



# TOWN OF PENFIELD

3100 Atlantic Avenue, Penfield, NY 14526-9798

## PENFIELD TOWN BOARD AGENDA

Wednesday, May 1, 7:30 PM

Supervisor R. Anthony LaFountain, presiding

I Call to Order - Pledge of Allegiance - Roll Call

II Public Hearing #1 – To Consider Applicant's request for relief from Condition #7 of Resolution #13T-81 and to hear all persons interested on the Question of Granting Relief from Condition #7 of Resolution #13T- 81 to Allow Later Hours of Operation of the Proposed Outdoor Dining Area of the Proposed Jeremiah's Tavern at 2164 Fairport Nine Mile Point Road

III Communications and Announcements

IV Public Participation

V Additions and Deletions to Agenda

VI Approval of Minutes – April 3, 2013

VII Petitions

VIII Resolutions by Function

### Law and Finance

13T-111 Awarding Contract for Geographic Information System (GIS) Services to MRB Group, P.C.

13T-112 Employee Handbook Revisions

13T-113 Approval of Issuance of a Conditional Use Permit to Allow a Restaurant With Outdoor Dining at 2084 Five Mile Line Road

13T-114 Approval of Issuance of a Conditional Use Permit to Allow a Landscaping Office at 1739 Penfield Road

13T-115 William and Debbie S. Wickham, Tax Certiorari Settlement

13T-116 Setting a Public Hearing for a Conditional Use Permit to Allow Dog Grooming at 1850 Penfield Road

13T-117 Setting a Public Hearing for a Conditional Use Permit to Allow a Day Spa at 1788 Penfield Road

### Public Works

13T-118 Recognizing May 2013 as National Historic Preservation Month

### Public Safety- None

### Community Services

13T-119 Authorization for Supervisor to Sign Recreation Contracts

IX Old Business

X New Business

XI Public Participation

XII Adjournment

PENFIELD TOWN BOARD RESOLUTION NO. 13T-112

DATE: May 1, 2013

BY: Councilman Moore

Law & Finance COMMITTEE

NAME: Awarding a Contract for Geographic Information System (GIS) Services to MRB Group, P.C.

WHEREAS, the Town of Penfield was one of the first municipalities to utilize GIS to manage its infrastructure, and

WHEREAS, the Town of Penfield has developed a public portal through its website to allow access to their mapping inventory, and

WHEREAS, the Town of Penfield desires to continue building on the many layers of data and information available to its employees and residents, and

WHEREAS, the Town received three proposals from qualified engineering firms to provide the necessary services to update the web portal and provide continued mapping services, and

WHEREAS, MRB Group, P.C. was selected to provide the GIS services to the Town of Penfield for 2013.

NOW, THEREFORE, BE IT RESOLVED that the Supervisor is authorized to sign the contract with MRB Group, P.C. at the hourly rates noted in their proposal dated April 2, 2013.

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

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

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

PENFIELD TOWN BOARD RESOLUTION NO. 13T-112 Date: May 1, 2013

BY Cm Moore

Law & Finance Committee

Name: Employee Handbook Revisions

Whereas, the Penfield Town Board adopted an Employed Handbook on January 3, 1989 and the Board is committed to keeping this information up to date,

NOW, THEREFORE, BE IT RESOLVED, that the following revisions, additions and deletions on file with the Town Clerk are approved for inclusion in the Employee Handbook effective May 1, 2013.

**REVISIONS:**

Page 1V-10

Family and Medical Leave

- Military Caregiver Leave (M.C.L.)

Military Care Leave allows an eligible employee who is the spouse, son, daughter, parent, or “next to kin” of a covered veteran with a serious injury or illness.

- a. M.C.L. allows employees to take up to a total of 26 workweeks of unpaid leave during a “single 12-month period to provide care for the veteran.

A veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness is a covered veteran if he or she:

- a. was a member of the Armed Forces (including a member of the National Guard or Reserves); or
- b. was discharged or released under conditions other than dishonorable; and
- c. was discharged within the five-year period before the eligible employee first takes FMLA military caregiver leave to care for him or her; \*

\* For a veteran who was discharged prior to March 8, 2013, the effective date of the FMLA Final Rule, the period between October 28, 2009 and March 8, 2013 will not count towards the determination of the five-year period. For example, if a service member retired on October 28,

2007, he or she would have had three years remaining of the five-year period on October 28, 2009. The family member requesting FMLA will have three years to begin military caregiver leave starting on March 8, 2013. Likewise, if a service member was discharged on December 1, 2010, the five-year period will begin on March 8, 2013 and extend until March 8, 2018.

- Airline Flight Crew Employees

FMLA entitles Airline Flight Crew eligible employees of covered employers to take unpaid, job protected leave for specified family and medical reasons.

Page 1V-15

- How to File a Complaint

The U.S. Department of Labor’s Wage and Hour Division (WHD) is responsible for administering and enforcing the Family and Medical Leave Act for most employees.

If you have questions, or you think your rights under the FMLA have been violated, you can contact WHD at 1-866-487-9243. To contact the Wage and Hour Division office nearest you, visit: [www.dol.gov/whd/america2.htm](http://www.dol.gov/whd/america2.htm).

The employees’ guide to “Military Family Leave “ under the Family and Medical Leave Act is available in the Personnel Office or by accessing Paychex ‘s “e-service” link, company information, web links.

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

Vote: Kohl \_\_\_\_\_  
LaFountain \_\_\_\_\_  
Metzler \_\_\_\_\_  
Moore \_\_\_\_\_  
Quinn \_\_\_\_\_



BY Councilman Moore

Law & Finance Committee

NAME Approval of Issuance of a Conditional Use Permit to Allow a Restaurant With  
Outdoor Dining at 2084 Five Mile Line Road – SBL# 139.06-2-61.1 – Salvatore Aquino  
& Jennifer Henry – The 5 Mile Café

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 sit-down restaurant with outdoor dining at 2084 Five Mile Line Road, located in the Four Corners (FC) zoning district; and

WHEREAS, the Town Board of the said Town of Penfield held a public hearing at the Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on April 17, 2013 at 7:30 PM on said date, to consider the application and hear all persons interested on the question of the issuance of a Conditional Use Permit to allow a sit-down restaurant with outdoor dining at 2084 Five Mile Line Road, in the Four Corners (FC) zoning district and the public hearing was closed and decision was reserved.

NOW, THEREFORE, BE IT

RESOLVED, that the applicants' request for a **CONDITIONAL USE PERMIT** to allow a sit-down restaurant with outdoor dining at 2084 Five Mile Line Road is hereby **GRANTED** subject to the following conditions:

1. The applicants shall obtain a **CONDITIONAL USE PERMIT** from the Town Clerk and pay the appropriate fee. The **CONDITIONAL USE PERMIT** is non-transferable. Any subsequent owner or operator shall be required to apply for and obtain a **CONDITIONAL USE PERMIT** from the Town Board to operate a restaurant at this location.
2. The applicants propose to initially operate the restaurant primarily for breakfast and lunch with the potential for early dinners. The applicants may expand their hours at a later date and may do so, however, the restaurant shall be closed to the public at midnight on a nightly basis in compliance with the requirements of the Four Corners District.
3. The applicants shall comply with the occupancy requirements that have been established by the Penfield Fire Marshal in accordance with the New York State Building Code and obtain any/all necessary permits from the Building Department.

