



# TOWN OF PENFIELD

3100 Atlantic Avenue, Penfield, NY 14526-9798

PENFIELD TOWN BOARD AGENDA  
Wednesday, October 17, 2012, 7:30 PM  
Supervisor R. Anthony LaFountain, presiding

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- I Call to Order - Pledge of Allegiance - Roll Call
- II Public Hearing #1 - To Allow a Restaurant with Outdoor Dining at  
2124-2126 Five Mile Line Road  
  
Public Hearing #2 – To Consider Establishment of Sparrow Point  
Subdivision – Special Improvement District  
  
Public Hearing #3 - To Consider Establishment of Sparrow Point  
Subdivision Sidewalk District (#17)
- III Communications and Announcements
- IV Public Participation
- V Additions and Deletions to Agenda
- VI Approval of Minutes – September 19, 2012
- VII Petitions
- VIII Resolutions by Function  
  
Law and Finance  
12T-216 Adoption of Final Budgets for Fiscal Year 2013 for the  
Town of Penfield  
12T-217 Authorize Supervisor to sign Lease Agreement with the Penfield  
Ecumenical Food Shelf  
  
12T-218 Adoption of Part 2 of the Environmental Assessment Form and  
Negative Declaration for the Southpoint Cove Apartment Project at  
1420 and 1440 Empire Blvd.

12T-219 Granting Special Permit and Preliminary and Final Resubdivision  
And Site Plan Approval and an Environmental Protection Overlay  
Permit to Allow the Development of a 358 Unit Apartment Complex  
and Accessory 3,500 Square Foot Clubhouse and Pool on 26.62  
Acres at 1420 and 1440 Empire Blvd.

12T-220 Authorize the Town Cable Television Coordinator to attend the  
Alliance for Community Media – North East Annual Conference &  
Trade Show

Public Works - None

Public Safety - None

Community Services

12T-221 Rejecting Bid and Re-Advertising for Sealed Bids for Remote  
Video Camera System

12T-222 Authorization for Supervisor to Sign Recreation Contracts

- IX Old Business
- X New Business
- XI Public Participation
- XII Adjournment

PENFIELD TOWN BOARD RESOLUTION NO. \_\_\_\_\_ DATE: October 17, 2012

BY: Cm Moore Law and Finance COMMITTEE

Name: Authorize the Supervisor to sign Lease Agreement with the Penfield Ecumenical Food Shelf

WHEREAS, the Town of Penfield desires to enter into a Lease Agreement with The Penfield Ecumenical Food Shelf for operation of food shelf services to the residents of the Town of Penfield;

NOW BE IT RESOLVED, that the Supervisor is authorized to sign a Lease Agreement with the Penfield Ecumenical Food Shelf, in a form approved by the Town Attorney, for the building located at 1618 Jackson Road, Penfield, NY beginning on October 1, 2012 and ending on September 30, 2015.

Moved: \_\_\_\_\_

Seconded: \_\_\_\_\_

Vote:

Kohl	_____
LaFountain	_____
Metzler	_____
Moore	_____
Quinn	_____

PENFIELD TOWN BOARD RESOLUTION NO. \_\_\_\_\_

DATE October 17, 2012

BY Councilman Moore

Law & Finance COMMITTEE

NAME Granting Special Permit and Preliminary and Final Resubdivision and Site Plan

Approval and an Environmental Protection Overlay Permit to Allow the Development of a 358

Unit Apartment Complex and Accessory 3,500 Square Foot Clubhouse and Pool on 26.62 Acres

at 1420 and 1440 Empire Blvd. – SBL#s 108.06-1-008.1 and 108.06-1-008.2 –Southpoint Cove

LLC

WHEREAS, Southpoint Cove LLC (“Applicant”), 1170 Pittsford Victor Road, Pittsford, New York 14534, has filed an application (“Application”) with the Town Board (“Town Board”) of the Town of Penfield (“Town”) for the issuance of a Special Permit, Preliminary and Final Resubdivision and Site Plan Approval and an Environmental Protection Overlay Permit pursuant to Articles III–3-10, III-3-92, VIII-8-2 and IX-9-2 of the Code to allow a 358-unit apartment complex and an accessory 3,500 square foot clubhouse and pool (the “Project”), on an approximately 26.62-acre site (“Site”) on Empire Blvd. in the LaSalle’s Landing Development (LLD) zoning district; and

WHEREAS, the Site includes a 16.7-acre parcel at 1440 Empire Blvd. (SBL# 108.06-1-008.2), which is owned by Upstate Brownfield Partners LLC (“UBP”), and a 10-acre parcel at 1420 Empire Blvd. (SBL# 108.06-1-008.1), which is owned by Focus Property Management, Inc.; and

WHEREAS, the Project will also require development activities on a portion of 1384 Empire Blvd., which is ground leased by Rochester Waterfront Properties LLC, and 1463 Empire Blvd. which is owned by the Town; and

WHEREAS, the Project will include ten three-story apartment buildings with parking underneath, as well as a clubhouse; and

WHEREAS, along with the Application, the Applicant submitted a completed Full Environmental Assessment Form (“EAF”), Part 1, for the Project, pursuant to the State Environmental Quality Review Act (“SEQRA”); and

WHEREAS, by Resolution No. 12T-122 approved on May 2, 2012, the Town Board determined that the Project was a Type I action under SEQRA and set a public hearing for the Application on June 6, 2012 at 7:30 PM; and

WHEREAS, about 4.738 acres of the Site at 1440 Empire Blvd. is a brownfield property (“Brownfield”), which is a former dump that contains petroleum and PCB contamination; and

WHEREAS, the Brownfield is enrolled in the Brownfield Cleanup Program (“BCP”) as BCP Site No. B8-0721-06-06, and has been investigated, and will be remediated pursuant to a Remedial Action Work Plan (“RAWP”) prepared by Passero Associates as part of the Project, under the supervision of the New York State Department of Environmental Conservation (“NYSDEC”); and

WHEREAS, UBP has offered to donate, following Project approvals and the commencement of construction, the northern portion of 1440 Empire Blvd., consisting of 7.094 acres of woodlands (“Woodlot”) and federal wetlands (“Wetland”), shown as Lot R-2 (“Wetland/Woodlot Parcel”) on the proposed Subdivision Plat (which does not include any of the Brownfield) to Monroe County or another appropriate recipient for use as a park in coordination with nearby Abraham Lincoln Park or a nature preserve; and

WHEREAS, the Applicant has also applied to NYSDEC for an Article 24 Freshwater Wetlands Permit to allow the storm water pipe to be located within the 100 foot wetland adjacent area in order to discharge storm water into Irondequoit Bay but otherwise no development activities will take place in NYSDEC regulated freshwater wetlands or their adjacent areas, or in federal wetlands; and

WHEREAS, the Applicant is filing a notice of intent to qualify for coverage under the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity (GP-0-10-001), and has furnished the Town with a Stormwater Pollution Prevention Plan (SWPPP); and

WHEREAS, the Applicant proposes to construct a pedestrian/bicycle path to allow public access through the Site and terminating at the northern boundary for future access to the Abraham Lincoln Park to the north; and

WHEREAS, Notice of a Public Hearing on the Application, including Town Board Resolution No. 12T-122 setting the Public Hearing, certified by the Town Clerk, was published in the *Penfield Post*, the official newspaper of the Town, on May 17, 2012, and the Town Clerk also caused a copy of that Notice and Resolution to be posted on the sign board of the Town maintained pursuant to Town Law §30(6) on May 17, 2012, and on the Town web site on May 17, 2012; and

WHEREAS, a public hearing was duly held on the Application on June 6, 2012 at 7:30 PM before the Town Board at the Penfield Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York, to consider the Application and hear all persons interested on the question of the issuance of a Special Permit, Preliminary and Final Resubdivision and Site Plan Approval and an Environmental Protection Overlay Permit pursuant to Articles III-3-10, III-3-92, VIII-8-2 and IX-9-2 of the Code to allow the Project, including a 358-unit apartment complex and an accessory 3,500 square foot clubhouse and pool, on the approximately 26-acre Site on Empire Blvd. in the LaSalle’s Landing Development (LLD) zoning district, all persons desiring to be heard were heard, and the public hearing was closed; and

WHEREAS, by Resolution No. 12T-218 approved by the Town Board on October 17, 2012, with the consent of the other involved agencies, the Town Board designated itself lead agency under SEQRA; and

WHEREAS, the Town Board completed Part 2 of the EAF, and by Resolution No. 12T-218, which is incorporated into this Resolution by reference, determined that the proposed Project will not have a significant impact on the environment, and made a Negative Declaration under SEQRA, so that an environmental impact statement will not be required for the Project; and

WHEREAS, the Town Board finds that the following mitigation measures that the Applicant has offered and agreed to undertake and comply with, as integral parts of the Project, are adequate to address any potential impacts of the Project:

a. The (“Applicant”) will design and construct necessary sanitary sewer capacity improvements to various facilities within Sewer District No. 12, in accordance with the requirements of the Town Engineer, which requirements shall be set forth in an Agreement between the Applicant and the Town of Penfield. Said improvements shall be constructed and operational prior to issuance of a building permit for the sixth apartment building proposed to be constructed within the Project. Current district facilities do have sufficient capacity to allow for construction of the first five buildings without unduly depleting remaining reserve capacity set aside for remaining sewer district properties. These proposed sewer district improvements, when complete, will provide an overall increase to sewer district capacity.

b. Traffic mitigation measures will be provided along Empire Boulevard to the satisfaction of NYSDOT and the Town, including the addition of a two-way left turn lane and appropriate tapers, a westbound deceleration lane, and vegetation removal for sight distance improvements, as indicated by details contained in the Traffic Impact Study prepared by Passero Associates dated March 2012 and the site design plans, and as they may be approved or modified by NYSDOT.

c. The Brownfield will be remediated as required by NYSDEC pursuant to a final Remedial Action Work Plan (“RAWP”) approved by NYSDEC, including removal and off-site disposal in an appropriate landfill of all soil and waste contaminated with PCBs greater than 10 ppb or lead greater than 400 ppb, and covering remaining excavated soils greater than 1 ppb of PCBs on the Site or relocated to the adjacent borrow pit and capped, and any future disturbance of the cap will be governed by a Site Management Plan (“SMP”) approved by NYSDEC.

d. No construction will occur within 330 feet of the eagles’ nest, and any construction within 660 feet of the nest will occur outside of the eagles’ nesting season.

e. The public shall have access through the Site on approximately 2,000 linear feet of sidewalks and stone paths, which will connect the public sidewalk at Bazil’s Restaurant to the northern property line of the Project.

f. The Applicant shall obtain an Article 24 Freshwater Wetlands Permit so it can construct the proposed storm sewer to discharge storm water drainage into Irondequoit Bay.

g. The Wetland/Woodlot Parcel will be donated for use as a park or nature preserve.

