The Planning Board met at 6:30 PM local time Thursday, February 9th, 2012 in the Auditorium to discuss, in a meeting open to the public, tabled matters and other business that was before it.

I. CALL TO ORDER:

PRESENT: Arsen Markarian, Chairperson
Bill Bastian
Jim Burton
Sue Kreiser
Doug McCord
Terry Tydings

ABSENT: Allyn Hetzke, Jr.

ALSO PRESENT: Linda Cummings, Secretary
Katie Evans, Planning Board Clerk
Mark Valentine, Planning Department Head
Peter Weishaar, Legal Counsel

II. APPROVAL OF MINUTES: January 26, 2012

The Board approved the minutes of January 26, 2012.

Vote: Moved by: Burton Seconded by: Bastian

Chairperson Markarian – Aye Bastian – Aye Burton – Aye Hetzke - Absent
Kreiser – Aye McCord – Aye Tydings - Aye

Motion was carried.

III. TABLED

1. Michael Schaffron, LaBella Associates, P.C., 300 State Street, Suite 201, Rochester, NY 14614/Rochester Gas & Electric requests under Articles III-3-10, IX-9-2, and X-10-4 of the Code, Preliminary and Final Site Plan, expansion to an existing Conditional Use Permit, and EPOD Permit approval to construct additional transformers with associated improvements on 84.1 +/- acres located at 1540 Salt Road to be known as RG&E Station 124 Expansion. The property is now or formerly owned by Rochester Gas & Electric and is zoned RA-2. Appl#12P-0001. SBL# 111.01-1-30.

The Planning Board Chair is AUTHORIZED to sign the Part 2 EAF.

Vote: Moved by: McCord Seconded by: Kreiser

Chairperson Markarian – Aye Bastian – Aye Burton – Aye Hetzke - Absent
2. Doug Eldred/BME Associates, 10 Lift Bridge Lane East, Fairport, NY 14450/Ellison Heights LLC requests an informal discussion with the Board regarding the construction of five four-story apartment buildings consisting of 183 +/- units and one clubhouse with associated improvements on 18.6 +/- acres located at 1200-A and 1200-B Penfield Road to be known as Ellison Heights Section 2. The property is now or formerly owned by Ellison Heights LLC and is zoned MR. Appl# 11p-0016. SBL# 123.19-1-26.11 and 123.19-1-26.12.

   - Katie Evans, Town Planner, reviewed the Ellison Heights timeline and draft sketch plan review response letter.
   - Mark Valentine, Planning Department Head, reviewed Board Member Hetzke’s comments.

   The Board APPROVED the amended sketch plan review response letter and directed staff to issue it.

   Vote: Moved by: Bastian   Seconded by: Kreiser

   Chairperson Markarian – Aye  Bastian –Aye  Burton –Aye  Hetzke - Absent
   Kreiser –Aye  McCord -Aye  Tydings - Aye

   Motion was carried.

3. Jared Lusk, Nixon Peabody Attorneys at Law, 1100 Clinton Square, Rochester, NY 14604/DiMarco Brandt Point, LLC requests the Town Board to consider their pending application for the proposed action. The
proposed action has been classified as a Type I Action pursuant to applicable SEQRA Regulations, including 6 N.Y.C.R.R. 617.5 et seq., and the Penfield Environmental Quality Review Local Law #3 of 1996. The Planning Board, acting as lead agency, has accepted a Draft Environmental Impact Statement for the proposed action. A public hearing was held October 14, 2010 at 7:00 PM, at which time the Planning Board heard all interested persons on the content of said document.

- Doug McCord and Jim Burton excused themselves from the table during this discussion.
- Mark Valentine, Planning Department Head, provided an overview of the draft FEIS Residential Real Estate Values, Tops Leaving/Analysis of Grocery Market, and Plaza Health/Redevelopment sections. The Board discussed the prepared responses and completed a working draft of the sections. The working drafts are hereby incorporated into the meeting minutes as Schedule A, B, and C.

The Board took NO ACTION on this item.

IV. MISCELLANEOUS

1. Incentive Zoning Application to permit the construction of 36 single family homes on a lot totaling 29.7 acres. The parcel is located at 85 Fellows Road and 2353 Penfield Road and is to be known as Ashlyn Rise Subdivision. The property is now or formerly owned by Samuel & Elisa Trapani and is zoned RR-1. Application # 11P-0004, SBL#140.01-01-065 and 140.02-01-058.2.

   - Katie Evans, provided an overview the project. The Board had no additional comments for the Town Board for their consideration.

2. Michael D. O’Neill/ P.L.S., O’Neill-Rodak Land Surveying Associates, P.C., 5 South Fitzhugh Street, Rochester, NY 14614/Robert and Lisa Dreste request under Article VIII-8-2 of the Code Resubdivision approval to allow the resubdivision of two lots, 1754 and 1758 Salt Road, resulting in one 10 +/- acre parcel now or formerly owned by Robert and Lisa Dreste to be known as Lot R-3 Resubdivision of the Ranchette Subdivision. The property is zoned RA-2. SBL# 126.01-1-3 and 126.01-1-4.

   Resubdivision was APPROVED.

   Vote: Moved by: Tydings Seconded by: McCord

   Chairperson Markarian – Aye  Bastian –Aye  Burton –Aye  Hetzke - Absent

   Kreiser –Aye  McCord -Aye  Tydings - Aye

   Motion was carried.

There being no further business to come before the Board, this meeting was adjourned at 8:35 pm., Thursday, February 9, 2012.