4. Adequate on-site parking and off-site shall be available at all times to accommodate the applicant's business. At no time shall adjacent property owners or the other tenants of the subject property be adversely impacted by those patronizing this business.
5. The applicants shall obtain a Liquor License from the New York State Liquor Authority prior to serving alcohol at this location; furthermore, the applicant shall ensure that the primary use of the property remains as a sit-down restaurant and that the sale of alcohol is secondary and incidental to the sale of food.
6. The applicants have requested outdoor dining for 24 patrons (6 tables with 4 seats at each table) on the front porch and 16 patrons (4 tables with 4 seats at each table) on the proposed patio to the rear entrance of the restaurant. The applicants shall be required to comply with the requirements of the Penfield Fire Marshal regarding the use of outdoor dining area to ensure proper accessibility in those areas. All tables and chairs shall be removed from the outdoor dining area at the end of the season and stored internally on or off the site. The proposed patio to be used as the outdoor dining area shall be approved by the Director of Development Services and a building permit shall be obtained prior to its installation.
7. The applicants do not propose to have any type of entertainment to the exterior of the restaurant and none is permitted. The applicant shall only be permitted to have "piped" background music within the restaurant. No background music is permitted in the outdoor dining areas.
8. The applicants shall be responsible for the continuous maintenance of the hood and exhaust system and at no time shall odors emanate from the site that may cause a nuisance to area property owners.
9. The applicants, the owner and the other tenants who utilize the dumpster on the site shall be responsible for constructing a dumpster enclosure on the property that is properly sized to enclose the dumpster, cardboard container and grease container. The location, design and size of said enclosure shall be approved by the Director of Developmental Services.
10. The applicants shall obtain a Sign Permit from the Building Department to install the freestanding sign panel approved by the Town Board and Historic Preservation Board. Any future modification to the approved sign shall be reviewed and approved by both Boards prior to its installation.
11. The applicants propose to purchase the subject property at a future date. Prior to the sale of said property, the applicants and the owner shall provide the Town with a cross access and parking easement, in the Town's format, to

ensure that all parties currently sharing the common parking lot and points of ingress and egress continue to be served by those facilities.

12. The applicants have stated that they would like to utilize the second floor of the building for small parties. The second floor does not currently comply with the requirements of the New York State Building Code, as it has no means of secondary access. The applicants shall not be permitted to utilize the second floor of the building for any purpose other than storage space until such time as they are able to comply with the Building Code. In addition, the applicants will be required to obtain a Conditional Use Permit from the Town Board to utilize that area. The Board will review parking conditions at the site in its review of the Conditional Use Permit
13. This operation shall comply with all Federal, State, County and Town Codes.
14. Failure to comply with the conditions set forth hereinabove may result in the revocation of this Conditional Use Permit pursuant to the requirements of the Zoning Ordinance.

AND BE IT FURTHER

RESOLVED, that the applicants' proposal is classified as a Type II action pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and no additional environmental review regarding this proposal is necessary.

The Town Board, in granting the Conditional Use Permit, does so based on its following findings:

1. The applicants have leased the building formerly occupied by a restaurant known as Elegant Expressions.
2. The applicants propose to operate a primarily breakfast and lunch business, with light dinners. They may open for later dinners once established and will comply with the permitted hours of operation within the Four Corners District.
3. The applicants also propose to provide outdoor dining with 24 seats on the front porch and 16 seats in a proposed patio to be installed adjacent to the rear entrance. The applicants will obtain approval from the Director of Developmental Services and will obtain a building permit prior to the installation of the proposed patio.
4. There are adequate parking facilities on site to accommodate this business, as the current owner has informally permitted shared parking and access to the site for all of the businesses operating from it. The applicants propose to purchase the restaurant from the owner at a future date and prior to sale of the property, the Board is will require the execution of a shared access and

parking easement over the owners' properties to ensure that shared access and parking facilities are provided to all those operating businesses from these sites. Failure to execute such easement will result in revocation of the applicants' Conditional Use Permit to operate from this site.

- 5. The applicants stated that they will comply with all applicable State codes and regulations pertaining to the operation of a sit-down restaurant and sale of alcohol in the Town of Penfield.
- 6. The dumpster serving the owners' properties is not currently enclosed as per Town Code. The owner, the applicants and all others who benefit from the use of the dumpster shall be responsible for its enclosure at the direction of the Director of Developmental Services. Said dumpster shall be enclosed by June 1, 2013.
- 7. The applicants do not propose to have any live entertainment on the premises at any time and the Board has required that no live music be permitted on the site. The applicants propose the use of "piped" background music within the restaurant and that shall be permitted. No piped music shall be permitted in the outdoor dining areas.
- 8. The applicants shall not be permitted to utilize the second floor of the building for any purpose other than storage space until such time as they are able to comply with the Building Code. In addition, the applicants will be required to obtain a Conditional Use Permit from the Town Board to utilize that area. The Board will review parking conditions at the site in its review of the Conditional Use Permit.
- 9. The applicants' proposal is consistent with and furthers the goals and objectives of the Four Corners zoning district.

