



# TOWN OF PENFIELD

3100 Atlantic Avenue, Penfield, NY 14526-9798

## PENFIELD TOWN BOARD AGENDA

Wednesday, July 17, 2013, 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 Carpet and Flooring Office at 1788 Penfield Road, located in the Four Corners (FC) Zoning District
- III Communications and Announcements
- IV Public Participation
- V Additions and Deletions to Agenda
- VI Approval of Minutes –June 5, 2013
- VII Petitions
- VIII Resolutions by Function
  - Law and Finance
  - 13T-150 Authorizing Purchase of a Portion of Property at 1777 Penfield Road from Dr. Arnold J. DiPietro to Create Additional Right of Way to Extend Motts Lane
  - 13T-151 Setting a Public Hearing for Conditional Use Permit to Allow a Chocolate Shop at 1865 Penfield Road
  - 13T-152 Authorization for Release of an Access and Turnaround Easement to Lots 2, 3, & 4 at 1440 Scribner Road
  - 13T-153 Authorization for Release of a Sanitary Sewer Easement at 1440 Scribner Road
  - 13T-154 Authorization for release of a Drainage Easement at 1440 Scribner Road
  - 13T-155 Adoption of Town of Penfield Background Check Policy
  - 13T-156 Granting Relief From Condition # 7 of Resolution #13T-81 Pertaining to the Permitted Hours of Operation of the Outdoor Dining Area for the Proposed Jeremiah’s Tavern located at 2164 Fairport Nine Mile point Road

Public Works - None

Public Safety - None

Community Services

13T-157 Authorization for Supervisor to Sign Recreation Contracts

IX Old Business

X New Business

XI Public Participation

XII Adjournment

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

DATE July 17, 2013

BY Councilman Moore

Law & Finance COMMITTEE

NAME Authorizing Purchase of a Portion of Property at 1777 Penfield Road from Dr.

Arnold J. DiPietro to Create Additional Right of Way to Extend Motts Lane- SBL# -

139.09-1-15.1

WHEREAS, The Town Board proposes to purchase a portion of property at 1777 Penfield Road, consisting of 0.012 +/- acres for the purpose of creating additional right of way to extend Motts Lane; and

WHEREAS, the Town of Penfield has had an appraisal prepared by Midland Appraisal Associates to determine a fair market value for said property, that being \$3,036; and

WHEREAS, the property owner, Dr. Arnold J. DiPietro has offered to sell a portion of said property for \$3,036; and

WHEREAS, 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 RESOLVED, that the subject action is determined to be an Unlisted action pursuant to the State Environmental Quality Review Act (SEQRA) and the Town Board has determined that the purchase of the subject properties will not create an adverse impact to the environment;

NOW, THEREFORE, BE IT

RESOLVED, that the Supervisor is hereby authorized to sign a Purchase and Sale Contract for the purchase a portion of said property at 1777 Penfield Road in the amount of \$3,036; and

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

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

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

LaFountain \_\_\_\_\_

Metzler \_\_\_\_\_

Moore \_\_\_\_\_

Quinn \_\_\_\_\_

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

DATE July 17, 2013

BY Councilman Moore

Law & Finance Committee

NAME Setting a Public Hearing for a Conditional Use Permit to Allow a Chocolate Shop at 1865 Penfield Road – 139.06-4-14 – Donna Nichols-Scott

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 chocolate shop at 1865 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 subject application is determined to be a Type II action pursuant to the requirements of the State Environmental Quality Review Law; 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 August 7, 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 chocolate shop at 1865 Penfield Road in the Four Corners (FC) zoning district; and be it further

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

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

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

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

LaFountain \_\_\_\_\_

Metzler \_\_\_\_\_

Moore \_\_\_\_\_

Quinn \_\_\_\_\_

PENFIELD TOWN BOARD RESOLUTION NO. \_\_\_\_\_ DATE July 17, 2013

BY Councilman Moore

Law & Finance COMMITTEE

NAME Authorization for Release of an Access and Turnaround Easement to Lots 2, 3, & 4, at 1440 Scribner Road – SBL #109.05-1-55.1, 109.05-1-55.2 & 109.05-1-55.3