NOW, THEREFORE, BE IT RESOLVED that the Application for a Special Permit, Preliminary and Final Resubdivision and Site Plan Approval and an Environmental Protection Overlay Permit for the Project, be and the same are hereby APPROVED subject to the following conditions:

1. Compliance with or agreements reached on all of the engineering requirements that may be raised by the Town Engineer including, but not limited to those raised in the Town Engineer's memo dated May 23, 2012. The Applicant shall obtain the signature of the Town Engineer on the final Site Plan, which shall indicate compliance with this requirement and submission of NYSDOT Improvements Plans to the Town Engineer prior to his signature on the final Site Plan.
2. The signature blocks shall be provided on the Subdivision Plat and Site Plan as required by Section 1.1 of the Town of Penfield Development Regulations and Specifications, with the exception that the signature block shall identify the Town Supervisor's signature.
3. Compliance with all requirements of the Town of Penfield Design and Construction Specifications, revised January 18, 2011.
4. Limits of disturbance as identified on the final Site Plan shall be strictly enforced throughout site and building construction at the direction of the Town Engineer. Further, the limits of disturbance shall be shown on the site, grading, utility and landscaping plans. Areas to be preserved as noted on the Site Plan are to be protected by an above ground orange construction fence per the approval of the Town Engineer and shall be installed prior to any disturbance. Protection measures shall continue until the Site is stabilized or the issuance of a Notice of Termination for the development has been issued. .
5. All site work is to be in compliance with the standards of Chapter 29 - Article V of the Code.
6. The Town Board shall review all final exterior architectural details pertaining to the proposed apartment buildings and clubhouse, retaining walls and dumpster enclosures prior to the issuance of a building permit.
7. Compliance with all requirements of any Federal, State, County or local agency having jurisdiction in the development of the Project on the Site. The Applicant shall submit copies of all State permits to the Town Engineer prior to the start of construction.
8. The applicant shall remove all vegetation along Empire Blvd. at the direction of the Town Engineer to improve sight distance to and from the proposed curbcut prior to the commencement of site work on the property.

9. The final grading plan shall contain a full schedule of erosion control implementation, temporary and permanent seeding details, topsoil stockpile areas and other applicable measures deemed appropriate and acceptable to the Town Engineer.
10. The finished ground level adjacent to each building foundation wall shall be graded in such a manner as to provide positive drainage away from all structures, and shall be subject to the approval of the Town Engineer and Building Inspector.
11. The Applicant shall obtain an EPOD Permit from the Town Clerk and pay the appropriate fee. The applicant shall calculate the amount of disturbance to each EPOD, in acres or portions thereof, which shall be displayed on the final Site Plan.
12. Furnishing the Town with a Letter of Credit in an amount to be approved by the Town Engineer. The Letter of Credit shall insure that all public improvements and such other items as may be deemed necessary are constructed in accordance with the approved plan and the standards and specifications of the Town.
13. Submission of all easements, petitions and covenants to implement the approved plan. Those documents shall be submitted in the Town's format, shall be subject to approval by the Town Attorney, and accompanied by the required filing fees prior to obtaining the signature of the Director of Developmental Services on the final Site Plan.
14. Any and all costs related to the relocation of utilities necessitated by the Project shall be borne by the individual and/or the utility company requesting the relocation. All new utilities serving the Project shall be installed underground.
15. All sanitary sewer connections are to be approved by the Town Engineer and the Monroe County Health Department.
16. Construction must begin within one (1) year from the date of this Resolution, pursuant to Sections 9-4 and 10-4(B) of the Code, or else an extension or re-approval must be obtained from the Town Board.
17. The approved Subdivision Plat must be properly recorded in the Monroe County Clerk's Office prior to the issuance of a building permit.
18. The Applicant must consult with the local office of the U.S. Postal Service to determine an appropriate location and time frame for mailbox rack installation.
19. Any applicable Recreation Fees shall be paid by the Applicant at the time a building permit is issued.
20. THIS RESOLUTION OF APPROVAL WITH CONDITIONS SHALL BE PRINTED IN ITS ENTIRETY AND CONTAINED ON AT LEAST ONE (1) SHEET WITHIN THE SITE PLAN SET.

21. Compliance with all of the requirements of the Director of Developmental Services regarding this matter.

AND BE IT FURTHER RESOLVED, that the applicant, upon submission of plans for signatures, shall also submit a written summary of compliance with the above stated conditions to the Town Supervisor.

AND BE IT FURTHER RESOLVED, that the Town Board bases its decision to APPROVE on the following factors considered and findings:

**Subdivision Approval Factors Considered:**

- A. Character of the Land, including Topography and Watercourses. The land includes steep slopes surrounding a federal Wetland and Irondequoit Bay, and naturally drains into the Wetland and Bay. Several EPOD's are located on the northern portion of 1440 Empire Blvd. Development has been clustered to concentrate development away from these potentially sensitive environmental areas, including steep slopes, wetlands and woodlands, and the eagles' nest on the adjoining parcel to the northwest. Instead, development is limited to previously disturbed areas which are not currently being used, and do not contain woodlands or significant wildlife habitat. In order to accomplish this, the proposed buildings have been designed to be three stories and contain more units than typical apartment projects. Additionally, half of the parking for the Site is proposed in garages within the buildings to minimize construction of parking lots. Collectively, these design efforts have allowed the Project to be situated on a 15-acre portion of the 26-acre Site. The Town Board is satisfied with the overall layout of the Project, and the use of clustering to avoid impacts.
- B. Conformity to the Official Zoning Map and Harmony with the Current Master Plan of the Town. The Project is consistent with the Zoning Map contained in the Town of Penfield Zoning Ordinance ("Zoning Ordinance"). The Site is located in the LaSalle's Landing Development District (LLD) which "permits moderate density residential development, as well as certain commercial, recreational and open space uses." Town Code §3-90(A). The Zoning Ordinance list of principal uses allowed in the LLD, all of which are "subject to a special use permit and site plan approval issued by the Town Board," specifically includes "[m]ulti-family dwellings and apartment buildings," per Town Code §3-90(B)(1)(b). The Town Board has determined that the Project is an appropriate use in the LLD District. Further, the *Town of Penfield 2010 Comprehensive Plan* (pp. 98-99) continues the endorsement of mixed use development in the LDD, and sets a goal to "[p]rotect areas characterized by steep slopes and woodlands" and "[e]nhance, preserve, and protect the functions and benefits of wetlands and watercourses," including Irondequoit Bay. The Project accomplishes all of the goals by clustering development away from environmentally sensitive areas, donation of the Wetland/Woodlot Parcel, and development of apartments next to a marina and restaurant along a State highway to create a mixed use area.
- C. Current Development Regulations and Specifications. The Applicant will comply with all current development requirements, including the Town of Penfield Design and Construction Specifications, revised January 18, 2011. See Condition No. 3, above.

- D. Street Layout and Design. The Town Board has reviewed the proposed street layout and design.
- E. Street Names. Street names must be reviewed and found acceptable by Monroe County 911 and the Penfield Fire Marshal. Nautical names for streets and building will be proposed throughout the Project to promote the architectural theme.
- F. Arrangement of Lots. The Project will have a single owner, so it is appropriate that the Project be built on a single new subdivided lot, R-1, which will be 22.973 acres, and will include 1420 Empire Blvd. (SBL# 108.06-1-008.1), and the southern portion of 1440 Empire Blvd. (SBL# 108.06-1-008.2). The remaining northern portion of 1440 Empire Blvd. will be resubdivided as Lot R-2, consisting of 7.094 acres, which is the Wetland/Woodlot Parcel. This lot will be donated for use as a park or nature preserve, does not include the Brownfield, and will not be developed. Further, 1463 Empire Blvd. (SBL# 108.06-1-007.1) (“Town Parcel”), a 1.67-acre vacant lot owned by the Town, which is being purchased by UBP so the Applicant can use it as a borrow area and re-grade to improve sight distances on Empire Blvd., will be included as part of Lot R-1, although no buildings will be built upon it. In addition, a portion (about 1.43 acres) of 1384 Empire Blvd. (SBL# 108.06-1-1) will be included in Lot R-1, since some improvements will be built in this area. This arrangement is appropriate, because it separates the developed and preserved areas onto different lots. If necessary for financing or ownership purposes, Lot R-1 can be further subdivided, but the preserved Lot R-2 should remain a separate lot.
- G. Drainage Improvements. The Site will be adequately graded, and storm water drainage issues have been adequately mitigated, as set forth in the Stormwater Pollution Prevention Plan (“SWPPP”) and site design plans, by providing water quality improvements including a storm sewer system that will collect runoff from the Project and convey it to a proposed stormwater management area (“SMA”) located at the western portion of the development using several Green Infrastructure practices including organic filters and bio retention areas. After treatment for water quality, the stormwater will be discharged through a proposed storm sewer into Irondequoit Bay.
- H. Utility, Sidewalk and Pedestrian Access, and Conservation Easements. In 1996 the Town constructed a series of sanitary sewers, pump stations and force mains to serve Sanitary Sewer District Extension No. 12, including the Site, so access to public sanitary sewers exists. Adequate access is being provided for water, electric, gas and telecommunication facilities. A pedestrian master plan has been developed that provides an outline for providing access for hikers, walkers, runners and bicyclists to lands along the Bay between the Town Park to the west and Abraham Lincoln Park to the north, connecting to the Seaway Trail along Empire Blvd. As part of this plan, the public will have access through the Site on approximately 2,000 linear feet of sidewalks and stone paths, which will connect the public sidewalk at Basil’s Restaurant to the northern property line of the Project. The path will not encroach on any wetlands or associated adjacent areas. Sidewalks will also be constructed along the property frontage on Empire Blvd. in compliance with the Town of Penfield Sidewalk Policy to construct sidewalks along primary roadway within the Project. Furthermore, the Applicant will provide public access connectivity through the Site on the

interior sidewalks and in the form of the stone path, as submitted on the pedestrian master plan. The intent is to provide both pedestrian and bicycle access through the Site eventually to the Abraham Lincoln County Park.

- I. Parks, Open Spaces, and Natural Features, Including Ownership, Use, and Maintenance of Such Lands. The applicant has offered and will donate the 7.094-acre Wetland/Woodlot Parcel for use as parkland or a nature preserve will protect the existing federal Wetland and a wooded hill with significant vistas, which will provide new recreational opportunities for the public and preserve habitat for wildlife. This parcel will be owned by an appropriate government entity, land trust or other appropriate agency, as determined by the Town Board. If no such agency or land trust is willing to accept this parcel (R-2), the applicant shall retain ownership of said lot R-2 and has offered to and will encumber the property with covenants and restrictions against any future development in a form acceptable to the Town Attorney. The Applicant has offered to and will further grant the Town of Penfield an access easement and construct a public access path in such easement consistent with the requirements of the Town Engineer.
- J. Density Calculation. Town Code §3-90(C)(1)(a) requires a “minimum area of three thousand (3,000) square feet per dwelling unit” in the LDD District. Therefore, 386 units would be allowed on the 26.62 acres that comprise 1420 and 1440 Empire Blvd. Only 358 units are proposed, so density requirements are satisfied. Furthermore, the area of Lots R-1 (including the Town Parcel and a portion of 1384 Empire Blvd.) and R-2 together will be 30.07 acres, so 436 units would be allowed in total. The Applicant is therefore foregoing 78 units in density, since the Wetland/Woodlot Parcel will not be built upon.
- K. Special Benefited Districts Required. No special districts will be required. The Site is already serviced by Sanitary Sewer District Extension No. 12. All remaining aspects of the Project, with the exception of the proposed sidewalks to be constructed along Empire Blvd. shall be maintained by the Applicant.
- L. On-Site Individual Sewage Disposal Systems. There will be no on-site individual sewage disposal systems. The site will be entirely serviced by public sanitary sewers.
- M. Documents Required for Dedication of Public Improvements. Dedication is not planned for utility lines, sidewalks within the Project, paths or roadways, but rather they will maintained by the Applicant via a Property Maintenance Agreement.

