday through Friday and between 8:00 AM and 1:00 PM on Saturday, except for Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. Hauling trucks shall enter and exit the premises only within the hours permitted. All equipment operations shall be restricted to the above hours.

All public roadways shall be cleaned of spillage or windblown materials, as ordered by the Town representative. Owner shall have sweeper and water truck on site within 24 hours of request by Town officials.

All equipment, buildings, structures, etc. shall be removed from the site within two months of termination of the permit.

6-6. Inspections.

The town reserves the right to inspect all operations to verify that the terms and conditions of any permit are being complied with. Failure to allow access to town

personnel or their agents may be grounds to revoke the permit. The cost of town inspections shall be reimbursed to the town by the applicant.

The applicant shall provide for inspections in accordance with the current NYS Department of Environmental Conservation SPEDS Permit for Stormwater Discharges. Any disturbance of one acre or more shall require the filing of a Notice of Intent (NOI) with the NYSDEC prior to the start of work. A copy of the NOI shall be provided to the Town in an approved Stormwater Pollution Prevention Plan (SWPPP).

The active mining and topsoil sales area shall not exceed five acres at any one time. Applicant may request a five acre disturbance waiver from the Town Board. All provisions of the current NYS Department of Environmental Conservation SPEDS Permit for Stormwater Discharges shall be followed.

6-7. Exceptions.

A permit shall not be required in the following instances:

- a) Nothing contained in this article shall be construed to prevent a person from removing topsoil from one part of their land to another part of the same premises when such removal is necessary as an accessory use or is made for the purpose of improving said property,
- b) Sites subject to town subdivision and site plan review process, provided that the application has received approval by the appropriate board or authorized official,
- c) Excavation for the purpose of constructing a basement wall, building, or utility, or part thereof, for which a permit has been issued by the Town of Penfield Building Department,
- d) Any capital or public works project authorized by the Town of Penfield, NYSDOT, or Monroe County, and
- e) Agricultural activities not located in an environmental protection overlay district (EPOD).

6-7. Penalties for offenses.

The Authorized Official shall notify the applicant, in writing, of any violations of this article. Applicant shall have seven calendar days to remedy any violations.

Any person, firm, or corporation who or which violates any provisions of this article shall be subject to the penalties set forth in section 14-28 of the Zoning Ordinance, or as may be amended.

6-8. Repealer.

Article VI, entitled "Excavation and Topsoil Removal" is hereby repealed upon the effective date of this article