



# TOWN OF PENFIELD

3100 Atlantic Avenue, Penfield, NY 14526-9798

## PENFIELD TOWN BOARD MEETING AGENDA

Wednesday December 19, 2012 7:30 PM

Supervisor R. Anthony LaFountain, presiding

I Call to Order - Pledge of Allegiance - Roll Call

II Communications and Announcements

III Public Participation

IV Additions and Deletions to Agenda

V Approval of Minutes – November 7, 2012

VI Petitions

VII Resolutions by Function

### Law and Finance

12T-245 Setting a Public Hearing for a Conditional Use Permit to Allow a Yogurt Shop at 2105 Five Mile Line Road

12T-246 Setting a Public Hearing for a Conditional Use Permit and Preliminary and Final Resubdivision and Site Plan Approval to Allow a 6,500 +/- square foot Restaurant at 2164 Fairport Nine Mile Point Road

12T-247 Elderwood Rochester Affiliates

12T-248 Adoption of a Findings Statement and Granting an Amendment to the Zoning Ordinance and Map to Allow a Rezoning of a Portion of the Property Located at 1994-B Empire Boulevard Consisting of 7.95 +/- Acres from R-1-12 to General Business, and 6.61 +/- Acres of Property Located at 1994-C to be Rezoned from Multiple Residence to General Business - SBL#'s 093.02-1-24.997 and 093.02-1-25.1

### Public Works

12T-249 Authorization to Sign an Order on Consent and Submit Payment with New York State Department of Environmental Conservation

### Public Safety

12T-250 Award Contract for 2013 Property Maintenance to Maintain, Clean-Up and Secure Properties as needed by the Authorized Official

12T-251 Authorization to Restrict Parking on Seabury Boulevard

### Community Services

12T-252 Authorization for Supervisor to Sign Recreation Contracts

VIII Old Business

IX New Business

X Public Participation

XI Adjournment

PENFIELD TOWN BOARD RESOLUTION NO. \_\_\_\_\_ DATE: December 19, 2012

BY: Councilman Quinn

Public Safety Committee

NAME: Award Contract for 2013 Property Maintenance to Maintain, Clean-Up and Secure Properties as needed by the Authorized Official

**WHEREAS**, sealed proposals were requested for the maintenance, clean-up and securing of properties that may become abandoned, neglected and/or otherwise inadequately maintained by the owner thereof in accordance with the applicable property maintenance code requirements of the Town of Penfield; and

**WHEREAS**, on Friday October 26, 2012 at 11:00AM local time, sealed proposals were received from Boon & Sons, Inc and Flint Landscaping & Snow Plowing and were read publicly by the Town Clerk; and

**WHEREAS**, both received bids were found to be comparable and reasonable for meeting the specifications as set forth in the bid for 2013 Property Maintenance, and

**NOW, THEREFORE BE IT RESOLVED**, that the Penfield Town Board hereby awards the bid to both; Boon & Sons Inc, 1 Boon Drive, PO Box 370, N. Chili, NY 14514 and Flint Landscaping & Snow Plowing, 96 Wheelock Road, Penfield, NY 14526, and

**BE IT FURTHER RESOLVED**, that funds for said work are budgeted for in the 2013 adopted budget.

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

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

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

Penfield Town Board Resolution No. \_\_\_\_\_

Date: 12/19/2012

BY: Councilmen Moore

Law & Finance Committee

NAME: ELDERWOOD ROCHESTER AFFILIATES

WHEREAS, ELDERWOOD ROCHESTER ALF (Elderwood Affiliates, Inc.), heretofore commenced proceedings for a review of the Assessment for the years 2011/2012 and 2012/2013 for the premises located at 100 Elderwood Court and 2030 Fairport Nine Mile Point Road (tax map numbers: 125.03-2-55 and 40.01-1-1.3); located in the Town of Penfield, and

WHEREAS, negotiations have been had between the Attorney for the Town and the Attorneys for the Petitioner in an attempt to settle Petitioner's claim, and

WHEREAS, after such negotiations, tentative agreement has been reached between all parties on the terms of a proposed settlement subject to the approval of the Town Board and to the approval of the Supreme Court of the State of New York, which terms of settlement are set forth in the stipulations on file in the Office of the Town Assessor, and

WHEREAS, upon due consideration of all facts and circumstances, the Town Board finds that the proposed compromise and settlement is fair and reasonable and should be approved.

THEREFORE, BE IT RESOLVED, that the proposed settlement of the Tax Certiorari proceedings brought by Elderwood Rochester ALF (Elderwood Affiliates, Inc.) for the years 2011/2012 and 2012/2013 be and hereby are approved.