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

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

Vote: Kohl \_\_\_\_\_  
 LaFountain \_\_\_\_\_  
 Metzler \_\_\_\_\_  
 Moore \_\_\_\_\_  
 Quinn \_\_\_\_\_

BY Councilman Moore

Law & Finance Committee

NAME Approval of Issuance of a Conditional Use Permit to Allow a Landscaping

Office at 1739 Penfield Road – SBL# 139.09-2-1– 2 - Blake Miller Lawn & Landscaping

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 landscaping office at 1739 Penfield Road, located in the Four Corners (FC) zoning district; and

WHEREAS, the Town Board of the said Town of Penfield held a public hearing at the Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on April 17, 2013, at 7:30 PM on said date, to consider the application and hear all persons interested on the question of the issuance of a Conditional Use Permit to allow a landscaping office at 1739 Penfield Road, in the Four Corners (FC) zoning district and the public hearing was closed.

NOW, THEREFORE, BE IT

RESOLVED, that the applicant's request for a CONDITIONAL USE PERMIT to allow a landscaping office at 1739 Penfield Road is hereby GRANTED subject to the following conditions:

1. The applicant shall obtain a CONDITIONAL USE PERMIT from the Town Clerk and pay the appropriate fee. The CONDITIONAL USE PERMIT is non-transferable. Any subsequent owner or operator shall be required to apply for and obtain a CONDITIONAL USE PERMIT from the Town Board to operate a business at this location.
2. The applicant shall comply with the occupancy requirements that have been established by the Penfield Fire Marshal in accordance with the New York State Building Code and obtain any/all necessary permits.
3. The applicant shall not be permitted to install any form of decorative structures to the exterior of the office without approval from the Town Board.
4. The applicant shall submit a sign package for the property for the Town Board's review and approval. Upon receiving approval from the Town Board, the applicant shall obtain a Sign Permit from the Building Department and pay the appropriate fee prior to the installation of any signage.
5. The applicant shall continue his efforts to bring his property at 2343 Penfield Road into compliance with the requirements of the Town Project Review

Committee's memo dated March 6, 2013 to the satisfaction of the Town Building Inspector. The PRC memo outlines specific timeframes to bring various issues on that site into compliance with Town Code.

6. This operation shall comply with all Federal, State, County and Town Codes.
7. Failure to comply with the conditions set forth hereinabove may result in the revocation of this Special Permit pursuant to the requirements of Article XI-11-14 of the Zoning Ordinance.

AND BE IT FURTHER

RESOLVED, that the applicant's proposal is classified as a Type II action pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and no additional environmental review concerning this proposal shall be required.

The Town Board, in granting the Special Permit, does so based on its following findings:

1. The applicant proposes to lease the building at 1739 Penfield Road for the purpose of installing the office component of his landscaping business at this location. In addition, he has additional space which he proposes to lease to a Certified Public Accountant or like professional and a local charity.
2. The site has adequate parking facilities to accommodate his business as well as his tenants as no vehicles associated with the landscaping business are proposed to be and are not permitted to be stored on site at any time.
3. The Town Board has requested the applicant to submit a sign package for the property (particularly the proposed freestanding sign) to ensure that the sign is compatible with the neighborhood and the existing signs in close proximity to it. Upon review and approval of the sign package, the applicant will be permitted to obtain a Sign Permit from the Building Department and install signage as approved.
4. The applicant does not propose a dumpster at the site at this time. In the event a dumpster is needed at a later date, the dumpster shall be placed on the site in a location that is buffered from Penfield Road and the adjacent properties. The dumpster will be required to be screened to the satisfaction of the Building Inspector.
5. The applicant's operational component of his landscaping business is located at 2343 Penfield Road. That property has been in violation of the Town's Code pertaining to Customary Agricultural Operations and Property Maintenance Articles in the Penfield Zoning Ordinance. The applicant is in the process of bringing that site into compliance with the requirements of the Town Code at the direction of Town staff. The applicant shall continue his

efforts to bring the site into compliance as directed in the Town PRC memo dated March 6, 2013. Failure to do so will result in revocation of this Conditional Use Permit to conduct business at 1739 Penfield Road.