BE IT RESOLVED, that the Town Board of the Town of Penfield hereby authorizes the Supervisor to sign a Release of Easement to permit a release of an existing Access and Turnaround Easement to Lots 2, 3, & 4, at 1440 Scribner Road, as shown on a map entitled “1440 Scribner Road Subdivision” prepared by Passero Associates, last revised June 24, 2011, filed in the Monroe County Clerk’s Office as Liber 11018 of maps, Page 74, as the easements on said property are no longer necessary; and

BE IT FURTHER RESOLVED, that the Release of Easement shall be in the Town’s format and shall be recorded at the Monroe County Clerk’s Office with a certified copy of this Resolution.

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

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

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

LaFountain \_\_\_\_\_

Metzler \_\_\_\_\_

Moore \_\_\_\_\_

Quinn \_\_\_\_\_

PENFIELD TOWN BOARD RESOLUTION NO. \_\_\_\_\_ DATE July 17, 2013

BY Councilman Moore

Law & Finance COMMITTEE

NAME Authorization for Release of a Sanitary Sewer Easement, at 1440 Scribner Road –

SBL #109.05-1-55.1, 109.05-1-55.2 & 109.05-1-55.3

BE IT RESOLVED, that the Town Board of the Town of Penfield hereby authorizes the Supervisor to sign a Release of Easement to permit a release of an existing 20’ wide Sanitary Sewer Easement, at 1440 Scribner Road, as shown on a map entitled “1440 Scribner Road Subdivision” prepared by Passero Associates, last revised June 24, 2011, filed in the Monroe County Clerk’s Office as Liber 11018 of maps, Page 543, as the easement on said property is no longer necessary; and

BE IT FURTHER RESOLVED, that the Release of Easement shall be in the Town’s format and shall be recorded at the Monroe County Clerk’s Office with a certified copy of this Resolution.

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

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

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

LaFountain \_\_\_\_\_

Metzler \_\_\_\_\_

Moore \_\_\_\_\_

Quinn \_\_\_\_\_

PENFIELD TOWN BOARD RESOLUTION NO. \_\_\_\_\_ DATE July 17, 2013

BY Councilman Moore

Law & Finance COMMITTEE

NAME Authorization for Release of a Drainage Easement, at 1440 Scribner Road – SBL  
#109.05-1-55.1, 109.05-1-55.2 & 109.05-1-55.3

BE IT RESOLVED, that the Town Board of the Town of Penfield hereby authorizes the Supervisor to sign a Release of Easement to permit a release of an existing 20' wide Drainage Easement, at 1440 Scribner Road, as shown on a map entitled "1440 Scribner Road Subdivision" prepared by Passero Associates, last revised June 24, 2011, filed in the Monroe County Clerk's Office as Liber 11018 of maps, Page 536, as the easement on said property is no longer necessary; and

BE IT FURTHER RESOLVED, that the Release of Easement shall be in the Town's format and shall be recorded at the Monroe County Clerk's Office with a certified copy of this Resolution.

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

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

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

LaFountain \_\_\_\_\_

Metzler \_\_\_\_\_

Moore \_\_\_\_\_

Quinn \_\_\_\_\_

PENFIELD TOWN BOARD RESOLUTION NO. \_\_\_\_\_ DATE: July 17, 2013

BY: Cm Moore Law and Finance COMMITTEE

Name: Adoption of Town of Penfield Background Check Policy

WHEREAS, the Town of Penfield is committed to protecting the security, safety, and health of our employees, residents and others, safeguarding the assets and resources of the Town and assuring individuals in responsible positions are worthy of the trust they are given; and