These minutes were adopted by the Planning Board on February 23, 2012.
SECTION 3.2 – RESIDENTIAL REAL ESTATE VALUES

Comment 1 – Allen, A.
If the parcel is rezoned, our property value - and the marketability of our property - will plummet. We built a beautiful high quality home in a nice neighborhood, with the expectation that this parcel would remain zoned residential and would someday provide a residential buffer to Bay Towne. Just the threat of a Super Wal-Mart in the backyards of Jewelberry residents has made selling a home on our street very difficult. Rezoning the parcel will devalue homes built with the expectation that a Super Wal-Mart would not be in the backyard. If DiMarco recognizes that developing and marketing residentially may be difficult because the current Bay Towne lends a “commercial feel” to the parcel, why would you consider allowing the parcel to be rezoned so our homes - which were built with the residential zoning expectation - could take on a “commercial feel” due to a Super Wal-Mart in the backyard?

Response:
The initial application submitted to the Town of Penfield requested that the entire R-1-12 and MR zoned properties be rezoned to General Business (GB). The amended rezoning application, received on August 10, 2010 reduced the amount of R-1-12 zoned lands to 11.12 acres, from the originally requested 20 acres. The remaining lands adjacent to Jewelberry and Seabury will remain R-1-12, if any rezoning is considered. The applicant has also offered to restrict the remaining R-1-12 zoned lands from any future development, leaving them in the existing natural state. As demonstrated in the amended Noise Study, the maintenance of natural vegetation will provide a more complete noise & visual buffer adjacent to an existing neighborhood than development of R-1-12 housing, which would result in the removal of most or all of the existing vegetation. As requested by the Board, the Applicant has submitted another alternative (CP-02) that would maintain a 200’ natural buffer plus a 100’ area for a berm and possible wall, thus increasing the separation further than proposed on the applicant’s preferred alternative layout. This was a combination of two previously reviewed alternatives; COM-50 and RES-15.

Factual information regarding property values of homes in neighborhoods surrounding a Wal-Mart have been provided in the DEIS. Please reference Attachment 20 in the DEIS for specific data relative to home values in neighborhoods surrounding the Gates, New York Wal-Mart.

Comment 2 – Bauer, R.
I would like to see us work, as Terry said, to come up with a solution that uses the existing space to revitalize the plaza as rapidly as possible but not encroach upon the property of the residents in the area who paid their own hard-earned money to make the biggest investment of their life, and the expectation is that that property will at least retain its value. The hope has been that the property will increase in value, but no one has moved there expecting their property to decrease in value. I moved from the west side specifically for that purpose 14 years ago, and I have seen or heard nothing that says to me that this larger Bay Towne Plaza with a Super Wal-Mart will increase my home’s value. The only thing I can believe is it will decrease my home’s value. I count on my home not to decrease in value and I moved to that area for that purpose. So I’m in favor of the revitalization of the Plaza. Let’s get it done as soon as possible and let’s use the existing footprint.

Response:
Factual information provided in Attachment 19 of the DEIS addresses the home values of the neighborhoods surrounding the land in question. The alternative of using the existing footprint for an expanded WalMart was considered in the DEIS. The applicant has provided rationale why this is not a preferred alternative in the DEIS Supplemental Submission, dated August 5, 2010, received August 10, 2010, Section 2.6, Alternative Plan – Res 48 Expansion. This alternative would use the existing WalMart location with an expanded store, but would also permit the construction of 48 single-family homes, effectively eliminating the natural vegetation that acts as a buffer to the adjacent neighborhoods. As shown in the amended Noise Study, this will likely result in a greater impact to neighbors than the preservation of natural vegetation.
**Comment 3 - Burns, J.**
The DiMarco Group proposal to rezone land parcels from residential to commercial use will encroach upon existing Penfield neighborhoods of single family houses much like Piccadilly Park where homes list for up to more than $400,000. The plan calls for a Super Wal-Mart to be constructed on land adjacent to neighborhoods on Jewelberry Drive, Guygrace Lane and Seabury Blvd. Residents built their homes on Seabury and Jewelberry with the understanding from the DiMarco Group and from Karrat Builders respectively that the adjacent vacant land would be developed residentially. Residents relied on those assurances when they purchased their homes and want them honored now. They say that having a Super Wal-Mart back up to their land without the buffer provided by the current zoning will decrease their property values (and the commensurate tax value of the neighborhood for the town), harm quality of life (noise, bright lighting at night, trash, etc.), and have a domino effect in surrounding neighborhoods.

**Response:**
The present zoning will allow for development of 48 single family homes on 12,000 square foot lots. As an alternative, about 9 acres of land is proposed to be left undeveloped and in its natural state by the preferred Redevelopment plan and approximately 10 acres of residential land (out of the 20 acres of R-1-12 zoned land) could remain residentially zoned and undeveloped through a combination of the COM-50 and RES-15 plans (CP-02) and the separation will allow for the construction of a berm and wall serving as a buffer that will provide a barrier to views and sound. Also, please reference Attachment 18 of the DEIS for visualizations of the proposed grading and berm sections that will mitigate the noise concerns expressed by neighbors. Property value data regarding the current neighborhoods surrounding Bay Towne and for the neighborhoods surrounding the Gates, New York Wal-Mart are also provided in Sections 19 and 20, respectively, of the DEIS. The Board had required the inclusion of this data, to determine the impacts that could be expected to property values. See also, Response to Comment 1, above.

**Comment 4 – Clement, J.**
I am confused at the amount of proposals I have read and I have done my due diligence. I have spent hours on the computer. I work in the area. I’m a business woman in the area and I live in the area. However, I am now faced as a resident of Seabury Boulevard with pending environmental changes. Increased traffic on Seabury Boulevard will be greatly impacted. And a possibility of lowering property taxes -- value, excuse me.