BE IT FURTHER RESOLVED, that the Attorney representing the Town be and hereby is directed to make application to the Supreme Court of the State of New York for approval of such settlement and that upon obtaining such approval, the Assessor of the Town of Penfield be and she hereby is directed to make the necessary adjustments in the Assessment Rolls for the Town of Penfield to reflect the terms of such settlement.

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

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

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

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

DATE December 19, 2012

BY Councilman Moore

Law & Finance COMMITTEE

NAME Setting a Public Hearing for a Conditional Use Permit to Allow a Yogurt Shop at 2105 Five

Mile Line Road – SBL# 139.06-1-31 – David & Jennifer Vacchetto – Yotini Yogurt

WHEREAS, an application has been received by the Penfield Town Board for the issuance of a Conditional Use Permit pursuant to Article III-3-97 of the Code to allow a yogurt shop at 2105 Five Mile Line Road, located in the Four Corners (FC) zoning district;

NOW, THEREFORE, BE IT

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

RESOLVED, that the subject application is determined to be a Type II action pursuant to the State Environmental Quality Review Act (SEQRA); and be it further

RESOLVED, that the Town Board of the said Town of Penfield shall hold a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on January 16, 2013, at 7:30 PM on said date, to consider the said application and to hear all persons interested on the question of the issuance of a Conditional Use Permit to allow a yogurt shop at 2105 Five Mile Line Road, in the Four Corners (FC) zoning district; and be it further

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

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

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

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

LaFountain \_\_\_\_\_

Metzler \_\_\_\_\_

Moore \_\_\_\_\_

Quinn \_\_\_\_\_

PENFIELD TOWN BOARD RESOLUTION NO. \_\_\_\_\_ DATE December 19, 2012

BY Councilman Moore

Law & Finance Committee

NAME Setting a Public Hearing for a Conditional Use Permit and Preliminary and Final Resubdivision and Site Plan Approval to Allow a 6,500 +/- square foot Restaurant at 2164 Fairport Nine Mile Point Road –140.01-2-70.11 – The Patriot Companies

WHEREAS, an application has been received by the Penfield Town Board, under Local Law No. 2 of 2003, known as the Town of Penfield Incentive Zoning Law, to consider the application for Incentive Zoning and Preliminary and Final Resubdivision and Site Plan approval under Article XI-9-2 and a Conditional Use Permit under Article X-10-4-E of the Code to allow a 6,500 +/- square foot restaurant/tavern on 1.27 acres in the Business Non-Retail (BN-R) zoning district at 2164 Fairport-Nine Mile Point Road;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Penfield will hold a Public Hearing at the Penfield Town Hall, 3100 Atlantic Avenue, Penfield, New York 14526 on January 16, 2013 at 7:30 PM on said date, to consider said application and to hear all persons on the question of consideration of said application; and be it further

RESOLVED, that the Penfield Town Board acted as “lead agency” within the meaning of the State Environmental Quality Review Act (SEQRA) and did designate itself as “lead agency” pursuant to SEQRA during the Incentive Zoning approval process which was granted by the Town Board at which time the requirements for SEQRA for the overall development concept for the site were met and satisfied in a Findings Statement adopted in Resolution No.159 dated June 21, 2006; and

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

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

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

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

LaFountain \_\_\_\_\_

Metzler \_\_\_\_\_

Moore \_\_\_\_\_

Quinn \_\_\_\_\_

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

BY: Councilman Moore Law & Finance COMMITTEE

NAME: Adoption of a Findings Statement and Granting an Amendment to the Zoning Ordinance and Map to Allow a Rezoning of a Portion of the Property Located at 1994-B Empire Boulevard Consisting of 7.95 +/- Acres from R-1-12 to General Business, and 6.61 +/- Acres of Property Located at 1994-C to be Rezoned from Multiple Residence to General Business - SBL#'s 093.02-1-24.997 and 093.02-1-25.1

WHEREAS, pursuant to Sections XIV-14-1 and XIV-14-3 of the Penfield Zoning Ordinance (the "Code"), on January 9, 2009, DiMarco Brandt Point LLC (the "Applicant") submitted an application (as amended, the "Application") to the Penfield Town Board (the "Town Board") to amend the Code and Map to rezone 20.01 acres from R-1-12 to General Business and 6.61 acres from Multiple Residence to General Business at the above referenced addresses, located north and east of the existing DiMarco Baytowne Associates, LLC parcel commonly known as Bay Towne Plaza, Tax Parcel No. 093.02-1-23.11 (the "Plaza"), in the Town of Penfield, New York; and