**Site Plan Approval: Factors Considered**

- A. Adequacy and arrangement of pedestrian traffic access and circulation, vehicular traffic, parking, walkway structures, control of intersections with vehicular traffic, pedestrian convenience, and appropriate provisions for handicapped persons.

The Project roadways comply with the Town’s Design Criteria for residential development. Traffic will circulate freely around the development, and there will be two vehicular entrances/exits to and from Empire Blvd. Internal intersections will be controlled with stop

signs. The main access road will have two exiting lanes and internal stacking to accommodate cars waiting to exit. As confirmed by NYSDOT, the Project will provide adequate and safe access to and from Empire Blvd. through two separate routes. The Traffic Study determined that Empire Blvd. has the capacity to accept the Project. Mitigation measures along Empire Boulevard will be implemented to the satisfaction of NYSDOT, and the Town of Penfield and will include the addition of eastbound left turn lanes for the entrance to the Project and Basil's Restaurant, a two way left turn lane, a westbound deceleration lane and vegetation removal for sight distance improvements, as indicated by details contained in the Traffic Impact Study and the site design plans. Adequate parking spaces will be provided. Town Code §3-90(D)(1)(a)(ii) requires two parking spaces per apartment unit, or 716 total, which will be provided by 360 covered parking spaces underneath the buildings, and 356 surface spaces, each of which will be 9' x 20'. Sidewalks and parking areas will be handicapped-accessible. As part of a pedestrian master plan to provide access for hikers, walkers, runners and bicyclists to lands along the Bay between the Town Park to the west and Abraham Lincoln Park to the north, connecting to the Seaway Trail along Empire Blvd., the public will have access through the Site on approximately 2,000 linear feet of sidewalks and stone paths, which will connect the public sidewalk at Basil's Restaurant to the northern property line of the Project. Sidewalks will also be constructed along Empire Boulevard which will be maintained by the Town of Penfield.

- B. Location, arrangement, size, architectural features and design of buildings, lighting and signs. As much as is possible, consideration should be given to noise sources, privacy and outdoor waste disposal locations.

The apartment homes will have attractive New England nautical-style architecture. The lighting will be unobtrusive, and the buildings will be clustered away from environmentally sensitive areas. No outdoor waste disposal locations are planned, and only minimal signage. Since half of the parking will be indoors, and most units will be accessed by internal hallways, noise will be minimal, and the apartments will be private.

- C. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise deterring buffer between these and adjoining properties. Site plans shall also show existing stands of trees on the site.

A landscape plan has been submitted that will provide a generous assortment of trees, shrubs and other landscaping, including landscaped islands in roadways, throughout the Project to provide a context sensitive development. This will also provide a visual and noise deterring buffer for adjoining properties, which are largely vacant other than the restaurant/marina to the west, which is not a noise-sensitive receptor. The development is placed in previously disturbed areas with little to no mature vegetation. The Wetland/Woodlot Parcel will not be disturbed, so that the existing woodlot shown on the Natural Resource Map will be preserved.

- D. In the case of an apartment house or multiple dwelling, the adequacy of usable open space for playgrounds and informal recreation.

The Project entails substantial common area and open space that will be available for passive and some active recreational activities of the residents. These areas include the 2,000 foot sidewalk and stone path, which can be utilized for hiking, walking, running and biking, the 7.04-acre Wetland/Woodlot Parcel, which can be used for hiking and passive recreation, and green areas around the perimeter of the Site. In addition, a clubhouse and swimming pool will be available to the residents of the Project.

E. Adequacy of stormwater, sanitary waste disposal, and public water facilities.

Stormwater drainage will be addressed adequately, as set forth in the SWPPP and site design plans, by grading and drainage improvements, including a storm sewer system that will collect runoff from the Project to a proposed SMA located at the western portion of the development using Green Infrastructure practices including organic filters and bio retention areas in compliance with the NYSDEC Stormwater Management Design Manual. After treatment for water quality, the stormwater will be discharged through a proposed storm sewer into Irondequoit Bay. Furthermore, adequate facilities do exist for disposal of sewage for the first five buildings. As identified in the applicant's Pump Station Report of 3/2012 and addendum of 5/2012, district facilities were designed for a total flow allocation of 93,000 +/- gallons per day (g.p.d.), where current utilization amounts to approximately 12,500 g.p.d. The Southpoint Cove Project containing 358 apartments and one community building is projected to require a total of 71,600 g.p.d. of sewer flow capacity. This total flow value is greater than the value allotted this property, as set forth in the sewer district formation documents. The Sewer and Engineering Departments have determined that sufficient capacity does exist for the first 5 Southpoint Cove buildings, while preserving sufficient capacity for remaining property owners within the district, as provided under the original district capacity allocations. To account for greater capacity utilization, and before receiving a building permit for the sixth building, the applicant shall design and construct, at its own expense, certain improvements to the sewer district's facilities. These improvements will be sized to not only recover this greater capacity utilization but also provide an increase in overall district reserve capacity and be constructed in accordance with the physical and financial requirements of the Town Engineer. To facilitate these improvements and provide an equitable mechanism for reimbursement of additional reserve capacity created, in excess of what Southpoint Cove requires, the Applicant and Town will develop an Agreement which provides a mechanism for reimbursement, back to the applicant, based on flow capacity required. The goal of Agreement is to provide additional sanitary sewer capacity for all district properties and have an equitable means of reimbursement of excess facilities. Adequate facilities are being provided for public water through Monroe County Water Authority, electric and gas through Rochester Gas & Electric Co., telecommunication through Time Warner and Frontier, and waste disposal by a private hauler. The Applicant will arrange for Rochester Gas & Electric Co. to extend natural gas lines to provide adequate gas service, which will also benefit the entire LaSalle's Landing District.

F. Protection of adjacent properties and the general public against noises, glare, and unsightliness, or other objectionable features.

The Project will not generate significant noise or glare. It will be an inviting western gateway to Penfield with attractive New England nautical-style architecture, and will preserve the Wetland and Woodlot, as well as view of Irondequoit Bay for the public. Furthermore, adjoining properties are largely vacant other than the restaurant/marina to the west, which is not a noise-sensitive receptor. All exterior lighting shall be Dark Sky Compliant.

- G. The effect of the proposed development on environmentally sensitive areas such as but not limited to: wetlands, floodplains, woodlands, steep slopes and watercourses.

The Wetland and Woodlot will be preserved by donation as a park or nature preserve. Development is clustered away from environmentally sensitive areas, and will not take place in wetlands and woodlands, and will not disturb watercourses. The previously disturbed steep slope on the Town Parcel will be disturbed so it can be used as a borrow pit to facilitate closure of the Brownfield, and trees and vegetation that obscure a clear sight distance for traffic entering Empire Blvd., and furthermore the storm sewer pipe must access the shoreline steep slopes, which is necessary to achieve proper drainage and avoid erosion, to reach Irondequoit Bay, but as set forth below in the discussion of the EPOD permit, the Applicant has identified mitigation measures that minimize any impacts.

- H. Compliance with this ordinance, the current Town Master Plan, the current Development Regulations and Specifications, New York State Environmental Quality Review Act (SEQRA), Law, Irondequoit Bay Plan, the Local Waterfront Revitalization Program and any other current and future plans, policies, and requirements.

1. Town Master Plan. The *Town of Penfield 2010 Comprehensive Plan* (pp. 98-99) continues the endorsement of mixed use development in the LDD, and sets a goal to “[p]rotect areas characterized by steep slopes and woodlands” and “[e]nhance, preserve, and protect the functions and benefits of wetlands and watercourses,” including Irondequoit Bay. The Project accomplishes all of the goals by clustering development away from environmentally sensitive areas and the donation of the Wetland/Woodlot Parcel, and by development of apartments next to a marina and restaurant to create a mixed use area.
2. Development Regulations and Specifications. The Project complies with applicable requirements, including the Town of Penfield Design and Construction Specifications, revised January 18, 2011, and applicable design criteria.
3. SEQRA. A Negative Declaration has been made by the Town as lead agency, which is in incorporated by reference.
4. Irondequoit Bay Harbor Management Plan. This Plan, which was adopted by the three towns surrounding the Bay, and serves as an addendum to their LWRPs, recognized the “the southeast slopes in Penfield” as an environmentally sensitive habitat area (p. 38), and sets as its first goal to “[b]etter protect and enhance the sensitive natural areas and resources of the Bay.” Additionally, the Plan recommends establishment of the hiking

trail planned in the Irondequoit Bay Hiking Trail Plan (p. 82), and calls for “a funding mechanism for an aggressive land acquisition program” (p. 83). The Project will carry out these goals by protecting the steep slopes, donation of the Wetland/Woodlot Parcel, and construction of the path for hikers.

5. Local Waterfront Revitalization Program. When the Local Waterfront Redevelopment Plan (“LWRP”) was adopted by the Town in 1991, the Site was included in Subarea 3 at the south end of Irondequoit Bay, which was identified as not currently meeting its development potential and lacked community benefits. However, the LWRP strongly urged development, stating that “Subarea 3 is considered by Penfield to be its prime LWRP opportunity site and the one which requires the most Town involvement to insure that appropriate redevelopment occurs in a manner which will realize the area's full potential.” LWRP at IV-6.
  - a. Development Constraints. As stated in the LWRP (IV-5-6), the lack of development in Subarea 3 is due to a number of factors which have or are being addressed by the Project in a manner that protects the environment:
    - i. Absence of Sewers along Empire Boulevard. In 1996 the Town of Penfield constructed Sanitary Sewer District Extension No. 12 to service the parcels within Subarea 3. As discussed above, the sewers are now adequate for the Project.
    - ii. Presence of Dump Sites. The LWRP cites the presence of known and suspected dump sites as a factor in restricting development in Subarea 3. Remediation of the Brownfield will eliminate this issue for the Site.
    - iii. Environmentally Sensitive Areas. The presence of environmentally sensitive areas, or Environmental Protection Overlay Districts (EPODs), is prevalent through Subarea 3, including the shoreline, steep slopes, wooded areas and wetlands. The Project was designed using a cluster approach to provide the required number of units for development without impacting EPODs or other sensitive areas, so that the development area is restricted to those areas that have already been disturbed, chiefly either during the prior earthmoving activities at 1420 Empire Blvd., or as part of the Brownfield at 1440 Empire Blvd. Prior alternative designs for the Project contemplated expansion into more sensitive areas but the current design has eliminated these impacts, and is consistent with the recommendations in the LWRP to protect those sensitive areas. The only exceptions are minimal activities in two EPOD areas, including the disturbance of steep slopes on the Town Parcel for use as a borrow area to provide fill to close the Brownfield and permanently cap existing waste and soil on the Site, and to provide a clear vision for traffic, and the passage of the stormwater pipe through the shoreline steep slope in the wetland buffer in order to reach Irondequoit Bay, which will not result in any significant negative impacts.

iv. Public Access to Irondequoit Bay. The LWRP also cites limited access to the waterfront as a deterrent to development within Subarea 3. While the Site does not contain frontage along Irondequoit Bay, it does present the opportunity to increase the ability for pedestrians to access the waterfront and take advantage of the views from the parcel. This is being accomplished by 2,000 linear feet of sidewalks and stone paths connecting the public sidewalk at Basil's Restaurant to the northern property line of the Project, as part of a pedestrian master plan to connect lands along the Bay between the Town to the west and Abraham Lincoln Park to the north and to also connect with the Seaway Trail. The 2,000-foot link provided by the Project will be a significant step in providing pedestrian connectivity through Subarea 3, consistent with the LWRP.

b. LWRP Policies. The Project will be consistent with the specific policies set forth in the LWRP, including the following:

**POLICY 1: RESTORE, REVITALIZE, AND REDEVELOP DETERIORATED AND UNDERUTILIZED WATERFRONT AREAS FOR COMMERCIAL AND INDUSTRIAL, CULTURAL, RECREATIONAL AND OTHER COMPATIBLE USES.**

**POLICY 1A: DEVELOP VACANT SITES ALONG EMPIRE BLVD. SHOREZONE FOR WATER ENHANCED USES IN CONFORMANCE WITH RESTRICTIONS CITED UNDER POLICY 2.**

These policies call for construction of "multi-family dwellings, apartment buildings and townhomes," and they "should serve as a catalyst to private investment." LWRP at III-3. Furthermore, Policy 2 calls for continuation of existing waterfront uses like marinas. Accordingly, construction of waterfront apartments near the existing marina, and allowing connectivity for public access, is exactly the type of development the LWRP envisioned.