**Response:**
As previously stated, this was a prime factor in the requirement of a DEIS for this project. The factual documentation provided illustrates that in scenarios similar to Bay Towne, property values were not adversely affected by development. Please reference Attachment 20 of the DEIS for specific property value information relative to the homes surrounding the Wal-Mart in Gates, New York. There is a valid concern with introducing non-resident traffic to Seabury Blvd. The applicant has not yet arrived at the Site Plan stage, assuming some new development moves forward. If this happens, more specific details and analysis of road design and connections can be reviewed, with the very specific intent to maintain Seabury Blvd. for resident use and discouraging non-resident use of Seabury Blvd. If a traffic signal is permitted on Brandt Point, it will provide a safer and easier access to Empire Blvd. for local residents of Seabury Blvd. as long as the connection is designed appropriately.

**Comment 5 - D’Agostino, A.**
Should the board approve this rezoning, it is a blatant slap in the face of the residents of Penfield, specifically the surrounding areas of Bay Towne Plaza. A home is a significant investment, both financially and emotionally, and the taxes we pay to live in this community are significant. It should be the Town’s top priority to protect that investment. I do not see how the Board could in good conscience approve any sort of rezoning.

**Response:**
The Planning Board is responsible to oversee the environmental review of potential impacts of this rezoning application. Ultimately the Town Board will consider whether to rezone the property after the environmental review is complete. There were enough areas of concern that the Board required the preparation of a DEIS, to analyze these impacts. One of those impacts was the potential to affect property values, if the project moved forward as proposed. See the Response to Comment 3 and Comment 4 above.
Comment 6 – DiPinto, F.
I don’t support this effort. I don't believe it’s going to help the value of -- improve the value of my property. In fact, I think it’s going to hurt it.

Response:
Please reference Attachments 19 and 20 of the DEIS for factual data regarding property values of the current surrounding Bay Towne area, as well as for information regarding the Gates, New York neighborhoods which border a Wal-Mart Supercenter. See the Response to Comment 3 and Comment 4 above.

Comment 7 – Green, S.
Finally, this proposal has attempted to sway opinion regarding property values by arguing the value of the homes in the Bay Towne area have increased since they were built. That is true. However, the argument that homes will continue to increase after a major commercial venture is built adjacent to the properties is not true. The homes in the neighborhoods surrounding the current footprint of Bay Towne enjoy currently an easement of open acres of land, filled with brush, trees, grass, wildlife and is, by the way, zoned Residential. The neighborhoods are attractive to potential buyers and the properties that have entered the market have moved. However, replace these open spaces with a 23 foot berm associated with a busy, 24-hour commercial activity and the walls of the large store as close as 220 foot from some resident’s home, property values will most certainly decline and sales will stagnate. And to think otherwise is simply unrealistic.

Response:
Please see response to Comment 1, above. Also, please refer to Attachment 20 of the DEIS illustrating property values of the Gates, New York neighborhoods surrounding the Wal-Mart. Please note that in these locations, the surrounding neighborhoods do not have the added mitigations of a berm and a natural buffer, all as proposed as part of the Redevelopment. In addition, as requested by the Board, the Applicant has submitted another alternative (CP-02) that would maintain a 200’ natural buffer plus a 100’ area for a berm and possible wall, thus increasing the separation further than proposed on the applicant’s preferred alternative layout. This was a combination of two previously reviewed alternatives; COM-50 and RES-15. This proposed buffer is greater than the current buffer of about 80’ between the existing Bay Towne Walmart and residential properties on Guygrace.

Comment 8 – Hanscom, M.
In terms of property values and marketability, in the DEIS page 3.1-13, it states that “the commercial feel of the area creates a challenge to market the property as appropriate for single family residences.” This is the truth. I received multiple emails liked the one I am about to read: This from a gentleman named Dan who wrote: “I considered buying a house on Guygrace in April until we realized how much uncertainty there was regarding this big project and what it might do the neighborhood. We decided not to pursue a home purchase in your neighborhood, even though the house and yard there was perfect for us. When we realized how it could drag out and how little control individual neighbors have, I decided to participate in the process and submitted my concerns to the Planning board. If the rezoning were to happen, I definitely would not consider a home backing up to the Bay Towne/Wal-Mart project. We value peacefulness and quietness and darkness at night. We just don’t think that would be a reality with the expansion of Bay Towne. We were also concerned for home devaluation because of the proximity of commercial development.”

This is the real truth relative to real estate in the area and in fact homes in our neighborhoods have not been selling at all or have been selling at lower than current tax assessed values once plans for this project were made public. For example, 64 Seabury assessed 175,000 sold for 168,500 (9/09); 77 Seabury never sold; 29 Jewelberry assessed 235,000 sold for 220,000 (6/09); 39 Jewelberry assessed for 308,900 sold for 295, 000 (8/08); 50 Jewelberry assessed 254, 100 sold for 243,000(7/09), 119 Jewelberry never sold; 134 Guygrace assessed 295,700 sold for 273,000(7/09); 121 Guygrace assessed 236,900 listed and sale pending for 227,000; and 127 Guygrace assessed for 303,000 and listing originally for 295,000 and lowered to 236,000 and not selling. The mere thought of this project is turning prospective buyers away!