WHEREAS, the purpose underlying the Application for rezoning is to redevelop the Plaza, which redevelopment is to include the construction of a new Walmart store and receipt of all necessary approvals from the Town Board, the Town Planning Board ("Planning Board"), and the Town Zoning Board of Appeals ("ZBA"), as applicable (the redevelopment is, collectively, the "Redevelopment Plan" or the "Project"); and

WHEREAS, pursuant to the New York State Environmental Quality Review Act and its implementing regulations (collectively, "SEQRA") the Project, including the requested rezoning, was classified as a Type I action. Pursuant to a SEQRA Type I action requirements, a coordinated review was required and on January 16, 2009, on behalf of the Town Board, the Planning Department mailed out letters to involved agencies requesting interest in acting as lead agency in the environmental review, on February 12, 2009, the Planning Board expressed its desire to be lead agency, and on February 26, 2009, the Planning Board was declared lead agency for the Project; and

WHEREAS, in accordance with New York General Municipal Law §239-m, the Application was duly referred to the Monroe County Department of Planning and Development for the required review under such section of the General Municipal Law which resulted in comments issued by the Monroe County Department of Planning and Development under referral #PN09-3Z, dated February 17, 2009; and

WHEREAS, on March 26, 2009, the Planning Board acting as lead agency pursuant to SEQRA issued a positive declaration indicating the project may result in a potentially significant adverse

impact and therefore required the preparation of an Environmental Impact Statement (“EIS”); and

WHEREAS, on April 9, 2009, the Planning Board received the Applicant’s proposed, draft scoping outline and the Planning Board determined it would conduct a public scoping process on the draft outline and thereby, comments were accepted in writing by the Planning Board via mail, hand delivery, fax, and e-mail to the Planning Department between April 13, 2009 and May 13, 2009 at 5:00 p.m. The Planning Board approved the final scoping outline on May 28, 2009; and

WHEREAS, in connection with the Application, the Applicant submitted numerous materials, including a Draft EIS, with supplements, dealing with identified environmental issues of the Redevelopment Plan, including noise, residential real estate values, traffic, water/drainage, lighting and view, impacts on the neighborhood and community, and other issues; and

WHEREAS, on September 7, 2010, the Planning Board declared the draft EIS adequate for public review, set a public hearing, and officially opened a public comment period; and

WHEREAS, on October 14, 2010, the Planning Board conducted a public hearing with respect to the draft EIS for the Application pursuant to SEQRA at the Penfield Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York, at 7:30 p.m. where the facts supporting the requested rezoning were presented and where citizen input was received (the “SEQRA Public Hearing”); and

WHEREAS, following the SEQRA Public Hearing and continuing until October 25, 2010 at 5:00 p.m., the Planning Board accepted additional written comments via mail, hand delivery, fax, and e-mail to the Planning Department on the Application in connection with the draft EIS; and

WHEREAS, thereafter, at the request of the Planning Board, the Applicant submitted a revised plan for the proposed rezoning entitled CP-02, which greatly reduced and modified the original plan submitted with the Application, as follows:

1. Reduction of the amount of R-1-12 land to be rezoned from 20.1 acres to 9.41 acres;
2. Increase in the buffer area to be located between the Plaza and residential neighborhoods, including modifying the proposed earthen berm to include a landscaped concrete wall, rather than a wooden fence;
3. The addition of landscaping elements at the revised Brandt Point Drive access road to provide a distinct separation between the commercial properties and the residential portion of the existing road;
4. Reduction in the height of the proposed parking lot lighting, not to exceed 30’ in height and the utilization of fixtures to minimize any light spillage off the commercial area; and
5. Modifications to provide for enclosed loading docks, with wall and roof framing; and



WHEREAS, on April 26, 2012, the Planning Board adopted and published the final EIS in connection with the Project, which is hereby incorporated by reference; and

WHEREAS, on May 15, 2012, the Planning Board adopted its Finding Statement (the “Findings Statement”) and determined that of all of the alternatives considered during the lengthy, thorough review process for the Project, Plan CP-02 best provided a balance of all interests and mitigated potential adverse environmental impacts to the maximum extent practicable based on the following findings, as well as those more fully set forth in the Findings Statement (these findings, as modified by this Resolution, constitute a portion of the Town Board’s findings of fact in support of the actions taken herein):