**POLICY 6: EXPEDITE PERMIT PROCEDURES IN ORDER TO FACILITATE THE SITING OF DEVELOPMENT ACTIVITIES AT SUITABLE LOCATIONS.**

This policy calls for "every effort to coordinate and synchronize existing permit procedures and regulatory programs," LWRP at III-7, which is being accomplished by approval and development of the Project.

**POLICY 39: THE TRANSPORT, STORAGE, TREATMENT AND DISPOSAL OF SOLID WASTES, PARTICULARLY HAZARDOUS WASTES, WITHIN COASTAL AREAS WILL BE CONDUCTED IN SUCH A MANNER SO AS TO PROTECT GROUNDWATER AND SURFACE WATER SUPPLIES, RECREATION AREAS, AND SCENIC RESOURCES.**

By remediating the Brownfield, the Project will further this policy to protect the area from solid and hazardous waste.

6. LaSalle's Landing Development Plan. This Plan was prepared for the Towns of Irondequoit and Penfield by LaBella Associates, P.C. in May 1997, and calls for opening the shoreline for public access, protection of environmentally sensitive areas, public acquisition of identified open space, preservation of scenic vistas and visual access to the Bay, and a proposed linear trail system, as well as zoning incentives to encourage mixed use development compatible with these goals. The study resulted in the LaSalle's Landing Development District (LLD) zoning, which permits moderate density residential development. Since the Project is a moderate-density residential development, and provides for protection of environmentally sensitive areas, public acquisition of the Wetland/Woodlot Parcel, preservation of scenic vistas and visual access to the Bay, and a trail through the Site, it is precisely the type of development envisioned by the LaSalle's Landing Development Plan.
- I. Provision for adequate drainage away from walls or structures. See Condition No. 9. The finished ground level adjacent to each building foundation wall will be graded in such a manner as to provide positive drainage away from all structures, and will be subject to the approval of the Town Engineer and Building Inspector.
- J. Maintenance agreements, easements and other required legal documentation shall be approved by the Town Attorney. All such documentation will be approved by the Town Attorney. See Condition No. 12.
- K. The impact of the proposed use on adjacent land uses. The Project will be an inviting western gateway to Penfield, will not generate significant noise or light or any pollution, and is not anticipated to have any negative impact on adjoining properties. Rather, the Project will serve as an anchor for the LaSalle's Landing Development District in compliance with the plan to develop the Site and adjoining properties.

### **Special Use Permit Approval: Factors Considered and Findings**

- A. The Project will, as applicable:
  1. Provide adequate and safe access.

As confirmed by NYSDOT, the Project will provide adequate and safe access to and from Empire Blvd. through two separate access locations. Mitigation measures along Empire Boulevard will be implemented to the satisfaction of NYSDOT and the Town, and will include the addition of eastbound left turn lanes for the entrances to the Project and Bazil's Restaurant, a two way left turn lane, a westbound deceleration lane and vegetation removal for sight distance improvements, as indicated by details contained in the Traffic Impact Study and the site design plans. The main access road will have two

exiting lanes and internal stacking to accommodate cars waiting to exit. The comprehensive Traffic Study identified that the area transportation system has capacity to accept the Project.

2. Provide adequate site utility service, including water supply, sewage and refuse disposal.

As set forth above, adequate provision is being made for water supply, sewage and refuse disposal. The existing Sewer District # 12, Pump Station No.2 has sufficient capacity for construction of the first five apartment buildings, and will operate more efficiently with the increased flow from the Project. To account for greater capacity utilization, and before receiving a building permit for the sixth building, the applicant shall design and construct, at its own expense, certain improvements to the sewer district's facilities. These improvements will be sized to not only recover this greater capacity utilization but also provide an increase in overall district reserve capacity and be constructed in accordance with the physical and financial requirements of the Town Engineer. To facilitate these improvements and provide an equitable mechanism for reimbursement of additional reserve capacity created, in excess of what Southpoint Cove requires, the Applicant and Town will develop an Agreement which provides a mechanism for reimbursement, back to the applicant, based on flow capacity required. The goal of Agreement is to provide additional sanitary sewer capacity for all district properties and have an equitable means of reimbursement of excess facilities.

Adequate facilities are being provided for water supply through Monroe County Water Authority, electric and through Rochester Gas & Electric Co., telecommunications through Time Warner and Frontier, and refuse disposal by a private hauler. The Applicant will arrange for Rochester Gas & Electric Co. to extend natural gas lines to provide adequate gas service, which will also benefit the entire LaSalle's Landing District.

3. Be compatible with and enhance, to the extent possible, the existing natural features of the site and the surrounding area.

The Project will be an inviting western gateway to Penfield, with attractive New England-style architecture. Closure of the Brownfield will protect the local environment from pollution and protect public health. The 2,000-foot pathway through the Site will enhance public access to the area. By clustering the Project away from the shoreline, and preservation of the Wetland/Woodlot Parcel, the Project will protect scenic views and vistas of the Bay, and by providing public access, it will allow the public to enjoy it. On the hill on the Woodlot, the public will be given the opportunity to not only view the Bay and downtown Rochester, but also, from a distance, the eagles' nest and the eagles that live there. Therefore, the Project will protect and enhance the existing natural features of the site and the surrounding area.

4. Provide adequate year-round site fire protection services.

Adequate fire protection will be provided by the West Webster Fire Department along with the mutual aid of other area fire departments.

5. Relate in an adequate and appropriate manner to the depth of bay water adjacent to the site.

No construction will take place in or on the shoreline of Irondequoit Bay (other than the stormwater pipe draining into the Bay) so the water depth is not relevant.

6. Relate in an adequate and appropriate manner to, and in general be compatible with the permitted existing land use and zoning pattern in the immediate area.

The Site is located in the LaSalle's Landing Development District (LLD), which "permits moderate density residential development, as well as certain commercial, recreational and open space uses..." Town Code §3-90(A). The Zoning Ordinance specifically allows "[m]ulti-family dwellings and apartment buildings" as a specially permitted principal use, Code §3-90(B)(1)(b), so the Project is consistent with the zoning pattern. Further, as discussed above, Since the Project is a moderate-density residential development next to commercial uses, and provides for protection of environmentally sensitive areas, public acquisition of the Wetland/Woodlot Parcel, preservation of scenic vistas and visual access to the Bay, and a trail through the Site, it is precisely the type of development envisioned by the LaSalle's Landing Development Plan.

7. Comply with the applicable site design criteria and other zoning district requirements outlined in the Penfield Zoning Ordinance.

The Project will comply with all current development requirements, including the Town of Penfield Design and Construction Specifications, revised January 18, 2011. Based on the visual analysis provided by the Applicant, the proposed height of the buildings will not interfere with identified scenic views or vistas or impair the aesthetic quality and integrity of the waterfront area, so that the 35-foot/two-story height limit set forth in Code §3-90(C)(3)(a) is waived by the Town Board, and the proposed building heights set forth in the Applicant's design plans of approximately 52.5 feet, measured from the bottom of the first floor, exclusive of cupolas or other decorative items, is approved. Furthermore, the Town Board waives the 60-foot setback from the public right of way ("ROW") set forth in Code §3-90(C)(2)(b)(2)(ii) for Building #2, which is setback 35 feet from the Empire Blvd. ROW (but 75 feet from the street line), since that the building was a tight fit due to the narrowing of the parcel and the Applicant's commitment to avoid encroachment into the wetland, which was the only other alternative. There is no safety concern with the adjacency to Empire Blvd., because the distance of 75 feet is considerable and additional landscaping will be installed to mitigate any potential impact. All other buildings are at least 60 feet from the Empire Blvd. ROW. The Project will meet all other applicable setback and density requirements, including less than 70% lot coverage.

8. Provide public access to the shore zone, to the extent possible and desirable given the nature of the site and proposed use.

In order to implement a pedestrian master plan to provide access for hikers, walkers, runners and bicyclists to lands along the Bay between the Town Park to the west and Abraham Lincoln Park to the north, connecting to the Seaway Trail along Empire Blvd, the public will have access through the Site on approximately 2,000 linear feet of sidewalks and stone paths, which will connect the public sidewalk at Basil's Restaurant to the northern property line of the Project. Furthermore, the Wetland/Woodlot Parcel will be a park or nature preserve available for the public to hike and view the Bay from the vista on the hill.

B. The Project will not, as applicable:

1. Adversely affect the orderly development and character of the surrounding neighborhood, nor be detrimental to the health, safety or to the general welfare of the town.

The Project will be an inviting western gateway to Penfield, and a positive addition to the Town and its tax base. The apartment homes have attractive New England-style architecture, will provide high-quality housing, and will serve as an anchor for development of the LaSalle's Landing District. As a result of the Project, the Brownfield will be remediated under the requirements of NYSDEC through the BCP, which will eliminate the potential for exposure of humans, wildlife and the environment to the buried contamination. Prior to mass earthwork, areas containing higher levels of PCBs will be treated in a manner approved by NYSDEC in the final RAWP. After the localized cleanup of PCBs, and the site work and building foundations reach substantial completion including utility and pavement installation, concrete form work and rough grading, waste areas not capped with impervious surfaces will be capped with at least two feet of clean soil in accordance with the approved RAWP for a Track 4 cleanup. Any future disturbance of the cap will be governed by the SMP approved by NYSDEC. Furthermore, the Project is clustered to avoid environmentally sensitive areas, including the Wetland and the Woodlot. Therefore, the Project will not adversely affect the orderly development and character of the surrounding neighborhood, nor be detrimental to the health, safety or to the general welfare of the Town, but rather it will be a major positive addition.

2. Be a nuisance to neighboring land uses. Create hazards or dangers to the general public or to persons in the vicinity of the Project, cause undue harm to or impair existing sensitive natural features on the site or in the surrounding area, be incompatible with the type, extent and direction of building development for the site and surrounding area, as proposed in the Town of Penfield Master Plan, LWRP, LaSalle's Landing Development Plan or official policies, or a portion thereof as adopted by the Town.