So if the DiMarco Group recognizes that developing and marketing residentially may be difficult, why would he foist his problems onto us who already have homes in the area and then say he can provide the best buffering to protect us? Provide instead Mr. DiMarco these same buffers against your undeveloped residential land and protect your future home owners against the negative effects of your plaza if you are so convinced of their effectiveness. At
least then people will know what they are buying into and you will have the opportunity of convincing them that the noise, and the traffic and the aesthetics of the current General Business district will not be a problem to their quality of life and to reselling their homes. But please do not try and convince us that adding 240,000 additional square footage to your General Business District will not adversely affect the quality of life and resale value of our current homes in the area. This is absolutely ludicrous!

All the DEIS alternatives focus on alleviating the impacts to Jewelberry residents, but the problem here is that you also have residents on Seabury, on Guygrace, on Anytrell, not to mention all the apartment dwellers of Brandt Point that are all impacted by the size and scope of your alternatives. The DiMarco Group does not mention us in their alternatives. Why is Jewelberry singled out in their alternatives? Do the higher property values of the homes on Jewelberry have something to do with it?

Response:
Since 2008, with the economic downturn, the Nation’s housing market has been among the worst in history. Any home sales within the time period from 2008 until now might reflect this downturn. There may be more to the effect of home sales vs. assessment values than just “…the mere thought of this project…” While there may be some potential buyers who fear the unknown or have heard rumors about a project on this site, the Board must take a much closer look at the potential impacts associated with several alternatives and determine if there is adequate mitigation available to minimize or eliminate the impacts.

For historical data on home values adjacent to construction of a Wal-Mart, where a store did not previously exist, please reference Attachment 20 of the DEIS, illustrating the home values around the Gates, NY Wal-Mart. A Wal-Mart has been in existence at Bay Towne Plaza since 1988. Analysis in the DEIS included taking noise measurements adjacent to Daniels Creek Apartments and Seabury Blvd., in addition to the rear yards of Jewelberry. The residential development on Guygrace has known noise levels from operation of the existing Walmart store.

Comment 9 – Kelly, N.
The Applicant additionally demonstrates a lack of understanding of the community and its concerns regarding property values with the presentation related to property values put forth in the proposal. The issue brought forth by the community is related to the potential impact of lower property values related to the proximity of this new commercial development to established residential neighborhoods. In the proposal, the Applicant chose to speak to the notion that property values have not decreased comparatively since the original Bay Towne Plaza was developed. This is irrelevant to the issue at hand. In addition, the Applicant did not present recent housing market activity for the immediate area and did not present a comprehensive view of activity in the immediate area. The inclusion of Grace Marie Drive and the exclusion of Coralburst Crescent in the comps additionally demonstrates the Applicant’s lack of attention to and/or understanding of the community. In addition, I would ask that the Applicant provide a recent and trended market analysis for the area, including an analysis of new housing starts for the Orchard Valley subdivision that closely borders the area in question for rezoning as opposed to new housing starts for the adjacent Galante Woods and Graceland Estates subdivisions that are less directly impacted by the proposed development. As homeowners, we remain concerned about declining property values in general (see zillow.com), and must be more diligent in ensuring that our property values are not further compromised by the proximity of significant retail development in an area that is zoned for residential development. Um, and I did go online last night and our property values are already decreasing. My property value had decreased $4,500 in the past 30 days. So it’s a little bit disconcerting to think that it could decrease more based on the proximity of a large retail center near my house. I also do plan on submitting something in writing, and thank you for your attention.

Response:
The Planning Board is responsible to oversee the environmental review of potential impacts of this rezoning application. There were enough areas of concern that the Board required the preparation of a DEIS, to analyze these impacts. One of those impacts was the potential to affect property values, if the project moved forward as proposed. Reduction in property values absent any approved commercial development in the area or even completion of the environmental review process leads one to think that other factors may be significant contributors to those reductions. See the Response to Comment 3 and Comment 4 above.
Comment 10 - Kettlewell

Home-ownership is the single largest financial investment that individuals make. What percentage of home value will be impacted? For example, 10% would equate to $30,000 on a $300,000 home. How wide spread will this be? Will reassessment be performed to reflect the impact? Where is the case study information? Should the poor investment of the developer become the problem of the residents that surround that property?

Response:

In this specific scenario, prediction of the future trends in the economy and other mitigating factors are not possible to guarantee. The case study information is currently in the DEIS in Sections 19 and 20. Specific home sales information is provided for the area immediately surrounding Bay Towne. It is important to note that a shopping center has existed adjacent to many of the adjoining neighbors for over twenty years.

Comment 11 – Kircher, K.

Another very important point is that everyone on this street will be affected by our home values going down. No one will want to buy our homes with Wal-Mart in the backyard.

Response:

The Planning Board is responsible to oversee the environmental review of potential impacts of this rezoning application. There were enough areas of concern that the Board required the preparation of a DEIS, to analyze these impacts. One of those impacts was the potential to affect property values, if the project moved forward as proposed. The reference to WalMart being in the backyard is somewhat of an exaggeration. The applicant's preferred alternative, COM-54, is separated from the rear yards of Jewelberry Drive by 100' of natural vegetation and 100' of an extensive berm system and barrier. As requested by the Board, the Applicant has submitted another alternative (CP-02) that would maintain a 200' natural buffer plus a 100' area for a berm and possible wall, thus increasing the separation further than proposed on the applicant’s preferred alternative layout. This was a combination of two previously reviewed alternatives; COM-50 and RES-15. See also the Response to Comment 3 and Comment 4 above.

Comment 12 – Phan, H.