1. The CP-02 plan permits the economic development deemed important to the Town, provides maximum separation and natural buffering between existing residential neighborhoods and future commercial activities, and incorporates adequate mitigation to minimize or eliminate the potential adverse environmental impacts identified to the maximum extent practical.
2. Noise was identified as a potential adverse impact early in the process and received the most public input. The Applicant provided a Noise Study in the draft EIS. That Noise Study was reviewed by the Planning Board’s consultant, Stantec, and additional input was provided to the Applicant as requested by the Planning Board. Noise mitigation offered by the Applicant includes:
  - a. Maintaining a natural buffer north, east, and south of the Project site, adjacent to the existing residential properties, up to 200’ in depth as depicted in Plan CP-02. This natural buffer area will be permanently restricted from further development through a conservation easement or similar restrictive covenant.
  - b. Creation of a large earthen berm of varying height topped with an 8’ decorative concrete barrier, which, at its maximum height will be taller than any proposed new structure or light fixture.
  - c. Installation of additional plantings of evergreens in the natural buffer area which will remain zoned R-1-12, along with a variety of plantings on the berm. Location and types of plantings will be determined in any final site plan review process by the Town’s landscape consultant.
  - d. Specific design features intended to minimize delivery truck travel routes and backing up. These will be more detailed during any future site plan review process, but are important in minimizing the noise from these trucks.
  - e. The incorporation of enclosed loading docks, with wall and roof framing to eliminate the noise from trucks idling and refrigeration trailers running thereby minimizing noise impacts.
  - f. Expanding the existing Property Maintenance Agreement filed in the Monroe County Clerk’s Office under liber 10784, page 376 on August 27, 2009 for Bay Towne Plaza to include the parcels considered to be rezoned to General Business

for the purpose of establishing hours when scheduled outdoor maintenance and routine activities can occur. These include, but are not limited to parking lot sweeping and trash collection, which will be prohibited between the hours of 11:00 p.m. and 7:00 a.m. Trash compactors, if included in any final designs, will be properly screened.

- g. The Planning Board Design Guidelines detail the need for proper screening of all externally mounted HVAC units, especially when they are roof-mounted.
- h. Prohibiting any type of outdoor amplified intercom or speaker system.

Based on the foregoing, there are adequate protective measures proposed as mitigation to minimize the potential noise impacts resulting from this Project, within industry standards.

3. In order to analyze the potential impacts to real estate values, the Planning Board required the Applicant to analyze the home values around the Gates, New York Walmart store, both before and after construction of the store. The results show that the home values continued to increase, even after the new Walmart was constructed. The separations and buffers were much less in Gates than those being proposed with this Project. The mitigation for this Project that will help maintain property values includes:
  - a. Substantial protection of a natural buffer as depicted in Plan CP-02 that is currently heavily vegetated.
  - b. Construction of a concrete panel and post barrier on top of a large earthen berm to discourage trespassing from the Project site into surrounding neighborhoods, as well as to help mitigate noise and visual impacts.
  - c. Maintaining maximum light pole heights of 30' or less with downward directed light fixtures and the use of light shields, as determined appropriate during site plan review.
  - d. Enhancing the landscaping of the natural area and adding berm plantings.
  - e. Mitigating intrusive noise sources as discussed in the noise section of the final EIS.

Based on the foregoing, the Project will not likely result in any potential decrease in property values.

4. Potential traffic impacts were analyzed by the Planning Board, Town Staff, the New York State Department of Transportation, the Monroe County Department of Transportation, the Planning Board's consultant, Stantec, and the Applicant and its consultants. This coordination provided the Planning Board with a comprehensive understanding of important traffic related issues and available mitigation techniques. Transportation mitigation measures offered by the Applicant include:

- a. New traffic signal at Brandt Point Drive with associated improvements.
- b. New traffic signal at Sovran Drive with associated improvements.
- c. Synchronization of certain traffic lights along the Empire Boulevard corridor.
- d. New Creek Street access to the Plaza through Sovran Drive.
- e. The reconfiguration of the existing Creek Street access, to restrict left hand turns from this intersection.
- f. Improvements for pedestrian safety through the work limits of the Project, including pedestrian indication lights at pedestrian crossings on Empire Boulevard, Brandt Point Drive and Sovran Drive, additional street lighting, upgrading or installing new sidewalks along Empire and connections to the internal pedestrian system.
- g. Creating a dedicated left turn lane on Empire Boulevard at Brandt Point Drive.
- h. Installation of signage to alert motorists to not block Terrell Drive.
- i. A post-development analysis to analyze any safety issues at the Terrell/Empire intersection and review all involved traffic signals to determine if any adjustments in timing are warranted.
- j. Cross access easements to permit the Empire Boulevard frontage businesses to have access into the Plaza to utilize traffic signals.
- k. An agreement for private contribution from the Plaza to cover wear and tear on Brandt Point Drive as it goes from primarily a residential 2-lane street along all of its length to a partially commercial access along portions of its length.
- l. The construction of a center turn lane along the Empire Boulevard corridor from Brandt Point Drive to the Penfield/Webster Town line

Based on the foregoing, there are adequate protective measures proposed as mitigation to minimize or eliminate the potential traffic impacts resulting from this Project.