The Project will be a positive addition to neighboring land uses, since it will serve as an anchor of the LDD District and bring residents to the area who can utilize nearby businesses, including restaurants and the marina. Further, it will provide pedestrian and bicycle connectivity through the 2,000-foot public sidewalk and path. Rather than create hazards or dangers, the Project will result in remediation of the Brownfield, and provide a safe passageway through the Site. Further, multi-family development on this Site is not

only compatible with, but was contemplated by the official policies of the Town, including the Town of Penfield Master Plan, LWRP and LaSalle's Landing Development Plan, as discussed above.

3. Impair or adversely impact significant historic, archeological and/or cultural resource sites.

As found by the Phase IA Cultural Resource Investigation, the Site does not have any cultural value or potential for historic or archeological resources. This was primarily determined based on historical facts that the development area has previously been disturbed both during earth moving and mass grading activities at 1420 Empire Boulevard and the Brownfield at 1440 Empire Boulevard. Therefore, the Project will not result in the impairment or adversely impact significant historic, archeological or cultural resource sites.

4. Require an unnecessary or destructive amount of dredging, filling or other disturbance of the water of Irondequoit Bay or Irondequoit Creek.

There will be no dredging, filling or other disturbance of the water of Irondequoit Bay or Irondequoit Creek. The Project will merely convey stormwater into the Bay as naturally occurred prior to development. Erosion and sedimentation features will be incorporated to address any discharge of sediment into Irondequoit Bay.

5. Adversely affect any sensitive environmental features, which may exist on or in close proximity to the site.

As discussed above, environmentally sensitive features on the Site will be preserved, including the Wetland and Woodlot, which will be donated for a park or nature preserve. Furthermore, erosion control practices will be implemented to the maximum extent practicable in order to the potential for any sediment to enter the Bay or Wetland, and protect steep slopes. This will be accomplished by provided silt fencing, stone pad protection, seeding and stabilization measures. The Project will not impact the bald eagles that nest on the adjoining property to the northwest. The nearest proposed structure to the nest is Building #10, which is at its closest point will be 575 feet from the nest. Consistent with the National Bald Eagle Management Guidelines applicable to federal permitting, no construction will occur within 330 feet of the nest (an in fact no closer than 550 feet), and any construction within 660 feet of the nest will occur outside of the eagles' nesting season. After the young eagles have fledged the nest in late summer, construction of Building #10 will begin. During the fall, the parking areas and shell of Building #10 will be completed so that by the time the eagles begin laying eggs in February, only interior work will be taking place. Final landscaping will then be installed after a second fledging of the young, or approximately one year after construction of Building #10 begins.

## **EPOD Steep Slopes Permit Approval: Factors Considered and Findings**

- A. The effect that the proposed regulated activity will have on the public health, safety and welfare and the protection or enhancement of the fragile and environmentally sensitive steep slope areas within the Town.

The Project has been designed to avoid steep slopes along the Bay, and will protect them. While the steep slope EPOD on the Town Parcel will be impacted, it is likely artificial slope constructed for Empire Blvd. and the previous trolley track. After soils from the borrow area is excavated for cover for the Brownfield, and trees and large vegetation that block a clear view for traffic exiting the Site are removed, the area will be refilled with waste from the Brownfield (subject to approval of NYSDEC) and capped with clean soils. Erosion control measures will be utilized, and the area will be maintained as a lawn area with grass or ground cover. Furthermore, while a stormwater pipe will be routed through steep slope and wetland EPODs, erosion control measures will be utilized and the pipe will not have any negative impact, but rather will reduce the potential for erosion from uncontrolled stormwater. Accordingly, there will be no negative environmental impacts from the disturbance and an adequate grade and cover will be established.

- B. The Applicant Has Demonstrated That:

1. A Geotechnical Report prepared by Empire GEO Services, Inc. has been submitted to determine the proper placement of structures and other development related facilities within the plateau area.

All structures and parking areas will be located on an existing flat plateau area with a stable angle of repose, above the Bay and below Empire Blvd.

2. The stability of soils will be maintained or increased to adequately support any construction thereon, or to support any landscaping, agricultural, or similar activities. This shall be documented by soil-bearing data provided by a qualified testing laboratory or engineer and paid for by the developer (or applicant).

There will be no permanent construction on the steep slope, and all work will be in compliance with the recommendations of the Geotechnical Report. Any waste will be capped in accordance with NYSDEC requirements. Erosion control measures will be implemented, as well as re-seeding disturbed areas to minimize soil exposure.

3. No proposed activity will cause erosion or slipping of soil, or cause sediment to be discharged into Irondequoit Bay, its wetlands or tributaries, or any stream or tributary.

Erosion control practices will be implemented to the maximum extent practicable in order to eliminate the potential for any sediment to enter the Bay or Wetland, and protect steep slopes. This will be accomplished by provided silt fencing, stone pad protection, seeding and stabilization measures.

4. Plant life located on the slopes outside of the minimum area that needs to be disturbed for carrying on approved activities shall not be destroyed. Plants or other acceptable ground cover shall be re-established in disturbed areas immediately upon completion of development activity so as to prevent any of the harmful effects set forth above to maintain the natural scenic characteristics of any steep slope. Because vegetation needs to be cleared both to allow the excavation of the borrow area, and to remove obstructions to clear vision, it is necessary to remove most large vegetation on the steep slope on the Town Parcel. Only minimal vegetation must be disturbed by the stormwater pipe. No other steep slope vegetation will be impacted. Upon completion of the work, grass or other ground cover will be established.
5. Access down steep slopes shall be provided with ramp slopes no greater than 1:16 and side slopes no greater than 1:3 if not terraced or otherwise structurally stabilized. Disturbed non-roadway areas shall be stabilized and adequately drained.

No access is necessary since there will be no permanent structures or parking areas on the steep slopes on the Town Parcel.

6. Construction of erosion protection structures, particularly along the waterside of eroding bluffs, shall provide protection of bluff features according to the following standards:
  - a. All erosion protection structures shall be designed and constructed according to generally accepted engineering principles found in publications of the U.S. Soil Conservation Service, as amended.

All erosion protection structures will be designed according to generally accepted engineering principles found in the NYSDEC Standards/Specifications for Erosion and Sediment Control, as amended.

- b. The construction, modification or restoration of erosion protection structures shall not cause any measurable increase in erosion at the development site or other locations, and prevent adverse effects to natural protective features, existing erosion protection structures, and natural resources such as significant fish and wildlife habitats.

Erosion protection structures shall not cause any measurable increase in erosion at the Site or other locations, and will not prevent adverse effects to natural protective features, existing erosion protection structures, and natural resources such as significant fish and wildlife habitats since there will be no resulting erosion or sedimentation in the Bay or Wetland.

7. Drainage of stormwater shall not cause erosion or siltation, contribute to slope failures, pollute groundwater, or cause damage to, or flooding of property. Drainage systems shall be designed and located to ensure slope stability.

Erosion control practices will be implemented to the maximum extent practicable in order to eliminate the potential for any sediment to enter the Bay or Wetland. This will be accomplished by provided silt fencing, stone pad protection, seeding and stabilization measures. Furthermore, drainage off the slope on the Town Parcel will be collected by a stormwater system in accordance with the SWPPP and site design plans, in a SMA using Green Infrastructure practices, and then discharged, after water quality treatment, through the stormwater pipe into Irondequoit Bay. No filling will occur above the 100-year flood zone.

8. Any grading, excavating or other soil disturbance conducted on a steep slope shall not direct surface water runoff over the receding edge during construction.

The disturbance of the steep slopes will not result in direct surface water runoff over the receding edge during construction. Rather, the erosion and stormwater control mechanisms described above will be utilized.

9. There is no reasonable alternative for the proposed regulated activity on that portion of the site not containing steep slopes.

It is necessary to provide safe access to Empire Blvd. In order to do so, the Town Parcel must be re-graded and trees and large vegetation removed so that there will be a clear line of site, as set forth in the Traffic Impact Study. Furthermore, the Brownfield can only be economically closed if the Project is constructed, and waste is left on-site and capped with clean fill from on-site. It would be very expensive to haul cover from off-site or to transport large quantities of waste off-site to a new landfill area, and this expense would make the Project infeasible. The Brownfield will be remediated by a Track 4 closure under the BCP, which will include treatment or removal of any heavily-contaminated PCB source areas, and capping the remaining waste with either an impermeable surface or two feet of clean fill. Parking lots, roads and structures built as part of the Project will act as part of the cap, and fill from on-site will be utilized to provide the two-foot soil barrier. The only other practical source for on-site fill would be using the hill in the Woodlot, but that would destroy the trees in that area. Finally, stormwater must be conveyed to Irondequoit Bay since that is the natural drainage pattern due to the steep grade. Therefore, there is no reasonable alternative for the proposed regulated activity.

#### EPOD Wetland Permit Approval: Factors Considered and Findings

1. Alter groundwater reservoir capacities.

The stormwater pipe, which will be routed through the wetland buffer area that is classified as part of the wetland EPOD, will not have any impact on groundwater reservoir capacities.

2. Decrease watercourse flood carrying capacities.

There will be no decrease in watercourse flood carrying capacities. Rather, the stormwater collection system, with its discharge to Irondequoit Bay, will reduce any flood hazards.

3. Deteriorate water or air quality.

There will be no impact on water or air quality. After collection in a stormwater management area (SMA), stormwater will be treated for water quality by bio retention and organic filters.

4. Alter water retention capabilities.

There will be no impact on water retention capabilities. The stormwater already drains into Irondequoit Bay, and the discharge will be trivial compared to the volume of water in the Bay.

5. Increase downstream siltation.

There will be no increase in downstream siltation. Rather, stormwater will be collected in a SMA, and then treated for water quality by bio retention and organic filters, so silt will be removed prior to discharge.

6. Alter the natural wildlife balance.

There will be no impact on natural wildlife balance. The stormwater already naturally drains into Irondequoit Bay.

7. Impair any natural function of the wetland.

The stormwater discharge will not impact any natural functions of the wetland. Rather, the stormwater already naturally drains into Irondequoit Bay, and the system is expected to improve the quality of stormwater discharges: and

BE IT FURTHER RESOLVED. that Section 276 of the Town Law states that “Conditional Approval of the final plat shall expire within one hundred eighty (180) days after the date of the Resolution granting conditional approval unless such requirements have been certified as complete”: and

BE IT FURTHER RESOLVED, that this section also provides that the Town Board “may extend for periods of ninety days each, the time in which a conditionally approved plat must be submitted for signature if, in the Town Board's opinion, such extension is warranted by the particular circumstances”; and

BE IT FURTHER RESOLVED, that the Town Board considered all of the documents and information generated as part of its review of the Application, including, but not limited to the following:

1. Letter of Intent, submitted on March 30, 2012.
2. Detailed Site Design Plans prepared by Passero Associates submitted on March 30, 2012.
3. Subdivision Map prepared by Passero Associates submitted on March 30, 2012.
4. Architectural drawings and elevations prepared by Passero Associates submitted on March 30, 2012.
5. Environmental Assessment Form with Visual EAF Addendum submitted on March 30, 2012.
6. Coastal Assessment Form submitted on March 30, 2012.
7. Natural Resources Map prepared by Passero Associates submitted on March 30, 2012.
8. Fish and Wildlife Impact Assessment prepared by Leader Professional Services, dated October 2010 submitted on March 30, 2012.
9. Traffic Impact Study prepared by Passero Associates, dated March 2012 submitted on March 30, 2012.
10. Stormwater Pollution Prevention Plan prepared by Passero Associates, dated March 2012 submitted on March 30, 2012.
11. Pump Station Report prepared by Passero Associates, dated March 2012 submitted on March 30, 2012.
12. Comments from NYSDOT dated May February 6, 2012, submitted on March 30, 2012.
13. Freshwater Wetland Application Report prepared by Passero Associates, dated April 2012 submitted on April 23, 2012.
14. Pedestrian Master Plan dated March 2012, submitted on April 30, 2012.
15. Conservation Board Report dated May 1, 2012.
16. Planning Board memo dated May 10, 2012.
17. Phase IA Cultural Resource Investigations for the Proposed Southpoint Cove Apartments Project, Town of Penfield, Monroe County, New York, prepared by Powers & Teremy, LLC, dated May 7, 2012 submitted on May 17, 2012.