Our subdivision is only 3 minutes away from the plaza, we love our neighborhood. It is such a peaceful and quiet area. We have never heard any noise from the plaza as people have mentioned and complained on October 14th at the hearing meeting. I have 2 employees and a customer who live right next to the plaza on Pen-Web Street. They never complain the noises and the lights from the plaza. Every time I picked up my employees from this street I always thought this is very peaceful street. The values of the house on this street are high. The reason I know that because there was a house was up for sale, and I told my sister to buy it because it is very convenient access to shops and plaza. Come to find out the price for the house was high and it was sold quick. Therefore, the plaza has a positive effect on the values of the homes.

Response:

The Planning Board is responsible to oversee the environmental review of potential impacts of this rezoning application. There were enough areas of concern that the Board required the preparation of a DEIS, to analyze these impacts. One of those impacts was the potential to affect property values, if the project moved forward as proposed. See the Response to Comment 3 and Comment 4 above.

Comment 13 – Sanchez, J.

Lastly, it would be unfair to all of the property owners that have property that backs up to the parcel that DiMarco is asking to be rezoned. All of these people invested their savings in beautiful homes that back up to a residential lot. Everyone knew that land could be potentially be developed someday, but we all reasonably expected that we may be looking at someone’s backyard, in accordance with current R-1-12 zoning, not at the back of a Super WalMart, and the two are vastly different. None of us would have built our homes here if the Super WalMart had already been here. We all face significantly decreased home values if this goes through, since other people aren’t going to want to live behind WalMart either. The unfairness of the proposition is almost too preposterous to verbalize.

Separately with respect to the residential home value, there is about a -- almost two pages of documentation surrounding kind of the -- what Bay Towne has done to the area. And I think again, these were very broad assumptions. They were not specific. At the end of the day, if -- you know, if it's all about location, home values --
Penfield Planning Board  
February 9, 2012

not to -- not to regurgitate again several comments that were made earlier tonight. At the end of the day, we all buy our homes based on location. So if you're going buy a home, adjacent to a potential future big box, I think we all know what the answer is that comes to many of us here, which would be probably the answer would be no. You would move on to something else. So I think it is something -- so you can't really base residential home values on the fact that Bay Towne, which was built a couple years ago, has actually increased home values. Which recently, economically that is not really the case, so I can't make any broad assumptions. And lastly, um, obviously I bought my home based on doing a lot of diligence. I'm a resident there since 2006, and one of the big things for our family, we have three kids, young, was what -- Penfield offered, which was kind of a little bit more of a rural community, a little outside of commercial. I knew that I was behind 1000 feet of Wal-Mart, but least I made still the decision based on the Residential zoning that is there presently today. Obviously now that is being reviewed, which obviously I would be against.

Response: Include reference that the size of existing building to be a “big box” ref. brand name
The current application for rezoning includes only a portion of the R-1-12 zoned land. The remaining 8 +/- acres is proposed to remain R-1-12 and be restricted from further development. The Planning Board is responsible to oversee the environmental review of potential impacts of this rezoning application. There were enough areas of concern that the Board required the preparation of a DEIS, to analyze these impacts. One of those impacts was the potential to affect property values, if the project moved forward as proposed. See the Response to Comment 3 and Comment 4 above. The Applicant has provided several scenarios for commercial and/or residential development of the land. The residential options indicate that if residences are constructed on this parcel of land, there will not be a natural buffer to alleviate additional impacts from development of a 28 or 48 lot subdivision.

Comment 14 – Smith, S.
While I agree that a vibrant, fully leased Bay Towne Plaza is vital to this area, I do not feel that achieving this goal requires rezoning. Therefore, I do not support this zoning change. Needless to say, any such redevelopment raises the obvious concerns such as (but not limited to): Increased noise levels (to what we already hear) Lighting Aesthetics Increased traffic Depressed property values Overall lower quality of life for nearby residents Potential increased retail vacancy in Bay Towne as a result of Super Wal-Mart. I would be sad, but compelled, to leave the town of Penfield. I am sure many others would as a result of such an invasive rezoning to the current residential property.

Response:
Please reference the DEIS, specifically Chapter 3; 3.3, 3.5, Tables 3.3-2, 3.3-3, 3.3-4, 3.3-5 and 3.3-6. Additionally, Figures 6 and 7 explain with map aides the lighting and noise measurements that are inquired about in this Comment. Attachment 10 (Noise Study), Attachment 19 (Property Value Assessments-Bay Towne vicinity) and Attachment 20 (Gates New York information regarding Wal-Mart in neighborhood) of the DEIS provide detailed analysis, as does the amended Noise Study, included in this FEIS.

Comment 15 - Stanton, R.
The DEIS grossly overstates economic benefits of the Project to the local tax base, and fails to consider the economic impact of the devaluation of neighboring properties arising from the threatened action.

Response:
The DEIS does consider the impacts to property values, as contained in Responses to Comment 3 and Comment 4, above.