5. The Code requires minimum buffers between commercial zoning development and residential zoning districts, rather than transitional zoning districts or uses. There are three areas in Penfield that have General Business zoning. There are several areas in Penfield where General Business Districts directly abut single family residential districts. Such locations in the northwest section of Penfield are shown in the North Penfield Crossroads area plan, provided as an appendix in the draft EIS. Second, Panorama Plaza, which is zoned General Business, lies in the Panorama Valley and directly abuts the Allens Creek Townhouse developments (according to the Penfield Code, Article III-3-42, Townhouse units are single-family residential units separated by a party wall). In that instance, the buffer separating the two developments is the corridor of Irondequoit Creek,

lined by natural vegetation. In the third area, at the intersection of NYS Route 250 (Fairport Nine Mile Point Road) and NYS Route 441 (Penfield Road), the General Business district abuts three separate single-family districts: R-1-20 to the northwest, R-1-15 to the east, and Townhouse Dwelling District to the south.

6. It is more important to provide adequately transitioned land uses than to concentrate on transitional zoning districts. For this Project, the single-family zoning developments that are adjacent to the subject application site will be buffered by transitional land uses that will provide higher quality buffer protection than zoning districts alone could provide. The mitigation provided for in this Application will result in lands abutting those three residential neighborhoods not only to remain residentially zoned but, also restricted from further development of any kind through the imposition of a conservation easement or other restrictive covenant. This transition of land uses from commercial to undeveloped natural area to residential development is the best protection available for the residential neighborhoods, especially given that, as currently zoned, the Plaza property directly abuts a residential district where the Applicant could construct single family homes as of right. If the zoning were transitional and small-lot single family homes were constructed, for example, the natural vegetation would be removed for homes, streets, utilities, etc. This removal would subject the existing neighborhoods to higher levels of sound and light than if the natural, wooded area were to remain in connection with the Project.
7. The redevelopment and expansion of the existing plaza would provide a very positive stimulus for local business growth and for the existing businesses. The resulting redevelopment expansion modeled after the features contained in Plan CP-02 provides an appropriate balance of protection of the residential character of the surrounding neighborhoods and the important economic benefits desired by the Town and the Applicant.
8. Mitigation techniques available for stormwater could include underground storage and surface treatment, and storage on-site combined with off-site capacities as determined by the Town Engineer. Final calculations and designs for the required mitigation of stormwater impacts are premature at this stage. However, there is adequate land area on the Project site, adequate techniques to properly manage requirements of both the New York State Department of Environmental Conservation (“NYSDEC”) and the Town of Penfield, and adequate oversight by the Town Engineer to assure that the mitigation will be effective to achieve all stormwater discharge goals. The final calculations and designs will be available when a formal site plan application is prepared and submitted. It will be thoroughly reviewed by the Planning Board and the Town Engineer to assure compliance with all Findings and Conclusions of the environmental review for the Project, as well as compliance with all regulations and requirements of the NYSDEC and the Town of Penfield. Based on the foregoing, there are adequate protective measures proposed as mitigation to minimize or eliminate the potential stormwater related impacts resulting from this Project.
9. The adopted 2010 Comprehensive Plan identifies several times the lack of existing commercial development to balance tax rates. In addition, one of the opportunities specified under Key Issues on Page 19 of the Comprehensive Plan is local shopping

opportunities near residential neighborhoods. Additionally, Page 19 also lists one of the threats as “zoning that could limit development and Town’s tax base.” Page 137 indicates that the Economic Development Action Plan supports maximizing the potential of the available commercial land area within the existing commercial activity centers, as well as some expansion of the commercial district boundaries.