WHEREAS, the Town Board desires to establish a protocol for doing background checks on individuals seeking employment, volunteering, and/or providing a contractual service for the Town. All department heads are required to comply with Town policy and procedures;

NOW, THEREFORE, BE IT FURTHER RESOLVED, that all employees (part-time, full-time, and seasonal including competitive and non-competitive class employees), union employees, volunteers, contractual service providers or any person (s) offering/position and in particular who work with children, youth, senior citizens or other vulnerable populations will be required to have a Background Check investigation. At a minimum the background check shall include a nationwide criminal background and sex offender check; and

BE IT FURTHER RESOLVED, that all contractual service providers are responsible to submit a background check release form to the Town of Penfield that verifies that all instructors/staff/volunteers performing any paid, unpaid, or volunteer offering/position has successfully been approved through a background screening including nationwide criminal background and sex offender check. All contract service providers are responsible for all fees associated with the background check; and

BE IT FURTHER RESOLVED, that this Policy will take affect on September 1, 2013.

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

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

Vote:

Kohl \_\_\_\_\_

LaFountain \_\_\_\_\_

Metzler \_\_\_\_\_

Moore \_\_\_\_\_

Quinn \_\_\_\_\_



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

DATE July 17, 2013

BY Councilman Moore

Law & Finance COMMITTEE

NAME Granting Relief From Condition Number 7 of Resolution 13T-81 Pertaining to the Permitted Hours of Operation of the Outdoor Dining Area for the Proposed Jeremiah's Tavern Located at 2164 Fairport Nine Mile Point Road – SBL# – 140.01-2-70.11 – The Patriot Companies

WHEREAS, on February 20, 2013, in Resolution T13-81, the Town Board of the Town of Penfield granted preliminary and final resubdivision and site plan approval and a conditional use permit to allow the construction and operation of a 6,500 square foot sit-down restaurant with an accessory 2,600 square foot outdoor dining patio at 2164 Fairport Nine Mile Point Road; and

WHEREAS, Condition #7 of said approval resolution limited the permitted hours of use of the outdoor dining patio from 11:00 a.m. to 10:00 p.m. on a daily basis; and

WHEREAS, the applicant met with the Town Board at it March 27, 2013 work session to request relief from said Condition #7 as it found limitation of use of the proposed outdoor dining patio to be too restrictive; and

WHEREAS, the Town Board determined that it was fair and equitable to allow the applicant to present its case for later hours of operation and for the public to comment on the applicant's proposal to ensure that it can feasibly operate its business while protecting the health, safety and general welfare of the public;

WHEREAS, the Town Board of the said Town of Penfield held a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on May 1, 2013 at 7:30 PM on said date, to consider the 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 outdoor dining patio of the proposed Jeremiah's Tavern proposed to be constructed at 2164 Fairport Nine Mile Point Road; and

WHEREAS, the applicant presented its rationale for requesting longer hours of use of the outdoor dining area and requested that it be permitted to utilize a flat screen television and "piped background music" within the outdoor dining area as well; and

WHEREAS, nine area residents expressed their concerns for extending the approved hours of operation of the outdoor dining area pertaining to potential noise issues; and

WHEREAS, the Town Board required that the applicant conduct a sound study for the subject property to determine the decibel levels necessary to create adverse noise impacts to adjacent properties; and

WHEREAS, on June 7, 8 and 11, 2013, Marathon Engineering conducted a scientific sound study adjacent to several neighborhoods which identified no noise impacts above 54 decibels at the closest point to the easterly and southerly neighborhoods, however, neither members of town staff nor concerned neighbors participated in said study. On June 12, 2013, at its work session, the Town Board directed the applicant to conduct a second study to allow members of the town and concerned neighbors to participate and verify the findings of said study in real time; and

WHEREAS, on Saturday evening, June 15, 2013, at 7:30 p.m., Marathon Engineering conducted a fourth sound study at the site in which the Town Supervisor, area residents and the applicant participated. The study included sound testing from the subject site and its proximity to Braunston Drive, Canterbury Trail and South Village Trail and Cherrymede Crescent. Sounds involving human conversation, an automobile horn and music were amplified from ambient (46-47 db) to 100 decibels from the control site and no sound above 53 db was detected on Braunston Drive, Canterbury Trail, South Village Trail or Cherrymede Crescent during this study period.