Comment 16 – Trevett T.
A piece of land was set aside to protect the people who had or would in the future make very handsome investments in our Town, in our tax base for a lot of good reasons, including noise, smell, visual problems, just activity alone could scare other people who might interested in these homes that would be developing away from those homes. In my humble opinion, I think that constitutes a contract, an agreement. And for one party to come here now and say, “I would like to take that condition back,” at the expense of men and women who are taxpayers in our Town who relied on this condition, I -- I don’t think that's right either.
Response:
The property in question was never “set aside” for the protection of others. The land was always planned for some form of development, thus the present zoning. The R-1-12 portion of the lands under consideration was actually approved for residential development as Section 2 of the Providence Landing Subdivision (reference date the approval was granted). The applicant has implemented his right to seek a zoning change through application to the Penfield Town Board. The result of that application outcome is yet to be determined.
SECTION 3.4 – REASON FOR TOPS LEAVING AND ANALYSIS OF GROCERY MARKET

Comment 1 – Hanscom M.
Victor's Supercenter Wal-Mart is less than 100,000 sq ft and operates between 7am and 11pm everyday. Our current store is over 119,000 sq ft and could be made into a Supercenter without any further expansion. Use the existing Wal-Mart store and add a larger grocery component if need be. Yet, I think it is important to mention that the empty Tops store alone shows us all how short term the gain is in allowing commercial districts to be developed with superstores. They develop and then they empty and stay empty for year after year. You see this in Brockport with the empty Wal-Mart building sitting there year after year with yet another Super Wal-Mart being built just around the corner from it. We certainly do not need an additional 170,000 sq ft Superstore being built on residential land, surrounded by three residential neighborhoods, with the potential that some day this store will lie vacant, particularly since the trend for superstores, whether it be a Wal-Mart or a Target, is for smaller stores, like the one in Victor that just opened with only a 100,000 sq footage, again 19,000 sq ft smaller than our current Wal-Mart. So why are we even here? Our current Wal-Mart is already plenty big to accommodate a larger grocery component! But would a Super Wal-Mart be the key to revitalizing Bay Towne? If you are really looking to “make Bay Towne stand out, to give shoppers a reason to re-establish their loyalty to Bay Towne” as the DiMarco’s state in the DEIS page 3.5-5, do we really need a Wal-Mart at all or another grocery store?

Response:
The applicant has addressed the alternative of a smaller Wal-Mart store in the DEIS, chapter 20-2.1. The Planning Board cannot make decisions about the marketability of retail stores or whether or not a certain sized store may become or remain vacant. There are many factors that go into securing tenants for stores and the Planning Board cannot base decisions on factors over which it has no control. It is the Board's responsibility, under SEQRA, to identify and analyze impacts that may be associated with a preferred alternative and to analyze identified alternatives to the one preferred by the project sponsor. That is the process that is currently underway.

As discussed in the DEIS, Chapter 2-2.1, the Applicant has analyzed the possibility of a smaller Wal-Mart store for this location. The proposed Project includes an approximately 177,000 square foot Wal-Mart supercenter. The former Tops store is now partially occupied and additional construction is on-going.

SECTION 3.4.1 – PLAZA HEALTH/REDEVELOPMENT

Comment 1 - Burns, J.
I also am very cognizant of the problems that are going on there. It's very ugly right now. That Wal-Mart is a disaster I think compared to what a Super Wal-Mart could do for the area.

Response:
The Town of Penfield has entered into a Property Maintenance Agreement with the owners of Bay Towne Plaza for the purposes of regulating noise-generating activities and general maintenance issues. Any new commercial development would also be required to enter into a Property Maintenance Agreement, which is then enforced by Penfield’s Code Enforcement Officer.

Comment 2 - Dohr, P.
The petition reads in part, "I'm aware of and support the DiMarco Group's application to the Town Board of Penfield for the rezoning of the presently vacant land adjoining Bay Towne land to General Business. The rezoning will permit the relocation and expansion of the current Wal-Mart store into a Wal-Mart Super Center, as well as the addition of a pedestrian friendly venue for specialty shops, all of which will increase the property tax base, sales tax revenue and employment in Penfield. The investment in Bay Towne Plaza will not only keep it strong, but will also strengthen the entire North Penfield Crossroads Business District."

Response:
The Planning Board received the petition as part of the public comment and input process.
Comment 3 - Frank, T.
So I figured -- I think you also -- I think you all saw the newspaper article today about Wal-Mart adding smaller stores. They're shifting gears to think small. Focusing on small and medium-sized stores it plans to open. It is trying to jump-start sluggish US sales. To me this is an important thing. As I say, at one time, Kmart was the big -- the big store in the area. Well, they are probably not going to last much longer. And now Wal-Mart is trying to jump-start sales. They want to build smaller. By the way, your stock went down 10 points yesterday. And I am concerned that at some point in the foreseeable future, Wal-Mart -- or, yeah. Wal-Mart isn't going to be there. Which is going to leave a rather large, empty building on that property and for those that look at me like I'm crazy about them going under, it wasn't that long ago that if you told people that Chase Pitkins was going down the drain, they would have had you locked up. It's gone, because a business decision was made to close it. If Wal-Mart concentrates on smaller stores, to build this massive building, um, is really ridiculous. I would at least say wait another 5, 10 years and see how Wal-Mart does. I also believe that I -- I wish I could get a Vote for Bay Towne T-shirt, but I don't work for Wal-Mart. But -- because I'm in favor. I will vote for Bay Towne. You know, it does need stores there. It does need stores, something to bring people in.

However, Tops has sat there for several years now, and I had spoken with a Tops employee a few years ago and according to him, they were more or less forced out of Bay Towne because of the lease. So, you know, again, I -- I don't have a whole lot of faith, and if he -- if DiMarco Group would have -- had put in shops, started the process, then, okay, but they want to go the other way. Let us build this monstrosity, and then the other stores will come.

Response:
Concern about large empty stores is not a new issue. The Planning Board cannot control how successful a business is. Its primary protection against unsightliness remains with a Property Maintenance Agreement, a strong Code and adequate enforcement. Some redevelopment of the existing Bay Towne Plaza is underway, including the former Tops store, which now has a tenant in part of the building.