10. The North Penfield Crossroads Plan details specific locations where higher intensity zoning or development could occur within the Town. The North Penfield Crossroads Plan required the preparation of a draft EIS and public hearing and a final EIS, and was adopted by the Town Board on June 1, 2007. It identified the Project site for higher intensity uses than allowed under existing zoning, if adequate setbacks and buffers can be provided. The Planning Board has determined that the incorporated buffers and setbacks identified in Plan CP-02 achieve the intent of the North Penfield Crossroads Plan, and therefore Plan CP-02 is consistent with the 2010 Comprehensive Plan.
11. In addressing lighting and view, the Applicant provided suggested mitigation by way of limitations on light pole heights, incorporation of light shields where appropriate, and incorporation of an earthen berm and concrete panel barrier to help mitigate visual impacts on residential neighbors. In addition, incorporation of a preserved, natural buffer will help shield light intrusion. The balance with light pole heights, such as the maximum 30’ pole height proposed by the Applicant, is that the shorter the pole height, the more poles are needed to provide safe lighting levels. If more, but shorter poles are provided, then the potential for snow removal difficulty increases, with a greater likelihood of the use of back-up beepers on snow removal equipment. The maximum 30’ pole heights and fixture designs proposed provide the proper balance with safe light coverage, minimizing the number of poles, and minimizing light distribution to areas where it is not intended. The mitigation identified in the draft EIS, as further discussed in the Findings Statement and in the final EIS, will provide adequate protection to minimize or eliminate the potential impacts from the Project associated with lighting and views.
12. The Planning Board has considered the expansion of the existing Walmart structure to be more intrusive to existing near-by residents, with little room to mitigate the nuisance factors. The Planning Board has determined that the analysis of this alternative received proper consideration and was rejected as being more harmful than a fully mitigated alternative location for the Walmart Super Center.
13. The Planning Board has determined that the proposed Project will not likely result in any increased crime or public safety issues; however, the Planning Board has further determined that identified mitigation is adequate to deter any potential increase in crime and additional risks to public safety that may occur. The mitigation includes:
  - a. Installation of an earthen berm and a landscaped concrete barrier on top of the berm that shall extend southerly behind the existing Walmart building all the way to the property line to provide additional buffering to the neighbors.
  - b. Continued use of internal and external security cameras.

- c. Maintaining adequate levels of light in the parking areas and store entrances.
- d. Having on-site Plaza management with security responsibilities.

14. Based on the above findings, as well as those more fully set forth in the Findings Statement hereby incorporated by reference, the environmental impacts of the requested rezoning and as shown on Plan CP-02, the impacts from rezoning a portion of the property with proper mitigation are less than the environmental impacts that would result from development under current zoning; and

WHEREAS, as indicated above during the draft EIS stage of the environmental review the Planning Board requested an additional alternative for consideration which was ultimately submitted as Plan CP-02 and therefore was not included in the New York General Municipal Law §239-m referral to the Monroe County Department of Planning and Development known as PN09-3Z dated February 17, 2009. Although all the agencies included in the Monroe County Development Review Committee are involved agencies under SERQA for the action and were included within a coordinated SEQRA review, the town re-referred the application and in accordance with New York General Municipal Law §239-m, comments were issued by the Monroe County Department of Planning and Development under referral #PN12-37Z, dated June 21, 2012; and

WHEREAS, a public hearing was held by the Town Board, pursuant to Article XIV-14-1 of the Penfield Zoning Ordinance and Section 265 of the New York State Town Law on August 22, 2012, at the Penfield Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York, at 7:30 p.m., where the facts in support of the requested rezoning were presented and where public input was received and thereafter the public hearing was closed, except for written comments, and decision was reserved (the “Rezoning Public Hearing”); and

WHEREAS, following the Rezoning Public Hearing and continuing until September 14, 2012, the Town Board accepted additional written public comments via mail, hand delivery, fax, and e-mail to the Planning Department and/or the Town Supervisor’s Office on the Application; and

WHEREAS, the Town Board has duly considered all matters presented throughout the rezoning process, including the Rezoning Public Hearing and subsequent public comment period, raised both by proponents of and those opposed to the granting of the Application, including but not limited to petitions in opposition, as well as the professionals and governmental consultants and bodies; and

WHEREAS, the Town Board has had exhaustive deliberations based on the extensive input provided by the Applicant, the reviewing agencies, and the general public, while also conducting comprehensive research and due diligence to determine a reasonable compromise that benefits all parties involved; and

WHEREAS, the Town Board required additional mitigation than that proposed in the CP-02 Plan, by enhancing the buffer to further benefit the adjacent residences situated on Jewelberry Drive, Guygrace Lane, Seabury Boulevard, and the Daniel’s Creek apartment complex; and