NOW, THEREFORE, BE IT

RESOLVED, that based on the findings of the five sound studies conducted by Marathon Engineering on June 7, 8, 11 and June 15, 2013, the Board finds that the applicant's request to extend the hours of operation of the proposed outdoor dining area is reasonable subject to the following conditions:

1. On February 20, 2013, in condition #7 of resolution T13-81, the Town Board limited the permitted hours of use of the outdoor dining area from 11:00 a.m. to 10:00 p.m. on a daily basis, based on its concern for adverse impacts to area residents. The Board hereby extends the hours of use from 11:00 a.m. to 11:00 p.m. on a daily basis.
2. The applicant had offered, as a compromise, to address neighbor concerns by eliminating live music in the outdoor dining patio until such time as it can demonstrate that the use of the patio does not create adverse noise impacts to area residents, at which time it may request permission from the Town Board, through the public hearing review process to consider live music on the patio and further extend the permitted hours of operation of the patio, if warranted.
3. The Board, as a response to the applicant's proposal to eliminate live music from the patio, will permit the applicant's request for flat screen televisions and "piped background music" on the patio, subject to compliance with the requirements of Article IV-4-9 of the Penfield Ordinance pertaining to noise abatement.

4. The applicant shall be required to provide area residents with the proposed manager's contact information to address and abate any valid noise issues experienced by them.
5. Failure to comply with the conditions set forth hereinabove may result in the Town Board requiring a review of the applicant's Conditional Use Permit for non-compliance. In the event that the applicant is found to be non-compliant, it will be required to abate the violation by whatever means necessary subject to Town Board approval.

The Board bases its decision to extend the applicant's hours of operation on its following findings:

1. The applicant had expressed concern to the Board that it proposes to expend approximately \$2.4 million on the site and that it could not justify the cost without being able to market the use of the site to its fullest practicable extent.
2. The applicant proposed scenarios that included maintaining the hours permitted by the Board to 10:00 p.m. from Sunday to Thursday and allowing him to extend the hours on Friday and Saturday evenings to midnight. The applicant also proposed to eliminate live music altogether to allow later hours.
3. Although the Board is confident that the sound studies conducted by Marathon Engineering dated June 12, 2013 and revised June 20, 2013 demonstrate that the proposal will not create adverse noise impacts to area residents, the Board finds that permitting the applicant to extend the hours of the use of the patio from 10:00 p.m. to 11:00 p.m. will an appropriate timeframe until the business is well established and it is assured that the business has operated on a sustained basis in compliance with the requirements of the Penfield Noise Ordinance. Once a positive record has been established to the Board's satisfaction, it will permit the applicant to request further extended hours and live music on the patio.
4. The Board encourages the applicant and the residents who have expressed concern regarding this proposal to meet periodically to ensure that a relationship among all parties can be established and that concerns, if any, can be immediately addressed all parties satisfaction.

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

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

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

LaFountain \_\_\_\_\_

Metzler \_\_\_\_\_

Moore \_\_\_\_\_

Quinn \_\_\_\_\_

PENFIELD TOWN BOARD RESOLUTION NO. \_\_\_\_\_ DATE 7-17-13

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:

Marc Jacobson, 15 Dundas Drive, Rochester, NY 14625, Penfield Recreation Soccer League Official, 6/24/2013 - 8/1/2013, for the fees of: \$15.50 per 8/9/10/ under game and \$19.50 per 14/under game. Vouchers to be submitted monthly.