18. Stantec letter dated May 22, 2012.
19. Comments from the Monroe County Department of Planning and Development dated May 23, 2012.
20. Town of Penfield Local Waterfront Policies Review dated May 24, 2012.
21. New York State Department of Environmental Conservation Letter dated May 24, 2012.
22. Town of Penfield Engineering Department memo dated May 25, 2012.
23. New York State Parks Recreation and Historic Preservation letter dated May 25, 2012, received on May 29, 2012.
24. Revised site plan submitted July 18, 2012.
25. Town of Penfield Project Review Committee memos dated May 17, 2012, June 1, 2012 and July 24, 2012.
26. Town Engineer's memo dated July 24, 2012.
27. Draft Remedial Action Work Plan dated February 2012, submitted August 17, 2012.
28. Geotechnical Report prepared by Empire GEO Services, Inc., dated July 2012, submitted on August 21, 2012.
29. Comments from other involved and interested agencies, and responses and comments by representatives of the Applicant.
30. Public comment, verbal, written and electronic, including those presented at the Public Hearing held on June 6, 2012; and

Moved: \_\_\_\_\_

Seconded: \_\_\_\_\_

Vote: Kohl \_\_\_\_\_

LaFountain \_\_\_\_\_

Metzler \_\_\_\_\_

Moore \_\_\_\_\_

Quinn \_\_\_\_\_

PENFIELD TOWN BOARD RESOLUTION NO. \_\_\_\_\_ DATE: October 17, 2012

BY: Andy Moore \_\_\_\_\_ Law & Finance \_\_\_\_\_ COMMITTEE

NAME: Authorize the Town Cable Television Coordinator to attend the Alliance for Community Media - North East Annual Conference & Trade Show

WHEREAS, the Town Cable Television Coordinator is on the Board of Directors for the Alliance for Community Media Northeast Region (ACM-NE) encompassing the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island and Vermont, and

WHEREAS, the ACM-NE Annual Conference & Trade Show will be held from October 31<sup>st</sup> to November 2<sup>nd</sup> in Plymouth, Massachusetts and Partial reimbursement will be paid by the Town and partial reimbursement will be paid by ACM-NE. Authorized expenses will be reimbursed by the Town upon presentation of a properly completed voucher with supporting documents for mileage and hotel expenses, and

THEREFORE BE IT RESOLVED, that David E. Renner, Cable Television Coordinator is hereby authorized to attend the ACM-NE Annual Conference & Trade Show at a shared cost with the Town of Penfield.

MOVED: \_\_\_\_\_

SECONDED: \_\_\_\_\_

Kohl \_\_\_\_\_

LaFountain \_\_\_\_\_

Metzler \_\_\_\_\_

Moore \_\_\_\_\_

Quinn \_\_\_\_\_

PENFIELD TOWN BOARD RESOLUTION NO. \_\_\_\_\_

DATE October 17, 2012

BY Councilman Moore

Law & Finance COMMITTEE

NAME Adoption of Part 2 of the Environmental Assessment Form and Negative Declaration for the Southpoint Cove Apartment Project at 1420 and 1440 Empire Blvd. – Southpoint Cove LLC

WHEREAS, Southpoint Cove LLC (“Applicant”), 1170 Pittsford Victor Road, Pittsford, New York 14534, has filed an application (“Application”) with the Town Board (“Town Board”) of the Town of Penfield (“Town”) for the issuance of a Special Permit, Preliminary and Final Resubdivision and Site Plan Approval and an Environmental Protection Overlay Permit pursuant to Articles III-3-10, III-3-92, VIII-8-2, and IX-9-2 of the Code to allow a 358-unit apartment complex and an accessory 3,500 square foot clubhouse and pool (the “Project”), on an approximately 26.62 acre site (“Site”) on Empire Blvd. in the LaSalle’s Landing Development (LLD) zoning district; and

WHEREAS, the Site includes a 16.7 acre parcel at 1440 Empire Blvd. (SBL# 108.06-1-008.2), which is owned by Upstate Brownfield Partners LLC (“UBP”), and a 10-acre parcel at 1420 Empire Blvd. (SBL# 108.06-1-008.1), which is owned by Focus Property Management, Inc.; and

WHEREAS, the Project will also require development activities on a portion of 1463 Empire Blvd. (SBL# 108.06-1-007.1) (“Town Parcel”), which is owned by the Town and 1384 Empire Blvd., which is ground leased by Rochester Waterfront Properties LLC; and

WHEREAS, the Project will include ten three-story apartment buildings with parking underneath, as well as a clubhouse and in-ground swimming pool; and

WHEREAS, along with the Application, the Applicant submitted a completed Full Environmental Assessment Form (“EAF”), Part 1, for the Project, pursuant to the State Environmental Quality Review Act (“SEQRA”); and

WHEREAS, by Resolution No. 12T-122, approved on May 2, 2012, the Town Board determined that the Project was a Type I action pursuant to SEQRA; and

WHEREAS, about 4.738 acres of the Site at 1440 Empire Blvd. is a brownfield property (“Brownfield”), which is a former dump that contains petroleum and PCB contamination; and

WHEREAS, the Brownfield is enrolled in the Brownfield Cleanup Program (“BCP”) as BCP Site No. B8-0721-06-06, and has been investigated, and will be remediated pursuant to a Remedial Action Work Plan (“RAWP”) as part of the Project, under the supervision of the New York State Department of Environmental Conservation (“NYSDEC”); and

WHEREAS, UBP has offered to donate, following Project approvals and the commencement of construction, the northern portion of 1440 Empire Blvd., consisting of 7.094 acres of woodlands (“Woodlot”) and federal wetlands (“Wetland”), shown as Lot R-2 (“Wetland/Woodlot Parcel”)

on the proposed Subdivision Plat (which does not include any of the Brownfield) to a governmental entity, land trust or another appropriate recipient for use as a park a nature preserve; and

WHEREAS, the Applicant has also applied to NYSDEC for a freshwater wetlands permit so that the Stormwater pipe can cross the 100 foot wetland buffer area in order to reach Irondequoit Bay, which is necessary to achieve proper drainage and avoid erosion, but otherwise no development activities will take place in NYSDEC-regulated freshwater wetlands or buffer areas, or in federal wetlands; and

WHEREAS, the Applicant is filing a notice of intent to qualify for coverage under the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity (GP-0-10-001), and has furnished the Town with a Stormwater Pollution Prevention Plan (SPPP); and

WHEREAS, the Applicant proposes to construct a pedestrian/bicycle path to allow public access through the Site and to allow the future connection to Abraham Lincoln Park to the north; and

WHEREAS, by a letter dated May 1, 2012, pursuant to 6 N.Y.C.R.R. §617.6(b)(3), the Town circulated a copy of Part 1 of the EAF to all involved agencies that have authority to approve permits for the Project, including the New York State Departments of Transportation (“NYSDOT”) and Environmental Conservation (“NYSDEC”), and the Monroe County Department of Public Health, Water Authority and Industrial Development Agency, and requested that they consent to the Town Board acting as SEQRA lead agency for the coordinated review of the Project, and if they failed to object within 30 days they would consent to that designation; and

WHEREAS, all involved agencies have either consented to the Town acting as SEQRA lead agency, or have failed to object to that designation within 30 days; and

WHEREAS, an environmental review of the Project has been undertaken by the Town pursuant to SEQRA; and

WHEREAS, the Town Board considered various documents and information as part of its review of the Application, including the following:

1. Letter of Intent, submitted on March 30, 2012.
2. Detailed Site Design Plans prepared by Passero Associates submitted on March 30, 2012.
3. Subdivision Map prepared by Passero Associates submitted on March 30, 2012.
4. Architectural drawings and elevations prepared by Passero Associates submitted on March 30, 2012.

5. Environmental Assessment Form with Visual EAF Addendum submitted on March 30, 2012.
6. Coastal Assessment Form submitted on March 30, 2012.
7. Natural Resources Map prepared by Passero Associates submitted on March 30, 2012.
8. Fish and Wildlife Impact Assessment prepared by Leader Professional Services, dated October 2010 submitted on March 30, 2012.
9. Traffic Impact Study prepared by Passero Associates, dated March 2012 submitted on March 30, 2012.
10. Stormwater Pollution Prevention Plan prepared by Passero Associates, dated March 2012 submitted on March 30, 2012.
11. Pump Station Report prepared by Passero Associates, dated March 2012 submitted on March 30, 2012.
12. Comments from NYSDOT dated May February 6, 2012, submitted on March 30, 2012.
13. Freshwater Wetland Application Report prepared by Passero Associates, dated April 2012 submitted on April 23, 2012.
14. Pedestrian Access Plan dated March 2012, submitted on April 30, 2012.
15. Conservation Board Report dated May 1, 2012.
16. Planning Board memo dated May 10, 2012.
17. Phase IA Cultural Resource Investigations for the Proposed Southpoint Cove Apartments Project, Town of Penfield, Monroe County, New York, prepared by Powers & Teremy, LLC, dated May 7, 2012 submitted on May 17, 2012.
18. Stantec letter dated May 22, 2012.
19. Comments from the Monroe County Department of Planning and Development dated May 23, 2012.
20. Town of Penfield Local Waterfront Policies Review dated May 24, 2012.
21. New York State Department of Environmental Conservation Letter dated May 24, 2012.
22. Town of Penfield Engineering Department memo dated May 25, 2012.

23. New York State Parks Recreation and Historic Preservation letter dated May 25, 2012, received on May 29, 2012.
24. Revised site plan submitted July 18, 2012.
25. Town of Penfield Project Review Committee memos dated May 17, 2012, June 1, 2012 and July 24, 2012.
26. Draft Remedial Action Work Plan dated February 2012, submitted August 17, 2012.
27. Geotechnical Report prepared by Empire GEO Services, Inc., dated July 2012, submitted on August 21, 2012.
28. Comments from other involved and interested agencies, and responses and comments by representatives of the Applicant.
29. Public comment, verbal, written and electronic, including those presented at the Public Hearing held on June 6, 2012; and

WHEREAS, the Town Board has completed the EAF Part 2 and determined that Part 3 was not applicable;

NOW, THEREFORE BE IT RESOLVED, that the Town Board declares itself the lead agency for the coordinated SEQRA review of the Project, pursuant to 6 N.Y.C.R.R. §617.6(b)(3); and

BE IT FURTHER RESOLVED, that the Town Board of the Town of Penfield, acting as lead agency pursuant to SEQRA, having previously classified the proposed action as a Type I action, hereby adopts the EAF, Part 2, and the Negative Declaration annexed to this Resolution. Accordingly, the submission of a Draft Environmental Impact Statement will not be required.