WHEREAS, the Town Board, acting as an involved agency pursuant to the requirements of SEQRA, has determined that while the CP-02 Plan considered by the Planning Board provided substantial mitigation to the neighbors, the Town Board worked extensively to reduce the overall amount of R-1-12 land to be rezoned from 9.41 +/- acres (CP-02 Plan) to 7.95 +/- acres, which best provides a balance of all interests and mitigates potential adverse environmental impacts to the maximum extent practicable for all of the reasons set forth above and more fully in the Findings Statement; and

WHEREAS, this decision is based on the findings of fact set forth in the above Recitals and also on the following additional findings of fact:

1. The rezoning is consistent with the Town 2010 Comprehensive Plan and the North Penfield Crossroads Plan; and
2. The environmental impacts of the requested rezoning as described in the Application are less than the environmental impacts that would result from development under current zoning; and
3. Although there are residential developments near the property to be rezoned, the Applicant has committed to a buffer of up to 400' feet, which will be landscaped, including a significant earthen berm with a decorative landscaped concrete wall, thereby screening the residential lands from the Redevelopment Plan contemplated for the Plaza; and
4. Through-out the review process the conditions of rezoning approval as set forth below have been identified and determined to be beneficial to the health, safety and welfare of the public; and
5. The Project offers many benefits to the Town, including increased employment, increased investment, increased sales tax revenue, increased property tax revenue, a state of the art shopping experience, onsite and offsite beautification, traffic remediation measures, and others, as more fully set forth in the record; and
6. The Town Board finds that the requested rezoning of the property to General Business is, for all of the foregoing reasons and findings, including those more fully set forth in the Findings Statement, in the best interest of the Town as a whole; and

NOW, THEREFORE, BE IT RESOLVED, based on the above facts and findings, that the Findings Statement, as modified by such facts and findings, is hereby adopted by the Town Board in all respects; and

BE IT FURTHER RESOLVED, that the request for rezoning 7.95 +/- acres from R-1-12 to General Business and 6.61 +/- acres from Multiple Residence to General Business, as more particularly described in Schedule "A" attached hereto, is hereby GRANTED subject to the following conditions:

1. Any future development at the Project site shall comply with the requirements of all Federal, State, County, and local boards, agencies, and authorized officials having jurisdiction over such development.
2. The final layouts for the Project will be determined through a review process with the Planning Board and/or the ZBA, as necessary. Any future application process will be conducted in compliance with, or as guided by, as the case may be, adopted rules, regulations, guidelines and this rezoning resolution. These include the Town 2010 Comprehensive Plan, the Code, the Land Use Access Management Plan (LUAMP), the Design and Construction Specifications, and the Penfield Planning Board Design Guidelines.
3. The Planning Board and the ZBA, to the extent applicable, shall review the Project in such a way that any new development is located as close to Empire Boulevard and as far away from existing residences as feasible, while ensuring responsible design standards and effectuating all elements and mitigation measures contemplated herein and in the Findings Statement. It is the intent of the Town Board that the Project, as measured from the pavement to be located behind the new Walmart store, be located as close to 400' away from the rear property lines of the Jewelberry Drive residences as feasible, while, however, incorporating all of the elements and mitigation measures contemplated in the Findings Statement. Including, but not limited to the following essential features:
  - a. The connection to Sovran Drive
  - b. Creation of a large earthen berm, topped with an 8' decorative concrete barrier, which, at its maximum height will be taller than any proposed new structure or light fixture. The earthen berm and concrete wall shall be installed along the entire border of the parcel from Brandt Pointe Drive to the southern property line behind the existing Walmart.
  - c. Allowing for cross access easements to the existing businesses along the Empire Boulevard frontage.
  - d. Constructing a center left turn lane on Empire Boulevard from Brandt Point Drive, northward to the Penfield/Webster Town Line.
  - e. Prohibition of an outdoor amplified intercom or speaker system.
  - f. Improvements for pedestrian safety through the work limits of the Project, including pedestrian indication lights at pedestrian crossings on Empire Boulevard, additional street lighting, upgrading or installing new sidewalks along Empire and connections to the internal pedestrian system.
  - g. An agreement for private contribution from the Plaza to cover wear & tear on Brandt Point Drive as it goes from primarily a residential 2-lane street to a major commercial access.