- 6. This office is properly scaled to accommodate the site with respect to use and parking needs.

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

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

Vote: Kohl \_\_\_\_\_  
LaFountain \_\_\_\_\_  
Metzler \_\_\_\_\_  
Moore \_\_\_\_\_  
Quinn \_\_\_\_\_

Penfield Town Board Resolution No. 13T-115

Date: May 1, 2013

BY: Councilperson Moore

Law & Finance Committee

NAME: WILLIAM S. AND DEBBIE S. WICKHAM, Tax Certiorari Settlement

WHEREAS, heretofore commenced proceedings against the Assessor and the Board of Assessment Review and other respondents for a review of the Assessment for the years 2012/2013; for the premises located at 1350 Sweet Corners Road (Tax map number: 125.01-1-10.1) located within the Town of Penfield, and

WHEREAS, after negotiations between the Attorney for the Town and the Attorneys for the Petitioner, a tentative agreement has been reached between 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 Stipulation 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 settlement is fair and reasonable and should be approved.

THEREFORE, BE IT RESOLVED, that the proposed settlement for the Tax Certiorari proceedings brought by WILLIAM S. AND DEBBIE S. WICKHAM for the years 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 \_\_\_\_\_

BY Councilman Moore

Law & Finance COMMITTEE

NAME Setting a Public Hearing for a Conditional Use Permit to Allow Dog

Grooming at 1850 Penfield Road – SBL# 139.06-2-46 – Jaime Bunting & Brooke

Child

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 dog grooming at 1850 Penfield Road, located in the Four Corners (FC) zoning district”;

NOW, THEREFORE, BE IT

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

RESOLVED, that the Town Board of the said Town of Penfield shall hold a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on June 5, 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 dog grooming at 1850 Penfield Road, in the Four Corners (FC) zoning district; and be it further

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

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

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

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

LaFountain \_\_\_\_\_

Metzler \_\_\_\_\_

Moore \_\_\_\_\_

Quinn \_\_\_\_\_



PENFIELD TOWN BOARD RESOLUTION NO. 13T-117  
1, 2013

DATE May

BY Councilman Moore

Law & Finance COMMITTEE

NAME Setting a Public Hearing for a Conditional Use Permit to Allow a Day Spa at

1788 Penfield Road – SBL# 139.05-2-23.103 – Chun Yun Liu

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 a day spa at 1788 Penfield Road, located in the Four Corners (FC) zoning district”;

NOW, THEREFORE, BE IT

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

RESOLVED, that the Town Board of the said Town of Penfield shall hold a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on June 5, 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 day spa at 1788 Penfield Road, in the Four Corners (FC) zoning district; and be it further

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

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

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

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

LaFountain \_\_\_\_\_

Metzler \_\_\_\_\_

Moore \_\_\_\_\_

Quinn \_\_\_\_\_



PENFIELD TOWN BOARD RESOLUTION NO. 13T-118

DATE May 1, 2013

BY Councilwoman Metzler

Public Works Committee

NAME Recognizing May 2013 as National Historic Preservation Month

WHEREAS, historic preservation is an effective tool for managing growth, revitalizing neighborhoods, fostering local pride and maintaining community character while enhancing livability; and

WHEREAS, historic preservation is relevant for communities across the nation, both urban and rural, and for Americans of all ages, all walks of life and all ethnic backgrounds; and

WHEREAS, it is important to celebrate the role of history in our lives, and the contributions made by dedicated individuals, in helping to preserve the tangible aspects of the heritage that has shaped us as a people.

NOW, THEREFORE BE IT

RESOLVED, that the Town Board of the Town of Penfield does hereby proclaim May 2013 as National Historic Preservation Month and call upon the people of the Town of Penfield to join their fellow citizens across the United States in recognizing and participating in this special observance.

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

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

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