The following persons to provide service as Boys Soccer Camp Instructors 6/24–6/28/13, for the fee of \$22.50 per day: Vouchers to be submitted 7/17/13.

Thomas Szatko, 18 Thorntree Circle, Penfield, NY 14526  
Samuel Tiffany, 317 County Line Road, Macedon, NY 14502  
Chris Sergeant, 56 Canterbury Trail, Fairport, NY 14450  
Evan Orlando, 15 Maple Hill Farm Road, Penfield, NY 14526  
Ian Masters, 50 Random Knolls Drive, Penfield, NY 14526  
Jack Cipro, 5 Glen Circle, Penfield, NY 14526  
Philip DiFrancesco, 83 Brentwood Drive, Penfield, NY 14526  
Tim Obzud, 51 Hillcrest Drive, Penfield, NY 14526  
Peter Juliano, 28 Terrace Hill Drive, Penfield, NY 14526  
Jerha Rohlin, 4368 Ontario Center Road, Walworth, NY 14568  
Marc Jacobson, 15 Dundas Drive, Rochester, NY 14625

Tim Graves, 1582 Sweets Corners Road, Fairport, NY 14450, Assistant Director of Penfield Recreation Boys Youth Soccer Camp 6/24-6/28/13, for a fee of \$41.00 per day. Voucher to be submitted 7/17/13.

John Cotsonas, 224 West Ave, East Rochester, NY 14445 Director of Penfield Recreation Boys Youth Soccer Camp, , for the fee of \$325.00 plus \$1.00 per participant (\$2.00 per participant for camps with enrollments exceeding 59). Voucher to be submitted 7/17/13

Tom Westbrook, 6328 Murphy Dr, Victor, NY 14564, Assistant Director, Boys Soccer Camp, 6/24/13-6/28/2013, for the fee of \$41.00 per day. Voucher to be submitted 7/17/13.

The following persons to provide service as Volleyball Instructors, 6/24/13 – 6/28/13, for a fee of \$24.00 per day plus \$1 per day for each year previously working camp. Vouchers to be submitted 7/17/13.

- Joe Fusare, 6 Chamberlain Rd., Honeoye Falls, NY 14472
- Ben Naylor, 9 Woodspring Hill, Honeoye Falls, NY 14472
- Jack Lawatsch, 47 Helmsford Way, Penfield, NY 14526
- Vincent Gagliardo, 1782 Sweets Corners Road, Fairport, NY 14450
- Garrett Quiel, 9 Rockbridge Lane, Penfield, NY 14526
- Christina Aguielera, 638 Saddle Crest Drive, Webster, NY 14580
- Erin Mozingo, 16 Terrace Hill Drive, Penfield, NY 14526
- Grace Fumich, 1385 Cherry Laurel Circle, Webster, NY 14580
- Emily Knipper, 43 LaDue Avenue, Clifton Springs, NY 14432
- Corey Wiktorski, 114 Jackson Road Ext., Penfield, NY 14526
- Rebecca Doser, 14 Summer Glen Drive, Penfield, NY 14526
- John Sprague, 2709 Penfield Road, Fairport, NY 14450
- Rachel Salisbury, 14 Melbourne Green, Fairport, NY 14450
- Ethan Dangler, 136 Jackson Road Ext., Penfield, NY 14526
- Alex Wang, 3693 Stalker Road, Macedon, NY 14502

Mike Fusare, 6 Chamberlain Rd., Honeoye Falls, NY 14472, Director, Volleyball Camp, 6/24/13 – 6/28/13, for a fee of \$345.00 plus \$1.00 per paid participant, (\$2.00 per participant for any camp exceeding 59 participants). Voucher to be submitted 7/17/13.

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

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

Vote:

- Kohl \_\_\_\_\_
- LaFountain \_\_\_\_\_
- Metzler \_\_\_\_\_
- Moore \_\_\_\_\_
- Quinn \_\_\_\_\_