- h. Maintaining maximum light pole heights of 30' or less with downward directed light fixtures and the use of light shields, as determined appropriate during site plan review.
  - i. The construction of enclosed loading docks for both the new Walmart and the existing loading dock should it be relocated to the east side of the building and enclosed.
  - j. The elimination of the three (3) existing curb cuts along Brandt Point Drive, that will no longer be utilized.
  - k. The proposed parking located within the 400' setback to Jewelberry Drive shall be landbanked until such time as it is determined necessary to be installed by both the Applicant and the applicable Town body.
  - l. The proposed berm and wall shall wrap around the existing Walmart building and continue to the southern property line, thereby providing additional buffering for the residents of Guygrace Lane.
  - m. Enhancing the landscaping along the northern property line along Brandt Point Drive to better buffer the Daniels Creek apartment complex and residents of Seabury Boulevard
4. A natural vegetative buffer up to 400' wide, including an earthen berm with a decorative landscaped concrete wall and landscape plantings, all as contemplated in the Findings Statement, shall be located between the Project and the residences located on Jewelberry Drive, taking into account the considerations set forth above; and
  5. The Applicant shall be required to grant a conservation easement or other restrictive covenant over the remaining 12.06 +/- acres of 1994-B Empire Boulevard left zoned R-1-12. Such conservation easement shall allow the construction of bioswales, bioponds, and/or other green infrastructure to be located on the side of the berm closest to the new Walmart store as needed to meet applicable requirements, including those set forth by the New York State Department of Environmental Conservation; and

BE IT FURTHER RESOLVED, if any term, condition, or provision of this Resolution, or the application thereof shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Resolution, or the application of such term, condition, or provision, other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term, condition, and provision of this Resolution shall continue in full force and effect to the fullest extent permitted by law so long as the Resolution, in its remaining form, realizes the overall intent of its findings, terms, and conditions as determined by the Town Board, in its sole discretion under the law; and

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

1. Submissions and oral testimony of the Applicant, public, and all reviewing agencies.
2. Monroe County Department of Planning and Development referral # PN09-3Z, dated February 17, 2009 and the subsequent referral # PN12-37Z dated June 21, 2012.
3. Draft Environmental Impact Statement accepted as being adequate for public review on September 7, 2010.
4. Final Environmental Impact Statement adopted April 26, 2012.
5. Findings Statement adopted on May 15, 2012; and

BE IT FURTHER RESOLVED, that the Official Zoning Map and the Zoning Ordinance of the Town of Penfield be and the same are hereby amended to reflect the zoning changes approved herein for the property described in Schedule "A"; and

BE IT FURTHER RESOLVED, that the Town Clerk be, and is hereby authorized and directed to give the necessary notice of such change in the zoning to the departments, agencies and offices having jurisdiction in this matter and to publish the same as prescribed by law and cause the zoning amendment to be entered into the minutes of these proceedings.

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

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

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

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

DATE: December 19, 2012

BY Councilwoman Metzler

Public Works COMMITTEE

NAME Authorization to Sign an Order on Consent and Submit Payment with New York State Department of Environmental Conservation

WHEREAS; the New York State Department of Environmental Conservation has issued an Order on Consent to the Town of Penfield for work completed at 34 Helmsford Way, and

WHEREAS; the Town of Penfield has agreed to complete the compliance measures as stipulated in a letter November 16, 2012, and

WHEREAS; the Town of Penfield is hereby authorized to pay the NYSDEC a sum of \$500 to comply with the Order on Consent.

NOW THEREFORE BE IT RESOLVED, that the Town Board hereby authorizes the Town Engineer to sign the Order on Consent and that all fees shall be paid from the Engineering Department operating funds.

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

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

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

PENFIELD TOWN BOARD RESOLUTION NO. \_\_\_\_\_ DATE: December 19, 2012

BY: Councilman Quinn

Public Safety Committee

NAME: Authorization to Restrict Parking on Seabury Boulevard.

**WHEREAS**, it is the Town of Penfield’s responsibility to promote and maintain public safety on roads within the Town of Penfield; and

**WHEREAS**, pursuant to New York State Vehicle and Traffic Law, Section 1660, the Penfield Town Board is granted the authority to authorize the establishment of traffic control devices on Town highways within the Town of Penfield; and

**WHEREAS**, the Town of Penfield wishes to keep the neighborhoods around the Seabury Boulevard area safe and accessible to emergency vehicles; and

**NOW, THEREFORE BE IT RESOLVED**, that the Penfield Town Board hereby authorizes and establishes that “NO PARKING” shall be allowed on the south side of Seabury Boulevard within eight-hundred (800) feet of Empire Boulevard, and “NO PARKING” shall be allowed on the north side of Seabury Boulevard within four-hundred (400) feet of Empire Boulevard, and that Section 26-38 of the Vehicle and Traffic Ordinance is amended accordingly; and

**BE IT FURTHER RESOLVED**, that the Penfield Town Board hereby authorizes the Director of Public Works to post said parking restrictions.

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

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

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