Moved: \_\_\_\_\_

Seconded: \_\_\_\_\_

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

# Schedule "A"

## SEQR

State Environmental Quality Review

### NEGATIVE DECLARATION

Notice of Determination of Non-Significance

**Project Number:** N/A

**Date:** October 17, 2012

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Town of Penfield Town Board, as lead agency, has determined that the proposed action described below will not have a significant effect on the environment and a Draft Environmental Impact Statement will not be prepared.

**Name of Action:** Southpoint Cove Apartment Project

**SEQR Status:**  Type 1  
 Unlisted

**Conditional Negative Declaration:**  Yes  
 No

#### **Description of Action:**

The action involves the development of a 358 unit apartment complex consisting of ten three-story apartment buildings with parking underneath and an accessory 3,500 square foot clubhouse and pool, on an approximately 26.62 acre site on Empire Blvd. in the LaSalle's Landing Development (LLD) zoning district.

**Location:** 1420 and 1440 Empire Blvd. within the Town of Penfield, Monroe County.

#### **Reasons Supporting This Determination:**

The Town Board has considered the proposed Project and its potential for environmental impacts; reviewed and considered the EAF, the criteria contained in 6 N.Y.C.R.R. §617.7(c), and other supporting information to identify the relevant areas of environmental concern; and thoroughly analyzed the identified relevant areas of environmental concern to determine if the Project may have a significant adverse impact on the environment, and makes the following findings:

1. **Aesthetics and Community Character.** The Project will be an inviting western gateway to Penfield, and a positive addition to the Town and its tax base. The apartment homes have attractive New England-style architecture, will provide high-quality housing, and will serve as an anchor for development of the LaSalle's Landing District. Therefore, the Project will be consistent with, and enhance, the existing community and neighborhood character.
2. **Brownfield Remediation.** The Project will result in remediation of the Brownfield, which has long been a blight upon the area. The remediation will eliminate the potential for exposure of humans, wildlife and the environment to the buried PCBs, lead and petroleum contamination. Prior to mass earthwork, soil containing PCBs greater than 1 ppm that must be removed from the Brownfield to achieve grades will be buried in an adjacent borrow pit. Furthermore, all soils with PCBs above 10 ppm or lead above 400 ppm will be disposed of in an appropriate off-site landfill or treated in a manner approved by NYSDEC in the final RAWP. After the localized cleanup of PCBs, and the site work and building foundations reach substantial completion including utility and pavement installation, concrete form work and rough grading, waste areas not capped with impervious surfaces will be capped with at least two feet of clean soil from the borrow pit in accordance with the approved RAWP. Any future disturbance of the cap will be governed by a Site Management Plan ("SMP") approved by NYSDEC.
3. **Environmentally Sensitive Areas.** Development has been clustered to concentrate development away from any potentially sensitive environmental areas, including steep slopes, the Wetlands and Woodlot, and the eagles' nest on the adjoining parcel to the northwest. Rather, development is limited to previously disturbed areas which are not currently being used, and do not contain woodlands or significant wildlife habitat. Federal wetlands and NYSDEC regulated freshwater wetlands and buffer areas will be avoided (except for a storm sewer). In order to accomplish this, the proposed buildings have been designed to be three stories and contain more units than typical apartment projects. Additionally, half of the parking for the Site is proposed in garages within the buildings to minimize construction of parking lots. Collectively, these design efforts have allowed the Project to be situated on a 15-acre portion of the 26-acre Site.
4. **Wetland and Woodlot.** Donation of the 7.094 acre Wetland/Woodlot Parcel for use as parkland or a nature preserve will protect the existing federal Wetland and a wooded hill with significant vistas, which will provide recreational opportunities for the public and preserve habitat for wildlife.
5. **Eagles.** The Project will not impact the bald eagles that nest on the adjoining property to the northwest. The nearest proposed structure to the nest is Building #10, which is at its closest point will be 575 feet from the nest. Consistent with the National Bald Eagle Management Guidelines applicable to federal permitting, no construction will occur within 330 feet of the nest (an in fact no closer than 550 feet), and any construction within 660 feet of the nest will occur outside of the eagles' nesting season. After the young eagles have fledged the nest in late summer, construction of Building #10 will begin. During the fall, the parking areas and shell of Building #10 will be completed so

that by the time the eagles begin laying eggs in February, only interior work will be taking place. Final landscaping will then be installed after a second fledging of the young, or approximately one year after construction of Building #10 begins.

6. **Erosion Control.** Erosion control practices will be implemented to the maximum extent practicable in order to reduce the potential for any sediment to enter the Bay or the Wetland, and to protect steep slopes. This will be accomplished by provided silt fencing, stone pad protection, seeding and stabilization measures.

7. **Public Access.** A pedestrian master plan has been developed that provides an outline for providing access for hikers, walkers, runners and bicyclists to lands along the Bay between the Town Park to the west and Abraham Lincoln Park to the north, connecting to the Seaway Trail along Empire Blvd. As part of this plan, the public will have access through the Site on a public sidewalk that will be constructed along Empire Boulevard, in accordance with the Penfield Sidewalk Policy, as well as approximately 2,000 linear feet of sidewalks and stone paths within the Site, which will connect the public sidewalk at Bazil's Restaurant to the northern property line of the Project. The path will not encroach on any wetlands or associated adjacent areas.

8. **Scenic Vistas.** The *Town of Penfield Open Space Index* (1999) (p. 22) identifies the area as one of four Scenic Views and Vistas due to the view of Irondequoit Bay from the hill on the Woodlot. By clustering the Project away from the shoreline, and donation of the Wetland/Woodlot Parcel, the Project will protect this Scenic View and Vista, and by providing public access, will allow the public to enjoy it. In addition, from the hill on the Woodlot, the public will be given the opportunity to not only view the Bay and downtown Rochester, but also the eagles' nest and the eagles that live there.

9. **Sewers.** The Project is projected to require 112,533 gallons per day (gpd) of sewer capacity. The existing sewer system and pump has capacity adequate for the first five apartment buildings in the Project, and will function more efficiently with the increased volume. Prior to the receiving a certificate of occupancy for the sixth apartment building, the Applicant will pay to make improvements necessary to increase the sewer capacity to handle the entire Project. In 1996, the Town constructed a series of sanitary sewers, pump stations and force mains to serve Sanitary Sewer District Extension No. 12, including the Site. The sewer system was designed to service the district area at full build-out, which was projected at approximately 90,000 gallons per day (gpd) of wastewater. As set forth in the Pump Station Report and Technical Addendum, based on recent flow meter readings the pump station receives an average daily flow of 12,500 gpd, or approximately 14% of its design capacity, so it is currently vastly underutilized. The addition of the Project will increase the demand experienced by District Extension No. 12, so it will operate more efficiently. Prior to the sixth apartment building, the Applicant will provide mitigation to support ongoing maintenance of the system, and will install a new pump and appurtenances to increase the capacity of the system so it will be adequate for the Project. This will have the added benefit of providing future capacity for the entire LaSalle's Landing District, including capacity if

needed for adjacent future developments, which may need to contribute to some of these costs.

10. **Traffic.** Any traffic impacts will be mitigated to the satisfaction of NYSDOT and the Town by mitigation measures the Applicant has proposed to construct along Empire Boulevard, including the addition of eastbound left turn lanes, a two way left turn lane for the entrances to the Project and Bazil's Restaurant, a westbound deceleration lane and vegetation removal for sight distance improvements, as indicated by details contained in the Traffic Impact Study and the site design plans. The Project will not result in the encouraging or attracting of a large number of people to the Site other than residents.

11. **Stormwater.** The Site will be adequately graded, and Stormwater drainage issues have been adequately mitigated, as set forth in the Stormwater Pollution Prevention Plan ("SWPPP") and site design plans, by a storm sewer system that will collect runoff from the Project and convey it to a proposed Stormwater management area located at the western portion of the development using several Green Infrastructure practices including organic filters and bio retention areas. After treatment for water quality will discharge through a proposed storm sewer into Irondequoit Bay. During all phases of construction, the contractor will adhere to the requirements of the approved drawings and work plans including the SWPPP and the SMP. A third party environmental inspection company will be on site during construction to ensure compliance with the appropriate approved documents.

12. **Flooding.** No filling will take place below the 100-year floodplain, and the Project will not result in a substantial increase in potential for erosion, flooding, leaching or drainage problems, and no environmental impacts associated with flood hazards have been identified.

13. **Cultural Resources.** As found by the Phase IA Cultural Resource Investigation, the Site does not have any cultural value or potential for archeological resources. This was primarily determined based on historical facts that the development area has previously been disturbed both during earth moving and mass grading activities at 1420 Empire Boulevard and the Brownfield at 1440 Empire Boulevard. Therefore, the Project will not result in the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources.

14. **Ground and Surface Waters.** The Project will not result in any adverse change in existing ground or surface water quality or quantity.

15. **Wildlife and Fauna.** The Project will not result in the removal or destruction of large quantities of significant vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on any significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources.

16. **Critical Environmental Areas.** The environmental characteristics of a Critical Environmental Area as designated pursuant to 6 N.Y.C.R.R. §617.14(g) will not be impaired by the Project.

17. **Town Plans and Goals.** The Project will not result in the creation of a material conflict with the Town's current plans or goals as officially approved or adopted, but rather the Project is consistent with the Town's laws and plans, including:

- a. **Town Zoning Ordinance.** The Project is consistent with the Town of Penfield Zoning Ordinance ("Zoning Ordinance"). The Site is located in the LaSalle's Landing Development District (LLD), which "permits moderate density residential development, as well as certain commercial, recreational and open space uses..." Town Code §3-90(A). The Zoning Ordinance list of principal uses allowed in the LLD, all of which are "subject to a special use permit and site plan approval issued by the Town Board," specifically includes "[m]ulti-family dwellings and apartment buildings," Town Code §3-90(B)(1)(b), so the Project is specifically envisioned as an appropriate use in the LLD District. The Project is appropriately clustered, and will meet applicable density and setback (with one minor exception) requirements, and based on the visual analysis provided by the Applicant, the proposed height of the buildings will not interfere with identified scenic views or vistas or impair the aesthetic quality and integrity of the waterfront area.
- b. **LaSalle's Landing Development Plan.** This Plan was prepared for the Towns of Irondequoit and Penfield by LaBella Associates, P.C. in May 1997, and calls for opening the shoreline for public access, protection of environmentally sensitive areas, public acquisition of identified open space, preservation of scenic vistas and visual access to the Bay, and a proposed linear trail system, as well as zoning incentives to encourage mixed use development compatible with these goals. The study resulted in the LaSalle's Landing Development District (LLD) zoning, which allows moderate density residential development. Since the Project is a moderate-density residential development, and provides for protection of environmentally sensitive areas, public acquisition of the Wetland/Woodlot Parcel, preservation of scenic vistas and visual access to the Bay, and a trail through the Site, it is precisely the type of development envisioned by the LaSalle's Landing Development Plan.
- c. **Town Comprehensive Plan.** *The Town of Penfield 2010 Comprehensive Plan* (pp. 98-99) sets a goal to "[p]rotect areas characterized by steep slopes and woodlands" and "[e]nhance, preserve, and protect the functions and benefits of wetlands and watercourses," including Irondequoit Bay, and continues the endorsement of mixed use development in the LDD. The Project accomplishes all of the goals by clustering development away from environmentally sensitive areas and the donation of the

Wetland/Woodlot Parcel, and by development of apartments next to a marina and restaurant.