Comment 4 - Guon, E.
The revitalization of Bay Towne can do amazing things for my business, for the people that I employ, for the future people that I will employ. Some of them in this room have children and possibly themselves, hopefully. When Pam at Beale Street mentioned that she had to lay off people, with the revitalization, I look forward to extended hours at the restaurant, which would mean increased hiring and increased revenue for people. What we would do also would be revitalize inside and outside our restaurant, again, to make attractive our area of Penfield and to keep people in this area and not traveling toward Webster or toward other places.

Response:
The Planning Board acknowledges that a strong, healthy commercial district is important for a community.

Comment 5 - Hanscom, R.
And for three years I have opposed the rezoning, the revitalization of Bay Towne. For three years Mr. DiMarco tells you one thing and then does another. He says he is going to create a street of shops; doesn't do it. He says to Seabury residents it will be a residential area; doesn't create it. Personally, the business person from Spencerport, check the people that left Bay Towne. Check the reasons -- some of the reasons they left Bay Towne, please. I have talked to them. You need to look into it. Why did Tops leave? I want to know. And I think -- I think it is important because I think it is an important part of the DEIS to determine why people left Bay Towne, why the business owners left Bay Towne. I think we need to investigate why Tops left Bay Towne. Why did Play It Again Sports leave Bay Towne? Why did VCO leave Bay Towne? Why did VCO sue DiMarco? I think this is important. It leads to the integrity of the developer. This plaza is only 20 years old and it looks awful. It looks awful. Is this because Tops left that it went down hill? Chase-Pitkin left at 250 and 441. That plaza looks gorgeous. I mean the advancement that Wegmans has put into that plaza, it looks like a Pittsford Wegmans. It's looking gorgeous. Just because Tops left didn't mean that the plaza had to go down. But it does. It looks awful. It's only 20 years old. I am not proud of that area. I'm not proud of Bay Towne. I want to see it grow. We were hopeful that it would grow with the street of shops.

We were told by Mr. DiMarco that nothing was going to go beyond it until the street of shops thrived. Nothing happened. I -- why we're so frustrated, why we can't get on with it is because we can't get on with it. He says one thing. We tried to meet with him. We tried to talk with him, and we can't get on with it. So for three years I'm on it, and I'm sick of it. I would like to get on with the revitalization of Bay Towne. I would like to see that area thrive. There's so many vacancies. Why if Super Wal-Mart seems to be the key issue here, and all of us have no objection to it, why doesn't he put it on his current property? There is so many vacancies. In fact, if the Victor Super Wal-Mart can exist with 100,000 square feet and ours is 119,000 square feet, why can't you just take your existing Wal-Mart and make it into a Super Wal-Mart? You don't even have to add on to it? If what you want is a grocery component, you have the space. You have it. Work with it. Get on with it. Create your street of shops. Get on with it.
Response:
See Responses to Comment 1 and Comment 3, above. The reuse of the existing WalMart for a Super WalMart has been addressed in other sections of this FEIS.

Comment 6 - Hansen, S.
In 2008, Mr. DiMarco presented plans for a street of high-end shops in the old Tops store in this very room. He suggested possible tenants like book stores, coffee shops, craft stores and art galleries. When I spoke to him after the meeting and asked if this project is contingent on a big box store going in behind the plaza, he personally assured me that this was a stand-alone project and it was independent of any other future projects at Bay Towne.

Now, in 2010, according to Mr. DiMarco, the street of shops requires a big box anchor to be a viable project. Nothing has been built yet. I realize that times change and the economy is a lot different than it was in 2008, and -- that may have had a factor, but rezoning this property is a big step that won't be -- easily done… Do Wal-Mart customers and Bay Towne merchants actually care how many square feet is in this Super Center as long as it is a Super Center with groceries? Where is the objective data in the DEIS that talks about the size? The whole proposal also assumes that much of the vacant available space will be filled. The Tops has been vacant in the plaza for many years. An oversized Wal-Mart Super Center plus 64,000 square feet of new specialized retail is a high risk decision I think for a glut of unoccupied retail space. There is no mitigation. Only hope and speculation there.

Response:
The applicant and the Planning Board acknowledge that there are many vacancies in the Bay Towne Plaza. The Board also believes that there is likely more than a single reason for these vacancies. Speculation on tenancy appears to be common in the commercial leasing business, both from the tenant’s standpoint and the landlord’s. There are currently improvements to the existing plaza underway and since the public hearing in 2010, a new tenant has occupied a portion of the former Tops store.

The Planning Board also required analysis of alternatives in the DEIS, and these are discussed further in other sections of this FEIS, including use of the existing WalMart building to house a super store. Specifically reference where.....

Comment 7 - Hansen, S.
If the town board rezones this land, it opens the door for any sort of 24 hour general business development. If this proposed Big Box store decides at a later date to move down the street, can the town board prevent gas stations, 24 hour restaurants, oil change places, or any other sorts of highly commercial development in this potential General Business zone? In our neighborhood? As Mr. Dimarco has shown with the Street of Shops, just because the town approves something, doesn’t mean he HAS to build it. Times and the economy could change again. So the town could REZONE this land and some other commercial development could be built there. I ask that the Town proceeds with caution in making such a dramatic zoning change.

Response:
See Response to Comment 6, above. If the property is rezoned, the applicant may include any permitted use allowed by the Town of Penfield Code within the General Business District. Uses such as gas stations, auto repair facilities, etc. are allowed only if they meet specific standards outlined in the Conditional Use section of the Code. As noted earlier, occupancy of buildings cannot be guaranteed, nor does an approval guarantee the approved project will be built.