- d. **Local Waterfront Redevelopment Plan.** When the Local Waterfront Redevelopment Plan (“LWRP”) was adopted in 1991, the Site was included in Subarea 3 at the south end of Irondequoit Bay, which was identified as not currently meeting its development potential and lacked community benefits. However, the LWRP strongly urged development, stating that “Subarea 3 is considered by Penfield to be its prime LWRP opportunity site and the one which requires the most Town involvement to insure that appropriate redevelopment occurs in a manner which will realize the area's full potential.” LWRP at IV-6.
- i. **Development Constraints.** As stated in the LWRP (IV-5-6), the lack of development in Subarea 3 is due to a number of factors which have or are being addressed by the Project in a manner that protects the environment:
1. **Absence of Sewers along Empire Boulevard.** In 1996 the Town of Penfield constructed Sanitary Sewer District Extension No. 12 to service the parcels within Subarea 3. As discussed above, the sewers are now available for the Project.
  2. **Presence of Dump Sites.** The LWRP cites the presence of known and suspected dump sites as a factor in restricting development in Subarea 3. Remediation of the Brownfield will eliminate this issue for the Site.
  3. **Environmentally Sensitive Areas.** The presence of environmentally sensitive areas, or Environmental Protection Overlay Districts (EPODs), is prevalent through Subarea 3, including the shoreline, steep slopes, wooded areas and wetlands. The Project was designed using a cluster approach to provide the required number of units for development without impacting EPODS or other sensitive areas, so that the development area is restricted to those areas that have already been disturbed, chiefly either during the prior earthmoving activities at 1420 Empire Blvd., or as part of the Brownfield at 1440 Empire Blvd. Prior alternative designs for the Project contemplated expansion into more sensitive areas but the current design has eliminated these impacts, and is consistent with the recommendations in the LWRP to protect those sensitive areas. The only exceptions are the Stormwater pipe running through the wetland buffer on the steep slope at the

Bay shoreline, which will require a freshwater wetlands permit from NYSDEC but is necessary to achieve proper drainage and avoid erosion, and the disturbance of steep slopes on the Town Parcel for use as a borrow area to provide fill to close the Brownfield and permanently cap existing waste, and to provide a clear vision for traffic, which will not result in any significant negative impacts.

4. **Public Access to Irondequoit Bay.** The LWRP also cites limited access to the waterfront as a deterrent to development within Subarea 3. While the Site does not contain frontage along Irondequoit Bay, it does present the opportunity to increase the ability for pedestrians to access the waterfront and take advantage of the views from the parcel. This is being accomplished by 2,000 linear feet of sidewalks and stone paths connecting the public sidewalk at Basil's Restaurant to the northern property line of the Project, as part of a pedestrian master plan to connect lands along the Bay between the Town to the west and Abraham Lincoln Park to the north and to also connect with the Seaway Trail. The 2000-foot link provided by the Project will be a significant step in providing pedestrian connectivity through Subarea 3, consistent with the LWRP.

- ii. **LWRP Policies.** The Project will be consistent with the specific policies set forth in the LWRP, including the following:

POLICY 1: RESTORE, REVITALIZE, AND REDEVELOP DETERIORATED AND UNDERUTILIZED WATERFRONT AREAS FOR COMMERCIAL AND INDUSTRIAL, CULTURAL, RECREATIONAL AND OTHER COMPATIBLE USES.

POLICY 1A: DEVELOP VACANT SITES ALONG EMPIRE BLVD. SHOREZONE FOR WATER ENHANCED USES IN CONFORMANCE WITH RESTRICTIONS CITED UNDER POLICY 2.

These policies call for construction of “multi-family dwellings, apartment buildings and townhomes,” and they “should serve as a catalyst to private investment.” LWRP at III-3. Furthermore, Policy 2 calls for continuation of existing waterfront uses like marinas. Accordingly, construction of waterfront apartments near the existing marina, and allowing connectivity for public access, is exactly the type of development the LWRP envisioned.

POLICY 6: EXPEDITE PERMIT PROCEDURES IN ORDER TO FACILITATE THE SITING OF DEVELOPMENT ACTIVITIES AT SUITABLE LOCATIONS.

This policy calls for “every effort to coordinate and synchronize existing permit procedures and regulatory programs,” LWRP at III-7, which is being accomplished by development of the Project.

POLICY 39: THE TRANSPORT, STORAGE, TREATMENT AND DISPOSAL OF SOLID WASTES, PARTICULARLY HAZARDOUS WASTES, WITHIN COASTAL AREAS WILL BE CONDUCTED IN SUCH A MANNER SO AS TO PROTECT GROUNDWATER AND SURFACE WATER SUPPLIES, RECREATION AREAS, AND SCENIC RESOURCES.

By remediating the Brownfield, the Project will further this policy to protect the area from solid and hazardous waste.

- e. **Irondequoit Bay Harbor Management Plan.** This Plan, which was adopted by the three towns surrounding the Bay, and serves as an addendum to their LWRPs, recognized the “the southeast slopes in Penfield” as an environmentally sensitive habitat area (p. 38), and sets as its first goal to “[b]etter protect and enhance the sensitive natural areas and resources of the Bay.” Additionally, the Plan recommends establishment of the hiking trail planned in the Irondequoit Bay Hiking Trail Plan (p. 82), and calls for “a funding mechanism for an aggressive land acquisition program” (p. 83). The Project will carry out these goals by protecting the steep slopes, donation of the Wetland/Woodlot Parcel, and construction of the path for hikers.

18. **Other Pollution and Health Issues.** The Project will not result in a substantial adverse change in existing air quality, noise levels, or a substantial increase in solid waste production. Nor will the Project result in the creation of a hazard to human health.

19. **Other Utilities and Energy.** Adequate water, electric and telecommunication facilities will be provided for the Project. The Applicant will arrange for Rochester Gas & Electric Co. to extend natural gas lines to provide adequate gas service, which will also benefit the entire LaSalle’s Landing District. The Project will not result in a major change in the use of either the quantity or type of energy.

20. **Agriculture.** The Site does not presently host any agricultural uses, and will not impact agriculture.

21. **Cumulative Impacts.** The Project will not result in the creation of a material demand for other actions that would result in one of the above consequences. Further, the Project will not result in changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together

result in a substantial adverse impact on the environment; nor does it include two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria set forth in 6 N.Y.C.R.R. §617.7(c)(1).

For Further Information:

Contact Person: James P. Costello – Director of Developmental Services

Address: 3100 Atlantic Avenue, Penfield, New York 14526

Telephone Number: (585) 340-8642

Email: [Costello@penfield.org](mailto:Costello@penfield.org)

PENFIELD TOWN BOARD RESOLUTION NO. \_\_\_\_\_ DATE October 17, 2012

BY Andy Moore \_\_\_\_\_ Law and Finance \_\_\_\_\_ COMMITTEE

NAME Adoption of Final Budgets for fiscal year 2013 for the Town of Penfield.

**WHEREAS**, the Town Board of the Town of Penfield having on the 3<sup>rd</sup> day of October 2012 commencing at 7:30 PM, duly held a public hearing on the preliminary budgets for the fiscal year beginning January 1, 2013, and

**WHEREAS**, all requirements of Article 102 through 109 of the New York State Town Law for preparation and adoption of the General, Highway, and Library Budgets have been met, and

**WHEREAS**, all requirements of Article 15 of the New York State Town Law for preparation and adoption of the Special District budgets have been met, and

**WHEREAS**, in addition to the above legal requirements, a presentation of the 2013 Tentative Budget was made at the Town Board Legislative meeting on September 5th, and

**WHEREAS**, all persons desiring to be heard in the matter of the budgets of the Town of Penfield for fiscal year 2013 having been fully heard,

**NOW THEREFORE, BE IT RESOLVED**, that the Final Budgets for the General, Highway, and Library Funds, and the Special Districts be and the same are hereby adopted as the annual budgets for the fiscal year beginning January 1, 2013, and that such annual budgets as so adopted, be entered in detail in the minutes of the proceeding of this Town Board, and the annual budgets made available for public inspection at the Town Clerk's Office during normal business hours as well as in the Finance Office at the Town Hall located at 3100 Atlantic Avenue, and the Public Library at 1985 Baird Road, and

**BE IT FURTHER RESOLVED**, that the Clerk of the Town of Penfield prepare and certify as provided by law, duplicate copies of said annual budgets together with Assessment Rolls for the Town, and deliver one of such copies to the Supervisor of this Town, and that the Supervisor shall present such copy to the Monroe County Legislature, as required by law.

Moved: \_\_\_\_\_

Seconded: \_\_\_\_\_

Vote:

Kohl \_\_\_\_\_

LaFountain \_\_\_\_\_

Metzler \_\_\_\_\_

Moore \_\_\_\_\_

Quinn \_\_\_\_\_

PENFIELD TOWN BOARD RESOLUTION NO. \_\_\_\_\_

DATE October 17, 2012

BY Linda Kohl

COMMUNITY SERVICES COMMITTEE

NAME Rejecting Bid and Re-Advertising for Sealed Bids for Remote Video Camera System

WHEREAS; sealed bids were sought and requested in the manner prescribed by Law to furnish the Cable TV Department with the necessary equipment upgrades for studio and board room production, and

WHEREAS; on Wednesday October 10, 2012 at 11:00AM Local Time the following sealed bid was received, opened and read publicly;

Audio Video Corporation  
Corporate Headquarters  
213 Broadway  
Albany, NY 12204

Remote Video Camera System            \$118,970.00

WHEREAS; the Town Board reserves the right to reject any or all bids,

NOW THEREFORE BE IT RESOLVED, that the Town Board hereby rejects the bid received and,

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Cable Television Coordinator be and hereby is authorized to re-advertise in the manner prescribed by Law for sealed bids to furnish the Cable TV Department with the following:

Remote Video Camera System

NOW, THEREFORE, BE IT FURTHER RESOLVED, that said equipment shall conform to the specifications and services prepared by the Cable Television Coordinator. Sealed bids are to be received in the office of the Town Clerk Office until 11:00 AM, EST, Thursday November 01, 2012, at which point to be opened and publicly read.

Moved: \_\_\_\_\_

Seconded: \_\_\_\_\_

Vote: Kohl \_\_\_\_\_

LaFountain \_\_\_\_\_

Metzler \_\_\_\_\_

Moore \_\_\_\_\_

Quinn \_\_\_\_\_

PENFIELD TOWN BOARD RESOLUTION NO. \_\_\_\_\_ DATE 10/17/2012

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:

Bill Palmer, 1933 Penfield Road, Penfield, NY 14526, Adult Basketball Supervisor, 9/17/12 – 12/10/12, for the fee of \$36.00 per night. Vouchers to be submitted on a monthly basis.

Moved: \_\_\_\_\_

Seconded: \_\_\_\_\_

Vote: Kohl \_\_\_\_\_

LaFountain \_\_\_\_\_

Metzler \_\_\_\_\_

Moore \_\_\_\_\_

Quinn \_\_\_\_\_