Comment 8 - Nowak, P.
I am a potential business tenant in Bay Towne, and I would like to recap what was stated earlier, that -- and -- I'm about to take that risk, I'm putting a lot on the line, my house, some of my assets in order to become a tenant in Bay Towne. So when we talk about investment, I'm a young business owner and I'm -- I'm investing quite a bit in Bay Towne and in Penfield.

Response:
The Planning Board acknowledges that there are risks to tenants, as there are to landlords, in the commercial leasing business. It is incumbent on all parties to understand the risks and plan for them, for a successful business venture to take place.

Comment 9 - Orosz, A.
First off, I want to say that I am in favor of revitalizing Bay Towne. As it stands now, it is an eyesore. Another impact that is not addressed, what happens if we end up with a Medley Mall? Big, beautiful mall brought in, and it fails. Somebody comes in and says, "I can revitalize this." They come in, they revitalize it, and it fails. What happens to the buildings? Who takes care of them? Who looks after them? Who looks after the safety of the residents around it? Who gets stuck cleaning it up? That's an impact that is not addressed. And in this economy, it is a really significant factor. As we have said, bigger is not necessarily better. Bay Towne needs to be revitalized. The developer needs to take ownership, revitalize it and get on with it. He needs to do so within the current zoning issues.
Response:
Revitalization of the existing Bay Towne Plaza is currently under way, with façade changes and structural changes. The Town has entered into a Property Maintenance Agreement with the owners of the Plaza and enforcement of that agreement is the responsibility of the Code Enforcement Officer. Any new commercial development in Penfield is required to enter into a similar agreement, to have the property maintained, regardless of tenancy.

Comment 10 - Ryan, J.
We are very much for the desperately needed revamping of the Bay Towne Plaza and we do shop at the various shops there. If there has to be a Super store in the plaza, can't we look into the possibility of a side addition to the existing Wal-Mart? I worry that if a new building is constructed, that the old building will sit vacant as some of the smaller stores still are. Mr. DiMarco recently indicated to us that there are only a handful of perspective tenants so far.

Response:
It has previously been noted that there are no guarantees for vacancy and there are indeed risks for both tenant and landlord. Indeed, it is incumbent on the landlord to fill vacancies, as that is the source of rental income that maintains a successful business plan. Tenancies can be affected by a number of different factors, including size, price per-square-foot, anticipated marketability of a specific product in a specific geographic or demographic location, and alternative location options. The DEIS Supplemental Submission provides discussion on the alternative RES-48 Expansion, which discusses the applicant’s reasons for why the existing Walmart should not be expanded. See also, Response to Comment 9, above.

Comment 11 – Hanscom, M.
The proposed Bay Towne Plaza Expansion is not designed in such a way that it will help to re-vitalize the existing Bay Towne Plaza. The Street of Shops does nothing to promote additional business in the existing Bay Towne Plaza.

Response:
Most of the issues related to this comment are directed toward the access to and through the existing plaza in order to seek the destination of the proposed WalMart. This involves a very specific review of internal travel patterns, pedestrian accommodations and other features that are not available at this concept stage of analysis. The Planning Board is responsible to review any future site plan applications with the specific direction from the Penfield Zoning Ordinance, including but not limited to Article IX, Section 9-3.A., which states the Board should consider: “Adequacy and arrangement of pedestrian traffic access and circulation, vehicular traffic, parking, walkway structures, control of intersections with vehicular traffic, pedestrian convenience, and appropriate provisions for handicapped persons.”

It will be during any future site plan review that the specific details will be provided and discussed, subject to a public hearing and ultimately determined to be the best design available.

Comment 12 – Hanscom, M.
The existing Bay Towne Plaza is failing due to its poor layout, lack of signage and lack of advertising. Most of the stores are not visible from Empire Blvd. There is no formal street-front signage for any of the remaining stores in the plaza. I cannot recall ever seeing an advertisement by the Bay Towne Plaza owners in support of the stores in the plaza.

Response:
Bay Towne Plaza was designed over 20 years ago. That design, approved by the Town, has developed some interior conflict points and those are now being corrected. The fact that the Plaza has very little frontage on Empire Blvd. has presented a challenge to businesses. The Town’s sign ordinance regulates the amount of signage for commercial businesses and the owner of the plaza was allowed to construct the pylon sign at the Empire Blvd. entrance identifying the location as Bay Towne Plaza. This is not uncommon in plazas and malls, alike. It is up to the landlord and/or tenants to advertise with a geographic location. After 20+ years in existence, the location of Bay Towne Plaza is well known.

Comment 13 – Hanscom, M.
Suggest that a portion of the former Tops building to create a Neighborhood Market by WalMart and relocate the Fashion Bug, to put the market next to WalMart.

Response:
This alternative was not identified during the formal scoping process and therefore was not included in the DEIS. This alternative also has not been offered by the applicant. As stated in the SEQRA Handbook, only alternatives that "are feasible considering the objectives and capabilities of the project sponsor" are to be considered. SEQRA Handbook, Ques. 23, P. 122 (3d Edition, 2010). Here, the two store models would not meet the Applicant's goal of providing a one stop Super Wal-Mart shopping experience, nor
is the Applicant capable of developing that model, as the applicant has stated that its agreement with Wal-Mart requires the construction of a Super Wal-Mart. As stated in the DEIS, the proposed size and configuration of the Wal-Mart is based on the present prototype that Wal-Mart is now developing in this region. Wal-Mart has evaluated the market based on proximity to other Wal-Mart stores, population, etc. and determined a smaller or different type of Wal-Mart store would not be a feasible option for this location. Wal-Mart has determined that the proposed size is most efficient to serve the market area, as well as to remain a competitive and viable store.